

POLICY : REZONINGS ON FARM PORTIONS AND AGRICULTURAL HOLDINGS

Item B-DP (6-2003) STANDARDISATION OF DEVELOPMENT PLANNING POLICIES :
MC 12.6.2003 REZONINGS ON FARM PORTIONS AND AGRICULTURAL HOLDINGS

RESOLVED:

1. **That** the contents of the report regarding the standardisation of the Development Planning Policy for Rezoning on Farm Portions and Agricultural Holdings attached to the report as Annexure "A" **BE NOTED** and that the said policy **BE APPROVED**.
2. **That** all provisions in existing Town-planning Schemes which are in conflict with the Development Planning Policy for Rezoning on Farm Portions and Agricultural Holdings, **BE AMENDED** in accordance with the policy within a period of one year.
3. **That** the provisions of the policy **BE APPROPRIATELY COMMUNICATED** to Ward Committees and relevant stakeholders by the Development Planning Department.

REZONINGS ON FARM PORTIONS AND AGRICULTURAL POLICY

JUNE 2003

PREPARED BY:
DEVELOPMENT
PLANNING
DEPARTMENT

*Approved at Mayoral Committee
2003.06.12
ITEM B-DP (6-2003)*



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1. PURPOSE OF THE REPORT

The purpose of this report is to establish a uniform procedure for the Ekurhuleni Metropolitan Municipality with regards to the evaluation of land use applications submitted on farm portions and agricultural holdings in terms of the Town Planning and Townships Ordinance, 1986.

2. MOTIVATION

Until recently the disestablished Local Councils of the Ekurhuleni Metropolitan Municipality interpreted the definition of a "township" in terms of the Town Planning and Townships Ordinance, 15 of 1986 differently. This resulted in procedures that are not followed uniformly throughout the Metro. For example an application to establish a guest house on an agricultural holding in one Service Delivery Centre might only be allowed with a township establishment application, whereas the same rights might be allowed with a rezoning application or consent use (where allowed in terms of the Town Planning Scheme) in another Service Delivery Centre, subject to certain conditions. The criteria used by each Service Delivery Centre differs when evaluating whether an application should be submitted in terms of a rezoning or a township establishment procedure. Since in most cases it is argued that a rezoning/consent use (where permissible) application is a more expedient and a more simplified process to follow, private applicants use this disparity and non-conformity in procedures to motivate rezoning applications where a township application would have been appropriate. This causes confusion with applicants as well as officials.

2.2 WELMA BOERDERY HIGH COURT JUDGEMENT

A recent High Court Judgement in the matter between "Welma Boerdery (PTY) LTD and Pretoria Council implied that rezoning of a farm portion to a single land use is not legally possible. Based on the interpretation of this decision the Development Planning Tribunal recently decided to keep all applications for rezoning on farm portions in abeyance until clarity is obtained from the Townships Board on the definition of a single use. Several applications for rezonings on farm portions and agricultural holdings were therefore been delayed for several months.

It is therefore necessary to approve a uniform policy on dealing with rezonings on farm land versus township establishment in order to ensure speedy processing of applications and economic development.

2.3 PROCEDURAL DIFFERENCE BETWEEN TOWNSHIP ESTABLISHMENT AND REZONING

A simplified summary of the township establishment procedure is as follows:

- Submission of a motivating memorandum including all the relevant documentation. This includes a layout plan taking into consideration factors such as the contours of the land, geo-technical conditions, etc.
- Advertisement of the application and circulation thereof to external and internal parties;
- Approval of the layout plan if no objection was received;
- Submission of layout plan for allocation of erf numbers by the Surveyor General;
- Drafting conditions of establishment including comments received;
- Submission of application for official approval of the township in terms of delegations;

- Compliance of pre- proclamation conditions by the applicant, which includes submission of an approved general plan, amendment scheme maps, payment of guarantees for the installation of engineering services to the satisfaction of the Council, opening of a township register.
- Proclamation of the Township.

The process for a rezoning application is:

- Preparation of a motivating memorandum submitted by an applicant;
- Advertisement of the application and circulation thereof to external and internal parties;
- Submission of the application for approval in terms of delegations if no objection was received;
- Applicant compliance with approval conditions which may include payment or guarantees for the installation of engineering services to the satisfaction of the Council prior to the opening of a township register.

The difference between the two procedures is as follows:

- Township establishment is a legal process whereby agricultural land is converted into individual sites to which certain land rights are allocated.
- After the creation of the sites, land use rights in a township can be changed through a rezoning application.
- The process of township establishment is used when the intention is to create multiple portions of land which can be transferred to different owners.
- The information and documentation required for submission as part of a township establishment application is more comprehensive than that of a rezoning application.
- The information requirements are set out under schedule 7 of the Town planning and Township Regulations, 15 of 1986 for a rezoning application and section 18 for a township establishment application.

From the above it is clear that a rezoning application is a simpler and shorter and less expensive procedure than that of a township establishment application. **A rezoning application is usually submitted in respect of land located in an already approved township. The amount of information required for a rezoning application is considerably less than that required for a township establishment application. It is therefore assumed that the intention of the legislator was to allow rezonings only with regards to erven in already approved townships.**

2.4 RECENT DECISIONS TAKEN BY THE MINISTER OF DEVELOPMENT PLANNING AND LOCAL GOVERNMENT

The Transvaal Provincial Administration, (now the Department of Development Planning and Local Government) issued a statement in April 1986 to all Local Authorities that :

" ...as a general guideline, business, industrial and other rights may be granted on agricultural holdings and farm portions without the necessity of township establishment provided that the proposed development consists of a single development , the development on the ground on approval does not comply with the definition of township as contained in the Town -planning and Townships Ordinance, 25 of 1965, and the land is not to be subdivided. "

Based on the above guideline, local authorities approved rezonings on farm portions where the application complies with the above requirements. Since a single development is not defined in terms of this guideline the definition of a single development has been interpreted differently.

The Benoni Service Delivery Centre recently submitted two applications to the Townships Board in terms of section 130 of the Town Planning and Townships Ordinance, 15 of 1986 for investigation. The purpose was to establish whether these applications constituted an illegal township. Although these recommendations have not been approved by the MEC and have therefore no legal status, the principles contained in this document can be used as a guideline. The key issues of that report are summarised as follows:

- **The "Welma Boerdery" Judgement did not prove that the amendment scheme procedure cannot be used on farm portions.**
- The definition of a township must be interpreted within the context of the whole Ordinance. It then becomes clear that the need to establish a township arises in those circumstances where development of a single piece of land will take place, entitling various persons to obtain rights in various components of that single piece of land and making a particular use or uses thereof. It does not apply to a single development of a particular piece of land in single ownership. Comprising various components which will remain in single ownership.
- A single development with a single owner does not constitute an illegal township.
- The Townships Board decided that the above statement, dated April 1986 to all Local Authorities is still valid.
- The proposed development comprising of the following does not constitute an illegal township: a main house occupied by the owner, a second house occupied by the parents of the owner, usual outbuildings of which one is occupied by domestic servants and an outbuilding measuring 550 m² containing storage facilities. (A business for the storage of equipment to construct stages and seating facilities for events.)
- The merits of the application has been evaluated in terms of the scale and impact of the proposed use as well as the frequency of the activity on the property.

2.5 EXISTING POLICIES

2.5.1 TSHWANE METROPOLITAN COUNCIL

Shortly after the "Welma Boerdery" high court case the Tshwane Metro decided not to allow any rezonings on farm land and agricultural holdings. This policy is however reviewed currently and a new policy is being proposed by the Tshwane Metropolitan Legal and Corporate Department. A copy of this proposed policy was obtained and the contents contained in this policy are relevant to the Ekurhuleni Metropolitan Council. Approval was obtained from The Department of Tshwane Metro to refer to their proposed policy as well as their legal opinions.

The Ekurhuleni Metropolitan Municipality also has several Town Planning Schemes in operation in its area of jurisdiction. Some of these Schemes allow consent uses on farm land and agricultural holdings whereas others do not make provision for secondary uses under "Agricultural" zonings and therefore a rezoning application is required. Since these schemes are legal documents they have to be implemented by the relevant Metropolitan Departments.

The Tshwane policy has contradictory principles in terms of the definition of a township as stated in the Ordinance. The following comments are made on this policy:

- **A "Business" or "Industrial" use can be allowed with a rezoning application even though multiple uses can be accommodated as primary rights under these zonings. For example under a "Business 1" zoning implies that building plans can be approved for shops, places of refreshment, businesses, residential units which are primary rights under this zoning. This could lead to the creation of an illegal township.**
- The policy also makes provision for the approval of consent uses on farm land. The policy however does not indicate if only one consent use will be allowed or whether all the consent uses provided for under a specific zoning can be allowed.
- The policy is not clear on whether uses should be accommodated under one roof.
- The policy is not clear on the definition of a single use or single development.

Based on a discussion with an official from the Tshwane Legal and Corporate Department, the policy is interpreted as follows:

- **Only a single land use is permissible, such as a crèche or a shop or a factory with a rezoning procedure.**
- **Only one consent use on a farm portion will be allowed even though provision is made for several consent uses under a specific zoning.**
- Single buildings are preferred.

2.5.2 JOHANNESBURG METROPOLITAN COUNCIL

According to discussions with the Johannesburg Metro's Legal adviser, they have appointed a Senior Advocate to formulate an opinion on the "Welma Boerdery" Court case. His findings were that the High Court decision was correctly taken and that future applications should be evaluated against the definition of a township as stated in the Town Planning and Townships Ordinance, 15 of 1985. Examples of uses that will require a township establishment application in terms of the Johannesburg policy are provided below:

- Filling station;
- A zoning including agriculture, residential and a scaffolding business.
- **Any zoning that allows more than one use,**

2.5.3 EKURHULENI METROPOLITAN MUNICIPALITY

A recent study was done to determine which policies have been approved in each Service Delivery Centre. Based on this study, only Alberton and Kempton Park Service Delivery Centres have approved policies on this matter. Most of the recommendations made as part of these policies are still applicable and will be incorporated into the proposed Metro Policy. The Kempton park policy basically also only allows rezoning applications when a single use is applied for. The existing engineering services would also have to be able to service the proposed use. If major upgrading or provision of services is necessary a township establishment application would be required. It is submitted that the recommendations contained

in this policy is relevant and should be adopted as the policy for the Ekurhuleni Metropolitan Municipality after providing for a few amendments.

2.6 DEFINITION OF A TOWNSHIP

The Town Planning and Townships Ordinance, 1986 defines a township as follows:

“township” means any land laid out or divided into or developed as sites for residential, business or industrial purposes or similar purposes where such sites are arranged in such a manner as to be intersected or connected by or to abut on any street, and a site or street shall for the purposes of this definition include a right of way or any site or street which has not been surveyed or which is only notional in character.

Based on the above a site does not need to have legal cadastral boundaries and can therefore comprise only a portion of land for which a title deed exists. The street does not have to be surveyed and can only be imaginary. This implies that a dwelling house plus a shop which is divided or connected by a driveway on a farm portion constitutes an illegal township. **The key issues in this definition are a single use and a single building which can be allowed on land with a rezoning procedure without the creation of an illegal township.** A development comprising of a dwelling house, a building for a factory and the agricultural use can therefore not be allowed without township establishment in terms of this definition.

The above definition might have been formulated in an era when town planning policies were more control orientated, than developmental. It is therefore submitted that the definition of a township is too restrictive and does not contribute to flexible town planning procedures and speedy development. This definition does not support the new developmental oriented policies of provincial and local government. In order to ensure speedy development many local governments have therefore interpreted this definition to suit its own local town planning policies, causing great confusion.

Although this Metropolitan Council should also support a developmental view, it is still bounded by the legal framework of the Town Planning and Townships Ordinance, 15 of 1986. The proposed policy should therefore not be in contradiction with this definition. A local authority does not have the jurisdiction to contravene legislation even though it does not agree with it.

It is therefore proposed that an action be initiated whereby the Provincial Government be requested to re-evaluate the definition of a township and amend the existing legislation to support its development policies. The argument might be raised that such an exercise may be futile in view of the proposed new legislation on land uses planning. It is however submitted that a strong case can be made in view of the uncertainty regarding the framework for completion of this new legislation. The amendment of the definition could provide a short to medium term solution, whereas the finalisation of the new legislation might be longer term solution.

2.7 SINGLE USE VERSUS SINGLE DEVELOPMENT

Based on the above, it is clear that the Townships Board and the Department of Development Planning and Local Government has a less restrictive outlook than the

policies of Johannesburg and Tswane Metropolitan Councils. The Townships Board will allow a single development where as the Metro Councils will allow a single use.

A single use can be defined in its strictest form as one single land use, excluding any subservient or related uses for example only an office or a church. The question however arises whether a storage area should be allowed as part of this office use and whether this would then still comply with the definition of a single use. In the case of an office, the answer might seem straight forward, however when evaluating an application for a filling station the matter becomes more complex. A filling station is usually associated with a car wash facility, motor repairs, quick serve shop and an auto bank. The question therefore arises whether this constitutes a single development or a single use.

If the policy allows for a “single development”, to take place on a specific holding or farm portion the danger exist that multiple uses may be exercised, under one roof which will also lead to the establishment of an illegal township for example a shopping Centre. The proposed policy should therefore rather allow for a single use.

The definition of a single use should therefore take into consideration the following:

- **A single use should constitute a single land use including land uses which are related and subservient to the main use. "**
- Related and subservient uses are uses that are usually associated with the specific use and without which the use will not be able to function properly. These land uses must be so inter related that it is not necessary to mention them separately for example, a office with rights for a filling station.
- When defining a single use it is important to make provision for the primary rights on the property namely "Agriculture" and "Residential" The Residential component should also allow a second dwelling to make provision for accommodation of extended family. It might seem that allowing an agricultural use, residential for the owners of the land plus a single use constitute a multiple use and therefore an illegal township. Cognisance must however be taken that agriculture and residential for agricultural purposes are exempted from township establishment and can therefore be allowed without being considered as two additional uses. This will also make provision for the guideline as followed by the Department of Development Planning and Local Government.
- The principles of single ownership and single site should be reflected in the definition.
- A filling station should be classified as a single use but it must be limited to the inclusion of a C store limited to a maximum of 150 m² Auto Teller Machine and a car wash facility (depending on the definition of a filling station in the relevant town planning scheme). The collection of these uses is normally expected to be found at a filling station and are usually associated with this use (included in the definition of a filling station).

2.8 PROVISION OF ENGINEERING SERVICES

The provision and availability of the necessary engineering services should be considered when evaluating applications on farm portions. In terms of the township establishment procedure, services agreements are required prior to proclamation of a township. These agreements ensure that the funds are available to provide the necessary services to the satisfaction of the local authority's requirements. The transfer of all properties in the proposed township cannot take place unless the Council has certified to

the deeds office that the necessary services have been installed or that it is satisfied that it will be installed within a certain time period.

This is however not a requirement in terms of the rezoning procedure. The rezoning procedure requires that a local authority inform the applicant that a certain amount is payable for the provision of services after proclamation of the rights. The exercising of the rights and approval of building plans are therefore held over until such payment has been received. Should an applicant not make the payments necessary to ensure the provision of the required services the amendment scheme can be withdrawn.

It is therefore suggested that the Council adopt a policy whereby it is ensured at an early stage in the process that the necessary services arrangements are provided for. In this regard it is proposed that the applicant be provided with the cost implications for provision of services, prior to approval of the application. A written acceptance of these preliminary cost and service implications must be obtained from the applicant and made part of the approval conditions. One of the conditions to be complied with, prior to the proclamation of the rights should be that a services agreement be entered into between the local authority and the developer or owner. These conditions should however not prejudice Council's decision and it should be made clear in any correspondence that the conditions are draft and could be amended at the decision stage. These conditions must be agreed to prior to the submission of the application (or the granting of an amendment scheme number) for approval. Should the draft conditions be amended by Council, the applicant will be given a period of 30 days from the date of notification of the decision to give comments on the amended conditions. If the applicant does not agree with the amendments the dispute will be handled according to the normal procedure e.g. Portfolio Committee Hearing.

One of the main problems concerning rezonings is that the applicant does not pay the contributions etc or comply to other conditions, e.g. road widenings etc as with a rezoning this is only enforcesable after proclamation. With a township establishment application this problem does not arise.

It is thus also proposed that the necessary contributions etc be paid and most conditions be complied with before the amendment scheme is proclaimed.

PROCEDURE AND CONDITIONS

1. The township establishment procedure shall be the norm in changing land use rights on farm portions and agricultural holdings.
2. The change of land use of farm portions and agricultural holdings can be permitted in exceptional circumstances through rezoning or a consent use procedure (if permitted by the applicable town planning scheme) without the necessity of township establishment, provided that:
 - 2.1 The development does not comply with the definition of a township i.e. it does not consist of more than one site, which is arranged to be intersected, connected by or to abut on any street. "Site" shall mean ground chosen or used for a town or building and does not need to have legal cadastral boundaries.
 - 2.2 The application comprises a single development with a single use and a single owner;
 - 2.3 A single land- use such as "Special" for a warehouse or "Special" for a shop can be allowed with a rezoning procedure;
 - 2.4 Agricultural use and dwellings associated with agriculture can be included as primary rights. A dwelling unit can also be included as a primary right;

- 2.5 The essential services are available or can be provided to the satisfaction of the relevant department. All service fees and contributions will be payable as per the Council's policy in this regard from time to time;
- 2.6 If required a services agreement must be entered into between the Council and the developer prior to the proclamation of the rights;
- 2.7 Payment of the bulk services contributions, endowments, internal services or guarantees to this effect should be paid prior to the proclamation of the rights. (if required by the relevant departments.);
- 2.8 Where the Council is of the opinion that due to the impact or size of the development an application for township establishment is necessary, a rezoning application will not be acceptable;
- 2.9 Township establishment shall be required if a public road over any part of the property is required;
- 2.10 Council reserves the right to request additional information which would normally accompany an application for township establishment where required such as flood line certification, mineral right holders consent, geological reports, etc;
- 2.11 Where the land is so situated that it can be included in an Approved township by extension of the boundaries of that township and such inclusion is deemed desirable, a condition requiring such inclusion will be imposed;
- 2.12 The maximum floor area of the proposed use must be limited as part of the approval conditions. (as service contributions etc are determined by the floor area);
- 2.13 No alteration or expansion of the above mentioned land use rights is allowed except with a new application. Such an application must be in line with this policy;
- 2.14 Interrelated and or subservient uses in loose - standing buildings on a site (such as a guest house / dwelling plus hall, or a warehouse plus accompanying office) is also permissible without the township establishment procedure. - These land uses must be so interrelated that they do not have to be mentioned separately;
- 2.15 The land may not be subdivided or any portion thereof sub let in order to ensure single ownership;
- 2.16 Partial rezoning of a portion of land shall not be allowed. The floor Area; of the land uses shall be restricted to a specified amount and the bulk services and other contributions shall be calculated based on this floor area;
- 2.17 The following list gives examples of land uses which can be obtained on farm portions and agricultural holdings by means of a rezoning or Council Consent depending on the applicable Town Planning Scheme:
 - 2.17.1 "Special" for a Crèche, a Nursery school, an after school centre
 - 2.17.2 "Special" for a Place of Public worship or a Church
 - 2.17.3 "Special" for a Guest House
 - 2.17.4 "Special" for a Household enterprise, a medical consulting room or a home office
 - 2.17.5 "Special" for a Filling station including a dwelling unit
 - 2.17.6 "Special" for a Spaza shop including a dwelling unit
 - 2.17.7 "Special" for a Warehouse including a dwelling unit
 - 2.17.8 "Special" for a Second dwelling
 - 2.17.9 "Special" for a Golf course, a Private Open Space or a Golf Driving Range
Agricultural including a shop.
 - 2.17.10 Agricultural including a warehouse
 - 2.17.11 Uses exempted from township establishment in terms of the Town Planning and Townships Ordinance, 15 of 1986.

NOTE : A zoning such as "Commercial solely for a single warehouse is also acceptable.

- 2.18 The following are land uses which can only be obtained by means of township establishment:
- 2.18.1 Any zoning in terms of the town planning scheme that will allow multiple uses as primary rights, such as a Business 1 zoning.
 - 2.18.2 Shopping centres
 - 2.18.3 Offices: sectional title
 - 2.18.4 Industries: sectional title
 - 2.18.5 Sectional or group Housing
 - 2.18.6 Public Garage
3. The following process shall **BE ADOPTED** in dealing with applications on farm land and agricultural holdings:
- 3.1 Applicants will be encouraged to submit a preliminary proposal (including proposed floor area), which will be screened by the Planning Department to confirm that the correct procedure will be followed.
 - 3.2 A preliminary proposal can be in the form of a letter and must indicate the proposed rights applied for and proof to the satisfaction of the Council that the proposed development will not result in a township as defined in the Ordinance.
 - 3.3 Conditions 2.1 and 2.2 will be implemented by requesting a preliminary proposal prior to the allocation of an Amendment Scheme number when receiving such a request on a farm portion or agricultural holding.
 - 3.4 When evaluating the proposal, cognisance must be taken of the impact of planned / future national and provincial roads, availability of engineering services, Spatial development Framework etc. Where applicable the comments of provincial Departments for example Gautrans could be required prior to taking a decision on the proposal.
 - 3.5 An official answer is given to the applicant in writing indicating the process to be followed. This letter will indicate that the matter has been evaluated purely from a procedural point of view and must in no way be construed that the application will be approved.
 - 3.6 If the decision in point 2.5 indicated that the amendment scheme route can be followed a list of draft conditions and cost implications pertaining to the provision of engineering services must be provided to the applicant. These conditions must be mutually agreed upon in writing, prior to the allocation of a amendment scheme number and the submission of the amendment scheme application. It must also be stated that final conditions will however only be laid down with the evaluation of the formal application.
 - 3.7 In terms of this policy consent use applications (where permitted by the town planning scheme) must be processed the same as rezoning applications in terms of referring of applications, determining service contributions, requesting flood line certifications, geological reports, etc.
4. The following standard conditions must **BE LAID DOWN** as part of the approval of all rezoning/consent use (where applicable) applications on farm portions and agricultural holdings. These draft conditions must be accepted in writing by the applicant before the allocation of a amendment scheme number and the submission of the application (see 2.6 above).
- 4.1 All necessary contributions/endowments/guarantees must be paid prior to the promulgation of the amendment scheme.
 - 4.2 If required by the local authority a service agreement must be drawn up prior to the promulgation of the amendment scheme.

- 4.3 The applicable engineering connections will only be allowed once the site development plan has been approved.
- 4.4 The applicable connection fees are payable upon application.
- 4.5 A qualified engineer must confirm that the property is not affected by a 1:100 year flood line before the amendment scheme can be approved.
- 4.6 A geological engineer must confirm that the soil/geology is suitable for the land use rights applied for before the application can be approved. The report from the geological engineer must indicate what is the maximum development potential that can be accommodated on the property (e g Height, FAR and coverage) and mention any dolomitic risks involved.
- 4.7 The applicant will not be at liberty to demand any other higher order engineering services from Council once the application has been approved.
- 4.8 The property may not be subdivided.
- 4.9 No part of the holding or any interest in any development on the property may be alienated whether by sectional title or any other means other than alienation of the registered property together with improvements as a single entity.
- 4.10 No building may be sub-let except as a single entity.
- 4.11 The necessary environmental authorisation must be obtained.
- 4.12 If the mineral rights have been severed from the owner of the holding, the consent of the mineral rights holder(s) has to be obtained.
- 4.13 If required by the local authority a certificate that is signed by a professional geological engineer to confirm that the buildings comply to the findings and recommendations of a geological report, must be submitted to the local authority together with any building plans.
- 4.14 A detailed plan or report in respect of all the building structures signed by a professional engineer must be submitted to the local authority together with any building plans if required by the local authority.
- 4.15 The holding must be excised from the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919) and the description of the property as farmland must be submitted. (Proof of the registration of the excision must be submitted before the rezoning can be proclaimed).
- 4.16 A site development plan or if permitted by the local authority a detailed site plan submitted as part of the building plan has to be submitted for approval prior to or simultaneously with the submission of any building plans.