



PRESS RELEASE

BEAUFORT-WES/BEAUFORT WEST MUNISIPALITEIT – MUNICIPALITY



INTRODUCTION OF BEAUFORT WEST MUNICIPAL STANDARD ZONING SCHEME BY-LAW

In August 2019, the President assented to the Spatial Planning and Land Use Management Act, Act 16 of 2013 (SPLUMA). This act has as its objects to:- provide a framework for spatial planning and land use management in the Republic; to specify the relationship between the spatial planning and the land use management system and other kinds of planning; to provide for the inclusive, development, equitable and efficient spatial planning at the different spheres of government; to provide a framework for the monitoring, coordination and review of the spatial planning and land use management system to provide a framework for policies, principles, norms and standards for spatial development planning and land use management; to address past spatial and regulatory imbalances; to promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for land use decisions and development applications; to provide for the establishment, functions and operations of Municipal Planning Tribunals; to provide for the facilitation and enforcement of land use and development measures; and to provide for matters connected therewith.

The Western Cape Government also realised the need for revised provincial legislation dealing with land use planning, to be compliant with the Constitution and SPLUMA, and as a result has drafted, approved of and assented to the Western Cape Land Use Planning Act, Act 3 of 2014 (LUPA).

Land use planning in the Western Cape, has up to now mainly been regulated by the old order Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) (LUPO), which pre-dates the Constitution of the country. There was also no national legislation, dealing with land use planning.

LUPO never fully recognised municipal land use planning as an exclusive municipal land use planning competency as determined in the Constitution. Besides other matters, LUPO controlled many aspects of municipal land use planning such as:-

- The compilation and approval of town planning schemes and structure plans, which needed to be approved by the Minister.
- Approval of certain land use applications.
- The manner in which subdivision approvals are confirmed.
- Prescribing time frames and lapsing periods.
- Consideration of appeals.

These matters are now also not regulated in detail by the SPLUMA or LUPA as these are regarded as municipal planning competencies. As both SPLUMA and LUPA are so-called “framework” legislation, they set frameworks and certain minimum standards which municipalities must comply with in terms of their land use planning functions.

This means that municipalities must “give effect to” the provisions of SPLUMA and LUPA via their own legislative powers.

In terms of Section 156/2 of the Constitution, municipalities have the right to make by-laws for the matters which they have the right to administer, in this case “municipal planning” as set out in Schedule 4 B of the Constitution, read with Section 11(3)(e) and (m) of the Municipal Systems Act. An effective means to regulate municipal planning would be to make, adopt and implement municipal planning by-laws.

The effect of the two pieces of law reform in short entails that Municipalities will now have full responsibility for land use planning in their areas of jurisdiction, which entails:

- drafting of municipal spatial development frameworks,
- new integrated municipal zoning schemes,
- receive and consider all land use applications,
- decision making on land use applications by delegation to officials and to the Tribunals to be

- established
- appeals against decisions of the delegated official or the Tribunal to the Council's appeal authority,
- regulating time frames, notifications, confirmation of subdivision arrangements,
- lapsing of rights, and
- transgressions and enforcements.

Currently zoning rights in Beaufort West Municipality area are regulated and controlled through two different zoning schemes, namely the Section 8 Scheme Regulation promulgated in terms of Section 8 of the Land Use Planning Ordinance 15/1985 and the Scheme Regulations promulgated in terms of the Black Communities Development Act 4 of 1984 (BCDA).

SPLUMA came into operation on 1 July 2015. Section 24(1) of the same determines that a Municipality must, after public consultation, adopt and approve a single land use scheme for its entire area within five years from commencement of this act.

On 28 January 2020 the Local Council provisionally adopted the Beaufort West Municipal Standard Zoning Scheme By-law for public comment.

Die voorgestelde Standaard Soneringskema Verordening maak voorsiening vir grondgebruikregte wat nie in die Artikel 8 en BCDA-skemas bestaan nie, wat tot gevolg kan hê dat dit vir grondeienaars en of voornemende ontwikkelaars weens die uitgebreide gebruiksregte makliker sal wees om ontwikkelings te vestig. Grondeienaars moet egter daarop let, dat hoewel die voorgestelde skema voorsiening maak vir die oorgang van die Skema 8 en DCDA-skema sonerings, onwettige gebruike wat bestaan het voor die inwerkingtreding van die Standaard Soneringskema Verordening, steeds onwettig sal wees na implementering van die voormelde. In sekere gevalle is daar egter sekere primêre regte tot sonerings bygevoeg wat nie onder die huidige twee skemas bestaan het nie. 'n Voorbeeld hiervan is dat Enkel Residensiële Sone I eienaars, oor die primêre reg sal beskik om maksimum twee gaste kamers uit hul huis te verhuur, met dien verstande dat die dominante gebruik steeds enkel residensieel moet wees en sal die beskikbaarstelling van gaste kamer(s) egter steeds onderworpe wees aan die ontwikkelingsparameters van toepassing op Enkel Residensiële Sone I.

Dit is dus belangrik dat grondeienaars wat gebruike op hul erwe beoefen, anders dan die toegelate primêre reg, waarvoor hul tans nie toestemming het nie, hulself vergewis of sodanige gebruike wettig sal wees onder die Standaard Soneringskema aldan nie.

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