

NEW LEGISLATION :
ACTS, BILLS AND TAXES

Introduction

- A hot topic in SA today.
 - New legislation - landowners under siege?
1. Regulation of Agricultural Land Holdings Bill, 2017 (“Ceiling Bill”);
 2. Preservation and Development of Agricultural Land Bill, 2016 (“Preservation Bill”);
 3. Expropriation Bill, 2005 – passed by Parliament on Tuesday, 6 June 2017;
 4. Extension of Security of Tenure Amendment Bill, 2015 – passed by Parliament on Tuesday, 6 June 2017
 5. SPLUMA, the Local Government Municipal Property Rates Act and the Leopard Creek Case;
 6. The Property Practitioners Bill, 2016
 7. Comments on Property Valuation Act, 2014
 8. Others (not tabled here
 - Occupational Health and Safety : Electrical Certificates etc.
 - National Building Regulations : Municipal Plan Approvals
 - Environmental Laws – e.g. NEMPA)

Which ones affect Ingwelala and how? All may, in varying degrees.

Regulation of Agricultural Land Holdings Bill, 2017 (“Ceiling Bill”) : A Brief Summary

Minister of Rural Development and Land Reform

- Part of Land Reform process in SA
- Aim : “to reverse the legacy of colonialism and apartheid; and to ensure a *“just and equitable”* distribution of agricultural land to Africans.”
- Core Intervention : “to create a Land Commission to collect and disseminate all information regarding public and private agricultural land”. One of the most NB features of the Bill. Why? Government is the biggest landowner in SA but doesn’t know who owns what so needs to do a land audit.
- Minister Gugile Nkwinti : Business Day 29 March 2017
- Section 15 : Every owner of private agricultural land to lodge a completed notification with Land Commission stating race, gender, nationality, size and use of land, real rights. Constitutional?
- Section 1 : Definition –
 - 1.1 “Agricultural land” – all land except land in proclaimed townships, i.e. towns and cities, formally zoned non-agriculture, excluded by Minister, SPLUMA (non-agricultural land)– so at this stage applies to Ingwelala;
 - Note : GEF has made submissions to exclude “protected area” under NEMPA from definition.
 - 1.2 “Redistribution Agricultural Land” – all agricultural land that falls between or exceeds any category of agricultural land holdings contemplated in Section 25.
- Section 25 : The Minister determines categories of ceilings for agricultural land in each district. Different category ceilings can be determined.

Regulation of Agricultural Land Holdings Bill, 2017 (“Ceiling Bill”) : A Brief Summary

- Section 26 : Landowner to notify the Commissioner which portion of his land constitutes “Distribution Agricultural Land”, then black people as defined in the EE Act must be offered right of first refusal. If not so acquired, then “**SHALL**” be acquired by the Minister. If can’t agree on price, expropriation.
- Note : Unsure what the ceilings are, so difficult to comment meaningfully. A figure of 12 000 ha was bandied about. Practical?
- Example :
- A owns a farm of 1 300ha, ceiling in district set at 1 000ha, 300ha is Distribution Agricultural Land.
- Section 19 : No foreign person shall, from commencement of the Act, acquire ownership in agricultural land unless a black person has controlling interest. Foreign person can however enter into a long term lease for a period of not less than 30 years and not more than 50 years.
- Questions :
- Many questions regarding whether it breaches constitution (self-declare race and gender), and equality (foreign ownership), impractical? Administrative burden? Foreign investment? Financial structures? (Redeemable Prefs. “A”; Participation Prefs. “B”). Note : Institutional funds may be exempt. [pension, investment, hedge [white monopoly capital?]]
- Contradicts Preservation and Development of Agricultural Land Bill and creates splinter portions that may be uneconomical and fragments agricultural land.

PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND BILL, 2016
("Preservation Bill")

- Introduced by the Minister of Agriculture, Forestry and Fisheries – different Minister and Department to Ceiling Bill.
- Object : Preserve Agricultural Land to ensure food security.
- Promote agricultural production
- Prevent : fragmentation of Agricultural Land
creation of subsistence farmers
- Repeals Subdivision of Agricultural Land Act, 70 of 1970 – Thorpe dispute
- Makes approval for subdivision of agricultural land more onerous. Problematic for property developers.
- Contradicts the Ceiling Bill?
- Constitutional? : Sections 4, 9, 12, 13, 16, 19, 20, 21, 30, 39 – 42 unconstitutional?
- Apply to Ingwelala only if remains agricultural land

Local Government Municipal Property Rates Act, 2004 (“Rates Act”)

- SPLUMA : Section 24 – Municipalities to adopt and approve a single land-use scheme of its entire area by 30 June 2020, replacing all existing schemes within that municipal area. Bushbuckridge 2014, Maruleng (Thornybush, Timbavati, Klaserie) 2017, Ekurhuleni 2017
- Rates Act : Section 3 : Municipalities must adopt a rates policy
- Ingwelala within Bushbuckridge – received valuation roll this year
- Big challenge / threat? Caution – a lot of uncertainty
- Hearsay : proposed budget - R29B
- : R22B from private nature reserves and lodges
- : R38k for every R1m bungalow value p/a
- e.g : average Ingwelala bungalow : R3m
- $R38k \times 3 / 12 = R9\ 500$ per month
- Receiving attention : consultants
- Valuations Appeal Board : Leopard Creek Share Block Ltd. vs Nkomazi (Malelane) Local Authority - bare dominium vs land and buildings
 - R900m valuation
- - R65m rates account

Other Matters in Brief

- Property Practitioners Bill :
- Definition of Property Practitioner : must Ingwelala / John Llewellyn get Fidelity Fund Certificate? If act like estate agent and does valuations?
- Occupational Health and Safety :
- Is electrical compliance certificate necessary for each bungalow?
- National Building Regulations :
- Must building plans be approved by municipality?
- Comments on Property Valuations Act:
- Compensation under land claim on property valuation to be divided by 2
- Various Environmental Laws :
- NEMPA etc.