

## Book review:

### **Planning law: Principles and procedures of land-use management by Jeannie van Wyk. Juta 1999, pp 286, price: R250.**

In the old days when the Administrator / Premier was the final arbiter in rezoning and subdivision applications, planners were perhaps not so aware of the legal underpinnings of planning. The new Constitution changed all that. Now every planning decision can be challenged in a court of law. Obviously there are advantages and disadvantages to the courts being the final arbiter in planning and environmental management. However, it will serve no purpose to dwell on the disadvantages because the new dispensation is a *fait accompli*. It will be much more fruitful to take note of the adaptations that planners (and town councils) will have to make if they want to stay out of court – or have a fair chance when they do get there. Planners will have to be much more exact and consistent in their advice, and town councils in their decisions. Not only is there an increased accent on the legal input in planning, but the body of law is increasing rapidly. Even the decisions of the courts are an important source of planning law. And that is where this new book by Jeannie van Wyk makes a major contribution in collating the body of planning law. “Planning Law” brings together, fairly concisely, many of the finer aspects of planning law that planners may not always know about. The value of the book to planners is twofold. First it will fill in some of these gaps in our knowledge on planning law, and second, it will inform us about when we should consider consulting a planning lawyer. The book covers the planning and environmental management field comprehensively, from the

principles underpinning planning law (ch. 1), the place of planning law in the legal system (ch. 2), the history of planning law (ch. 3), planning administration (ch. 4), national and provincial planning (chs. 5, 6), and removal and enforcement of restrictive conditions (chs. 7, 8).

Environmental law

What I particularly liked is the inclusion of a chapter on “Planning and the environment” (ch. 9). I see planning as part of environmental management, the common aim being the promotion of sustainable development. Land-use management plays a major role in both.

“Environment” is defined in the Environment Conservation Act to include the human. Van Wyk chose to quote the definition of the National Environmental Management Act that excludes humans. The National Environmental Management Act is however strongly anthropocentrically oriented, as it clearly states as the first principle that “Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably” [section 2(2)], and “Development must be socially, environmentally and economically sustainable”{(2)}. Also from sections 23 and 24 of this Act, it is clear that most new developments will have to be processed according to the prescriptions of integrated environmental management. Therefore, from my point of view as legal amateur, it seems as if planning law is included in environmental law.

The development of planning law  
One point where I disagree somewhat with Van Wyk is about the impact of British and United States planning law on South African planning law. My analysis is that we are much closer to the American system, introduced after the landmark *City of Euclid vs. Ambler Realty* decision. The 1932 British Town and Country Planning Act did have a strong influence on South African planning ordinances, such as the Townships Ordinance (33 of 1934) of the Cape Province, but in 1947 Britain radically changed its system when they nationalised (actually, expropriated) all development rights. Since then our systems have been very different in principle from the British system. Our town planning schemes zoned for future land uses. In Britain present (legal) use of land is the land-use right – any change requires “planning permission”. Only the Land Use Planning Ordinance of the Cape Province (Ord. 15 of 1985) brought that Province closer to the British model, and thus also the new Planning and Development Act (Act 7 of 1999) of the Western Cape Province.

In Conclusion

Planning law: Principles and procedures of land-use management is a useful companion for planners. It also demonstrates the need for closer cooperation between planners and planning lawyers. Perhaps the Institution should open its membership to planning lawyers.

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