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## From the President's Desk



Its time for another President's letter and I really can't believe how quickly this year has gone. Its been a tremendous year for the Institute as we have run many events which judging by the survey responses have been extremely well received.

We have officially launched our Mentorship program countrywide which has been lauded by all including SACPVP – who are so impressed that they are wanting to collaborate with us. The interest in the program has resulted in a whole new batch of student members which is fantastic for the growth of our organization and the profession.

While this does sound like boasting I do think we as an Institute should acknowledge our successes and work on areas that need improvement. At Natex at the beginning of November we discussed the past year and spent some time on plans for the year ahead so that we can keep the Institute relevant, continue to provide value to our members and remain as the recognized body for valuation training in South Africa.

Our step into the social media world was a tentative step at first, with most of us concerned about this whole new world that we had not played in before, but again the response that we have received has been incredible. In fact, it is one of the ways that has encouraged individuals to contact us about the profession and how to become valuers which is fantastic for the future development of our profession.

As we wind down to the end of the year please keep safe and well.

**Tracey Myers**  
SAIV President

## From the GM's Office



It's hard to believe that another year has already just about come and gone. Where did the time go?

As I reflect back on the year that has been; I am reminded of an extract from a book I came across through Henré Hablutzel; *The South African Institute of Valuers, The First Eighty Years. 1909 – 1989* by JH Hermann(1992) which reads

**“If the Institute is to keep the identity of the valuation profession, then it too will have to move with the times and broaden its scope. It is to be hoped that the 1990 decision regarding the employment of a Public Relations Company will indeed get off the ground, that it will produce positive results and the Institute will emerge with a vital, modern upmarket image, whilst retaining its identity, dignity, professionalism and of course, its sense of purpose which is the basic reason for its existence viz maintaining a competence and ever increasing high standard in the valuation of immovable property”.**

This was written nearly 30 years ago but it remains ever so relevant today. Natex met at the beginning of November and the discussions that were had all encompassed the thinking that JH Hermann had that many years ago.

Abstracts from the book will be shared with you electronically. I hope you will enjoy it as it documents the history of the valuation profession and the Institute so well.

On another note, I would like to take this opportunity to congratulate our President, Tracey Myers on her elevation to Fellow. I can't think of anyone more deserving of this recognition right now. Not only for the work that she does for the Institute, but for the profession as a whole. She becomes the third female Fellow in the history of the Institute.

Here are some snippets from the application which was submitted:

“Tracey (sic) is dedicated to the profession through her work in private and through the Institute. Her involvement has culminated into the growth of the profession and in learning and development amongst Valuers”.

“She has mentored various students and professionals throughout her long career as a Valuer (29 years). This has been achieved through formal and informal mentorship of others. She remains committed to mentoring up-and-coming Valuers from various backgrounds in society”.

Congratulations Tracey!

To all of you who attended the various workshops and seminars across the country in the past few weeks, thank you for your unwavering support. Thank you for also taking the time to complete the surveys after each event, it helps us to know what to focus on and improve.

To the Branch Chairs and Branch Executives, thank you for all that you do and for your commitment to the advancement of the profession.

To all our Members, I'd like to wish each and every one of you a blessed and rested festive season. May the New Year be filled with joy.

Till next time,

**Lerato**

# CBE Bulletin

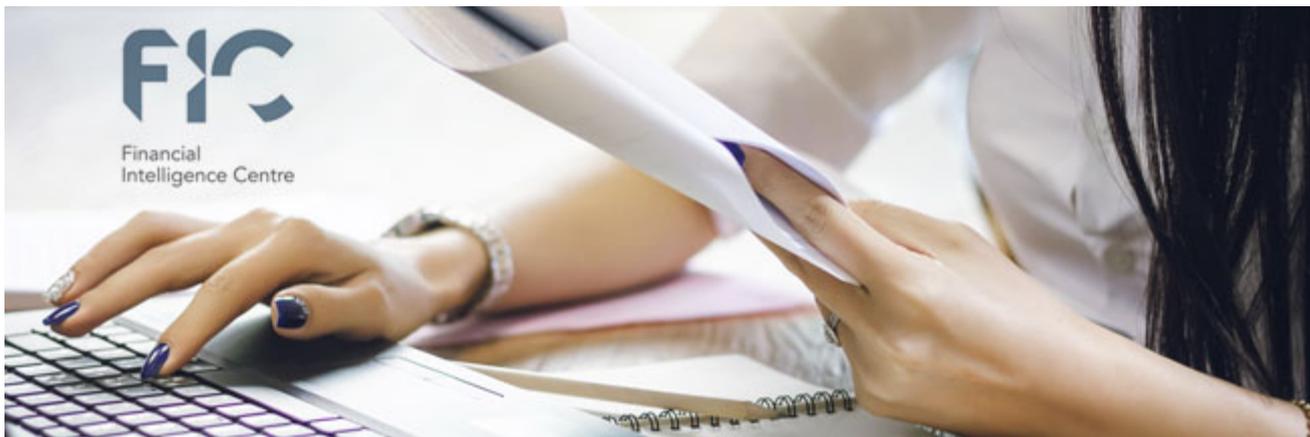


The last issue of the CBE Bulletin for 2019 is out. The November issue is a patchwork of “all sorts of everything.” In observance of the National Disability Rights Awareness Month (3 November – 3 December) Amanda Gibberd, director of Universal Design and Universal Access in Public Transport at the Department of Transport contributed the feature article with useful pointers for built environment practitioners in planning, developing and construction.

Other highlights of the month were the opening of the first High Court in Mpumalanga by President Cyril Ramaphosa. The facility was presented to the community jointly by sister entity IDT, and the Departments of Public Works and Infrastructure and Justice. CBE kept busy with two MoUs in the bag – with the University of Pretoria and Feenix. ACPM rewarded excellence to its top-notch developer members.

[Access the Bulletin](#)

# Suspect All Is Not Okay? File A Voluntary Disclosure Report



As the national centre for receiving transaction and related information, conducting analysis and disseminating financial intelligence, the FIC (Financial Intelligence Centre) relies on the regulatory reports it receives from accountable (banks, estate agents, casinos etc.) and reporting institutions (motor vehicle and Kruger rand dealers).

These reports include cash threshold reports (on cash transactions of R24 999.99 and above) and suspicious and unusual transaction reports, among others. The Financial Intelligence Centre Act, 2001 (Act 38 of 2001) requires all persons and entities that conduct, manage or work for a business, to submit suspicious and unusual transaction reports to the FIC.

However, there are persons who may not be involved in business but who nonetheless would like to report where they suspect there may be terrorist financing or money laundering. For example, these persons may wish to report:

- Where they suspect a transaction is linked to unlawful activity or the proceeds of crime
- Where they suspect that a transaction is facilitating a crime or crimes
- That a transaction is being undertaken for no apparent business or lawful purpose
- Where they suspect a transaction is being conducted to avoid the payment of tax or for financing terrorist activity
- Where a transaction or series of transactions may or may not be concluded between two or more parties.

The reports submitted by non-business persons who are not legally obliged to do so, are referred to as voluntary disclosure reports or VDRs. Reporters of VDRs are envisaged as persons or entities not involved in commercial activity, including non-profit organisations, charitable undertakings and/or public sector institutions. VDRs allow for all persons to be able to submit reports to the FIC, and to detail suspicious and unusual transactions and/or activity.

VDRs and all other reports submitted to the FIC form the bedrock for the analysis the FIC conducts, to develop financial intelligence reports. These financial intelligence reports assist in the identification of money laundering and financing of terrorist activities and they are disseminated to law enforcement and prosecutorial authority partners for their investigations and asset forfeiture applications.

Reporters of VDRs are required to register with the FIC via its FIC website [www.fic.gov.za](http://www.fic.gov.za), before they file reports with the FIC. Registration is once-off and, importantly, reports must be submitted within 15 days of

becoming aware of a suspicious and unusual transaction/activity.

Also, as with section 29 reports, reporting of VDRs to the FIC is confidential. Reporters of VDRs must not inform anyone that they have reported. Disclosure about having reported will be regarded as a tipping off offence.

Non-profit organisations, charitable undertakings and public sector institutions are cautioned against continuing with transactions where it is known or suspected that a transaction includes money laundering and/or terrorist financing.

Those who submit VDRs must remember the following important information:

- A person who submits a VDR is regarded as competent and may be compelled to give evidence in criminal proceedings arising from the VDR.
- Information concerning the identity of a voluntary reporter who has filed a VDR is admissible as evidence in criminal proceedings.
- Submitting a VDR is not a defence against prosecution for criminal activity, including money laundering and terrorism financing and related activity.
- Submitting a VDR does not protect the voluntary reporter from criminal and or civil action being instituted against the voluntary reporter.

Voluntary reporting is a meaningful way in which any institution and all citizens can assist in fighting money laundering and terrorist financing. For more information on VDRs, visit [www.fic.gov.za](http://www.fic.gov.za).



# Northern Branch Country Seminar held in Pretoria



Friday 4th and Saturday 5th October witnessed the Roodevallei Hotel and Conference Centre in Pretoria play host to the South African Institute of Valuers (SAIV) Northern Branch Country Seminar. Owing to the great speaker line up and insightful presentations they had prepared, the seminar was held over 2 days. It had a great atmosphere with a large contingent of delegates arriving clad in their Springboks jerseys as a result of the nation's rugby team playing their second 2019 Rugby World Cup game on the first day against Italy.

Proceedings got underway with SAIV President Tracey Myers introducing the MC, Northern Branch Executive Member Stanton Alberts, who performed a great job throughout the conference.

The first speaker to take to the podium was First National Bank Property Sector Analyst, John Loos discussing the 'South African economic outlook', a great topic to get the delegates warmed up. John captured the long economic super cycle which is currently in the stagnation phase. He also mentioned that it is a very long cycle which can last a few decades. "During the stagnation phase, often we do not only have politics affecting economics, but economics in the weak state of the economy starting to affect the politics as well. The last time we had such a weak phase was at the end of the previous government and I believe that this time around, yet again in the stagnation phase, we could be heading towards the next big political change, whatever that may be," stated John.



The next speaker was Itumeleng Mothibeli, the managing director for listed REIT, Vukile Property Fund's South African operations, who discussed 'Rental reversions and their impact on investors'. Itumeleng said they are finding that rental reversions are challenged and, in their portfolio, they have seen a decline over the past 3 years. "What's heartening for me is that they are still positive and I generally ask people to not only look at the reversions but also look at the trade of the tenant and the rental sales which equals affordability" said Itumeleng. He also mentioned that

they are seeing a distinct differentiation between the different classes of assets, for instance township shopping centres are showing higher trading densities when compared to their urban counterparts.

The second session was kicked off by Credit Risk Management Specialist, Keith Rocher who discussed 'Cash flow analysis, impact of valuer inputs on cash flow'. In his presentation he stated that in the Asset value methodology, the loan value is based on the capitalization of the market related income, comparative sales rate and is also determined by bank credit in respect of asset class. The Cash flow methodology loan value is based on free cash flow calculated on net rental income adjusted for actual vacancies, expired leases, month to month arrangements and short leases.



Managing Director of Ethics Monitoring & Management Services, Cynthia Schoeman was next up to present her discussion on 'Ethics monitoring'. Explaining what constitutes workplace ethics; Cynthia said the real challenge we face is not doing the right thing when everyone is looking at us, it is if we think no one is watching, we think we can get away with it, will we then do the right thing. "I describe ethics as a knowing-doing gap, there are many professions where in order to do something you would have to acquire a body of knowledge - in general that's the practice. Hence the issue with ethics; all of us already know what's wrong. And going back to the gap, the problem is that knowledge doesn't translate perfectly into ethical conduct" she said.

Sharon Brighton, the Head of Real Estate Legal for Corporate and Investment Banking and responsible for Commercial Property Finance for Personal and Business Banking, and Wealth and Investment for Standard Bank South Africa, discussed the 'POPI Act'. Sharon mentioned that even though the POPI Act is a domestic law, foreigners who use the personal information of South Africans online will be affected. For valuers she stated that when they are undertaking valuations, they need to think about what they actually want to include in a valuation report and if it is necessary. "Sometimes you don't have to include the information that you believe looks nice or very professional, perhaps you need to start thinking about including the bare minimum, you don't need to include everything, such as the physical address, the telephone number and ID number because that might get you into trouble from a POPIA perspective," she said.



Next up was a panel discussion comprising SAIV President and Vice President, Tracey Myers, Senior Valuer at Standard Bank CIB Risk Valuations and Malusi Mthuli, Head of Valuations at

FirstRand Bank Ltd respectively, who were joined by Head of the Commercial Property Finance and Agri Valuations team at Absa, Stephanie Selfe. This was an enlightening discussion on the 'Quality of valuation reports and reflection on the industry'. This was a very interactive session with the delegates given an opportunity to pose questions to the trio.

The following session saw Lightstone's Nick Burger getting on the technological side with a discussion on 'Virtual reality for valuations'. In his introduction, Nick gave the audience an overview of the industrial revolution from the early 1500's to what is today known as the fourth industrial revolution (4IR). "I believe if we don't keep track and keep up to date with technology, then we will have a hard time as far as the valuation profession is concerned," he said.

The day's proceedings were brought to an end by Rabin Harduth, Director at Accurate.Independent.Measurements who discussed 'A measured approach, adding value'. An architect by day and a comedian in his past time, Rabin's presentation had the attendees chuckling at times as he displayed his comical side. Rabin mentioned that when you are putting a valuation together you walk the site, pull out your measuring wheel and have a go with some A4 pages and ink scribbles and then use your knowledgeable experience and appropriate costing and financial models to get to a figure. "You have done everything you need for the valuation, however, in making an accurate valuation, where does the accuracy come in? Accuracy is everything," he said. Rabin's presentation included a case study of a building in Tshwane as he talked about 'size matters' in relation to the valuation of a property.



The second day of the SAIV Northern Branch Country Seminar saw Services SETA Executive Manager for Planning, Sibusiso Dhladhla providing an 'Overview of the Service SETA'. He mentioned that the Real Estate and Related Services Chamber includes the Decorators/interior designers and decorators; Real estate activities; Real estate activities with own or leased properties, Real estate duties on a fee or contract basis, Real estate valuation services; Property management services; Estate agencies and Valuers, as well as auctioneers. "The chamber facilitates the development of sector and sub-sector skills plans that are research based and monitored partly with stakeholders in the chamber. This is where we go to different industries and ask them - what exactly are your needs? What qualifications are relevant within your space and how would you like us to then train and facilitate those trainings within your space?" stated Sibusiso.

The next speaker was South African Council for the Property Valuers Profession (SACPVP) Vice-President, Roshinee Naidoo presenting an 'Update on the SACPVP'. She went to great lengths on current developments and what's in store for the future.

SAIV President Tracey Myers was back on the podium to talk about the 'Mentorship programme' currently run by the Institute. She highlighted the success stories and discussed what is in the pipeline as far as preserving the valuation profession and assisting graduates become valuers. "We would like to encourage mentors to come on board and help out in the mentoring of

graduates,” stated Tracey.



SAIV Vice-President Malusi Mthuli also returned to the podium to present his presentation on the '4th industrial revolution in the property valuation profession'. Talking about valuation in the past, Malusi said the gathering of information was time consuming and tools needed for the preparation of valuation reports were very expensive. He also stated that a valuer had to stand in a queue to source deeds information, survey data, zoning location, amenities, confirmation of services, spatial data, etc. "Now information is easily accessible, cheaper if not free, faster and available anytime of the day at the click of a button. Various online systems can be used to source deeds data, measure buildings, obtain street views, transfers, research data, time series and value estimates," stated Malusi. In conclusion, he said the real estate industry as we know it is changing and is changing at a very fast pace. "Automation, analytics and the internet of things will shift how we look, invest, manage, own, develop and sell real estate. It is incumbent on all property practitioners to be inspired by all of these changes and thrive to spearhead new developments that continue to challenge the status quo as we move closer to the fulfilment of industry 4.0," he stated.

The final presenter at the seminar was Energy and Solar Consultant at Power Quality and Renewable Services, Carel Ballack who discussed 'Solar panel rental - Impact of Valuations'. Carel said we are heading towards a point where it is cheaper having renewable energy. Talking about valuing solar assets, he mentioned that there are lots of questions that need to be answered in order to understand how to value these products and whether they should in fact have a value assigned to them. "Questions include who owns the system? How was it financed? What does it do? Is it actually working? Was it installed correctly? Can it be removed? and does it have a 2nd hand value?" stated Carel.

Prizes were up for grabs in lucky draws at the seminar; these included rugby balls signed by former rugby player Joel Stransky, cameras and mobile chargers. Congratulations to Adrian Vallun, Jan van Heerden, Hennie Wybenga, Leon Stander, Leane de Kock, Humphrey Visser, Deon Pienaar, Hannelie Pieters, Jaco Rabie and Didi Ledikwa-Makgaka on winning the various prizes at the seminar.

# Oakford Priory Investments (OPI)Pty Limited v The Member of the Executive Council (MEC) for Education for the Province of KwaZulu-Natal KZND Case No: 7535/2014 Lopes J. An application for leave to appeal was dismissed by Cachalia and Mathopo JJA (SCA 1278/18)



Valued at between **R1,58 million** and **R112,5 million** by valuers, based on the market, income and cost approaches. Lopes J found that all three methods, properly applied, should result in roughly the same value. The reason for the discrepancy in value was that some of the valuers did not include economic obsolescence in their depreciated Replacement Cost (DRC) calculation whilst others did. Lopes J ruled that **R4,4 million** was the amount of Just and equitable amount of compensation that the MEC had to pay for the 7,4 hectares (including three schools) which the MEC expropriated from OPI Pty Ltd and not **R79 million** which was claimed.

## **History (1881- 2018)**

Oakford Priory has an interesting history. In 1881, 100 freed slaves from North Africa, arrived at the Bluff. A British war ship intercepted an Arab Dhow off the coast of Madagascar releasing the slaves onto a ship travelling from Marseilles to Durban. Father Louis Mathieu who was travelling on the ship took care of the released slaves. In 1884, he together with the freed slaves moved to Oaks farm on the banks of the Umdloti river upstream from the Hazelmere Dam.

Eight sisters from the King Williams town Dominicans were recruited to assist Father Louis. In 1890, the Dominican Association of South Africa (DASA) was formed. The sisters almost single handedly together with the assistance of the local community built three schools for both black and white girls. These included the Oakford Primary and Secondary (OPS) school and the Sacred Heart Secondary (SHS) school which had a boarding hostel.

The sisters also built a church, aids clinic, creche, old age home and seminary. They leased out most of the 1,500 acres (600 hectares) of agricultural land to Tongaat Hullet. In 2000, the OPSS and SHSS schools were leased to the MEC in terms of section 14(1) of the SA Schools Act No 84/1996 together with 93 other Catholic schools which became Public Schools on Private property.

There are approximately 700 s14(1) schools in KZN including farm and other schools. The Catholic schools are leased to the MEC subject to a Catholic ethos being maintained in those schools. The lease rental, which is triple net (the MEC is responsible for R&M, Insurance and Rates and taxes etc.), was initially set at R5/learner in 2000 but increased to R45/ learner in 2014. This rental is generally higher than that paid for farm schools where the infrastructure is generally not as good. An amount of R3,000 per annum is currently paid by the MEC to lease most other s 14(1) schools.

In 2002 DASA sold 200 hectares to settle a land claim and in 2006 they donated 260 hectares for the development of Oakford Ville, a residential township, to house 700 families. 18 hectares was also required as a result of the raising of Hazelmere dam wall, but the department of Water Affairs (DWAF) had not yet expropriated that portion.

DASA, investigated selling the remaining 40-hectare property on the open market and/or donating it to other Catholic institutions as the sisters were elderly and they were no longer self-sufficient having sold and donated the bulk of the land for the upliftment of the local community. A well-respected valuer who acted as adviser to DASA and the Archdiocese undertook a valuation and informed DASA that although the buildings were valued on an estimated new replacement value (ENRC) basis for insurance at **R52 million**, the value on the open market was approximately **R5 Million**. This equated to a depreciation factor (physical, functional and economic) of more than **90%**.

The Archdiocese investigated taking over the Marian Centre, where the seminary was run but the costs of rehabilitating the electrical infrastructure proved unaffordable to them and they declined DASA's offer of donation. The Property was also offered to the eThekweni Municipality but for various reasons no transaction was concluded. Various Estate agents and property developers such as Marriott's were also unable to attract a buyer.

#### **Valuation in terms of the Municipal Property Rates Act (MPRA)**

On **1 July 2007**, the property became ratable in terms of the new Municipal Property Rates Act (MPRA) The eThekweni Municipality determined the market value of the 40-hectare property for rating purposes at **R24,840 million**. The Sisters lodged an objection since they were essentially breaking even financially and had not been able to attract a buyer. The objection was dismissed by the municipal valuer who increased the value to **R24,950 million** This led to an appeal by the sisters.

#### **Sale of the Parent Property**

On **24 January 2009**, Oakford Priory Investments (Pty) Ltd purchased the subject property for **R1,58 million (R33,617/ha)** from DASA. Mr. Maritz, who is the alter ego of the company, is an accountant and was the financial adviser to DASA. The sale agreement drew attention to the fact that the property was subject to an agreement contemplated in terms of Section 14(1) of the SA schools Act relating to the provision of public schools on private property. Maritz acknowledged that he was aware of this endorsement.

#### **eThekweni Valuation Appeal Board (VAB) Hearings**

Having purchased the property, Maritz took over the rates appeal from the sisters. In **2010**, the VAB reduced the value of the subject property to **R1,58 million** after Maritz gave evidence that the transaction between his company and DASA had been at arm's length. In 2012, the eThekweni municipality revalued the subject property and increased the value to **R30,75 million**. Once again Maritz objected and appealed and once again the value was reduced to **R1,58 million**.

#### **Arbitration Hearing heard by CJ Pammenter SC**

In November **2010**, Maritz filed a statement of claim in arbitration proceedings which he had instituted against the MEC in terms of the lease agreement. Maritz alleged the rental which the MEC was paying for the schools was not market related. Maritz appointed a valuer who determined the market value of the entire 40-hectare property at **R112,5 million**. He also determined that the pro rata value of the OPSS and

TSH schools was **R41,6 million**. This excluded the hostel which was subject to a separate lease agreement by the Sacred Heart Trust run by old girls of the school.

Maritz and his valuer argued that the market rental which the MEC should pay for the schools was **R5 million/annum**. They determined this rental based on a yield of **12%** on the market value of the schools which they said was **R41,6m**.

The arbitrator dismissed the claim and held that OPI Pty Ltd was bound by the s 14(1) lease agreement (**R40/learner-2010 - 2013**). He also said that Maritz's valuer was putting the cart before the horse and that one "should look at the income of the property to determine its value and not the value of the property to determine its income" Maritz's valuer agreed with the arbitrator's contention.

### **Expropriation of 18 hectares by DWAF**

**11 April 2011**, the Department of Water Affairs (DWAF) expropriated 18 ha for the raising of the Hazelmere Dam wall. Included in the expropriation were some mostly old buildings which included old laborer's dwellings which were leased to them for approximately R45 per month. These farm workers were in the process of being relocated to Oakford Ville which the sisters had donated, and the dwellings would be demolished.

DWAF appointed a Valuer from the Eastern Cape who recommended that **R10,5 million** be paid as compensation for the expropriation of **18 ha** from the parent property. The valuer based his valuation on the Cost Approach, but only depreciated the buildings on their physical condition and made no allowance for functional or economic obsolescence. He valued the **18 hectares** of land at **R1,8 million (R100,000/ha)** and the buildings at **R 8,7 million**. DWAF duly paid R10,5 million to OPI Pty Ltd.

### **Arbitration Appeal Hearing heard by M Pillemer SC, AK Kissoon Sing SC and RJ Salmon SC**

In July 2011, dissatisfied with the outcome of the initial arbitration, Maritz took the MEC on appeal before three arbitrators. Once again, the arbitrators dismissed Maritz's rental claim for R5 million per annum for the schools and confirmed that the s 14(1) lease agreement was binding. The Appraisal of Real Estate indicates that one method of determining Economic obsolescence is to capitalize the rent loss attributable to the negative influence, in this case the s 14(1) endorsement which Maritz's valuer did not consider in his DRV valuation.

### **Eviction of the Sacred Heart Trust (SHT) from the Sacred Heart Secondary School.**

In 2012, Maritz obtained an eviction order against the hostel dwellers from the Sacred Heart Secondary School on the basis that the trustees of the Sacred Heart Trust had breached the lease agreement (which was draconian). One of the reasons for the eviction was that the hostel buildings were not safe and posed a danger to the boarders. Maritz also cut off access to the schools and started charging the department for an alternative access route which the learners were told to use to gain access to the schools through sugar cane fields.

The MEC considered expropriating the schools from the parent property in 2012 but prevaricated.

### **Expropriation of OPS and SHS schools situated on 7.4 hectares of land**

On 28 January 2014, the KwaZulu-Natal Provincial Administration (NPA) issued a Notice of Expropriation in terms of Section 58(4) of the South African Schools Act No 84 of 1996 (substituted by Section 2 of Act No 53 of 2000).

Maritz appointed the same valuer who had recommended to DWAF that an amount of **R10,5 million** be paid for the expropriation of **18 hectares** for the raising of Hazelmere dam. The valuer initially recommended that an amount of **R62,127 million** be claimed by way of compensation for the expropriated

portions based once again on the cost approach but with no allowance for functional or economic obsolescence.

Maritz appointed a second valuer whom he instructed to value the property using the cost approach ignoring the section 14(1) lease agreement. The second valuer who was unaware of the first valuer's valuation recommended that an amount of **R57,4 million** be claimed as compensation for the expropriation of the schools. The second valuer maintained that there was no functional or economic obsolescence and thus also did include them in his valuation.

### **Valuations undertaken on behalf of the MEC**

The MEC appointed Roland Pardey to determine the amount of compensation which was payable for the expropriation. Unfortunately, Mr. Pardey passed away after giving his evidence in chief but before being cross examined. Thus, the court could not take any cognizance of Mr. Pardey's valuation. However, before Mr. Pardey passed away, there were several meetings held between Mr. Pardey and the two valuers appointed by Maritz.

In 2016, Mr. Ken Davies was appointed by the MEC to attend the experts meeting. Messers Pardey and Davies were firmly of the view that the Income approach should be the primary method and that the Cost approach the secondary method. However, the valuers appointed by Maritz were of the view that the cost approach was the only method which could be used and that there was no functional or economic obsolescence. Maritz's first valuer did attempt an Income valuation (ignoring the s14(1) leases) but later abandoned that valuation.

Mr. Stephenson was asked to step into the shoes of Mr. Pardey after his unfortunate death. Mr. Stephenson was of the opinion that all three methods could and should be applied, however, he was bound by the joint agreement that the market approach could not be used in this instance other than it is used to determine the value of the land as if vacant in the cost approach.

Mr. Davies and Mr. Stephenson undertook separate valuations, but both concluded that the compensation payable for the 7,4-hectare expropriated portion (including the OPS and SHS schools) as part of the parent property was between **R4 million and R4,1 million**. Messers Davies and Stephenson used the income approach as the primary valuation method, but Mr. Stephenson also used the Cost approach as a secondary method. The major difference between Mr. Stephenson's cost valuation and that of Maritz's valuers was that he included economic obsolescence whereas Maritz's valuers did not. Mr. Stephenson also considered section 25 of the constitution which states that the history of acquisition of the property is one of the factors which must be considered in determining Just and Equitable compensation.

### **Arguments put forward by the valuers appointed by Maritz**

The valuers appointed by Maritz gave the following reasons why the Cost approach (excluding functional and economic obsolescence) was the only method that could be used and why the Income approach should not be used are as follows:

1. The schools are not financial institutions.
2. The lease agreements which existed between the MEC and Oakford were not market related.
3. The rental in the lease agreements for the schools was not determined for the period after the 31st of March 2013
4. The hostel lease agreements had been determined prior to the expropriation date, and there were no rental figures with which to make calculations.

They argued that the cost approach *"is principally used for the valuation of specialized property, which is property that is rarely if ever sold in the market, except by way of sale of a business or entity of which it is part"*. Their position was that the Schools were specialized properties and there was no market for them.

They said the following about the income approach:

- *“There is no indication when the rentals for the schools will increase, and to what extent;*
- *There is no market research to determine the capitalization rate, in circumstances where a single percentage change in that rate will make an enormous difference to the value calculation;*
- *There is no identifiable notional income stream with regard to the expropriated properties; and*
- *The numbers of pupils in the schools are currently diminishing and so an accurate number of pupils cannot be determined, and a rental figure cannot be calculated.”*

## **Judgement**

Judge Lopes dismissed the arguments presented by Maritz’s valuers on the basis of the following evidence:

- The existence of the Section 14 agreement undoubtedly creates an income stream for the three schools which is readily determinable.
- The income stream may well be viewed as nominal. To suggest that any comparison could be made between the rentals applicable to the schools and the hostels, and the office rentals paid by the Field Band foundation is plainly unrealistic.
- The Section 14 agreement ensured that the schools would remain as public schools until the MEC decided otherwise. This meant that the income stream would have continued indefinitely.
- The Catholic ethos was enthusiastically maintained which reinforces the predictable rental income and provides a solid base for the use of the Income Approach.
- In addition, rental was accruing in respect of the hostel lease (although this had terminated) plus the rental for the cottage.
- It was putting the cart before the horse to establish value and then work backward to a rental. The rental determines the value, not the other way around.
- It seems entirely logical to value the parent property with the schools and then without them. This is particularly relevant when considering the original purchase price of R1,58 million.
- The biggest stumbling block in the Cost Approach is the determination of Economic Obsolescence
- All the experts agreed that where two or more approaches were used to value a property, if the approaches were correctly applied, they should arrive at broadly similar answers.
- Without the application of Economic Obsolescence, the experts were poles apart.
- It was not necessary for the Judge to adopt the mantle of a “*super valuator*”, as he preferred the approach adopted by the MEC’s experts over those of the Oakford experts.

## **What the Judge said about Maritz**

- Maritz underplayed his motives for buying Oakford Priory.
- He saw an opportunity to profit

- He tried to convey an image of a businessman fighting to secure his commercial rights contained in the constitution.
- Given the history of the property, his purchase of it and his subsequent conduct, he came across as an avaricious businessman, willing to put learners at risk in order to achieve his financial aims.
- Mr Maritz was wholly unrealistic in his approach to what he was entitled to.
- His view was that he was entitled to be paid a nett rental of approximately R5 million for the schools.

### **Legal Principles emanating from the Judgement**

The International Valuation Standards (IVS) were referred to extensively by the both sets of valuers and the following principles emanated out of the matter

IVS define an investment property as a

*“property that is land or a building, or a part of a building, or both, held by the owner to earn rentals or for capital appreciation or both...”.*

The parent property falls squarely within this definition, and it was clearly appropriate to use the Income approach to determine the compensation payable for the expropriation of the 7,4-hectare portion from the parent.

*40.2 “The income approach should be applied and afforded significant weight under the following circumstances:*

- a) the income-producing ability of the asset is the critical element affecting value from a participant perspective, and/or*
- b) reasonable projections of the amount and timing of future income are available for the subject asset, but there are few if any relevant market comparables”*

*60. Cost Approach [IVS17 Pg 42 – 43]*

*60.2 the cost approach should be applied and afforded significant weight under the following circumstances:*

- a) the asset is not directly income-generating and the unique nature of the asset makes using an income approach or market approach unfeasible*

*80.2 Depreciation adjustments are normally considered for the following types of obsolescence, which may be further divided into subcategories when making adjustments:*

- a) physical obsolescence: any loss of utility due to the physical deterioration of the asset or its components resulting from its age and usage*
- b) functional obsolescence: any loss of utility resulting from inefficiencies in the subject asset compared to its replacement such as its design, specification, or technology being outdated*
- c) external or economic obsolescence: any loss of utility caused by economic or locational factors external to the asset*

### **Before and After Method of Valuation**

*In Geue and Another v Van Der Lith and Another (625/02) [2003] ZASCA 118; [2003] 4 All SA 553 (SCA) (20 November 2003)*, the court held that you cannot sell something that does not exist. Thus, in the hands of the expropriatee the 7.42 hectares does not exist. In other words, it cannot be sold separately from the parent property but must be valued as part of the parent.

Lopes J endorsed the use of the before and after method of valuation in his Judgement and rejected the valuations undertaken by the valuers appointed by Maritz who incorrectly valued the 7.4-hectare portion as a separate property and failed to apply Functional and economic obsolescence.

***Article by K Davies and A R Stephenson***







## **Reminder!**

*Submit your CET points to the SACPVP*

**Click here to visit SACPVP website**

## **Can your Body Corporate or Managing Agent switch off or reduce your electricity if you have not paid your levies?**



The answer is a resounding NO.

Many owners in Sectional Title buildings who are in arrears with their levies are faced with the situation where their electricity supply is unilaterally cut off by the Trustees or Managing Agent. More recently, the practice of reducing the electricity was attempted in order to avoid court action against the Body Corporate. What can owners do in this situation? Well, the Community Schemes Ombud Service has unequivocally held that Trustees in buildings do not have the legal right to terminate or reduce electricity services UNLESS they have a court order. The Gauteng High Court has upheld this view in the case of Claudia Niehaus vs High Meadow Grove Body Corporate. The Body Corporate is not the supplier of electricity and therefore cannot wield this type of power in the scheme. Trustees may argue that the right to terminate or reduce electricity is recorded in the rules of their building. This type of clause constitutes nothing but a power to interfere with such person's right to use the electricity supply. The Community Schemes Ombud Service will not provide a compliance certificate for such a clause in the rules. An owner who faces this situation can go to Court to obtain a spoliation order which means that the Body Corporate must restore possession of the electricity back to the owner. Alternatively, an owner can approach the Community Schemes Ombud service for relief. It should also be noted that if there is a tenant in the unit where electricity is disconnected, the tenant could approach the Rental Tribunal for relief.

Make no mistake, it is very important for owners to keep up with their levy payments. The Body Corporate has every right to claim unpaid levies and can go about collecting the levies in a

number of ways: They may institute legal action and would be entitled to recover the taxed legal costs from the defaulting owner and may actually attach and sell the unit. They may also approach the Community Schemes Ombud and now, with the latest legislation, could obtain an order attaching the rental from the defaulting owner's tenant. We also find that going the correct legal route and obtaining a Court order to disconnect electricity is productive. The law has to balance competing interests, the right of the Body Corporate to receive monthly levy payments, and the right of owners to have undisturbed, peaceful possession of their unit.

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# South African Architectural Heritage. Legislation and Change



South Africa has ten sites listed on UNESCO's list of World Heritage Sites. Five are listed for their cultural attributes (the Fossil Hominid Sites, Mapungubwe, the Richtersveld, Robben Island and the Khomani Cultural Landscape), four are listed for their natural attributes (Barberton Makhonjwa Mountains, the Cape Floral Region, iSimangaliso Wetland Park and the Vredefort Dome) while the Maloti-Drakensberg Park is listed for both cultural and natural reasons. To ensure the protection of South Africa's cultural heritage, the South African Heritage Resources Agency (SAHRA) is charged to manage and implement the National Heritage Resources Act, (NHRA), No. 25 of 1999. The various regions in South Africa have Provincial Heritage Resources Agencies (PHRA's) to administer their local acts.

The National Act defines a heritage resource as "any place or object of cultural significance; while cultural significance is defined as "aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance." Clause 7 sets out the grading criteria:

## **Grade I:**

Heritage resources with qualities so exceptional that they are of special national significance; (these include the World Heritage Sites)

## **Grade II:**

Heritage resources which, although forming part of the national estate, can be considered to have special qualities which make them significant within the context of a province or a region; and

## **Grade III:**

Other heritage resources worthy of conservation,

Grade III includes the buildings listed for their architectural merit by local authorities. The 'safety net' in the National as well as the various local Acts is the 'Sixty Year Clause'. Clause 34 of the NHRA states that;

*No person may alter or demolish any structure or part of a structure which is older than 60 years*

*without a permit issued by the relevant provincial heritage resources authority.*

This clause puts an enormous strain on the work load of the PHRA's and the local authorities.

The 'triggers' for a Heritage Impact Assessment are set out in Clause 38 of the NHRA:

1. the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;
2. the construction of a bridge or similar structure exceeding 50 m in length;
3. any development or other activity which will change the character of a site:
  - exceeding 5 000 m<sup>2</sup> in extent; or
  - involving three or more existing erven or subdivisions thereof; or
  - involving three or more erven or divisions thereof which have been consolidated within the past five years; or
  - the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;
4. the re-zoning of a site exceeding 10 000 m<sup>2</sup> in extent; or
5. any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority,

Once the PHRA is notified of any of the triggers, a decision will be made whether an HIA is required.

The major South African cities have a listing of buildings for their architectural merit. Certainly the Listing used in eThekweni, the area I am most familiar with, needs to update the Listing written in 1984 and includes only the buildings within the boundaries of the previous 'apartheid city'. The Listing should also include the intangibles, where important events took place, particularly with regard to the struggle sites. Recognition should also be given to buildings which have won architectural awards but are not sixty years old.

The value of a Listed building is generally increased enormously by a successful change of use application. The local authority will also consider relaxing the parking requirements as well as the bulk and coverage constraints. Consideration should also be given to rates rebates. Regarding the Green issue; architectural conservation sits within sustainability. Energy and resources have gone into a building worthy of conservation; it is best to recycle it to increase its longevity.

Not mentioned in the Heritage legislation are the numerous international heritage policy documents dealing with cultural significance, authenticity, cultural landscapes etc. One of the most important documents is UNESCO's Historic Urban Landscapes (HUL) guidelines. Cultural landscapes are evaluated as a whole instead of looking at individual iconic buildings. Intangible heritage is taken into account and the process works together with communities in order to be successful. For a city to be dynamic, change must be allowed to occur. 'Limits of Acceptable Change' (LAC) is a tool used for monitoring change. In cities inscribed on UNESCO's World Heritage list, the Outstanding Universal Value (OUV) is defined at the time of inscription. How much change can be allowed to occur before that interferes with the OUV?

The protection of heritage in this country invariably comes back to the question: "Whose heritage is it anyway?" The vision of SAHRA is "A nation united through heritage". This is commendable but in a country which only became a democracy twenty-five years ago, we still have a legacy of colonialism. In their book, 'The Empire writes back', 1989, Ashcroft, Griffiths and Tiffin state "More than three-quarters of the people living in the world today have had their lives shaped by

the experience of colonialism.”

Rahul Mehrotra, the architect and theorist working in India, sees two different kinds of space, the static and the kinetic. The ‘static city’ is designed according to architectural norms and town planning controls. The ‘kinetic city’ is characterized by “processions, festivals, street vendors and dwellers, resulting in an ever-transforming streetscape – a city in constant motion whose very physical fabric is characterized by its kinetic quality”. (Mehrotra, *Negotiating the Static and the Kinetic Cities: The Emergent Urbanism of Mumbai*.2008: xi). Important elements in the composition are not buildings but the spaces between buildings which enable the inhabitants to live and support their livelihoods. The city becomes a “grand adjustment”, challenging the formal view of architecture. The Static City, on the other hand, dependent on architecture for its representation, is no longer the single image by which the city is read.

If the preservation of historic buildings is a part of the ‘static city’, how do you define the ‘cultural significance’ of the building? Mehrotra argues that the role of the architect should be that which embraces change rather than that of a preservationist who opposes change. Architecture then becomes a part of reality of contemporary life.

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CAPE TOWN – Rebosis Property Fund's share price shot up as much as 25 percent to 40 cents yesterday, following an announcement that the merger with Delta Property Fund was on track, and that a capital raising might be undertaken.

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Buying property off-plan means that you will be depending on the developer and builder to complete your home properly, within your desired construction design requirements and timeously, explains Jonathan Kohler, CEO of Landsdowne Property Group.

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New property developments in the Cape Town Central City worth in excess of R950 million have been reported this year in spite of a tight economy and huge economic pressure. This is the key finding since the release in July of the latest edition of The State of Cape Town Central City Report 2018 – A Year in Review (SCCR) by the Cape Town Central City Improvement District (CCID).

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The Real Estate industry has benefited greatly from technological advances on the one side, but on the other side it has also made it easier for scammers to prey on unsuspecting buyers, sellers, landlords, tenants and agents. Steve van Wyk, MD of Seeff Centurion, lists the below precautions with regards to sales and rentals to minimise the risks of falling victim to real estate fraud in either category.

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The parliamentary ad hoc committee tasked with introducing legislation to amend the property clause in the Constitution to give effect to a parliamentary resolution to expropriate land without compensation on Wednesday resolved to invite experts on the issue to address MPs.

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