

expropriation

Prince Herbert's father trying to persuade his son to make an advantageous marriage in **Monty Python and the Holy Grail:**

Prince Herbert: But I don't like her.

Father: Don't like her? ! What's wrong with her? She's beautiful, she's rich, she's got huge ... tracts of land.

Prince Herbert: I know, but I want the girl that I marry to have ... a certain ... special ...



by Redvers Lee
Property Division

A draft Expropriation Bill was recently published and has elicited a great deal of comment, not all favourable. The Bill must be understood as an attempt to align our expropriation machinery with the Constitution, which provides that property may be expropriated for a public purpose or in the public interest, including land reform. Government felt that the existing Expropriation Act, which was enacted in 1975, was in need of a major overhaul. Let's take a look at three important differences between the old Expropriation Act and the draft Expropriation Bill.

Firstly, the Expropriation Act permitted expropriation for *public purposes* only. This meant that public authorities could expropriate land to build roads, dams and schools and for similar purposes. The new Bill expands the scope of lawful expropriation to include property expropriated for a public purpose or in the public interest. The public interest is defined to include the nation's commitment to land reform and to bringing about equitable access to South Africa's natural resources. If the Bill is passed, public authorities will be expressly authorised to expropriate in order to advance land reform.

Secondly, under the existing Expropriation Act a public authority is obliged to pay market value and to compensate for any actual financial loss caused by the expropriation. The draft Bill provides that compensation must be just and equitable, reflecting an equitable balance between the

public interest and the interests of those affected. Although the Act goes on to say that public authorities must consider the market value of the property, market value is not the overriding consideration. The draft Bill specifically allows public authorities to pay less than market value.

A third distinction relates to dispute resolution mechanisms. Under the existing Expropriation Act, either the public authority or the expropriated owner may refer a compensation dispute to the High Court. The High Court has authority to make an order on the amount of compensation to be paid. Under the draft Bill, the determination of compensation is subject only to review by a court. A review is a limited process - the court only considers whether the public authority has properly applied its mind to the compensation dispute and whether the expropriation process has been correctly followed. Having said that, the Promotion of Access to Information Act provides the means to require the state to provide information on which it based its compensation determination, while the Promotion of Administrative Justice Act requires that compensation decisions be reasoned and justifiable. Property owners will not be left helpless in the face of an expropriating authority.

The draft Expropriation Bill is open for public comment and may be enacted with or without amendments. We will be watching developments with interest.

laduma! maatla scores at vnh

Maatla Hlapolosa, an attorney in our Litigation Division, has been made an associate.

Maatla earned his LLB at the University of Pretoria, and was responsible for Immigration and Refugee Desk at Lawyers for Human Rights before joining us in 2006. He specialises in banking law and

foreclosures, and acts for a prominent bank.

Maatla is a soccer fanatic and played the beautiful game throughout his school career. He seldom misses a Kaizer Chiefs game and he is looking forward to 2010.



Maatla Hlapolosa
Litigation Division



Some people think football is a matter of life and death ...

I can assure them it is much more important than that

Bill Shankly.



golf at gowrie

The new golf course at Gowrie Farm Golf and Fly Fishing Estate in Nottingham Road was recently the venue for Venn Nemeth & Hart's annual golf day. Everyone thoroughly enjoyed the course, which was designed by our very own Guy Smith.



Gowrie Farm Golf and Fly Fishing Estate

A superb winter's day ended with prize giving and drinks in the magnificent stone Club House, as mist rolled in over the dam.

A four ball comprising Pat Dewes, Rod

Benkenstein, Warwick Hulbert and Domingos de Jesus walked away with the first prize for the day.



The least thing upset him on the links. He missed short putts because of the uproar of the butterflies in the adjoining meadows.

P.G. Wodehouse



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LETTER

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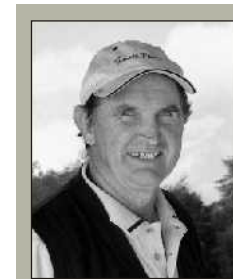
John Wallace

Simon Francis

coffee



with guy smith



Guy Smith

Guy Smith is defined by a restless energy and creativity. He is a veteran property lawyer and conveyancer and is also a property developer in his own right. Now, at the peak of his career, he has personally contributed a number of high quality golf estates and niche residential developments to the South African landscape. It was hard pinning Guy down for a cup of coffee, but when we did, we found his vision practically contagious.

If I could live my life over, I would be doing exactly what I'm doing now - creating property developments with soul! Good urban design changes the way people live. I aim to create special places, places where people feel comfortable and where public spaces, including streets, have a human scale to them. Unfortunately most modern developments are designed around the motorcar, without much thought for people. Many suburbs developed since the 1950s are harsh, aggressive and soulless places. The roads are conduits for motorcars rather than public spaces that can be enjoyed, not only by motorcars, but people as well.

Today, most houses are isolated from neighbours and the surrounding

landscape. This is because streets are seen as just a way to get to or from work. With this way of thinking, houses become places that imprison people, rather than forming part of the public domain. I see things differently. I believe houses should fit into the greater urban landscape and that the spaces between houses should be seen as public living areas, which are to be enjoyed by inhabitants of the village or town. If houses are carefully designed and correctly placed in relation to the street, the public spaces change character.

Old Stellenbosch is my favourite South African town. I find that when I am in Stellenbosch it is difficult to stay indoors or to drive around you are drawn out onto the streets and into the public spaces. There is a quality about those streets and public spaces that changes the way people live and enjoy the urban landscape. I see no reason why this cannot be repeated in modern developments.

Initially, like most developers, I was focused on the bottom line. But when I started developing Prince's Grant on the KwaZulu-Natal north coast, I was introduced to John Rushmere and Dr Glen Gallagher. John is a professor of architecture at the

Nelson Mandela University, whilst Glen is a former senior partner of GAP Architects in Johannesburg and a doyen of South African architecture. They introduced me to a new way of thinking about urban design, called New Urbanism, and its expression in Seaside, a revolutionary development on the northwest coast of Florida.

A trip to Seaside changed my thinking completely. My stay at Seaside, and a meeting with one of its designers, helped me to understand the quality of good urban design. For instance, Seaside is designed with verandahs facing onto the streets, so as to connect people to the public spaces. Essentially, the designers rediscovered the traditional town planning principles that make a place like Stellenbosch great. A morning run at Seaside brought it home to me practically. I was sitting on the verandah putting on my shoes when a conversation with a local resident started, quite naturally. We ended up having a social evening in a local restaurant. This is what good urban design does for one.

Gowrie Village in Nottingham Road is a working example of the great qualities of New Urbanism. We apply the same principles in designing Garlington Country Estate in Hilton, and hopefully, with time, this will become one of the leading developments in the KwaZulu-Natal Midlands.

Property development is risky and complex. Many landowners believe that they can successfully develop their properties, even though they have little or no

property development experience. The result is that many projects are financially and aesthetically disastrous. Our Property Division is able to offer the full range of professional property development services. Not only do we handle the legal aspects and provide conveyancing services, but we can also advise on how to successfully go about a development. This flows from my own experience in taking developments from raw land, through approval, financing and design, and onto transfer.

South Africa is an awesome place to live and work. The energy crisis is going to be a challenge over the next few years and, while this could be seen as an obstacle, a developer who thinks laterally on this issue will be propelled to the forefront of the profession. Even in the current economic downturn, there are also still great opportunities for developers, particularly in the lower and middle-income markets. The real challenge is to create developments at the lower end of the market that also have quality urban design and soul.