

Business Unit
ECONOMIC DEVELOPMENT AND PLANNING

ENFORCEMENT PRESENTATION

THE EXPERIENCE OF KWADUKUZA MUNICIPALITY

SPLUMA FORUM WORKSHOP

17 November 2017



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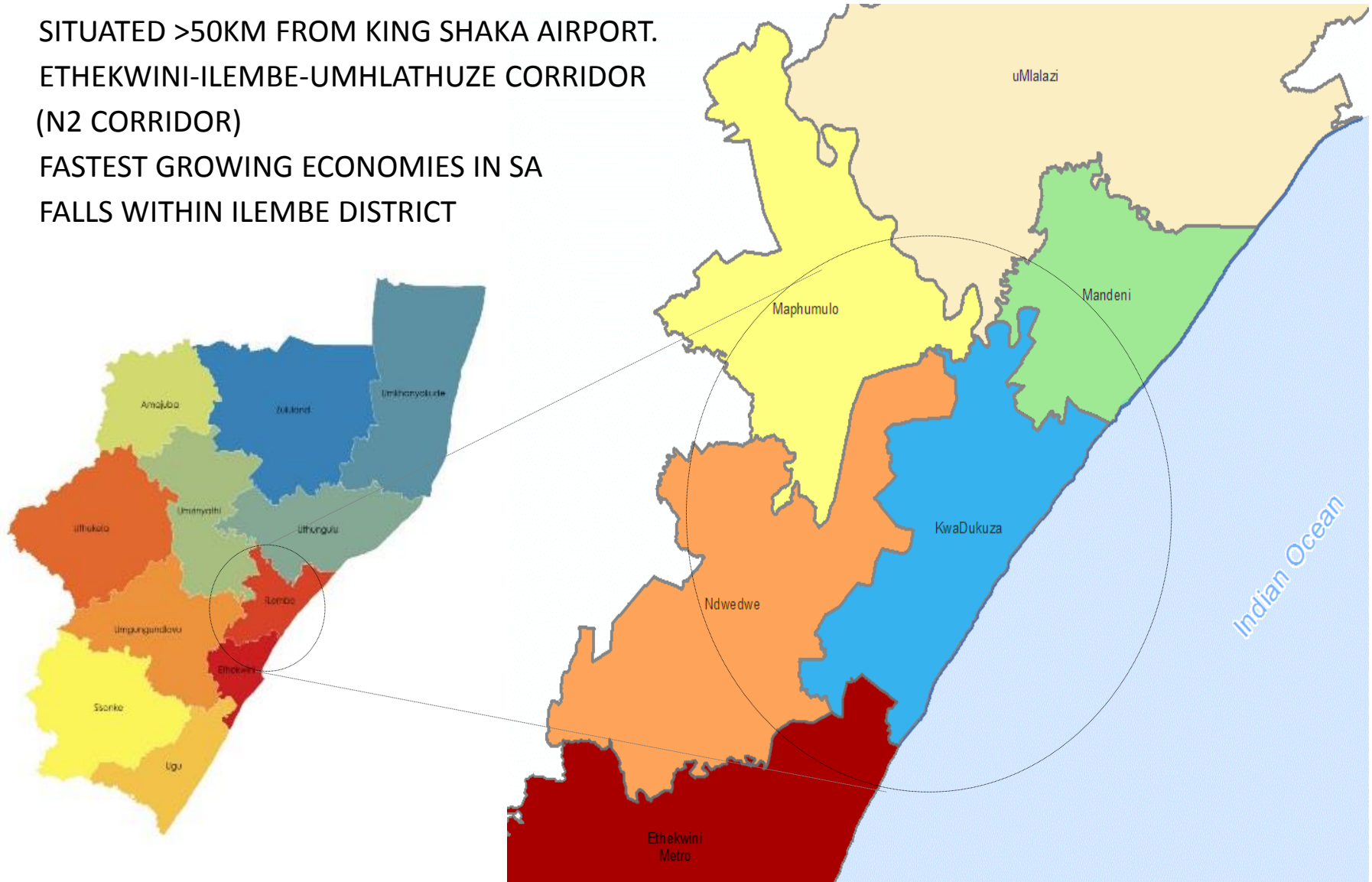


PURPOSE OF PRESENTATION

- TO GIVE COLLEAGUES AN OVERVIEW OF KDM.
- TO SHARE OUR IDEAS AND EXPERIENCES WITH COLLEAGUES FROM OTHER MUNICIPALITIES IN TERMS OF ENFORCEMENT AND THE WAY WE DEAL WITH CONTRAVENTION OF BYLAWS.
- TO STIMULATE DISCUSSION ON THE TOPIC OF ENFORCEMENT AND LEARN FROM OTHER MUNICIPALITIES IN TERMS OF BEST PRACTICE.
- TO SHARE KWADUKUZA CHALLENGES IN ENFORCEMENT

KWADUKUZA LM (KZ 292) AND THE DISTRICT

- 734.971KM² IN EXTENT.
- 276 719 POPULATION
- SITUATED >50KM FROM KING SHAKA AIRPORT.
- ETHEKWINI-ILEMBE-UMHLATHUZE CORRIDOR (N2 CORRIDOR)
- FASTEST GROWING ECONOMIES IN SA
- FALLS WITHIN ILEMBE DISTRICT



ECONOMIC DEVELOPMENT AND PLANNING BUSINESS UNIT

ORGANIZATIONAL STRUCTURE

DEVELOPMENT PLANNING

- Building Control
- Development Control
- Spatial Planning & Sustainable Development (Envir.)

LED

- Heritage and Tourism
- Local Economic Development

DEVELOPMENT ENFORCEMENT (NEW)

- Enforcement
 - Building Licence
 - Advertising
 - Building Control
 - Land Use
- Prosecution

Director (1)
Senior Managers (1)
Chief Planner (1)
Town Planners (5)
Senior Planning
Technicians (6)
(Enforcement – 9)



Director
Snr Manager
LED Officers



Director (1)
Snr Manager (1)
Enforcement
Specialists/ Inspectors
(4)
Officer - Legal & Admin
(1)

FROM PDA to SPLUMA (Highlights)

PDA, 2008

- PROVINCIAL LEGISLATION
- NO SEPARATION OF DUTIES
- RELIEF FROM COURT OF LAW
- PROVISION OF A FINE
 - Imprisonment (5yrs)
 - Fine (not stipulated)
- TYPES OF NOTICES
 - Contravention Notice
 - Prohibition Order
 - Urgent Prevention Order
- MISCONDUCT BY OFFICIAL
 - Fine & Imprisonment (not stipulated)

SPLUMA, 2013

- NATIONAL LEGISLATION
- PROVIDES FOR MUNICIPAL BYLAWS
- RELIEF FROM COURTS OF LAW
- SEPARATION OF DUTIES
- ACT & BYLAW: PROVIDES FOR DETAILED PROVISIONS FOR ENFORCEMENT:
 - Section 32 (Act)
 - Chapter 7 (Bylaw)
- PROVISION OF FINE –
 - Imprisonment (1 yr)/
 - Fine not exceeding R10 000
- MISCONDUCT BY OFFICIAL:
 - Fine not exceeding R1mil
 - Imprisonment 1 yr
- TYPE OF NOTICES
- REDUCTION/ DISCONNECTION OF SERVICES – COURT ORDER (BYLAW)

IMPORTANCE/REASONS FOR ENFORCEMENT

- Legislative and Constitutional requirement
- For the purpose of controlled /orderly developments.
- Form of Revenue Enhancement for the municipality :
 - Fines for illegal developments.
 - Penalties/Higher tariffs for regularization.
 - Loss of Rates rebate
 - Increase in services charges
- Lack of Enforcement is a serious Social / Financial Risk to the Municipality (e.g Illegal occupation of Council Land)
- Mitigate against Revenue loss:
 - Land Use application fees, submission fees, etc.
 - Property rates income (Incorrect valuation /Billing / conflicting uses)
 - Service costs e.g. Waste Collection for Business vs. household; Service Consumption.

SPLUMA Act 16 of 2013 -

- **to provide for the facilitation and enforcement of land use and development measures; and to provide for matters connected there with.**

LAND USE SCHEME

24(1) A municipality must, after public consultation, adopt and approve a single land use scheme for its entire area within five years from the commencement of this Act.

LEGAL EFFECT OF LAND USE SCHEME

26(1) An adopted and approved land use scheme-

- (a) has the force of law, and all land owners and users of land, including a municipality, a state owned enterprise and organs of state within the municipal area are bound by the provisions of such a land use scheme;

ENFORCEMENT OF LAND USE SCHEME

32(1) A municipality may pass by-laws aimed at enforcing its land use scheme.

(2) A municipality may apply to a court for an order-

- (a) interdicting any person from using land in contravention of its land use scheme;
- (b) authorising the demolition of any structure erected on land in contravention of its land use scheme, without any obligation on the municipality or the person carrying out the demolition to pay compensation; or
- (c) directing any other appropriate preventative or remedial measure.

KDM SPLUMA BYLAWS, 2016 (Model Bylaw)

❖ CHAPTER 2 (INSTITUTIONAL):

- PART 6 OF THE BYLAW PROVIDES FOR THE APPOINTMENT AND FUNCTION OF THE MUNICIPAL PLANNING ENFORCEMENT AUTHORITY.

✓ FUNCTION OF MUNICIPAL PLANNING ENFORCEMENT OFFICER

30. A MUNICIPAL PLANNING ENFORCEMENT OFFICER MUST ASSIST A MUNICIPALITY WITH THE ENFORCEMENT OF :

- The By-law,
- the land use management scheme
- the decisions of the Municipal Planning Approval Authority and
- the decision of the Municipal Planning Appeal Authority.

KDM SPLUMA BYLAWS, 2016 (cont.)

Appointment of Municipal Planning Enforcement Officer

31.(1) The Municipal Manager must appoint a Municipal Planning Enforcement Officer.

31(2) A Municipal Planning Enforcement Officer must be a peace officer contemplated in section 334(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

PART 7 – Independence, Conflict of Interest, Liability and Indemnity

Section 34 (8) of the Bylaw states that a Municipal Planning Enforcement Officer may not also hold the office of –

- a) *Municipal Planning Registrar;*
- b) *Deputy Municipal Planning Registrar;*
- c) *Municipal Planning Authorised Officer;*
- d) *a member of a Municipal Planning Tribunal;*
- e) *Municipal Planning Appeal Authority Registrar; or*
- f) *Deputy Municipal Planning Appeal Authority Registrar.*

The above provision is made in order to avoid any conflict of interest that may arise from an official concerned. In the case of KwaDukuza, all officials from planning (i.e. development control and forward planning) are either appointed as Planning Registrars, Authorized Officers or as members of the Municipal Planning Tribunal.

KDM SPLUMA BYLAWS, 2016 (cont.)

Chapter 7 of the KwaDukuza SPLUMA Bylaw is dedicated to enforcement under the following subheadings:

- Part 1: Offences, penalties and disconnection of services
- Part 2: Prosecution
- Part 3: Subsequent application for municipal planning approval
- Part 4: Offence and misconduct by official approving the use of land or erection buildings or contrary to the Act, a land use scheme or a restrictive condition of title or servitude registered against land

Requirements for Legally Enforcing a Bylaw

Law Enforcement Officers :

- Member of the SAPS
- Municipal/Provincial Traffic Officers
- Municipal/Metro Police
- Law Enforcement Officers appointed by the Municipality

Process – Appointment of Peace officers

- Appointment is in terms of Section 334 of the Criminal Procedures Act (Act 51 of 1977)
- Firstly you have to complete a Law Enforcement /Peace officer Training Course in which you will receive a Certificate.
- You have to be appointed by the Municipality as a Law Enforcement officer.
- Police Clearance which takes about a month.
- Submit application to Provincial Commissioner of Police.(Application to include Law Enforcement certificate, ID Document, Indemnity form, Police Clearance report)
- Receive Certificate from Commissioner of Police.
- This certificate is valid for a period of 12 months from date of issue and can be withdrawn at any time should any of the criteria of appointment be contravened.

Requirements for Legally Enforcing a Bylaw (cont.)

Certificate of appointment

Before acting as a Peace Officer, you have to be a holder of a Certificate of Appointment that must contain the following information:

- Full names of the bearer
- Identity number of the bearer
- Photograph of the bearer
- Signature of the bearer
- Description of the capacity in which the person has been appointed
- The name of the Employer that made the appointment
- Signature of the Employer or responsible person
- The official stamp of the employer.

Roles and Functions of a Peace officer

- Requirement of SPLUMA enforcement of SPLUMA Bylaws.
- Enforcement of any other Bylaws.
- Issue of written notices in terms of section 341 of the Criminal Procedures Act of 1977.
- Issue of written notices in terms of section 56 of the Criminal Procedures Act of 1977.
- The execution of Warrant of Arrest in terms of section 44 and 55(2) of the Criminal Procedures Act of 1977.
- The powers conferred upon a Peace officer in terms of Section 41(1) of the Criminal Procedures Act of 1977.

Requirements for Legally Enforcing a Bylaw (cont.)

ADMISSION OF GUILT FINES

- These fine structures deal with all Bylaw infringements.
- Has to be approved by the Magistrates Court.
- Has to be reviewed from time to time.

Summary of Basic Requirements for Successful Enforcement

- The municipality must have an adopted wall to wall Land Use Scheme.
- The municipality must have an adopted SPLUMA Bylaw.
- The Municipal Manager must appoint Enforcement officer/s
- The Enforcement authority must be independent of Planning.
- The Enforcement officer must be a Peace officer appointed in terms of section 341 of the Criminal Procedures Act. This will also allow them to administer any other Bylaws of the Municipality and issue fines for contraventions.
- There must be a high standard of Ethics and Morals on the part of the Enforcement officer.

KwaDukuza Approach to Enforcement

- PUBLIC AWARENESS (Municipal Processes)
 - Ongoing engagement of professional/ competent people
 - Conducting Surveys
 - Community/ Public
- JOINT PLANNED ENFORCEMENT OPERATIONS
- UNPLANNED ENFORCEMENT OPERATIONS
- RELIEF FROM COURTS (Serious Cases)
- ISSUING OF FINES (Traffic/ Crime Prevention Officers)
- BUILDING OF PARTNERSHIPS (Internal & External)
- ‘SEPARATION’ OF DUTIES – SPECIALIST ENFORCEMENT UNIT TO DEAL WITH SERIOUS AND COMPLEX MATTERS
- RISK MANAGEMENT – ROTATION OF STAFF, RANDOM INSPECTIONS BY SNR OFFICIALS

Approach to Enforcement: 'Case Study' 1

1. JOINT PLANNED ENFORCEMENT OPERATIONS :

- PARTICIPATING DEPARTMENTS
 - Internal Depts: Town Planning, Building Control, Electrical, Fire, Environmental, Traffic/ Crime Prevention
 - External: Ilembe Health, SAPS (if available)
- ACTIVITIES
 - Regularly/ Bi-monthly
 - Choose Day/s, Area/s
 - Element Of Surprise
 - Pre- preparation (Task Team Meeting - Coordination)
 - Issuing of fines/ Notices
 - Debriefing - serious cases requiring follow up

Approach to Enforcement: Case Study 2

2. HIGH COURT MATTER:

- **PARTICIPATING STAKEHOLDERS**

- Internal Depts.: Legal, Town Planning
- External Resource - Attorney, Junior/Senior Counsel

- **ACTIVITIES**

- Issuing of Notices
- Assess Seriousness of Case
- Compilation of Information for Attorney/ Legal
- Appointment and Briefing of Attorney and Council.
- You must be able to convince the court that as the Municipality you have done everything within your power to stop the illegal activity and the only option left, is the Court.

CHALLENGES EXPERIENCED

- Lack of capacity within Departments
- Lack of public awareness
- Lack of experienced staff to deal with enforcement.
- Lack of willingness on the part of officials due to Corruption
- Fear for life
- Political Interference in some matters
- Reactive rather than pro active
- Joint operations done on an adhoc basis with lack of follow up.
- Lack of understanding and appreciation of Town Planning laws by lower courts.
- Leaking of information/disappearance of files when dealing with contentious matters.

KDM LESSONS LEARNT

ENFORCEMENT:

- Require Resources (financial, human)
- Require partnerships, coordination of Resources - internal & external)
- Require robust response from Municipality in order to deter others.
- Require Separation of Duties – avoid conflict of interest,
- Require Public Awareness – Ignorance is a common excuse.
- Require an effective Complaint Management System – to follow up on matters.
- Officials required to be clued up with legislative processes.
- Act within the confines of the law –do not overstep your authority.
- Require strong record keeping/ filing system,
- Require Ethical Officials/Enforcement officers
- Require consistency in approach (No selective prosecution)
- Require Planners to take lead in litigation matters – understand planning law better



THANK YOU...



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