

**Developers versus Ratepayers?
Contravening Land Use, Zoning and Development
Controls in Berea, Durban**

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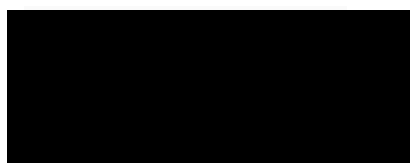
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ABSTRACT

Land use has been and continues to be a subject of conflict, conquest, and expropriation. The demand for urban space for residential occupation has resulted in the creation of high-rise structures proliferating in number and height in recent years. The aim of this study is to determine the level of compliance with, and enforcement of existing development controls within the Berea and the impact development at 317 Currie Road has on the surrounding community. The empirical data obtained from qualitative research suggested that various inconsistencies exist within the eThekweni Municipality and development control measures have rarely been enforced at 317 Currie Road. Serengeti Rise has violated several by-laws and regulations in the construction of their project and the ratepayers of the locality bear the brunt of these violations. This study revealed that the developer had not complied with the system of land use regulations in the Municipality. Also, there was weak enforcement of the statutory laws that govern the city to curtail the excesses of the developers and respond to the land use and zoning violations raised by residents. Based on the controversies, arguable concessions, and lack of transparency by the Municipality and developer, findings suggest that the Municipality has been inconsistent in enforcing stringent by-laws. The city appears to be privileging the interest of the private sector developer by approving amendments and implementing planning policies that are detrimental to the ratepayers of the Berea community.

DECLARATION

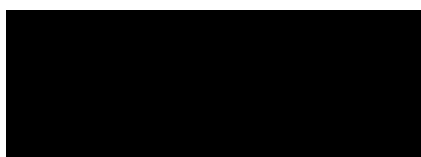
I, Sunayna Boodhoo, hereby declare that the dissertation entitled: **‘Developers versus Ratepayers? Contravening Land Use, Zoning and Development Controls in Berea, Durban’**, is a result of my own research and investigation and that all sources utilized or quoted have been appropriately referenced. This dissertation is being submitted for the degree of Master of Science at the University of KwaZulu-Natal and has not been submitted for a degree or examination at any other institution or university.



Sunayna Boodhoo

29 January 2021

Date



Prof. Brij Maharaj

29 January 2021

Date

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DEFINITIONS

Building: includes- (a) any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with- (i) the accommodation or convenience of human beings or animals.

Development: Any physical intervention excavation or action other than those caused by natural forces, which in the opinion of Municipal authority in any way result in a change to the fabric of a site, structure, or object.

Deviation plan: To diverge from an established course or usual or accepted standards.

Erection: Concerning a building, including alteration, extension, or rebuilding at a property site.

Height: The vertical measurement of a building and is expressed as a linear measurement either in meters, a measurement above mean sea level, or as the number of storeys.

Municipality: Refers to eThekweni Municipality. Also referred to as ‘Council’ and ‘local authority’.

Owner: In relation to a building or land, means the person in whose name the land on which such building was or is erected or such land, is registered in the deed’s office in question.

PAJA: A formal request filed by an individual to gain access to private or public documentation so that citizens can have adequate information to enable them to exercise and protect their rights more fully. Therefore, PAJA is an important tool one could use to gain access to information.

Serengeti Rise: Developers of the property at 317 Currie Road on Berea, Durban

Side space/ Rear space: Space free of all buildings example three meters in width around the property

Storey: Part of a building which is situated on top of any floor and the top of the floor next above it. If there is no floor above the ceiling, provided that the height of such storey or floor should not be more than 3.5 meters for residential and 4.5 meters for other uses.

Third-party: Any natural or juristic person who is not the requester of the information, nor the body to whom the information request is made.

ABBREVIATIONS

BCO	Building Control Officer
CIU	City Integrity and Investigative Unit
ETA	eThekwini Transport Authority
FAR	Floor Area Ratio
GHG	Greenhouse Gas
GR 1	General Residence 1 zone
GR 2	General Residence 2 zone
GR 5	General Residence 5 zone
IDP	Integrated Development Plan
IO	Information's Officer
LUM	Land Use Management
MPRA	Municipal Property Rates Act
NBRA	National Building Regulations Act
PAJA	Promotion of Access to Information Act 2 of 2000
PAJA	The Promotion of Administrative Justice Act 3 of 2000
SCA	Supreme Court of Appeal
SDF	Spatial Development Framework Plan
SOB	Save Our Berea
SR	Serengeti Rise (Developers of 317 Currie road)
TPO	Town Planning Ordinance

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Preamble

Conflicts related to land use are widespread and arise due to incompatible interests and have altered in nature and intensity over time. Land use has been and continues to be a subject of conflict, conquest, and expropriation. The demand for urban space for residential use has surpassed the planned supply because of rapid urbanization and the need for vertical city expansion (Noor *et al.*, 2013a). This socio-economic process is manifested in the increased density in urban centres.

In conjunction with the rapid population growth, urban land is a scarce and expensive commodity. According to Ibrahim (2007:1999), “When tall buildings are attributed with power and prestige status, developers play a pivotal role in meeting occupier demand”. Hence, land is becoming wrapped in concrete, and the only option for many developers is to build vertically (Egidi *et al.*, 2020). Therefore, the construction of high-rise development is considered to be a solution to address the increasing demand for housing (Noor *et al.*, 2013a)

However, high-rise development results in a battle between traditional and modern forms of a city. It further exacerbates conflict when the cultural and social aspects of the landscape are altered (Ibrahim, 2007). Additionally, the negative externalities associated with high-rise development cannot be ignored. Ideally, developers require a zonal change to increase the height, density, and bulk of a development to cater for a structure greater than the currently prescribe zone (Boamah *et al.*, 2012). However, when developers do not abide by laws and regulations that govern the construction, residents adjacent to the structure may perceive their rights as ratepayers being infringed.

Concerns arise when land use control measures fail to attain harmonious development of land. Land use and zoning violations, in conjunction with neglect of quality assurance by private-sector developers, have resulted in poorly planned, haphazard structures that eventually result in the disfigurement of the area (Mahmud, 2007). Therefore, contestations emerge within the neighborhood when residents consider the construction detrimental to the precinct. Thus, land use has been and continues to be a subject of conflict, conquest, expropriation, and exploitation for many years (Bob, 2010).

Regardless of regulations been implemented to ensure that the interest of all stakeholders is considered, the implementation of the zoning ordinance has been controversial. Due to its alterable nature and the fact that rezoning can occur raises questions about its effectiveness. A major concern was that zoning ordinances may be a political tool that can be used by one class of citizens to the disadvantage of another (Alnsour and Meaton, 2009). Additionally, despite the existence of adequate by-laws and regulations governing development, these laws or regulations are not always adhered to during construction. Consequently, resulting in contestations over conflicting land uses in a locality.

Spatial planning and development controls forming part of statutory law, it is important to determine whether these controls are case-specific, locality specific, and context-specific as geographical, political as well as socio-economic conditions can significantly vary across different spaces (Jaegar, 2006). Additionally, discrepancies in the way that land use regulations are implemented and enforced have been criticized because of a lack of transparency within the local authority. In many cases, officials may be liable for engaging in unethical behavior which subsequently results in local authorities overlooking developers' activities that are non-compliant with land use and zoning regulations (Chiodeli and Moroni, 2015).

The spatial distribution of the costs associated with illegal physical changes in the urban landscape is predominantly inflicted upon residents who have limited power to oppose such developments. Several studies have focused on the need for high-rise development in many countries, for example in India (Kavilkar and Patil, 2014), Bangladesh (Mahmud., 2007; Ahsan 2016), Australia (Dodson *et al.*, 2007), Egypt, and Japan (Ibrahim, 2007).

However, very few studies engage with residents' opinions about how changes, modifications, and redevelopment on a property that appears 'illegal' have been approved by the local authority. When officials overlook a land use or zoning violation on a property or are complicit in approving an inappropriate construction, residential property owners face the brunt of the negative ramifications, like plummeting property values and neighborhood blight. Governments adopt land use regulation and control measures to regulate different land uses, ensure development conformity and safeguard property values to “maximize social and individual returns from the use of land” (Boamah *et al.*, 2012:350). However, in most instances the development control system focuses more on the planning requirements of the city as it contributes substantially to the income generated for the city, and little consideration is given to the impact planning decision has on the neighborhood (Mohd *et al.*, 2009).

The concept of land use transition highlights that land use change is non-linear (Lambin and Meyfroidt, 2010) and ever-changing as it is fundamentally associated with various societal, economic, political, and environmental factors. Despite the positive attributes high-rise dwellings may bring forth, developers are expected to conform to the building by-laws and regulations enacted by the Municipality. If a development transgresses development prohibitions and progresses illegally, it distorts market processes and leads to mismatched development within a neighborhood (Kim, 2011). This then externalizes more costs to a community (Dana, 1997).

The local authority has a primary role in curtailing developers who defy the law. If there are any violations, then the local authority has the power to halt a project until the developer rectifies the deviations or demolition may be required. However, municipalities are encountering many challenges in ensuring planning requirements are enforced. Political scandals in cities have sparked public outrage discrediting governments for turning a blind eye to development which flouts building regulations and controls. Treisman, 2000; Quesada *et al.*, 2015; Benito *et al.*, 2015; and Okeke *et al.*, 2020 echo similar issues in Spain and Nigeria whereby government officials are implicated in colluding with developers by approving or consenting to certain structures.

Nowadays, decentralized political systems make it easier for a developer to influence a segment of the government because a fragmented system has fewer centralized forces to demand accountability and transparency (Treisman, 2000). Residents express particular concern when they assume the functional efficiency of land use regulation is compromised and the effects of a contravening development will only worsen over time. It is crucial for the local authority to determine from the onset whether the total social benefit of any new development outweighs the total social cost before approving a development project. As Boamah *et al.*, (2012:352) assert, “unregulated land development contributes to urban problems and lowers the quality of life within communities” and this typically has become of concern to residents of the Berea, therefore forming the focus of this study.

The need for sustainable development and compact cities is well articulated, however poor planning and management of development hinders urban transformation. When homeowners in a residential precinct such as the Berea sensed that a new high-rise development being built on Currie Road had more negative externalities than positive, they questioned who benefits. Concerned residents of the area formed a committee and actively called upon all residents of

the Berea to speak out against the infringement by the developer. Municipal officials have been accused of ‘greasing the wheel’ of certain projects via intermediaries for favorable treatment (Dodson *et al.*, 2007; Heo *et al.*, 2017). Therefore, this research examines the development control regime in eThekweni Municipality and documents the state of enforcement by its planning authority. This study evaluates the litany of irregularities by the developer and further assesses the competency of the local officials who were responsible for approving the obtrusive development in 317 Currie Road.

Residents strongly objected against this structure suggesting that it was not executed and administered in a way that delivers social and economic benefit to the community. As in the case of Berea, it is important to investigate the efficiency and effectiveness of local authorities in maintaining a level of compliance with operational building codes and by-laws. Vertical growth has implications for inequalities in urban life if spatial design characteristics fail to promote social cohesion. Therefore, the feud between unlawful developers and ratepayers of a precinct has become a topic of heated political debate.

For this reason, land use conflict as a conceptual framework for this study provides a clear foundation for analyzing and understanding conflict. This framework assists in determining how government’s role or lack thereof, exacerbates conflict in the community. Contestation of this nature begins when members of the community believe that there remains a surprising paucity of comprehensive checks and clamp down on the 'explosive' nature of physical development that goes against the Town Planning Ordinance No. 27 of 1949 and the National Building Regulations and Building Standards Act No. 103 of 1977 (Walford, 2018). This study is a geographical investigation of the development control regime within the Berea, located in eThekweni Municipality, and the implications unregulated development has on those living close to the construction at 317 Currie Road.

The fundamental purpose of land use controls and regulations are to make communities more desirable, as well as to regulate market failures (Egidi *et al.*, 2020). However, when residents perceive their property values will depreciate based on an unlawful development activity, protecting their assets becomes an emotional issue. As a result, it is imperative to determine the impact this building has on surrounding property values and the consequential relief that needs to be sought based on the current repercussions of this development.

This is a geographical study to evaluate the procedural fairness of consenting to development at 317 Currie Road considering its obtrusive nature, and to assess how this luxury high-rise

apartment may enhance or impact upon the sense of place, the distinctiveness of the area, and quality of life. This empirical study analyzes the effects a breach in planning law has on property values in Berea. Furthermore, it is important to understand the influence of building standards and control measures have on land values.

The competent authority has a constitutional obligation to those they govern to ensure that their roles are performed diligently. However, Castells (1996) contends that urban development is gradually focusing less on developers' misdemeanors and more about connections and networks formed between those defying the law and those of power. Consequently, this study assesses how the eThekweni Municipality, as regulators of development and land use, has been implicated in the creation of the 317 Currie Road debacle. Hence, gaining insight into the pervasive practice of *ad hocery* in rezoning, subdivision approval, and granting of special consents becomes of fundamental importance in determining if protocols followed were fair and lawful in 317 Currie Road.

1.2 Aim

The aim of this study is to determine the level of compliance with, and enforcement of existing development controls within the Berea and the impact development at 317 Currie Road has on the surrounding community.

1.3 Objectives

- Review the role of the local authority in planning procedures, as well as enforcing land use building control regulations and by-laws in Currie Road, Berea.
- Determine whether the developer, Serengeti Rise complied with land use and zoning regulations.
- Analyze residents' concerns about development at 317 Currie Road and to determine how their constitutional rights as ratepayers have been infringed.
- Identify reasons why land use and zoning regulations have been flouted by the developer.

1.4 Research Questions

- Are government officials playing an effective role in enforcing compliance to land use development control measures in the Berea?
- Do developers comply with land use and zoning regulations in the Berea? If not, why have control measures been flouted?

- What are some of the repercussions of having high-rise development in Currie Road? Are residents' concerns about contravening building regulations justified?

1.5 Motivation of study

Although extensive research highlights the need for high-rise development in many countries, limited research focuses on how the spatial characteristics of a poorly designed development can impact a community. There is a clear need to focus on the impact contravening land use, zoning, and development controls have on a precinct that is not structurally conducive to support a development like 317 Currie Road. This study, therefore, focuses the research in a critical area, and using a case study approach analyzes the viability and impacts of 317 Currie Road in Durban. Unlike most studies conducted within this area, this research aims to interrogate Council's role in rezoning the property at 317 Currie Road, as well as find reasoning as to how the changes and modifications consented seem to be defiance to land use rights and building regulations.

This study is motivated by the fact that recently homeowners were up in arms over the planned rezoning of a nine-storey 'monstrosity' on 317 Currie Road by developers Serengeti Rise (Barbeau and Masuku, 2017). Residents appealed to the eThekweni Municipality to reverse its decision to rezone the property from initial General Residential 1 (residential) to General Residential 5 (high density, high-rise building). However, ratepayers were frustrated when the Council chose to dismiss their concerns.

This study is motivated to determine the rationale behind the Council's decision to approve a structure that would ultimately increase the bulk of a development from 1846 meters to 9786 square meters in a residential area. A rezoning of this nature has never been seen in the Berea prior to this consent, thus, in contradiction to the Town Planning Ordinance of 1949 which guides city development. Therefore, it is imperative for this study to investigate if there was any collusion between the Municipality and the developer that resulted in the approval for a project that did not adhere to statutory laws and requirements which govern the city. Therefore, it is necessary for a fine-grained study to be conducted which exposes how particular aspects of legal practice related to government performance may fuel contravention within the development sector. Urban problems like haphazard development and neighborhood blight have not fully being assessed in Berea. To date, there has been insufficient scholarly research undertaken in the Berea that assesses the impact contentious buildings like 317 Currie Road

have on the locality and fewer studies conducted focus on resident's opinion of the encroachment. To understand the level of tension and the degree of unwanted animosity that occurs within an area due to building activities, all aspects leading to the approval and construction of this structure need to be evaluated to gain a holistic perspective of the problem.

1.6 Study Area and background

The Berea is considered one of the eThekweni Municipality's oldest, upmarket residential suburb. The Berea, which is a suburb in Durban built on a ridge rising from the City centre, offers residents views of the sea and harbor as depicted in Figure 1.1. The area incorporates smaller suburbs of Morningside, Greyville, Windermere, Essenwood, and Musgrave (Hansmann *et al.*, 2018). Located within proximity is the Musgrave shopping mall, the Greyville Racecourse, and two magnificent recreational parks namely Botanical Gardens and Mitchell Park as shown in Figure 1.2. Currie Road is located parallel to Essenwood Road and has a total length of 2.88 kilometers (Geoview, 2010). The area boasts a variety of older architectural styles, valuable buildings, and beautiful tree-lined streets which were constructed during apartheid in 1948 (Hansmann *et al.*, 2018).

Typical of South African suburban neighborhoods developed during the apartheid era, urban planning of the Berea was based on orthodox planning principles that were infused with racial spatial inequalities. From 1994, planning in the City of Durban and the Berea, in particular, aimed to shape the dynamics of urban transformation (Hansmann *et al.*, 2018). The focus changed from the creation of relatively mono-functional settlements to promoting compact city ideas and principles of vertical urbanism.

Previously, zoning laws and regulations were the main planning mechanisms to implement segregation by locating non-whites to zones in towns and cities peripherally to the city. In an attempt to advance sustainable development, high-rise residential buildings have become more prevalent in the Berea to rectify these historical inequalities by catering for a greater population mix. (Hansmann *et al.*, 2018). High-rise structures can create an electric feel to the suburb of Berea if constructed appropriately. For example, Surrey Mansion is an art deco development located two properties away from 317 Currie Road under a GR 1 zone (Appendix 1). This building has received widespread praise and recognition from those who appreciate the beauty in the form of architecture. The high-rise structure at 317 Currie Road is completely contradictory to this development. The obtrusive residential development creates an 'eye-sore'

within the locality, which raises questions as to how such a ghastly project may be approved by the local authority. Majority of the residents who once enjoyed panoramic views of the City and sea now have their views obstructed when Serengeti Rise erected a structure in derogation to by-laws.

Fed-up with the increasing signs of decay, building violations, and neglected properties, Berea residents formed an active organization known as the Save Our Berea committee (SOB) (Barbeau and Masuku, 2017), which worked closely with residents to challenge developers and the local authority. The SOB committee plays an important role in raising awareness, engaging with residents, and holding officials responsible for the lack of law enforcement and poor planning, especially in the case of this study area (Mohideen, 2013). Additionally, this organization forms alliances with other civic groups which have been formed by concerned residents determined to save their suburbs from land use zoning and building violations. Regardless of the considerable battles that exist in this locality, the Berea still exudes a deep sense of community and a rich tradition of struggle that continues in the face of the challenges posed by the new South Africa.

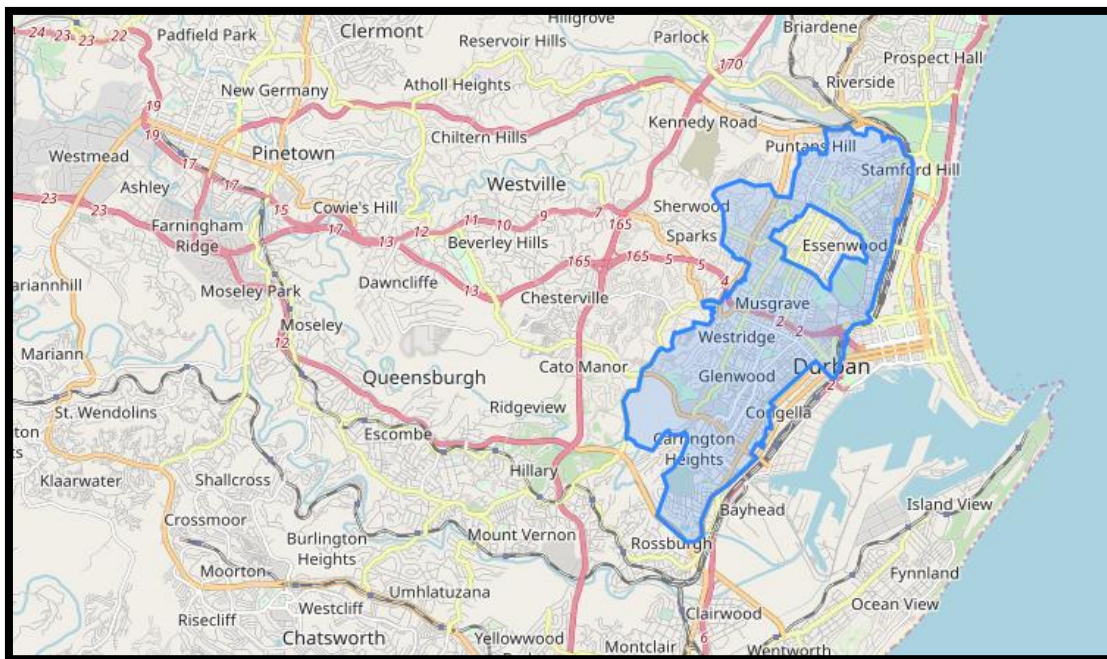


Figure 1. 1 Layout of the Berea, Durban (Frith, 2011: 01)

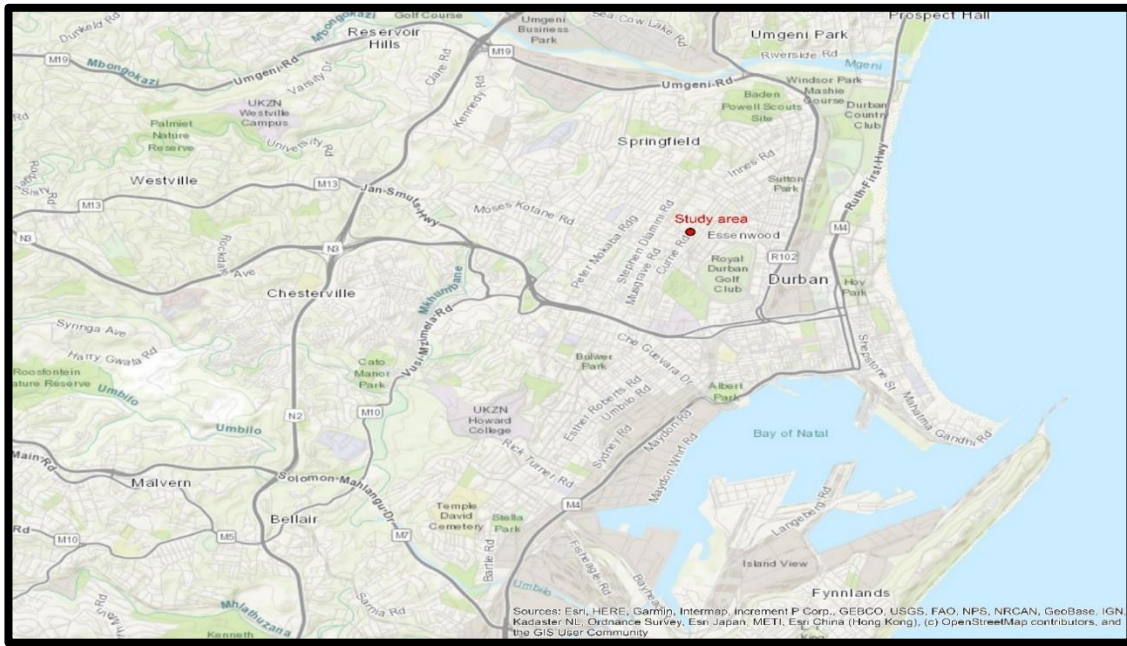


Figure 1. 2 Study area in relation to recreational areas (Author, 2021)

1.7 Chapter Sequence

Chapter One: Introduction

This chapter presents a general overview of the research and outlines the rationale and motivation for the study. The aims and objectives of this study are also outlined in this chapter.

Chapter Two: Theoretical Contextualization

This chapter discusses the theory of vertical urbanism, land use zoning, and conflict, which provides the conceptual framework for this study. It will also briefly discuss government policies, schemes, and legislature applicable within the eThekweni Municipality as these regulations fundamentally influence land use planning and decision making. Thereafter, this chapter will look at similar cases in a global and local context, as well as discuss factors that result in a dysfunctional system of land governance.

Chapter Three: Methodology and Study Area

This chapter provides detail on the study area as well as the methodology used to gather and analyze data for this study. The limitations are also outlined in this chapter.

Chapter Four: Data Analysis

The key findings for this study are analyzed in detail in this chapter and is thematically organized around the key themes.

Chapter Five: Discussion/Evaluation and Recommendations

This chapter critically analyzes the main discursive points of the study and draws upon key points in the literature review and the theoretical framework to draw conclusions.

1.8 Conclusion

The relationship between developers and residents are complex and becomes even more so when dealing with municipal officials in a developing city. When members of a community perceive the negative externalities associated with a development are overlooked, conflict within the precinct is inevitable. A land use right is intrinsically correlated to the zone allocated to a property. This study investigates the impacts a permissible GR 5 rezoning has on the Currie Road precinct. Essentially, it is imperative to distinguish if land use regulations have been stringently enforced within the Berea by eThekweni Municipality and whether all factors were taken into consideration by Municipal officials before granting consent for this development.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

High-rise construction is a phenomenon encroaching many cities as there exists a considerable demand in the construction market. There is also a need for compliance with zoning laws and building regulations (Salari and Sohi, 2017). However, construction violations and contravening of zoning and building regulations is a reality which creates controversies. Development controls and regulations of a city is not obeyed, despite the existence of adequate legal frameworks. This chapter presents and theoretical framework for the study. It also presents a review of the various factors relating to contraventions of high-rise development within urban areas. Skepticism and conflict arise when residents perceive their living standards have been compromised. Therefore, this chapter analyzes the positive and negative externalities associated with high-rise development in a residential context, drawing from international, national and local experiences. This chapter will also review planning policies and processes of the eThekweni Municipality. The chapter also discusses how dysfunctional systems of governance can be a catalyst for land use conflict and corruption.

2.2 Theoretical Framework

The theoretical framework for this study draws from the literature related to vertical urbanism, land use conflict and land use zoning.

2.2.1 Vertical Urbanism

The term vertical urbanism emerged in architecture to highlight building upwards as the key to making cities more compact (Lin and Gámez, 2018). The need to create a compact urban form was driven by the desire for a comfortable urban environment in conditions of rapid population growth and limited or scarce territories (Akristiniy and Boriskina, 2018; Garg and Sharma, 2018). The high cost of land has stimulated high-rise construction as a need to densify localities to accommodate the population influx cities have experienced over the years. Together with this, modern architectural imagination, supported by improvements in construction technologies has led to the process of urbanization extending over the vertical axis (Hewitt and Graham, 2014). Interest in high-rise development trace back to the 1950's (McNeill, 2015) but is now receiving attention under vertical urbanism. In certain Asian cities like Hong Kong and Singapore, high-rise living is normalized to efficiently provide housing for the masses (Hou, 2012; McNeill, 2015).

From the perspective of a developer and local government, building upwards rather than sideways reduces one of the barriers to construction. This is ultimately the difficulties in acquiring land. Since land costs are exacerbated in central and peripheral locations, Leitner *et al.*, (2020:04) postulate that, "building up is quicker, cheaper, and more profitable for developers". Additionally, increases in the number of storeys and height of buildings echo sentiments of modernity, prestige, and success for developers (Leitner *et al.*, 2020). However, vertical spaces have been subject to strong criticism due to inequalities surrounding the process of splintering urbanism. A growing field of scholarships such as De Cauter (2005); Ballard (2006); Hewitt and Graham (2014) and Leitner *et al.*, (2020) suggest that vertical urbanism gives rise to a world of dire economic struggle which is built on exploitative social relationships.

In light of this, Ballard (2006) depicted vertical cities to be an ultra-modern, technologically sophisticated, luxury enclave. De Cauter (2005) supported this ideology and considered cities following the trajectory towards vertical extensions as 'capsular' urban spaces. This

representation exposes vertical urbanism for creating certain elite, gated communities that spread out in metropolitan areas. Power secured through ascension can create expensive housing that is not accessible to the urban majority. Alternatively, affordable housing can isolate people from social networks and have detrimental impacts on psychological well-being. This aligns with the study conducted by Hewitt and Graham (2014:09) which postulates that, "high-rise development creates dystopia as its inhabitants retreat from their wider social relations and become voluntary captives of the apartment building".

Additionally, urban theorists like Leitner *et al.*, (2020) have begun to pay attention to vertical or volumetric urbanism for giving rise to unevenness which systematically favors the private sector. In cities across the world, neoliberal urbanism has incentivized strategies to evade planning restrictions which enable developers to build higher. For example, Floor Area Ratio (FAR) is a zoning regulation which ensures that the acceptable floor area of a building is in correlation to the plot area. This has been used to control density whereby higher FAR's result in denser construction. However, this regulation has been criticized for its amendments to promote densification and verticality.

Leitner *et al.*, (2020:01) indicates that, "these policies have been reworked to facilitate high-rise construction through floor area uplift". Developers are granted higher FAR's which results in a new structure not integrating well with surrounding properties. The excessive height or coverage consented under higher FAR's may not be appropriate for a particular locality. For instance, if neighborhoods are closely connected. Thus, a tool which was intended to control densification has been manipulated to promote profitability of real estate projects for the developer and local government to benefit from through property tax revenues (Leitner *et al.*, 2020). Therefore, under the influence of vertical urbanism, FAR regulations have been trumped by pro-developer legislation which accelerates or increase floor area for upward development. The explosion of verticality in cities worldwide has been considered the next logical stage in development. Bearing this in mind, the race to the sky has led to many developers defying laws and regulations for them to fulfill their private interests.

This is the practice in Jakarta whereby privatized colonization of space has been shaped by formal or informal negotiations between the developer and local government (Leitner *et al.*, 2020). When the rule of law is compromised or amended to fit the desired need of a sole developer, people begin to lose trust in the system which governs them. Especially if the desired

outcome of the developer brings little or no benefit to many of the residents, conflict over territory is likely to occur. Thus, support and enthusiasm for higher density neighborhoods are tempered by negative associations that cannot go unnoticed. Threats of social unrest, violence, protest, and a sense of lifestyle unaffordability will hinder vertical urbanism from attaining its desired results if not developed within the confines that promote livability and wellbeing of citizens. Moreover, if land use development controls and regulations are breached or tailored to suit the needs of a sole proprietor at the expense of the majority of the urbanites, this could subsequently instill hesitancy about the value of compact living, thereby giving rise to conflict and contestation within a locality.

2.2.2 Land use conflict

Land conflict refers to social relationships and processes whereby at least two parties can be distinguished by their different interests over their rights to land (Coser, 1964; Wehrmann, 2017). According to Wehrmann (2008:09), “these different interests are a result of property rights to land which includes the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land and to transfer land”. Therefore, for years land has been subjected to conflict and contestations because of misuse, restrictions, or disputes over property rights to land (Wehrmann, 2008; Wehrmann, 2017). It becomes apparent that land use conflicts particularly arise due to incompatible interests and have altered in nature and intensity over time. Although land-related conflicts are a widespread phenomenon that occurs at any time or place, both need, and greed is considered to equally contribute to this form of conflict. However, conflict over land may not necessarily be a driver of negative externalities.

According to the United Nations Interagency Framework Team for Prevention Action (2012:08), “conflict can be an essential component of social change and development”. The social conflict theory further considers conflict as a vehicle for societal development and decision-making improvement (Dahrendorf, 1990; Bonacker, 1996). On the contrary, land use conflict may be problematic when societal mechanisms and institutions for managing and resolving conflict breakdown. Societies which encompass fragile political systems, weak institution, and disruptive social relations are drawn into a vicious cycle of conflict (Balestri, 2015). Land use conflict for example may stem from residents' opposing the rezoning of a particular property within the precinct. The escalated rate of this intrusion has several implications on surrounding communities. The land-related conflict which arises as a result, range from conflict which is relatively easy to solve, such as boundary conflict between

neighbors, to more difficult situations that include several parties- for instance, group invasions, evictions of entire settlements, as well as the opposition of a multi-unit dwelling infringing on residential areas if constructed in defiance to by-laws (Wehrmann, 2008). However, Wehrmann (2008: 02) suggests that, “the most complex form of land conflict is those which include corrupt land administrators and state capture”.

With regard to residential conflict which occurs on a local scale where the affected people reside, residents are faced with activities like traffic congestion, fumes, noise, and alike. According to Wehrmann (2005:41), “these elements are considered to have negative implications on the local, collective, good living environment, thus inducing conflict”. Moreover, residential conflict over land use may have a negative effect on the municipal level (Buchanan and Tullock, 1962) if for example, the public decision-maker has allowed a 'disturbing' activity within the area. Consequently, conflict may arise when residents do not wish to be affected by the decisions made by the municipal official.

Land use conflict more particularly amongst residential homeowners and inconsiderate developer's impact on the social stability within the society when land conflict undermines trust and increases fear and suspicion. This occurs often between formerly close people such as neighbors and family members (Wehrmann, 2008). Ideally, when people and their livelihood systems are brought into contact and competition, the latter between users and land uses result in confrontation, hence leading to conflictual situations. Conversion of these landscapes according to Groot (2006: 176), "only make narrow sense because the benefit from the land use change usually favor private or corporate interest groups, while the costs are burdened upon a diffuse group of stakeholders and future generations". Thus, it is essentially imperative to understand the unpredictable nature of the land use domain when certain development changes negatively impact those surrounding a development.

As a theoretical framework, land use conflict assesses how conflict over land can be dynamic and unpredictable. A clash between land tenure rights and property rights can further drive conflict (Wehrmann, 2017). Land tenure systems and property rights are considered interchangeable, though a notable difference exists, for example, land tenure rights act as rules regulating people's relationship to the land. It determines how a property or right to land should be allocated within society. Additionally, the United Nations Interagency Framework Team for Prevention Action (2012) further suggests that there are many types of rights to land for

instance control rights and transfer rights to state a few. However, land tenure systems do not simply confer rights, but also emphasize the restrictions and responsibilities which one needs to abide by, thus land rights are in a sense broader than property rights. Statutory forms of tenure are regulated by institutions, laws, and policies which stress compliance since these institutions include the courts, national and local governments (Young, 2002). When an individual breach these policies, laws or regulations which govern them, or when unethical practices and lack of transparency occurs within institutions, conflicts amongst stakeholders are likely to flourish and this leads to deterioration in the overall quality of the environment.

2.2.3 Land use zoning

Zoning is a land use management tool that defines the kind of development or uses that are permitted on a property (Nel, 2015). According to Chung (1994:77) “Zoning is broadly understood...to be government delineation and/or restrictions of rights over land within certain spatial confines”. Thus, it is a fundamental tool used to implement comprehensive and development plans in all communities (Richey and Duclos, 2008). The objectives of zoning schemes are to separate incompatible uses as these generate negative attributes which subsequently create harm and conflict. However, this land use management tool not only resolves land use conflict through demarcated zones for specified activities but also makes it easier to facilitate differential taxation based on land values that are directly related to permissible land values (Fischel, 2004; Tarlock, 2014). Most importantly, according to Hirt (2014: 253), "Zoning can protect land values, particularly the property values of detached single-family homes". By grouping activities or uses into particular classes for instance land use zones (industrial, commercial, and residential), land use planning prevents associated chaos from occurring. Thus, a zoning ordinance is a legally binding regulatory tool that assists in making a comprehensive plan a reality (Warren, 2009).

The main purpose of the ordinance is to ensure that negative externalities like traffic congestion are avoided, adequate light, and air is maintained while promoting public health, safety, comfort, morals, convenience, and alike (Yokley, 1950). Therefore, it can be asserted that this regulatory framework decrease public costs, protects property values, and enhance the overall quality of life for residents. However conflictual and sometimes hostile situations arise when people do not adhere to the stipulated conditions in order to operate or build within a precinct, or when changes within the jurisdiction impact the greatest on the community. It is important to acknowledge that zoning ordinances simply regulate or influence development and growth.

These ordinances are not 'fixed' or a final word, they are alterable via a process known as variances. This legally allows a property owner to rezone a parcel of land by making an exception to the preexisting zone. (Hagman, 1969; Nel, 2015).

For example, if a developer purchases a property and intends on constructing a high-rise, upmarket apartment, various restrictions may imply under a restricted zone. This would limit the developer from achieving his/her goals. The developer would have to abide by the height, side space, and rear space restrictions imposed by this zoning which would ultimately produce fewer units. However, if the developer applies for a rezoning allowing him/her to develop more units with greater height and bulk, the development may be permissible. Provided if the structure meets a specified criterion in accordance with municipal regulations. According to the Zoning Scheme Regulations in the City of Cape Town (2012), for this to be done an application form would need to be submitted to the Planning Department which consents to a particular development or rezoning. Therefore, rezoning can be a simple or complex process depending on the requirements of the city.

Despite the alterable nature of zoning, this land use management tool has been criticized for creating residential areas populated by similar income, class, or racial groups (Fichel, 2004). Another problem highlighted by Nel (2015:04) states that "Land use zoning is largely insensitive to aesthetics and design, focusing on individual use rather than the interaction between them". Standard development controls such as building restriction areas (setbacks, side spaces, and parking requirements) generate monotony within residential areas (Sitowski, 2003; Talen, 2012). As a result, zoning may deprive a city of essential diversity and innovation as it ignores the complexity of the built environment to a set of rules and regulations.

2.3 Contestation over high-rise development within residential zones

This section reviews some international (Toronto, Seattle, Dhaka and Spain) and national (Durban, Cape Town and Johannesburg) cases of conflict associated with land use zoning.

2.3.1 International Context

Toronto is Canada's largest city and a city experiencing advanced suburban restructuring (August, 2017). Toronto has the largest number of new high-rise apartments under construction in the world, exceeding New York, which is famous for many high-rise apartments (Moos, 2016). Over the past decade, Toronto's cityscape has been transformed by a massive surge in

high-rise development. According to Qing (2018:01), this transformation has been "promoted by government policies, city plans, foreign investors, and wealthy developers who plan to transform the city's physical and socio-economic landscape".

The fundamental aim of increasing density in built-up areas was to consequently create a more diverse and sustainable inner city (Moos, 2016). However, the relationship between the pattern of vertical multi-unit resident housing and the negative overall effect it has on quality of life and lifestyle cannot go unexplained. Shedding light on the negative ramification of high-rise development, west of central Toronto experiences several issues with high-rise apartment buildings within residential areas. Many opponents suggest it makes the area look somber and dark (Gardiner, 2017). This then reinforces stress and weakens mental health.

According to Gardiner (2017) in *Guardian Mail*, high-rise buildings produce a substantial negative impact on mood. This is not entirely caused by density itself, but also by the insensitive design of the development. When a built form, layout, or design of a development infringes on adjacent properties, it may impact negatively on community spirit, social interaction, and satisfaction within the neighborhood. In the case of Toronto, Dave (2011) states that social interaction and community spirit are essential components for a sustainable community and social cohesion. Yet, when residents' psychological needs are not considered due to the wave of new urbanism, it may cause social instability (Qing, 2017). Under the context of New Urbanism, poorly constructed high-rise development can evoke emotional depression, lack of meaningful social relationships, sleep deprivation and lack of reconnection to the outside. When psychological needs are not fulfilled due to haphazard high-rise architectural design, unpleasant emotions arise.

Moreover, densifying areas or neighborhoods have been widely accepted in areas like London because of government policy and the potential of generating higher profits by builders. Gardiner (2017:04) stated in the *Guardian Mail* that, "inflated land prices mean that developers have little option but to go upwards to make their investments back...height is the only way for them to recover the price paid". One needs to bear in mind that having shelter over one's head is important, although developers need to find a humane way to house people bearing various socio-economic and environmental factors in mind.

Likewise, the city of Seattle adjusted its residential zoning rules in 2010, opening many neighborhoods to four-storey or higher construction for the first time in decades (Goodman, 2015). Various neighborhood activists demanded City to withdraw the ruling, however to their dismay the more they pushed back against the rule, the more high-rise buildings were constructed. Since the 2010 adjustment to the zoning rule, there had been a dramatic increase in tall buildings (Goodman, 2015). This was evident in 2013 as ten new four-storey apartments were built, as much as the last ten years combined (Goodman, 2015). The City of Seattle had introduced a 'Seattle process' due to the pressures of the neighborhood groups to reassess its rule (Goodman, 2015).

Many issues concerning spatial design and construction practice have been noted worldwide. The increasing demand for housing units in Bangladesh, more particularly Dhaka is currently addressed by constructing high-rise buildings (Ahsan, 2016). Within Dhaka, the function of the legitimate authority is to control development and manage the growth of the city by following a prepared land use plan. However, the goals of Dhaka have been difficult. Mahmud (2007:02) states that "failure in the development control process made Dhaka an unplanned, overcrowded and polluted city". The underlying reason for this was corruption in the whole system and inappropriate permission process which hindered the development of Dhaka (Mahmud, 2007).

Regardless of cities like Dhaka having stringent policies and regulations implemented, lack of law enforcement and strong monitoring paves the way for developers to violate plans during the construction phase. In Dhaka, the most prevalent irregularity noted was private developers or property owners who deviate from the plan originally approved by Council (Mahmud, 2007). According to Mahmud (2007:09) "...90% buildings of Dhaka's city violated the rules of Building Construction Rules of 1996" which was imposed on height restrictions. There have been allegations that developers pay bribes to officials to avoid unnecessary delay, to bypass planning laws. According to Ahsan (2016:11) in Dhaka, "corruption and socio-political pressures were responsible for most of the city's plan deviation". Hence, Dhaka becomes a typical example of how planning decisions become subjective to power, politics, and money. The construction industry is beset by several issues when high-rise units are involved, and this can be observed not only in Dhaka, but also in countries like New Zealand, Sweden, and the United Kingdom (Matthewman, 2017).

Likewise, Spain experiences loopholes in local urban development which gives rise to conflict and opposition by community members. Quesada et al., (2013); Quesada et al., (2015), and Benito et al., (2015) mention that in Spain, frequent cases of corruption associated with urban planning are not a consequence of the absence of land use regulations, but the effect of deficient implementation of the norms, values, and principles of these regulations. As a result, the effects of patronage by local officials have resulted in structural defects and illegal approval of developments.

A lax regulatory environment significantly may influence the way high-rise units are perceived within a locality. It is undeniable that unethical behavior in the construction realm is coherent with and perpetuates animosity with many who oppose a haphazard development (Matthewman, 2017). Therefore, the changeable and unpredictable nature of high rise, multi-unit dwellings have resulted in contestation both at the international and local scale as a result of what Gebel (2012:121) refers to as “selfish rational utility maximizers”. Individuals who act in an economically rational way whereby their primary motive is to increase the benefits of their own self-interest for greatest personal gain has detrimental effects on society. By tactfully maximizing their personal happiness or utility without considering the impact their choices have on others is likely to give rise to conflict and contestation over land use.

2.3.2 Land use conflict over development in the South African context

2.3.2.1 KwaZulu-Natal, Durban

Residents of the Berea have been perturbed by the number of developmental issues that have surfaced over the last decade. For instance, that of 10 Overdale Road and Clive Road amongst others. With regards to development at Overdale Road, building operation at this property commenced after new ownership and according to Walford and Charles (2017:02) in *The Berea Mail*, "no plans had been submitted in terms of section 4 of the National Building Regulations and Building Standards Act No 3 of 1977". After numerous inquiries made with the eThekweni Municipality, it was gathered that no plans had been submitted to the council. Regardless of contravention notices been issued to the owner, the building continued in defiance. The city has processed a fine for non-compliance, however, despite the effort made, residents are angered by the developments that have appeared to have shown a flagrant disregard for the city by-laws.

Similarly, with regards to Clive Road, residents express concern over developmental work on a property that has not submitted plans for approval before development commences. Walford (2017) asserted in *The Berea Mail* that, the original building had been demolished, foundations been laid, and work started on development without following protocols and procedures. Upon physical inspection, it was observed that a larger foundation than that which previously existed had been laid. Consequently, this would only be to support a larger development which residents were not aware of (Walford, 2017). Residents have been infuriated by the laxity of the council for not clamping down on such developments or imposing repercussions for their actions.

Likewise, there were serious concerns about the development at 615 Stephen Dlamini Road, Durban when the project had commenced without any request for neighbors to comment on the plans (Figure 2.1). The neighbors requested access to the development plans, but this was denied to them. Walford (2016: 05) suggested in the *Berea Mail* that, “Officials who block residents from seeing the plans of a next-door development are legally at odds with the constitution”. The Constitution of South Africa encourages the sharing of information; hence the council should be encouraged to be more transparent. After countless battles, Cheryl Johnson from Save Our Berea cited in an article by Walford (2016: 05) that after viewing the plans, it was noted that “the front unit would be three-storeys high and the rear unit of the property...will be six-storeys high”. It was only after great effort made by residents that they were aware of the significant changes occurring within this site.

After viewing the plans residents were mystified, as development this large within the precinct should have requested consent from the neighbors or merely made them aware of the intentions of the development within the property. Municipal officials declared that building plans have been submitted and approved in terms of the National building’s regulation, National standards, and Town Planning Scheme for the erection of two residential units. However, residents' main concern and frustration are a result of the lack of communication and inadequate consultation with them by the developer (Walford, 2017). Lack of consultation ultimately leads to breach of trust between neighbors, developers and city bureaucrats.



Figure 2. 1 Residents uninformed of construction at 615 Stephen Dlamini Road (Walford, 2017)

2.3.2.2 Western Cape

Issues with regards to high-rise apartment buildings are noted in Sea Point and Bo-Kaap, Cape Town. With regards to the former, residents at Sea Point are concerned by development within the area which according to Charles (2018a:01) in *Cape Argus*, "is turning their neighborhoods into a version of Hong Kong". Developers of this project plan to construct an 18-story skyscraper and residents expressed concern as the developer requested a waiver of on-site loading bays (Charles, 2018a). Presently the developer had made provisions for only one on-site loading bay. As a result, Samantha Walt who is the representative of Sea Point Ratepayers Association cited in the *Cape Argus* by Charles (2018a:01) that, "this ultimately means that Pick n' Pay will be offloading merchandise in the middle of the street...causing chaos in Irvington, Gorleston, and surrounding roads". Residents fear the implications involved in having this development within the residential neighborhood include increased volumes of traffic in an already congested area, loss of views, privacy, light, noise pollution, as well as limited access to the fire station (Charles, 2018a).

In recent years, more than 120 cases of illegal building work had been referred by the City of Cape Town to municipal courts, with offenders merely being penalized with fines ranging from R300-R8000 (Lewis, 2014). For many developers, this is nothing but a slap on the wrist, therefore allowing offenders to sin now and ask for forgiveness later. Furthermore, the Council has been criticized for not providing justifiable reasoning and documentation to residents who question controversial construction projects in their neighborhoods.

For example, the City of Cape Town has faced several complaints concerning development in Tamboerskloof and Bo-Kaap. In Tamboerskloof, a concerned resident approached the council and requested the city manager to intervene as his neighbor had erected a guest house on a site supposed to be used for a single dwelling (Lewis, 2014). The adamant resident had tried for weeks to access files from the city that would provide information about rezoning or approvals granted for the construction of the five-story block of flats in Exner Avenue, Tamboerskloof (Lewis, 2014). However, the file could not be located, and neither were the planning officials helpful in providing information (Lewis, 2014). The fact that building inspectors show leniency towards contravening developers is the reason for the observable drop in construction standards (Monbiot, 2006). Residents from Bo-Kaap share similar sentiments about a massive new development in Cape Town's Foreshore, claiming it to be a disproportionate and huge project (Davis, 2017). Residents were tired of the sight of cranes and earthmovers within the vicinity. The developer of the project reaffirms residents' concerns by indicating that the residential apartment will benefit people as they would be affordable prices for young professional people (Davis, 2017). Nevertheless, residents deny it doing so considering one-bedroom flats ranged over R2 million (Davis, 2017). Due to this, residents raised questions about the development declaring that projects like these tend to favor people with money at the interest of the community.

2.3.2.3 Gauteng

Gauteng is considered the economic capital of South Africa. It is a highly urbanized province due to the population influx across many city centres (Strauss, 2016). Johannesburg is the largest city and considerable investments are being made by both, the private and public sectors as a residential initiative to accommodate the booming suburbs such as Midrand, Sandton, Rosebank, Fourways, and alike (Huchzermeyer, 2017). The renewed interest in the market and a range of residential developments are a phenomenon that would continue to exist. These include small to medium-scale developments, as well as many multimillion-rand residential projects. However, either during the application or construction phases, some developers defy by-laws or regulations which govern their activity within a property. Although this issue affects many cities world-wide, the city of Johannesburg has implemented steps to eliminate illegal or contravening development activities in the city (Davis, 2016). The city recognizes the importance of taking action to curb the problem as a circumvention of by-laws and regulations could have a negative impact on neighborhoods. A typical example of an unlawful

multimillion-rand development would be that of the Guptas in Saxonwold Drive, Johannesburg.

Various controversies surround the Guptas triple story, monstrosity family home in Saxonwold Drive (Bega, 2017). The extensions undertaken on the property of Mr. Atul Gupta had been placed under scrutiny by a team of planning experts and building inspectors as a result of alleged violations of building regulations (Thakali, 2013). The Gupta family had applied to the City of Johannesburg to alter or amend their previously approved building plan on one of their properties to consolidate two sites and simultaneously re-subdivide in order to comply with zoning provisions (Thakali, 2013). However, the Gupta family had violated the Architects Act in terms of height restrictions and the number of dwelling units per site (*The Citizen*, 2013; Talkali, 2013). According to Takali (2013:03): “The size of the building footprint was 170 m² more than that which was allowed in terms of the Johannesburg Planning Scheme”. Residents of Saxonwold Drive were at first unaware of the initial building plans submitted. But the fact that they had been approved within a month without public consultation astonished them (Jacobs, 2013). Thereafter, plans were submitted for internal alterations. When the third plan was submitted due to deviations undertaken that did not comply with previously approved plans, residents became infuriated (Takali, 2013).

The illegal building plans were derided as not keeping with the character of the upmarket suburb (Bega, 2017). Residents had been living with an intrusive building in their backyard which towers over their properties and blocks out light (Bega, 2017). After Saxonwold’s Residents and Ratepayers Association appointed their own building inspector, it was gathered that the extensions and plans were 'incorrectly approved' by Council (Jacobs, 2013). Therefore, the Council was required to withdraw approved plans and order for work to cease. The City has given the family 30 days to resubmit an amended plan which is in accordance with the regulation. Failure to do so would require the Guptas to demolish the illegal portion of the building (Jacobs, 2013). The Guptas did not comply and their role in capturing the former South Africa President Jacob Zuma is now well known.

In Brixton and Rossmore, the City of Johannesburg decided to change the spatial framework of the area to incorporate a six-storey apartment block in a neighborhood of single and semi-detached homes. Developers suggest that the densification of the area would provide students with affordable housing (Huchzermeyer, 2017). However, the bachelor units which are to be sold at approximately R800 000 were designed with car owners in mind and cannot be

described as providing housing for the poor (Huchzermeyer, 2017). Brixton and Rossmore were suburbs chosen by developers based on their proximity to the city centre and two well-established universities. However, disputes against the proposed development arose based on the fact that the development did not comply with the City's spatial planning Act's five core principles which are: spatial justice, spatial resilience, sustainability, efficiency, and good governance (Huchzermeyer, 2017).

Although the developer presented his proposal as units that are affordable student housing which would improve spatial justice, the mere fact that the units were sold upwards of R800 000 made it impractical to target the poor. Moreover, the car-dominated architectural design could not be framed as resilient nor sustainable. When developers construct high-quality apartments for investment purposes under the pretense of building affordable accommodation, it tends to create tension as to who is likely to benefit. Granting consent to a single developer with short term profit interests would override the planning process in which residents are given their constitutional right to meaningful participation (Huchzermeyer, 2017). Thus, conflict within this precinct occurs when developers make a farce of the spatial justice framework of the City of Johannesburg.

2.4 Densification and the creation of compact cities

Densification is a multi-faceted and complex topic that is being debated across the world (Bentazo, 2007). Since 1994, urban integration and densification have been identified as government objectives (Permana *et al*, 2015). According to Mfusi (2016:09): "Densification has been argued as the most sustainable way of developing our cities and curbing the rapid urban sprawl while reducing the rate at which resources are being used up". The very essence of densification is to accommodate more of the poor and disadvantaged who suffer from the inevitable high land prices (Skovbro, 2001).

Therefore, compaction reduces the consumption of land and energy, as well as the emission of greenhouse gases caused by private car travel. The fundamental purpose of densifying areas that are well accessible and have well-connected transport options is to demonstrate less reliance on private cars. As a result, it will enforce the use of public transport and a greater number of people will be walking (Bentazo, 2007). The problem comes in trying to sell the idea to people who are not used to this type of living. For example, it may not be an attractive alternative to those residing in single-family detached dwellings. Consequently, the potential

benefits of densification need to be considered realistically against the pitfalls of getting it wrong.

Many neighborhoods may willingly welcome change and embrace the concept of densification. However, when residents that perceive a developer misusing his rights and violating building standards during the construction phases, tension is likely to occur. Many issues arise with high density, high rise dwellings as it allows for a greater occupancy rate. Yet even if a building is low-density, high-rise, if not properly designed it makes it harder for residents surrounding the property to accept it. According to Mfusi (2016:12): “High-rise development that occurs in smaller yards and setbacks sometimes produce clumsy designs when there’s less room to play with”. Moreover, when residents are not adequately informed or consulted about the changes that occur, it results in resistance. This hinders development that the city has planned and causes unnecessary conflict between the residents, developers and the city (Mfusi, 2016).

As indicated previously, many of the perceived negative impacts are associated with high-density, high-rise development are related to the detrimental psychological experience as a result of overcrowding (Clark and Moir, 2015). The assumption in most cases is that low-density residential accommodation would keep residents protected from the troubles that come with high-density housing, thus making low-density living alluring (Churchman, 1999). This may even be true to an extent, however, the fear of living with a low-density, high-rise building that contravenes developmental regulations and by-laws are equally as disastrous as it causes a similar amount of distress

2.5 Benefits of high-rise development within a residential precinct

Benefits associated with vertical building construction include demand for multi dwelling units, centralization of services and facilities near high-rise dwellings, and opportunity to introduce energy-efficient systems.

2.5.1 Need and desirability of a multi-dwelling unit

Investments made in high-rise buildings represent a component of a country’s economic power. Many countries like Hong Kong, Malaysia, United Arab Emirates (UAE), and Qatar have achieved their progress through encouraging the preparation of comprehensive plans to establish high-rise investment projects to prove their country's economic power and prestige (Farouk, 2011; Noor *et al*, 2013). In recent years, both developed and developing countries

have emerged as centres for high-rise buildings to accommodate the increase in population growth. This has been considered effective since land is a scarce commodity and particularly expensive in big cities (Ibrahim, 2007; Noor *et al*, 2013b; Yim, 2018). According to Ahmad, Aibina and Thaheem (2017:1699): "Skyscrapers create a symbolic value by presenting the supreme identity of a city and success of owners or occupants". High-rise buildings depict an image of success, strength, wealth and power. They convey a message of status and their unique architectural designs make them prominent structures. Not only do high-rise, multi-family units have the potential to offer great views, but their visibility and presence in urban landscape enhance the value of surrounding properties if constructed and maintained appropriately (Noor and Eves, 2011). Factors like cost, location, and aesthetics of a building attract prospective buyers.

2.5.2 Centralization of services and facilities near high-rise dwellings

People are interested in occupying dwellings that are conveniently situated near services and facilities. Therefore, high-rise developments are based on the centralization of many services and transportation options. According to Noor and Eves (2011:02): "One of the reasons people prefer to stay in a high-rise is the facilities provided within the housing area". People prefer residing in high-rise developments within or close to the city as it gives them access to basic public utilities and work. Additionally, facilities provided near high-rise residential building is more complete or more stylish compared to the low-rise residential building due to the larger number of families within the area (Bramley *et al*, 1995; Chan, 1997). It becomes apparent that the physical environment only becomes attractive for public life when the function and uses generate and support social activities.

2.5.3 Opportunity to introduce energy-efficient systems

As high-rise buildings increase, architectural styles change, and new technologies can be incorporated into the design of the development to make them more sustainable (Ahmad *et al*, 2017). The building sector is the single largest contributor to Greenhouse Gas Emissions (GHG). According to Yim *et al.*, (2018:09): "The elements emitting the most significant amount of GHG's are found to be communal lighting and lifts, as well as the energy consumed by tenants for hot water, air-conditioning, and refrigeration".

GHG's are not only emitted from the operation or activities occurring within the high-rise buildings, but also during the construction phase when certain materials or equipment are used. With modern technology being introduced, developers can now build structures that can

minimize carbon emissions by using environmentally friendly materials or energy-efficient appliances, lighting, heating, and cooling equipment (Dernie and Gaspari, 2015). Implementing renewable energy solutions like photovoltaic panels on high-rise buildings is also beneficial for countries to move towards a trajectory of sustainable development (Yim *et al.*, 2018).

Inarguably, determining if high-rise dwellings are desirable or undesirable is situational based and largely influenced by resident's perspective. The need for high-rise buildings is recognized, but the disadvantages of having these structures within a neighborhood cannot be ignored.

2.6 Negative consequences of high-rise intrusion within a residential zone

On the negative side, high rise buildings are viewed as an intrusion in the neighborhood, can lead to a decline in the neighborhood's social fabric, lead to social pathologies, increase in noise pollution, and reduce property values.

2.6.1 Strain on neighborhood facilities and light intrusion

High-rise buildings concentrate more people within a locality, and this subsequently creates an increased number of people particularly at peak times (Ibrahim, 2007). Ibrahim (2007:2000) states that: "This may overload the cities infrastructure - particularly its public transport, roads, and utilities. The size of a building has important direct influences on our emotional response". The increase in road traffic leads to an increase in: time spent on transportation, fuel costs, and noise, etc.

Furthermore, the undesirable impact from a new high-rise is noted in the period of construction. Medvedeva *et al.*, (2017:02) propose that: "The construction of a new high-rise creates discomfort to residents since construction machinery increases the load on transport routes during the construction phase, resulting in congestion". Moreover, certain city's drainage and sewerage facilities were constructed for a smaller population. Connectivity of drainage systems, for example, was planned in proportion to the type of dwellings within the area. The introduction of high-rise apartments not only increases the number of people living within the locality but also exerts tremendous pressure on the existing sewerage infrastructure (Engstrom, 2014).

Normal lighting and views of natural surroundings are associated with beneficial social and physical effects (Tregenza and Wilson, 2011). Poorly planned structures may impact negatively on adjacent properties when the degree of natural light significantly varies according to a building's design or structure (Capeluto and Plotnikov, 2017). However, some high-rise structures are designed in a manner that violates regulating laws and standards. Based on the building's shape, structure, and bulk, it may not fit appropriately amongst other dwellings and can cast a shadow on adjacent buildings if the high-rise towers over neighboring buildings (Kim and Cho, 2020).

This can ultimately be a major problem for dwellings surrounding the high-rise as their properties may appear to be somber and cold as a result of intrusive development. Sunlight exposure is directly correlated to the building's height and its setback distance from the site's property line. According to Kim and Cho (2020:31): "In South Korea, similar issues regarding insufficient access to sunlight by adjacent buildings as a consequence of high-rise construction have caused constant disputes".

2.6.2 Degradation of neighborhood social fabric

A study undertaken by Gifford (2007) suggests that high-rise buildings have various social and psychological influences on their occupants and those residents surrounding the development. At the societal level, a structure may be accused of burdening existing services and infrastructure, worsening traffic problems, and damaging the character of neighborhoods as indicated above (Broyer, 2002). However, Gifford (2007:02) further exclaims that in addition to this, "a development may induce psychological implications such as stress, fear and poor social relations as a result of the dissatisfaction". His empirical findings explain that a resident's personal experience of a building, their satisfaction with it, or lack thereof is structured around the impact the development has on resident's livelihood.

High-rise buildings have been considered problematic as it restricts people from interacting with their neighbors in a way which allows meaningful interaction. High-rise structures have been criticized for separating occupants of the development from their neighbors. Apartment living restricts social interaction on the ground level. Especially if facilities like private lawns and gardens are not available on the site or nearby (Alhamed *et al.*, 2014). Hence a feeling of separation is often felt. The lack of social interaction between neighbors often creates depersonalized living spaces and lowers the level of interest in community affairs (McCarthy

and Saegarth, 1978). Additionally, a study conducted in India by Chatterjee *et al.*, (2003) indicated that the design of high-rise building which lacked open spaces and play-areas was considered detrimental for the physical and mental health of young children. In Australia, sixty percent of parents believed that high-rise development had detrimental effects on children residing within the development and those which are neighboring the structure as it created a sense of alienation (Conway and Adam, 1977; Gifford and Lacombe, 2006).

2.6.3 Impact of crime on the community's livelihood

Fear of crime has long been recognized as a significant social problem, but the welfare implications of crime are potentially far deeper. Crime does not only victimize individuals, it can also weaken the fabric of social life by increasing fear, suspicion, and distrust (Corbacho *et al.*, 2012). According to Rujibhong *et al.*, (2016:106), as “social relations are more impersonal in high-rise dwellings, a higher level of security risks is noted”.

When a criminal activity within a neighbourhood increases to a level that the entire neighbourhood starts deteriorating, a major problem unveils. According to Conington (1991:232), "...a lack of social ties and an awareness that the neighbourhood is deteriorating or declining will result in elevated fear". The fear then instilled can be detrimental to the community. The fear of strangers sharing a dwelling or inviting a group of unknown visitors irrevocably leads to fear of crime as the anonymous interaction within the vicinity creates an objective possibility of crime (Gifford, 2007).

When a building is left unattended, incomplete, or unoccupied, it tends to result in strangers loitering the area and engaging in criminal activities. The fact that crime is typically concentrated on a small number of streets, intersections, or vacant properties (hotspots) lends further credence to the notion that place characteristics can be criminogenic (Weisburd *et al.*, 2012). Moreover, in instances whereby developers experience a delay in deviation plans, rezoning approvals, or even financial difficulties, it could affect the completion time for the building. This subsequently exposes residents to an eyesore, incomplete development, and attracts those who engage in illegal activities.

2.6.4 Impact of excessive exposure to noise

Noise is a problem that has resulted in an increasing number of complaints in recent years. It is noted to be an undesirable by-product of modern technological society. Been exposed to

even a moderate amount of noise may result in stress and irritation. Schroder (1977: 67) further suggests that "while irritation may lead to reduced efficiency and lower productivity, stress may cause personal suffering and additional welfare expenses". York (1972: 694-695) asserts that "due to sound been heard at many frequencies at various levels of intensity, methods need to be devised to control or prevent noise from becoming a nuisance". Ideally, when noise is perceived as a nuisance, psychological effects such as anxiety, annoyance, loss of sleep, tension, and speech impairment follow. Thus, these reported harms demonstrate a need for noise control legislation to protect the safety, welfare, and health of citizens. This is especially true in residential zoned areas that are exposed to heavy-duty construction machinery.

When this happens many developers not only engage in construction activities during the day but extend their operations till late hours at night. This may become irritating to neighbors especially when construction activities include generators or other mechanical equipment operations (Mbuligwe, 2004). Noise pollution is not only harmful to human beings, but the nature of the construction may also be a health hazard to all living beings. Recognizing that excessive or unusual noise can significantly impact human health and welfare is important to achieve a balance between construction by a developer within a residential neighborhood while protecting the rights of ratepayers.

Several studies of multi-story residential apartments have identified privacy and building quality as important influences on residents' perception and livability (Yuen 2011; Cho *et al.*, 2011). According to Cho *et al.*, (2011: 20), "Privacy is measured by the extent to which residents can control the intensity of their action with neighbors and is indicated by the amount of ambient noise and noise from neighbors experienced...". If a negative occurs over a prolonged period, it may reduce the neighborhood satisfaction level and propel people to move out of the area because of poor living conditions.

2.6.5 High-rise development infringement on residential property value

While high-rise apartments may have potential benefits, neighborhood residents may oppose a development of this nature, fearing a loss in property's value. As a result, skepticism to high-rise housing is a familiar feature in local politics globally (Craw, 2017). Many critics of high-rise dwellings indicate that owners of single-family homes express concerns that vertical development will increase levels of neighborhood social disorder and crime, create added inconveniences and nuisances (such as traffic and noise). Ultimately, this would reduce

property values (Pendall, 1999; Obrinsky and Stein, 2007). Therefore, the proximity of a troublesome development in a residential environment would be detrimental to the well-being of communities (Hughes and Sirman, 1992). High-rise housing may improve property values for example when housing replaces decayed, run-down dwellings in a neighborhood (Rawlings, 2002). When a positive trend is noted, it not only signals that the neighborhood is a more desirable place to reside in, but it also attracts developers to make long-term investments. However, this will have a reverse effect if a proposed development produces disadvantages (Rawlings, 2002; Craw, 2017).

Thibodeau (1990) analyzes the potential impact of a single high-rise building on nearby houses in a small residential area of North Dallas and found that homeowners with properties located between 1,000 and 2,500 meters away benefit or were not affected negatively from the high rise, while the homeowners within the 1,000-meter radius are negatively affected by the building. Fundamentally, the size of the development matters and the degree to which proximity is ameliorated by buffers to minimize visibility and associated negative consequences is important (Fischel, 2001). Similarly, a study conducted in the City of Omaha, Nebraska by Rawlings (2002: 03) suggests that "Some developers submit a proposal to rezone the area for apartment developments adjacent to single-family residence ...but apartment complexes lowered surrounding property values as they were aesthetically displeasing".

When City planners and building inspectorates do not play an effective role in regulating the size, design, or bulk of a structure within a precinct, or even overlook a building violation, housing structures become an emotional issue (Rawlings, 2002). A change of zoning rules that allows a developer to build a structure with greater bulk than the previously prescribed zoning may become a threat to property values when properties adjacent to the development are engulfed by the architectural style and design of the building (Garnett, 2001).

Housing matters less when the quality of a nearby property design, management, and maintenance is considered in a negative light (Goetz, 1996). Derelict or abandoned buildings or structures which violate by-laws and regulation in construction become a hazard to the surrounding communities. Properties not maintained, vacant for too long, or perceived as contributing to neighborhood blight can repel buyers from investing in areas, which subsequently would depreciate the overall value of properties within the locality. As a result,

any negative, unwanted changes within a neighborhood can generate ‘market effects’ which are damaging to surrounding residential property values (Craw, 2017).

Furthermore, when local authorities willingly grant certain developers the right to rezone a property to a larger scale, they sometimes do so under the pretense of ‘fiscal zoning’. Fiscal zoning is adopted in instances whereby the local authority believes that by consenting to a particular use, it may preserve and enhance the local property tax base. Garnett (2001:1236) further states that “fiscal zoning would predict that some municipalities may choose to adopt more lenient rules and regulations to attract particular home purchasers or developers with these preferences”. However, regardless of the revenue generated, the introduction of a new development needs to fit the social fabric of the area and municipalities need to scrutinize the physical aspects of the development as a ‘one-size fits all’ model is not successful in all districts.

When residents oppose a development based on the belief that it may transform the structure of an entire neighborhood negatively, it creates a tension zone between the developers and residents. Hence, the contribution to the local property tax base becomes less important to residents when their property values are not protected. High-rise development which is not aesthetically appealing and has resulted in the residential neighborhoods becoming less desirable because of the change brought about and consented by the municipality, therefore, impacts negatively on property values as seen in Minnesota (Nguyen, 2015). Thus, it is imperative to reiterate the need for stringent laws, regulations, and schemes to be effectively followed to make neighborhoods more desirable. The next section focuses on the land use schemes of the eThekweni Municipality

2.7 eThekweni Municipality Land Use Schemes

Spatial development policies in South Africa have undergone fundamental changes since the dawn of the democratic era in 1994 and this can be clearly seen within the eThekweni Municipality in KwaZulu-Natal (Du Plessis, 2015). eThekweni Municipality has formulated various land use schemes which have been used as an instrumental tool by the Municipality to guide and effectively manage development according to the vision, strategies, and policies of respective schemes. This has been done in order to promote a functional integration which in turn ensures sustainable development in the interest of the general public and a harmonious relationship amongst all (Du Plessis, 2015).

A land use scheme has the force of law and all landowners and users of land within the Municipality are bound by the provisions of such a land use scheme. In eThekweni Municipality, the Provincial Town Planning Ordinance 27 of 1949 which includes the eThekweni Municipality Durban Scheme Central Region will be discussed. Mention will also be made to the National Building Regulations and Standards Act 103 of 1977, Spatial Land Use and Management Act No. 16 of 2013 (SPLUMA), and the Promotion of Administrative Justice Act No. 3 of 2000.

2.7.1 Provincial Town Planning Ordinance 27 of 1949

The Town Planning Ordinance 27 of 1949 is also referred to as the Scheme. The main purpose of the Town Planning Scheme 27 of 1949 is to promote coordinated and harmonious development in such a way to most effectively support health, safety, order, convenience as well as the general welfare of the public (Town Planning Scheme, 1949). The Scheme upholds this by regulating, restricting or prohibiting a structure from commencing development or restructuring. Thus, the purpose of this scheme is to not only guide developers but also protect the average citizen from exploitation and ensure their well-being in the built environment. The Ordinance does not confer on any person the right to develop or use land in a manner that does is not construed in its provision. Therefore, preventing conflictual situations from occurring (Town Planning Scheme, 1949). The Ordinance outlines the functions, power and duties of the local administrative with connection to carrying out the Scheme. It provides a guideline for developers under its jurisdiction to abide by if a property needs to be amended, altered or rebuilt. The Scheme is crucial to managing land use rights, for example by specifying the conditions for public notices by a developer and provides timeframes for application processes. For the purpose of ensuring its effectiveness, the local administrative may appoint a town planning committee to assist with carrying out the functions outlined by this Scheme.

2.7.2 National Building Regulations and Standards Act 103 of 1977

Whether an individual decides to build a new development, extend, or alter an existing dwelling, one needs to follow certain construction procedures to avoid structural failure or collapse (Janek, 2013). Therefore, building regulations and standards are vital to ensure the success of any building project. In South Africa, the national standards are developed and published by the South African Bureau of Standards which give information about some of the most important national standards that relate to building a house or building design in general (CivilSure, 2016). This Act is divided into sections that provide information for developers and

architects to adhere to in terms of general principle and requirements, structural design, dimensions, lighting, and ventilation and so much more (NBRA, 1977). The level of advice, guidance, and professional service provided is governed by the Code of Practice laid down by the Act. The local authority is responsible for ensuring the required level of compliance has been achieved before it can approve a building application. Therefore, the Act outlines the role of the local authority and appointed building control officers in respect of the approval and erection of a building (NBRA, 1977). It contains timeframes to be adhered to, reasoning as to why a structure could be refused, and the action a developer is entitled to if an appeal is to be made, and so forth. The National Building Regulations and Standards Act 103 of 1977 is the law that enforces the standards and all building inspectors around South Africa are mandated to strictly follow them (NBRA, 1997).

2.7.3 Spatial Land Use and Management Act 16 of 2013

This Act provides a framework for spatial planning and land use management that needs to be adopted at national, provincial, and municipal spheres of government. SPLUMA has been recently introduced within the eThekweni Municipality and it incorporates a multi-faceted overarching framework. For instance, SPLUMA aims to provide a uniform, effective and comprehensive system of spatial planning and land use management, as well as provide for development principles, norms, and standards which will ultimately lead to sustainable and efficient use of land (SPLUMA, 2013). In terms of the rapid transgression occurring haphazardly along a residential precinct, SPLUMA may be able to allow for greater comprehensive checks and balances on all organs of state and land users, as it is designed to monitor and support other spheres in the performance of their spatial planning, land use management and development functions (SPLUMA, 2013).

Furthermore, by it been a legislative framework which incorporates national, provincial and municipal level, the Minister may be able to consult with all organs of state in local and provincial spheres of government in order to resolve or prevent conflict or any other inconsistencies which may arise from spatial plans, framework, and policies (SPLUMA, 2013). Furthermore, the legislation stipulates that the spatial development framework should be reviewed once in five years. This will be beneficial to many communities as organs of state may be able to propose amendments to the spatial development framework to achieve consistency in the framework. What is of paramount importance in this scheme is that emphasis is placed on the need for an inspector to investigate any non-compliance with its land use

scheme. Moreover, it prohibits any person from using land in contravention of its land use scheme and authorizes the demolition of any structure erected in contravention to the scheme (SPLUMA, 2013). However, since this framework has been recently implemented, it needs to be critically assessed and monitored to ensure its effectiveness and to make sure it is followed through in tantamount with other policies and frameworks.

2.7.4 Promotion of Administrative Justice Act (Act No. 3 of 2000)

The promotional of Administrative Justice Act (referred to as PAJA henceforth) is a milestone in the development of administrative law in South Africa as it comprises of basic rules and principles of administration procedure which have been defined in a statute (Pfaff and Schneider, 2001). According to Section 33(1) of the Constitution of the Republic of South Africa 1996, PAJA aims to promote administrative action that is lawful, reasonable, and procedurally fair (Plasket, 2002). Additionally, in doing so Currie and Klaaren (2001:59) explain that "PAJA requires administrators to provide written reasons for their administrative action as stipulated in Section 33(2) of the Constitution of the Republic of South Africa". It requires administrators to provide individuals who are negatively affected by a decision with a reasonable explanation if requested (Alexander and Phahlamohlaka, 2005). Hence the rule of law seeks to make administration effective and accountable to citizens for its actions. Moreover, Section 33(3) of the Constitution allows members of the public to review or challenge the decisions of administrators in court (Plasket, 2002). A person may approach the court once all internal remedies have been exhausted, thus this subsection in the Act allows for judicial review if the action is considered unlawful.

It is always important for administrators to be transparent in their decisions and follow lawful procedures. However, in certain instances, a decision may lack clarity on the issue from the beginning. This is evident in a case whereby an administrative action may be favorable to one person but not to the other. Plasket (2002: 66) provides an example of this, "The granting of a building permit to an applicant may give rise to a challenge by the neighbor who is afraid of damage to his or her property caused by construction". Most court cases centre on the infringement of statutory rights. As a result, this Act aims to strike a balance between divergent interests. That is to uphold the Constitutional rights of the public as well as to respect the administrative law (Plasket, 2002). Therefore, PAJA is important as it is intended to govern innumerable different cases and ensure citizens are entitled to open and transparent administration.

2.8 Dysfunctional systems of governance: a catalyst for land use conflict

Land use controls are an instrumental tool utilized by local governments in influencing the design, location, and functional character of urban growth. The way land use control measures are enforced may directly or indirectly affect the wellbeing of their constituents (Bourne, 1976; Glaeser and Goldin, 2006). Institutions that develop and enforce land use policies and controls play an important role in maintaining the coherence within society; however functional deficits within these institutions may be prevalent. Despite the existence of functional deficits within such institutions, this shortcoming cannot be attributed as the fundamental reason for land use conflict as they merely facilitate the occurrence (Wehrmann, 2008).

Many individuals exploit institutional deficits for the sake of reckless individual profit maximization which is ideally based on emotional and material needs. Due to the constant need to acquire power or wealth, residents of the area or developers from other jurisdictions break institutional rules to profit from institutional shortcomings (Wehrmann, 2008). Consequently, Wehrmann (2008: 25) suggests that "illegal behavior is the rule rather than the exception". Dysfunctional institutions entice powerful, profit driven individuals to take advantage of weaknesses in the system. Therefore, formal systems of governance are ignored local officials.

Land use disputes are often framed as a struggle between tyrant developers and residential property owners or residential property owners and the government due to lack of transparency. However, framing the land use conflict as a 'landowner versus the government' is not entirely correct (Duke, 2004). Land use conflict rests at the root of much lingering incoherence in land policies. Too frequently are disputes assessed topically, for instance, traffic congestion is analyzed as if distinct from the effect of high-rise development within residential areas, rather than assessing such conflict within their usual context of zoning, regulatory takings, and alike (Duke, 2004).

Democratic institutions have enacted regulations to reduce the susceptibility to contravening development within residential zones and give back to residents their long-awaited human rights. Residents have a right to assert their opinion and ask questions about their neighbors developing next door if they defy the law (Duke, 2004). However, the strength of the regulatory systems been enforced within the community or been systematically followed through in certain areas are bleak and continuously been violated.

A leaked report published by Underhill (2009) in the *Mail and Guardian* exposed how fraud was rife at the City of Cape Town's planning and building development management department. City officials were accused of accepting money across the counter to either speed up the approval of certain building plans or turn a blind eye to illicit developers. Underhill (2009:03) stated in the *Mail and Guardian* that, "32 employees were investigated for misconduct, and 12 of whom were disciplined internally. 7 were sacked and 2 resigned".

Because of the string of inconsistencies and lack of accountability by officials, complaints received by the public about encroaching structures are often overlooked and still approved. Consequently, Wehrmann (2008:24) asserts that "Nepotism, corruption, and disregard for regulations are considered normal by the population". Therefore, the absence of a strong, functioning institution that regulates the land market is likely to facilitate land conflict.

2.8.1 Corruption in the land use planning domain

Corruption is the abuse of public power and role for private benefit (Chioldelli and Moroni, 2015; Heo *et al.*, 2017). Within the land use planning domain, legislative and regulatory corruption is not uncommon and refers to the manner or extent to which legislators can be influenced. In some instances, rule makers or administrators can be bribed by individuals to introduce or revise regulations that can change the economic benefits associated with certain situations. Individuals may bribe bureaucrats to either speed up bureaucratic procedures or to obtain services that are not available. Corruption is not uncommon in our daily lives. However, the nature of corruption is such that it covers its tracks as those involved in the activity are loath to discuss or reveal the facts (Chioldelli and Moroni, 2015).

Parties who are involved in unethical dealings spend an ample amount of time and resources trying to evade detection (Fissman and Svensson, 2000). In Spain, 750 cases of political corruption which involved 800 individuals investigated for crimes such as nepotism, bribery, and fraud were officially reported in 2009 (Quesada *et al.*, 2013). This was merely the tip of the iceberg. Various direct and indirect negative consequences arise because of corrupt engagement between different individuals. Although it is critical to acknowledge that corruption not only alters the fundamental fairness and respect for the rule of the game, but it also negatively generates unwanted fallout (Chiodelli and Moroni, 2015). This fallout is usually a burden on the public purse, therefore Meon and Sekkat (2005) add that bad governance tends to worsen the welfare of the masses.

Moreover, corruption can create various undesirable consequences. For example, according to Chiodelli and Moroni (2015: 440), "Corruption can seriously damage the legitimacy and creditability of the political and institutional system and undermines generalized trust". Within the land use sector, corruption may also distort the market and hinder economic growth. Corruption through bribery paid out by developers is not conducive for growth as it enables developers to get things done in an inflexible bureaucratic system which could affect those surrounding the development negatively (Fisman and Svensson, 2007). According to Glaeser and Goldin (2006:10), "as the amount of regulation increases, the opportunity to extract bribes also rises". Bribe-taking politicians and bribe-giving businessmen are subsequently influenced by the amount of social and economic regulation.

In the land use planning domain, since the discretionary power remains vested with the political elite and administrators, the 'gains' resulting from unlawful deals transacted outweigh the penalties which might have incurred (Chiodelli and Moroni, 2015). Hence unlawful activities are also largely influenced by the benefits available and the riskiness of the corrupt transaction. Consequently, government interference, especially a bad one, is a distortion in the land use planning sector (Meon and Sekkat, 2005; Fisman and Svensson, 2007).

Unethical practices by public officials have adverse effects on the regulation and planning of land use. The fact that regulatory schemes can be manipulated to conform to contractor's wishes makes the land use planning sector volatile with contestations (Meon and Sekkat, 2005; Fisman and Syvensson, 2007). For example, certifying a certain area as developable land or essentially increasing the volume of an already certified area's quota of developable land far beyond initial figures (Chiodelli and Moroni, 2015).

Ultimately, corruption is a pressing issue that influences different phases within the planning domain. Chiodelli and Moroni (2015: 443) assert that "It can be inherent within the drafting phase when applications for variants are made, as well as within the construction phase". Amongst the possible forms of corruption that precede the construction of a building, bribery and various other illegalities can influence 'speeding-up' the procedure of acquiring a construction permit. The process for obtaining a permit is complex and cumbersome. Therefore, developers prefer engaging in illicit dealings which could provide a net gain to them (Chiodelli and Moroni, 2015; Boamah *et al.*, 2017). Developers within the Wa Municipality in Ghana suggested that acquiring a development permit is associated with a high degree of

uncertainty and delays (Boamah *et al.*, 2017). According to Boamah *et al.*, (2017:353), “..it takes 42 months or longer for the Wa Municipality Planning Authority (WMPA) to decide on a development permit application. A process which according to law, was supposedly 3 months”. Boamah *et al.*, (2017:354) further suggest that "delays significantly impact on land development costs and form a source of frustration for developers". Hence, developers find it easier to engage in corrupt activities to commence with development sooner.

The land use planning domain which entails zoning and the flexibility of variances deliberately sets out to be discriminatory. The fact that parcels of land can be switched from one zone to another indicates that zoning will continue to be an arbitrary system. Thus, it is imperative to acknowledge that corruption in land use planning is vested in public officials who can use their power selectively which is beneficial to the developer. The developers are not in themselves more prone to corruption, it's an existing dysfunctional planning system that can incentivize certain behavior (Chiodelli and Moroni, 2015). As a result, a more effective and stringent system that not only demands conformity but also acknowledges the importance of accountability needed to curtail the issue of corruption in the land use planning domain.

2.9 Dealing with and Preventing Land Conflicts

Ideally, conflict may be solved through informal or formal practices. With regards to the former, informal practices are adopted by the communities, whereas "formal practices are those that must follow official procedures, guided by government rules, regulations and laws" (Upreti, 2004:62). In some instances, social conflicts can be solved through consensual approaches whereby conflicting parties can establish a compromise to maintain peace, respect, and friendship within a community (Wehrmann, 2008).

This approach uses intensive discussions and negotiations to reach resolution. Furthermore, this approach is welcoming of a third individual (chosen by the parties) to help mediate or facilitate the negotiations without actively been involved in the process (Yamano and Deininger, 2005). According to Wehrmann (2008: 58), “social conflicts such as boundary conflict, illegal subdivisions, and illegal use of land that violates building regulations might be solved this way”. In Kenya, Yamano and Deininger (2005) revealed that 89 percent of recent conflicts that started from 2000 to 2004 (some of which were boundary conflicts) were solved via informal institutions. However, it is important to acknowledge that consensual approaches do not exclude government officials. Uprethi (2004: 60) states that "formal conflict resolution

systems are administratively complicated, expensive, heavily influenced by money and power, and are non-transparent", and therefore do not always successfully resolve conflict. Therefore, community-based land dispute resolutions are sometimes preferred because of time, cost, trust, and enforceability (Wehrmann, 2008).

On the other hand, non-consensual approaches are formal and involve a judge or a tribunal. Both parties are often represented by a lawyer. However, the downfall of this approach especially in a poorer community is that affluent parties can win a case because of corruption within the system or simply because the wealthy can hire a better lawyer (Uprethi, 2004: 64). Corruption in the form of bribes and abuse of power were the ultimate causes of the poor performance of formal systems. Furthermore, when formal institutions address a conflict-prone or conflict-affected area from a purely technical perspective, the current land conflict may be solved; however, the hostility may continue or even sharpen (Wehrmann, 2008). For formal institutions to be successful, they need to implement conflict-sensitive land policy reforms, which take existing sensitivities and grievances into account, as well as provide transparent and accountable measures in the resolution process. Uprethi (2004: 65) further contends that: "Conflict prevention and resolution strategies and practices require integration of external knowledge, local experience, accountable bureaucracy, transparent procedures, and an accessible judicial system".

It is important to improve constitutive institutions and define people's property rights more clearly. When people are aware of their rights, they can immediately communicate with responsible land management experts at a central and local level to prevent conflict. Furthermore, Wehrmann (2008) suggests that establishing a rule of law is a prerequisite for the prevention and resolution of land conflicts. It is important to have clear, non-contradictory laws and by-laws without loopholes, together with clearly defined roles and responsibilities of all stakeholders, to minimize the impacts of conflict (Diably-Pentzlin and Zimmermann, 1999). Active participation from community land users, together with sustained political will from all levels of governance, could create sound and secure property rights that are intrinsically linked with conflict prevention and resolution. According to Wehrmann (2008), good land governance is of utmost importance as it allows everyone to participate equitably and to receive an adequate share, while at the same time guaranteeing economically, socially, and environmentally sustainable land development.

2.10 Conclusion

This chapter has theoretically contextualized the study to follow. It has discussed the multidimensional nature of vertical urbanism as an ideology and has examined the spatial dynamics of high-rise development at a neighborhood level. The implications of this progression have highlighted the interrelation between land use conflict and zoning as supporting theories. These theoretical concepts provide insight to the pivotal role policies and land governance plays in shaping cities, as well as perpetuating inequalities. Therefore, it has aided the research by developing an understanding of the complexities encompassing high-rise construction around the globe when regulations and development controls are flouted. In addition to this, it has also comparatively outlined the benefits of high-rise structures if development controls are effectively enforced. This chapter further draws on planning policies and schemes that are adopted by the eThekweni Municipality to guide development within its jurisdiction. It has also aimed to discuss how weakness in the system of governance impact on contravention by developers and provides suggestions to overcome these problems.

CHAPTER THREE

METHODOLOGY

3.1 Introduction

This chapter outlines the methodology that has been employed for this study and provides insight into the chosen site. The primary and secondary data that has been utilized is described in order to highlight the range of information sources used in this study. This research has examined documents and reports from the local government and the court, as well as retrieved information from newspaper articles, interviews, and questionnaires. The study has made use of a case study approach and the study in question is Berea, specifically Currie Road, in Durban, KwaZulu-Natal. A justification for the use of this approach is given and a critical analysis of the advantages and disadvantages of such a method is provided.

Conducting research requires the use of a dependable method to derive data. This study has employed a mixed method approach which was largely qualitative in nature. The qualitative analysis used included conducting semi-structured, in-dept interviews and group discussions with key informants. The quantitative approach involved examination of statistics and the interpretation of close-ended questionnaires. The sampling technique chosen for this study was convenience sampling, and expert or purposive sampling. The methodological procedures outlined are designed and intended to answer the research questions in order to address the objectives of this study. Each procedure contains its own set of advantages and constraints; therefore, this chapter also incorporates the limitations to this study. Furthermore, this study complied ethical obligations as per the regulations of the University of KwaZulu-Natal.

3.2 The Study area: Berea

The Berea is a suburban neighborhood that falls under the planning and administrative jurisdiction of eThekweni Metropolitan Municipality. According to Hansmann *et al.*, (2018:02), “The Berea is approximately 2000 hectares, located to the west of the Inner City of Durban”. The suburban neighborhood was developed during the apartheid era where urban planning principles were based on orthodox planning. As a result, the Berea has a mix of architectural styles that include large Edwardian, and Victorian-style freestanding dwelling types. Over time, there has been an unprecedented increase in high-rise residential development projects in conjunction with alterations to current housing types to create compact living. This was largely conceived as a need to correct racial inequalities and create housing for a growing population (Iyer, 2012). The Berea’s close proximity to the CBD and the wide range of work opportunities nearby was no doubt a major factor in making the precinct a desirable area to reside in. However, the change from mono-functional households to promoting high-rise developments has accelerated in the post-apartheid era, and there have been some controversies associated with them. Most of which emanate from residents' concerns when developers do not conform to the building regulations and zoning ordinance of the eThekweni Municipality.

The need for more desirable upmarket apartments has contributed to changes in the spatial arrangement of the Berea. However, any changes in terms of development within a particular property require planning and developmental regulations to be followed. As of recent, the planning system of Berea has been under scrutiny for its lack of receptiveness to the policy initiatives and regulations implemented for creating sustainable human settlements (Hansmann *et al.*, 2018). A typical example is that of 317 Currie Road whereby the developer, Serengeti Rise has been implicated in contravening building regulations, which subsequently infringes on the rights of adjacent property owners. Residents of Berea have reported many contraventions of land use to the Municipality. Including the defiance by the developer at 317 Currie Road. Hansmann *et al.*, (2018: 09) suggests that "...55% of the contraventions related to site-specific complaints impacting on amenities". Therefore, conflict and contention have been a growing phenomenon within the precinct. However, as of recent, the problems experienced have not only escalated but have intensified since the GR 5 rezoning at 317 Currie Road, Berea. Figure 3.1 illustrates the study area as the first GR 5 zone within the precinct and Figure 3.2 below, shows an aerial layout of the property. Therefore, assessing residents’ predispositions of this ‘first of its kind’ rezoning is of paramount importance.

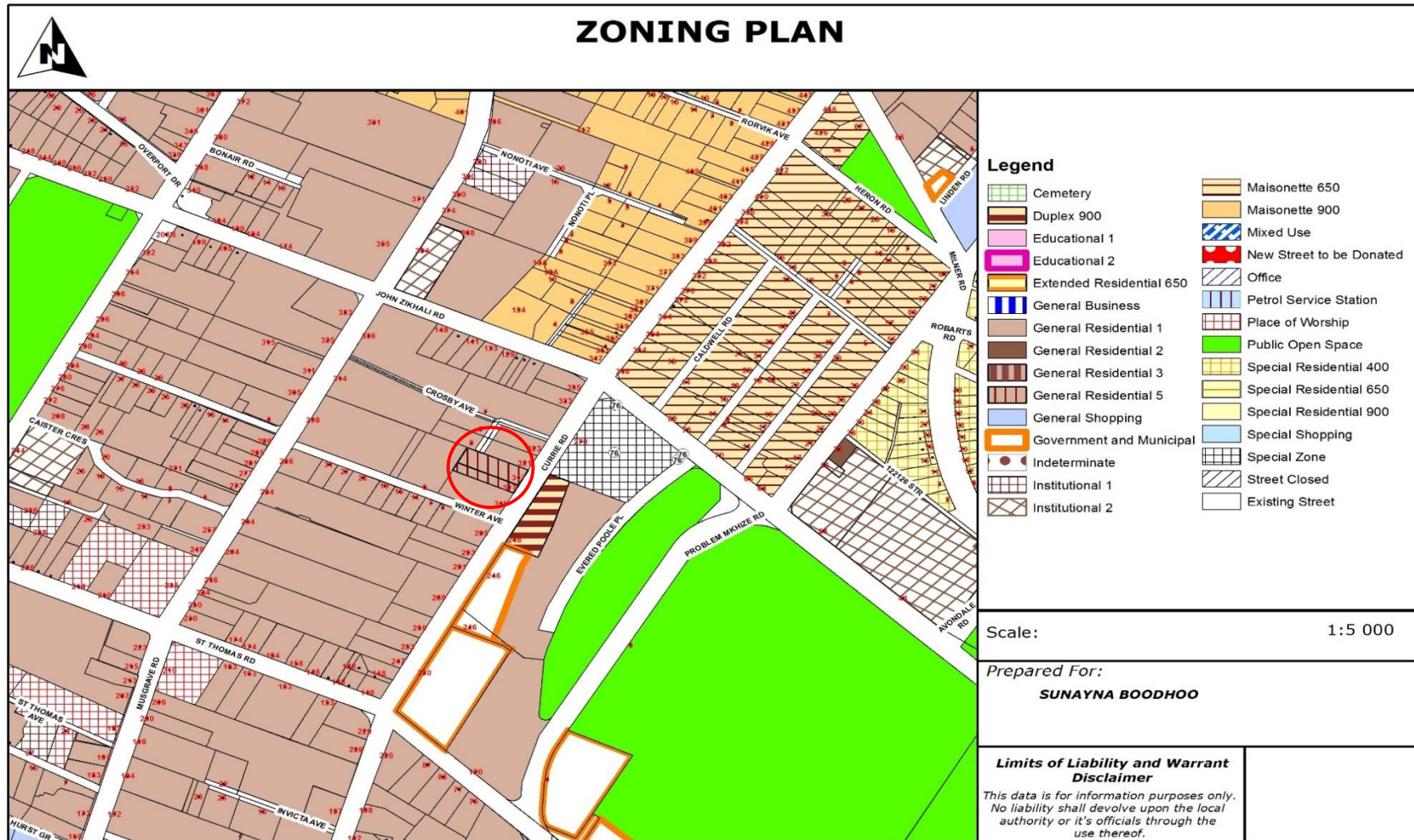


Figure 3. 1 Zoning Plan depicting development at 317 Currie Road as the first GR 5 zone (Prepared by the Department of Town Planning, 2018)

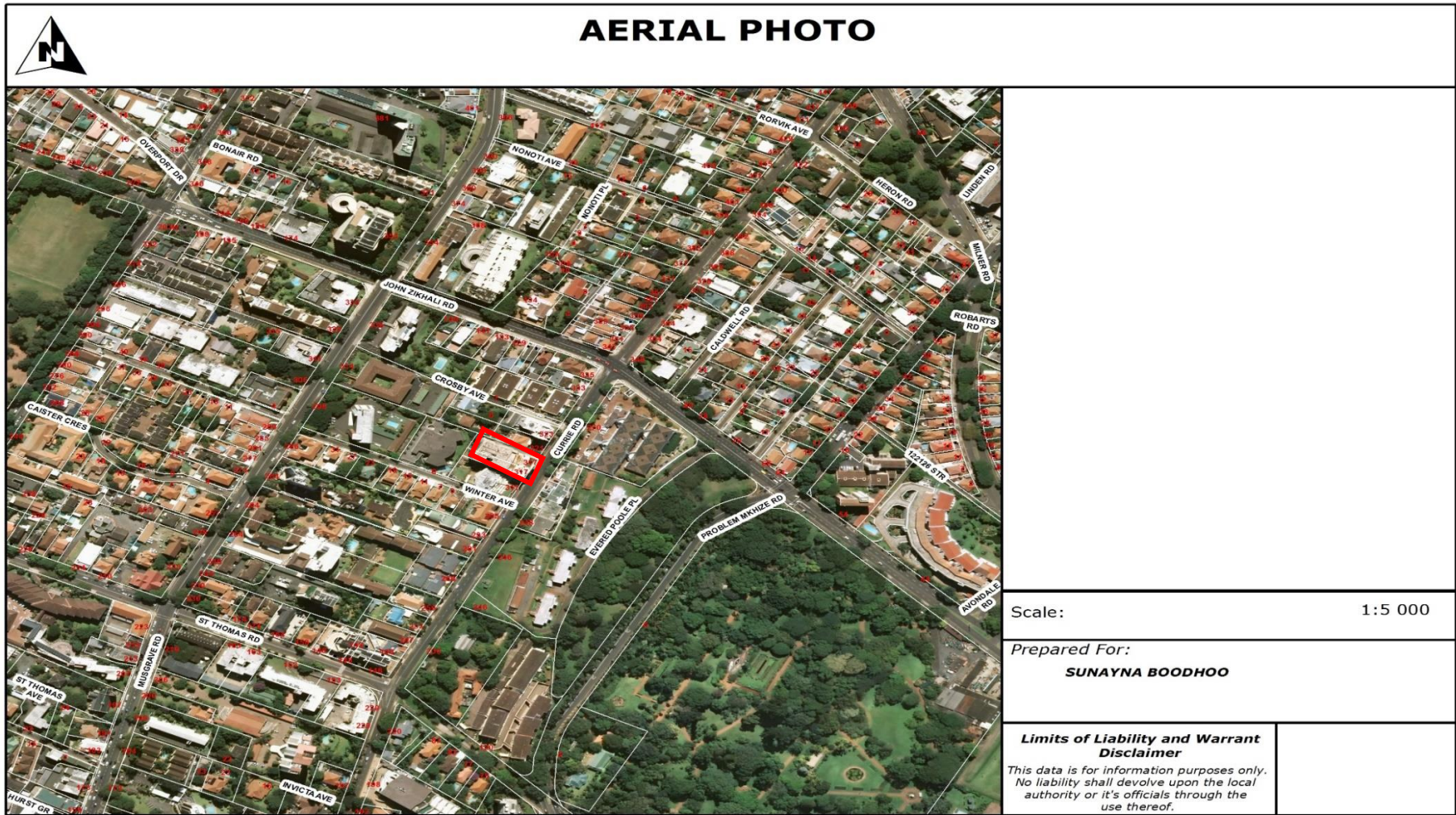


Figure 3. 2 Aerial photograph showing 317 Currie Road and the surrounding community (Prepared by the Department of Town Planning, 2018)

3.3 Case study approach

This investigation has made use of the case study approach in order to better understand the socio-economic and cultural impacts vertical expansion has on an urban environment. Especially when by-laws and regulations are violated during the construction phase. Case study approaches make use of particular examples to try and gain deep understandings of specific situations or try to access the applicability to a broader theory (Flyvberg, 2006).

Yin (2009:18) echoes similar sentiments indicating that a case study is “[a]n empirical inquiry about a contemporary phenomenon (e.g., a “case”), set within its real-world context—especially when the boundaries between phenomenon and context are not clearly evident” (Yin, 2009:18). The case study approach is commonly utilized in geographical research and other social science studies. The case study method has often been criticized as it is not possible to generalize from a single study (Gomme *et al.*, 2000; Flyvbjerg, 2006). Therefore, it has often been dismissed by many scholars as critics have suggested it is not useful for theory generation or academic generalization. However, Flyvbjerg (2006) contends that this is a large misunderstanding. The case study approach can add depth to understanding phenomena and can aid in developing critiques of theories, therefore contributing to critical social science research.

Research-based on case study method focuses on a single setting or unit that is spatially or temporally bounded (Van Maanen, 1979; Eisenhardt, 1989). As a result, case study research investigates a small unit, area, or group of people, thus adding in-depth and context specific information. According to Flyvbjerg (2006:428), it allows the researcher to "close in on real-life situations and test views directly in relation to phenomena as they unfold in practice". This study has made use of the case of 317 Currie Road development and has therefore helped develop an understanding of a community-based problem. This case study serves as an example of a phenomenon that is experienced locally and internationally. It has provided a useful point of reference and thus has made it a valuable method for scholars in geography.

3.4 Research Strategies

The information gathered for this study has been largely qualitative in nature. A certain amount of quantitative data has been employed to ensure a comprehensive analysis of the study. Qualitative research is favored simply because it is conducted in the natural settings of the social actors (Babie and Mouton 2010) or as Hancock states (2002:02), “It’s concerned with developing explanations of a social phenomenon as they occur naturally”. Non-random sampling is most appropriate when collecting qualitative data as it is considered to aim at individuals who have more information than others. Based on its less stringent rules, it allows the researcher to target respondents that are known to have valuable information (Marshall, 1996). This study gathered qualitative data through open-ended, detailed interviews and group discussions with Municipal officials from the Department of Town and Regional Planning, members from Save Our Berea who form part of a community activist group, a property evaluator, an advocate who has assisted residents to fight against transgressors within the Berea, and the ward councilor of the Berea.

Qualitative data is useful to understand the process behind observed results and people’s perception of their well-being (Kabir, 2016). Therefore, semi-structured questionnaires were administered to residents from households adjacent to the development at the study area in Currie Road. Their views and perceptions governing the land use rezoning approval and concerns with by-laws and building violations by Serengeti Rise assist in framing this research. This approach was advantageous when surveying residents as it allowed the researcher to understand the experiences of residents. The researcher was able to interact with respondents on a personal level and view them in their natural environment in order to experience their daily struggles when confronted with real-life situations (Baynard and Hanekom, 1997). This was important to achieve residents’ perception of the transgression.

According to Holloway (2005:4-6), “Quantitative approach involves statistics and numerical figures through the use of formally structured instruments”. Quantitative data is more accurate in terms of generating facts and figures. When combined with qualitative research, the data obtained provide a broad base insight on a particular issue. For this study, quantitative data has been analyzed in the form of assessing real estate property valuation reports and other statistics compiled from close-ended questions when surveying residents.

3.5 Sampling Methodology

In human geography, there is no perfect sampling framework that can be relied upon to fit all studies. A framework that best suits the study and eliminates bias needs to be employed (Lindsay, 1997). Sampling can be either random or non-random, but human geographers are less likely to use random sampling techniques (for example, selecting samples from a table of random numbers) because human behavior is not continuously or evenly distributed in space. Therefore, this research has made use of non-random sampling, and this has comprised of convenience sampling and purposive or expert sampling techniques. The use of non-random sampling can sometimes evoke negative connotations about a lack of representation from the entire population. It is also often dismissed as only being useful for being quick and cost-effective. However, non-random sampling can be specific with a defined purpose in mind (Lindsay, 1997).

Therefore, the geographical area to be covered is Currie Road which is 2.88 kilometers in length (Geoview, 2010). For this study, 50 respondents were selected based on door-to-door household surveys which were conducted using convenience sampling. The flexibility of convenience sampling allowed the researcher to achieve the sample size required. The limited sample size produces reliable data for the area under investigation. Figure 3.1 depicts the location of the 317 development in relation to the surrounding households. Household surveys were an excellent choice for gathering information from those adversely affected by the development. Residents within the immediate vicinity would be able to give a more insightful response. In addition, the sampling method has chosen to include key informants who possess a wealth of knowledge of the phenomena transpiring within Currie Road. Therefore, their contribution helps enrich this study by providing their expertise in the area. Hence, this study employed convenience sampling and purposeful or expert sampling for primary data collection.

3.5.1 Convenience Sampling

The convenience method is used when the researcher is interested in assessing a specific, accessible group. It is also a quick and efficient method for gathering information pertaining to a large group (Lindsay, 1997). However, this method has been criticized for not being able to adequately assess a representative population. In this study, it is possibly the only adequate sampling methodology as members of the target population were selected if they met a certain

criterion, for instance, geographic proximity, availability at a certain time, or the willingness to participate (Do'nyei, 2007). This sampling technique was most effective when carrying out surveys amongst residential households as not all respondents were available during the day for consultation. Furthermore, since some respondents refused to participate in the questionnaires and based on time and cost constraints, convenience sampling allowed for the easy selection of alternate respondents which was necessary in order to reach the required sample size.

3.5.2 Expert/ Purposeful Sampling

Expert sampling is considered as a derivative of purposeful sampling. Purposive sampling entails a sample based on who the researcher thinks would be appropriate for the study. The researcher selected the informant based on the broad general knowledge of the topic or those who have undergone a particular experience which is considered to be typical (Morse, 1991). According to Etikan and Bala (2017:02), expert sampling is employed when "the researcher...seeks consent of those that are experts or known experts in the area of study". This sampling methodology is usually embraced by human geographers as it provides an opportunity for depth rather than breadth of study (Lindsay, 1997).

To achieve this purpose, the study required representation from the individuals mentioned below. These individuals should be proficient and well informed with the phenomena of interest. Therefore, expert sampling included interviews with the following members of the Municipality, which include:

- Mrs. Clair Norton, Senior Manager of Land Use Management.
- Mr. Steven Moses, Enforcement and Prosecution Manager.
- Mr. Danial Pentesaib, Senior Building Inspectorate Manager.

Furthermore, other experts below were chosen based on their knowledge about the study area:

- Mrs. Cheryl Johnson, an active member, and representative of Save Our Berea.
- Mr. Chris Pappas, the ward councilor of Berea and representative of Save Our Berea.
- Mr. Kevin Dunkley, property evaluator who provides valuable and reliable information based on his expertise in land-related affairs.

- Mr. Tyoob Aboobaker, resident and advocate actively fighting on behalf of the residents against the development at 317 Currie Road.

3.6 Data Collection

3.6.1 Primary data sources

Primary data refers to the original data gained during the research process to solve a research problem (Hox and Boeiji, 2005; Goeldner and Richie, 2006). The data collected from ‘firsthand’ experience is considered to be reliable, objective, and authentic. This may take the form of site observations, questionnaires, and interviews (Raharjo, 2005; Kabir, 2016). Thus, the primary data utilized for this study include observation, in-depth interviews, and questionnaires as indicated below. In addition to this, property valuation reports, official documents such as the Supreme Court of Appeal document pertaining to the development at 317 Currie Road, and articles released on the SOB Facebook page have been utilized as other primary data in this project. This data has been analyzed, assessed, and evaluated to develop a comprehensive understanding of the topic.

3.6.1.1 Site Observation

The researcher visited the study area to physically examine and get a greater insight as to how developers at 317 Currie road have violated building regulations. Various observations were noted based on the implications of non-compliance bearing in mind the building standards and requirements of the eThekweni Municipality. For example, light intrusion created by the height of the development, disfigurement of the area due to the size and physical appearance of the development, amongst other factors. The visual observation of the property and how it spatially fit amongst other dwellings gave insight as to whether or not the development was undesirable. Moreover, observations were made based on the safety of building equipment on the property to determine if adjacent properties were exposed to this development’s shortcomings. Site observation plays a pivotal role in examining if densification provides an effective solution if development does not occur within the confines of the law which governs it.

3.6.1.2 Questionnaires

Before the commencement of the survey, the researcher had made sure the participant was aware of the nature of this research, which was purely for academic reasoning. Thereafter, getting written

consent was attained confirming participation in the study, as well as for the use of photographs or audio equipment if needed. In terms of the questionnaires, semi-structured surveys were developed. This was designed for 50 residents of the area and the researcher had surveyed the respective respondents based on door-to-door knocking or scheduling appointments if required. The questionnaire surveys were completed over a period of four months. The formulation and structure of the questionnaire were based on the objectives of this research and had close and open-ended questions. Open-ended questions allowed the respondent to express themselves freely, allowing the researcher to obtain perceptions, opinions, attitudes, and suggestions on the study objectives (Jili, 2012). Many respondents requested to be anonymous. Hence, pseudonyms will be used in the analysis.

3.6.1.3 Expert Interviews

Expert interviews were conducted face-to-face with the respondent, in a quiet environment, free from disturbances. Before the interview with the respective respondents, the following steps were followed:

- a) The researcher had viewed literature based on the topic and this formed part of the preparation process.
- b) An appointment was arranged with each participant at a time which suited them.
- c) Researcher had thanked the participant for their willingness to be a part of the study and made them aware of the ethical considerations as per the University of KwaZulu-Natal's rules.
- d) Where necessary, the researcher requested permission to record the interview and gently probed in order to gain an in-depth understanding of the phenomena under study.

Open-ended, unstructured interviews get respondents to talk about a topic and express themselves in their own way. All key informant interviews have two characteristics. The first is that it is only necessary for a small number of individuals to be interviewed and those who are pre-selected by the researcher are known to have pertinent information. For this study, the respondents chosen are named in section 3.5.2 above. Additionally, the second characteristic of key informant interviews is that they are qualitative interviews. As a result, a rough guideline of topics to be covered were listed and allowed the respondent to speak freely as if it is a natural conversation. Detailed notes were taken by the researcher and recordings were made where necessary with the approval of the

respondent. In this study, key informant interviews were conducted with seven respondents based on the history and their knowledge of the problem at the site 317 Currie Road, Berea.

The first interview was held with Mrs. Cheryl Johnson who is a resident, active representative, and co-founder of Save Our Berea. This organization was initially established in 2013 when the community faced issues with abandoned buildings which left to deteriorate to a point where they became inhabited by criminals and drug users. Today, this civic organization not only fights against owners who allow properties to become derelict, but they raise awareness, engage with residents, and hold officials responsible for the lack of enforcement of land use zoning regulations and poor planning (Mohideen, 2013). Thus, this lobby group creates an interface between residents of the Berea and officials in the eThekweni Municipality. Mrs. Johnson was consulted during the early stages of this study to gain a better understanding of the complexities regarding the development by the developer, Serengeti Rise. She was also a key link in getting in touch with ward councilor, Mr. Chris Pappas, and publicly making residents aware of this research via emails so that respondents were eager to co-operate.

The second interview was conducted with Mr. Chris Pappas, also known as the councilor of 'Ward 31'. Mr. Pappas belongs to the political party known as Democratic Alliance (DA) and has dealt with many of the residents' concerns over the years. Mr. Pappas assisted the research with information regarding the history of Berea and providing a list of other properties that have defied by-laws and regulations within the locality ever since the inception of 317 Currie Road. Mr. Pappas also assisted this research by continuously updating the researcher about meetings held by residents and officials such as the one attended by the researcher on the 6th of December 2017 held at the eThekweni Transport Authority (ETA) boardroom.

The third interview was with Mr. Kevin Dunkley who is also a member of SOB and works strongly alongside Mrs. Johnson. He is a land evaluator by profession and contributed to this study by providing reports and explaining vital information regarding the changes in property values over the years since the commencement of the building project at 317 Currie Road.

Mr. Tyoob Aboobaker, the fourth interviewee, is a resident who lives at 311 Currie Road and is an advocate by profession. He has represented the community in the litigation process against Serengeti Rise and has challenged the transparency and legitimacy of City officials in consenting to this development.

The remaining three interviews were conducted with eThekweni Municipality officials. Mrs. Claire Norton is a senior manager of Land use Management, Mr. Steven Moses from the Department of Enforcement and Prosecution, and lastly, Mr. Daniel Pentasaib who is the Senior Building Inspector. These respondents were selected based on their involvement with approving and overseeing the development at the study area. They form an important group in answering the research questions posed by the researcher and are the members who have been in engagement with residents from Berea over the years. These informants possess a wide range and depth of experience in their field. This brings new knowledge to the problem under investigation. However, the downfall is, they are likely to impose their own bias and interpretation (Kabir, 2016).

3.6.1.4 Participation-observation

From a participation-observation perspective, the researcher attended various community meetings and strategic planning meetings during the course of this study. Many of the community meetings were rallied by members of SOB and the researcher had the privilege of attending an official meeting held by the eThekweni Transport Authority (ETA). This meeting had taken place on the 6th of December 2017 whereby officials formally addressed some of the concerns raised by residents in terms of the development at 317 Currie Road. The minutes from this meeting were used as a primary data source.

3.6.2 Secondary Data

Secondary data sources included journal articles, books, dissertations, newspaper articles, government publications, and legislations. All these sources are listed in the reference section of this thesis. Published scholarship and government legislations that have been analyzed in the literature review will be drawn upon in the evaluation chapter to further expand on arguments in the section. In conjunction with primary data, secondary data sources were useful and extremely important as it allows for comparisons with cases in international and national scale as well.

3.7 Data Analysis

According to Glasne and Peshkin (1992:37), data analysis involves, "organizing what you have seen, heard and read so that you make sense of what you have learned". The qualitative data obtained from fieldwork was collated and analyzed using narrative analysis. Narrative data is commonly used in research to better understand a person's experience or collective experience (Bhatia, 2018). In this study, the opinions, and predispositions of respondents were analyzed thematically to build a narrative. The researcher identified concepts, behavior, phrases, or ideas and assigned codes to them according to a specific criterion (Kabir, 2016). For example, coding was applied to the type of unlawful activities conducted by the developer, and residents' attitudes towards infringement. Therefore, the researcher looks for the common responses to the questions and transcribes the information so that it can answer the research objectives.

Quantitative data were evaluated using descriptive statistics. This helps the researcher summarize data and find patterns (Bhatia, 2018). The researcher is required to conduct data checks to ensure data validation. This is to ensure questions were not left unanswered. Data coding was once again applied to assess the values to responses. For example, to identify how many years residents have resided within the community. This can be done by categories for the number of years by code ratings. Residents residing in Currie Road for 0-10 years will be coded as 0. Similar coding's can apply to property valuations and to rate the efficiency of Municipal officials within the area. Data was analyzed in this manner to build creditable answers to research questions. Accurate data is essential to maintain the integrity of the research (Kabir, 2016).

Additionally, Figure 3.1 and 3.2 indicates a zoning plan map and an aerial photograph of Currie Road, respectively. This was prepared by Mrs. Mazibuko from eThekweni Municipality, using ArcGIS software. The map provided information about the different zones within the locality. The map was analyzed, and drawings conclude that the development at 317 Currie Road is the only property rezoned for General Residential 5. Therefore, drawing from this map, it is important to assess whether the consent of GR 5 rezoning was a considerate decision judging from the pre-existing zoned properties.

3.8 Limitations

It is accepted that conducting research will always have limitations. In this particular instance some respondents were initially reluctant to co-operate with the researcher. However, this limitation was overcome when SOB activist, Mrs. Cheryl Johnson assisted by emailing members of the community informing them of this research and urging them to co-operate. Thereafter, respondents were more open to be co-operate once it was established that the researcher was independent and had no affiliation to a specific political party or organization. Additionally, Serengeti Rise had been approached but refused the request for an interview. Suggestions were made to contact their attorney; however, no information was obtained from the individual acting on behalf of them.

3.9 Ethical Considerations

This study was approved by the Humanities and Social Science Research Ethics Committee of the University of KwaZulu-Natal (Appendix: 2). In addition to this, a written gatekeeper's consent letter was obtained before fieldwork commencing from the Berea ward councilor, Chris Pappas (Appendix: 3). Therefore, allowing the researcher to conduct the study within this precinct. The researcher had a moral obligation to protect the rights of the respondents who participated in this study. Confidentiality and anonymity were of high importance, and where necessary pseudonyms were used. However, permission was obtained from those respondents who had participated in expert interviews to use their names and affiliations. No individual was forced to participate in this study. All the respondents were informed that they could terminate their participation in the study at any stage. This right was explained prior to the questionnaire or interview.

3.10 Conclusion

A brief background to the study area was presented in this chapter in order to contextualize the research. This chapter explained the research methodology adopted in this study. The methods and data sources were discussed in detail to give a greater insight as to how the study was conducted and justification presented for the sampling techniques used. A mixed-method approach provided greater insights into transgressions relating to land use zoning and the failure to enforce building regulations. A qualitative approach was predominantly used especially semi-structured key informant interviews. The data gathered was used in conjunction with a case study approach that focused on issues relating to 317 Currie Road.

CHAPTER FOUR

DATA ANALYSIS

4.1 Introduction

The aim of this study was to determine the level of compliance with, and enforcement of existing development controls within the Berea, and the impact the high-rise development at 317 Currie Road has on the surrounding community. This chapter presents the findings of the study and provides a discussion of the results. The data obtained was from surveys with residents, interviews with employees from the eThekweni Municipality, the councilor of the Berea, an advocate opposing the project, as well as Save Our Berea. Data was also collected from community meetings in Berea, as well as from an ETA meeting held on the 6th of December 2018. Information was also gathered from maps, official documents, and newspaper articles. The information retrieved from these sources were arranged thematically and assessed using narrative analysis and descriptive statistics to provide logical reasoning to the objectives of this study.

Therefore, this chapter is divided into three broad sections. The first section analyzes the adherence to eThekweni Municipalities by-laws and regulations by the developer, Serengeti Rise. The second section provides a detailed analysis of residents' perceptions and experiences of having the structure within their precinct. The third section examines the effectiveness of the eThekweni Municipality in enforcing land use control, regulations, and by-laws within the Berea, more specifically at 317 Currie Road¹. A key contestation to this study was whether the approval of GR 5 rezoning by Council provided any benefit to the community and if the rezoning application process was undertaken in a transparent manner.

¹ Certain paragraphs emanate from the researcher's observations and experiences during fieldwork.

4.2 Assessing the adherence to bylaws by Serengeti Rise

Controversies arose in the Berea after developers Serengeti Rise (referred to as SR thereafter) had purchased and demolished the existing property at 317 Currie Road in 2009. The subsequent sequence of events that led to conflicts and disputes are discussed in chronological order to present a holistic perspective of the conflicts associated with the development.

4.2.1 Land use zoning violation

Initially two building plans had been submitted by the developer. The first was approved on the 3rd of August 2010 which was for a four-storey block of flats under GR 1 zone. The second building plan together with a request to rezone the property to GR 5 in terms of Section 47*bis* of the Town Planning Ordinance No. 27 of 1949 was submitted on 12th of December 2011. The developer had unlawfully commenced construction before the rezoning and deviation plan was approved (SCA, 2015). The deviation plan for the project was approved on 6th of March 2014². However, on the 12th of June 2012, the construction of the building had reached an advanced stage whereby six-storeys had been successfully completed.

Steel rods were sticking out of the (6th) storey indicating that further development was planned. However, this building displayed little resemblance to the four-storey structure initially approved. Conflicts escalated between SR and residents who felt that they were deceived by the developer. The developer had commenced with the construction of a far larger building which was in accordance with the second building plan approximately three and a half years prior to it being approved.

Six-storeys of the outer framework of the property were completed by September 2014. This was six months after the deviation from the original plan had been approved. This suggests that developers SR had intended from the onset to construct a nine-storey building on the property prior to disclosing information to surrounding residents. The foundation built under GR 1 zoning appeared to be a façade to cater for a GR 5 project. Documentation gathered from the Supreme Court of Appeal of South Africa (SCA, 2015) make explicit that the foundation was laid sometime

² In the Supreme Court of Appeal of South Africa 2015

in 2011 with the intention of supporting a larger development and not a GR 1 version as initially proposed. As a result, this created concern amongst residents as the developer misled the local authority and the community as well as defied bylaws and regulations from the inception of the construction.

By-laws and regulations were violated because a building with this size and bulk would require the relaxation of side and rear spaces for a GR 5 foundation to be constructed. However, no supporting evidence exists to confirm that the foundation was built after the Municipality approved the deviation plan. According to the Supreme Court of Appeal of South Africa (SCA, 2015), the Municipality needs to inspect all properties prior to a deviation plan being approved. If this had occurred, any illegal development on the property prior to consent would need to be identified, condemned and the appropriate sanctions and penalties would have been applied.

Thus, the approval by the Municipality for deviation plans are invalid as proper protocol had not been adhered to from the beginning in terms of site inspection. Additionally, the legitimacy of the development on this property was questioned by most respondents based on the history and zonal layout of the Berea. It can be gathered that GR 5 zoning is unusual for this precinct, especially on such a small parcel of land. Land use regulations have been defied and not firmly adhered to judging by the nature and scale of the development. This is best illustrated visually with reference to Figure 4.1 which a photograph is taken by Broughton (2017) for an article in the *News24* digital media.



Figure 4. 1 317 Currie Road standing six-storeys high before obtaining deviation plan (Broughton, 2017)

Under the GR 1 zoning, the property initially had a total floor area of 1846 square meters and coverage which may not exceed forty percent coverage, 5-meter side space and 3-meter rear space apply (SCA, 2015). However, the Town Planning Ordinance (1949) stipulates zoning of properties as GR 5 permits the property a total floor area of 9789.8 square meters which is 5.3 times greater than the previous GR 1 zoning. Under this zone, a property needs a 7.5-meter side space and 4.8-meter rear space. A special consent can be requested by the owners to the Municipality according to the Town Planning Ordinance No. 27 of 1949 whereby no building lines, side spaces or rear space restrictions apply to properties.

However according to Mr. Aboobaker, an active advocate and resident of the area: *“No evidence of any special consent had been lodged or approved by Council. Many attempts were even made to contact the developers for proof of it, however no feedback was given”* (Interview, June 2018).

According to the Town Planning Scheme (1953) the intention of GR 5 zoning was to facilitate high density, high-rise development within the city centre, along the beachfront and Victoria Embankment and within the municipal building precinct. Thus, a building with this bulk could be described as incompatible with the adjoining and surrounding properties. Additionally, according to a report prepared by WS Burnwood, whom is a professional land surveyor:

“Height of the first and third floors are 3.5 meters high and the height of the second and fourth floor are 3.6 meters high. National Building regulations Act specifies that the maximum height of a residential storey in a building should not exceed 3.5 meters, which ultimately means the second and fourth floor heights do not comply with the Regulations” (Burnwood, 2014:09).

Thus, it is evident that at 317 Currie Road, land use rules and regulations have been disregarded from inception. Not only had the foundations been laid to cater for a GR 5 development prior to it being approved, but the development under GR 5 zoning violated height restrictions per storey and the relaxation for side, rear and frontal space was not considerate of surrounding residential dwellings.

4.2.2 Dispute about deviation plan

The plan initially passed by Council was for a four-storey development under the pre-existing GR 1 zoning. Under this zone, groundwork which begun by the developer signaled concern when a foundation been built was for a building which complied with GR 5 zoning. The developer had plans passed, then clearly deviated from it in the actual construction process and anticipated planning authorities to approve the deviation plan once submitted. To the developers favor, consent was granted for a deviation plan and residents remained bewildered by the developer’s illusory act. After the approval of the deviation plan by Municipality, the development spiked up nine-storeys.

According to Advocate Aboobaker:

“The deviation plan depicted a building comprising of a basement with nine floors above. The top two-storey apartment would be inclusive of private cinemas. This enormous building under construction, erroneously presented as a deviation from the four-storey building approved in August 2010. Four-storey block of apartments into a nine-storey structure that covers virtually an entire area of the property can hardly be described as a deviation” (Interview, June 2018).

Residents were particularly disturbed and wanted to know how an unlawful project proceeded for three and a half years before the deviation plan was passed. According to the Supreme Court of Appeal of South Africa (SCA, 2015), SR acknowledged that a considerable amount of work was done before the deviation plan was passed. The structure and foundation of the property were built in accordance to the deviation plan before approval. This meant that the structure had reached two-storeys in advance to accommodate the deviation plan. This plan was only passed on 6th of March 2014, therefore making the construction work prior to this date illegal.

Mrs. Cheryl Johnson explained that: *“Municipal officials had not played an active ‘supervisory role’ in inspecting the development. The lack of engagement of building professionals led to the approval of a development that violated the law”* (Interview, March 2018). Planning approval authorities were ineffective in scrutinizing and evaluating submitted plans for approval. Therefore, the developer, SR was easily able to defy operational building codes and by-laws in the study area.

Consequently, building standards and regulations which were intended to promote orderly development have been ineffective in their purpose. Mr. Aboobaker further explained that: *“this noticeable disorder was portrayed as a result of institutional failure to clamp down on the building when initial concerns were raised”* (Interview, September 2018). This compelling reason coupled with resident’s frustration when developer, SR refused to cooperate in submitting a full record of the rezoning application and deviation plan to the residents upon request, raised suspicion and enraged the community (SCA, 2015).

4.2.3 Lack of public notice and residents' right to be heard

The purpose of the public notice is clearly to inform interested parties about the project and to seek approval or to invite objections against a development or rezoning process. In this study twenty five percent of the respondents indicated that there were discrepancies in the planning review and approval process, and twenty percent expressed concern about the lack of public involvement (Figure 4.2). Most respondents felt that their concerns were not adequately taken into consideration and a 'top-down decision-making' was enforced.

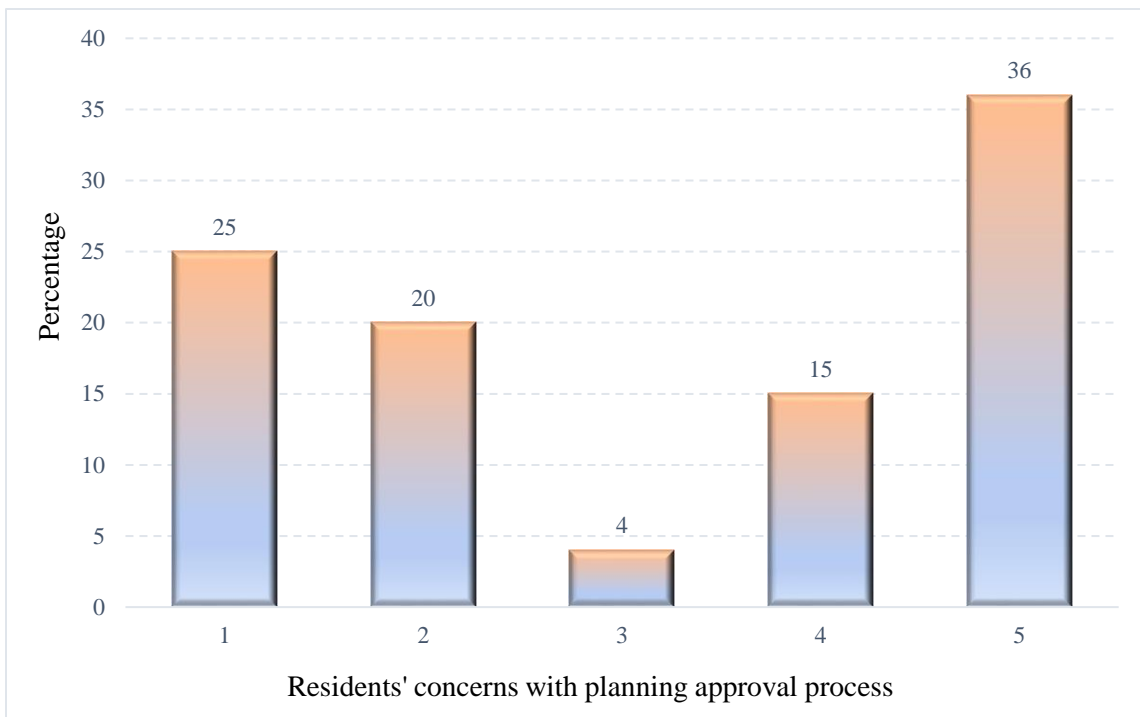


Figure 4. 2 Major concerns with rezoning approval process for 317 Currie Road

According to Respondent 2:

“For GR 5 zoning to occur, the owners of the property would require special consent from Municipality which would involve consultation with property owners within a 100-meter radius to notify them of the removal of rear and side space restrictions imposed by the Ordinance [Town Planning Ordinance of 1953]. However, residents were not notified during the requisition process” (Interview, October 2018).

Residents indicated that registered mails were not sent to their residence, which is a prerequisite to obtaining rezoning according to Section 74*bis* in the Town Planning Ordinance of 1953. As a result, there was a general resistance to the development at 317 Currie Road by owners and occupants of buildings in the immediate vicinity. The only documentation or record that was available to residents was the submitted and approved original GR 1 zoning plan, which was subsequently contravened. This outlined the initial proposal for the project, and residents assumed the development would be complying with this plan. However, residents were baffled by the current physical appearance of the building as it did not correspond to the approved plan. Mr. Acutt, who is owner of ‘Acutt Real Estate’ in Berea, as well as a homeowner in Winter Avenue³ contended that:

“We could have objected from the beginning if we were notified of SR skillful intention. We assumed the building would be similar to 6 on Winter Avenue (Plate 4.1) but it was three-storey’s above. Residents started seeing steel rods sticking out and started asking questions. This building started looking right through my bedroom. The consequential effect of this development is horrible!” (Interview, August 2018).

Every rezoning application requires the developer to circulate a public notice of the project so that the surrounding community becomes aware of the GR 5 zoning and have an opportunity to oppose or approve. This serves as a medium to alert the public about the plans for the property. A report prepared on behalf of the Development Planning, Environment and Management Unit by Mr. Vaughan Boden (2010), a Senior Technical Planner of Land use Management, disclosed that the adjacent property owners were not procedurally informed of the development. Thus, the application needed to be re-advertised⁴. According to Mr. Boden (2010:12), *“The fact that no formal notification was issued to residents which is a prerequisite stated in the Ordinance was viewed as a violation of the first degree”*. Considering the irregularities occurring at this property and the fact that residents were not adequately consulted, suggested that a new advert would need to be submitted for the proper protocol to be followed (Boden, 2010).

³ Winter Avenue: Located just off Musgrave Road. Building situated behind 317 Currie Road

⁴Boden, V.A (2010) “Report on Rezoning Application at 317 Currie Road”. prepared on behalf of the Development Planning, Environment and Management Unit



Plate 4. 1 317 Currie Road's proximity to 311 Currie Road and 6 on Winter Avenue as a result of relaxation of boundary line (Author, 2018)⁵

⁵ Unless otherwise stated, all photographs have been taken by the author

Legislation is put into place to ensure the protection of citizens' rights. This is reinforced by Promotion of Administrative Justice Act 3 of 2000⁶ (referred to as PAJA henceforth) which declares that it is an individual's democratic right to have access to information. According to Mr. Chris Pappas: *"The fact that notices failed to meet the purpose for which it was intended, namely, to advise affected landowners of the proposal change is a violation to PAJA"* (Interview, Oct 2018). Therefore, the rezoning of 317 Currie Road was not an administrative action in line with the Act. As a result, residents demanded that Court review the administrative decision to approve the development in terms of Section 6(2) of PAJA⁷. According to the report obtained from High Court of Appeal of South Africa (2015) during the litigation process, SR stated that public notices pertaining to the rezoning were posted. However, no proof was submitted to support this action. Mr. Pappas further contended that:

"With the modern era, developers could certainly have opted for a speedier process than postal as they claim if the intention were for the affected landowners to be notified of the change. The Town Planning Ordinance even provides for speedier options" (Interview, October 2018).

The developer created an impression of duly fulfilling his duties to notify residents yet could not provide proof of this procedure. The creditability of the developer seems to be questionable when his statement provides no evidence. Residents perceive his actions to be disrespectful and untruthful as the law provides several ways to effectively ensure residents were consulted. In conjunction with issuance of mails, a respondent suggested even a notice board was omitted from site and Plate 4.2 corresponds to this. According to Responded 2:

"Even though residents within the 100-meter radius were not fairly notified of the project, to compound the matter, no notice boards were erected on the property advertising the application for change in zoning and inviting public comment" (Interview, July 2018).

⁶ The Promotion of Administrative Justice Act No. 3 of 2000 (PAJA) gives effect to the right to administrative action that is lawful, reasonable, and procedurally fair as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996

⁷ Section 6(2) provides that: "A court or tribunal has the power to judicially review an administrative action ...".



Plate 4. 2 Front of the development omitting signage that is required according to by law and regulation (Author, 2018)

The developer makes accusations to be acting in the interest of the public but conceals the intention of the development by holding back on valuable information. Considering the size and height of the project, it is apparent that residents would be the ones experiencing the negative repercussions of having this development within the vicinity. According to the Supreme Court of Appeal of South Africa (SCA, 2015), concerned residential homeowners were dissatisfied with the way Council had addressed this misdemeanor and their concerns were not investigated. The developer orchestrated a crisis when he deliberately failed to inform residents of this development. As a result, residents felt that it was their Constitutional right to demand accountability. Since the notification process was not in accordance with the applicable law, non-compliance would render the zoning process invalid.

4.3 Residents perception and experiences

The way in which a community responds to change is greatly influenced by the extent to which a developer conforms to development control and regulatory measures. Based on the questionnaires and face-to-face interviews with key informants within the study area, eighty-four percent of residents indicated that they were uncomfortable with this project, whereas sixteen percent of the respondents claimed to be unaffected (Table 4.1). Thus, this section analyzes reasons behind the different perceptions of the development at 317 Currie Road.

Table 4. 1 Residents' attitudes towards developments at 317 Currie Road

	YES	NO
Are you comfortable with the development taking place at 317 Currie Road?	16%	84%
If No, was a Zoning complaint filed?	66%	34%
Do you expect similar high-rise developments to increase in future?	88%	12%
Do you feel a sense of exclusion from planning processes and procedures?	80%	20%
Does the development occurring within the precinct bring any benefit to the community?	15%	85%

4.3.1 Negative Perception

It is evident from Table 4.1, that eighty-four percent of respondents are uncomfortable with the development at 317 Currie Road. Furthermore, sixty-six percent of the respondents actively filed a zoning complaint, either independently or with the SOB organization. Mr. Don Robertson who is a resident of the community for 55 years stated that:

“Uncoordinated, haphazard development patterns are seen at this property. Therefore, it was essential that we signed the zoning complaint objecting to the construction of this development within the residentially zoned suburb of Berea. If no action is taken and if the community remains silent, government will consider walking all over us...” (Survey, June 2018).

The complaints and objections to the zoning signaled to Municipal officials that members of the community were unhappy with the transgression within their precinct. However, Municipal officials ignored their complaints and approved the deviation plan. Presently, a number of buildings have successfully been erected within Currie Road and residents had not objected to these properties as their structures were not intrusive to the surrounding households. These buildings were not only affordable but were architecturally interesting and fostered social creativity. Appendix 1 shows conforming properties in relation to the development at 317 Currie Road and Figure 4.3 provides a satellite imagery of the list of properties which are dissimilar to 317 Currie Road. Figure 4.3 also suggests that the development at 317 Currie Road not only has a detrimental impact on properties on Currie Road but also affect properties like Cadogan Gardens off Musgrave Road. Currie Road has a close and connected streetscape, and the properties listed below have been constructed within their zones, fulfilling their envisioned purposes.

The residential apartments that are built in accordance with the eThekweni Municipality *Scheme* and adhered to bylaws and regulations are:

- a. 311 Currie Road Body Corporate
- b. 298 Musgrave Road (Cadogan Gardens Share Block)
- c. 323 Currie Road (Surrey Mansions)
- d. 6 Winter Avenue



Figure 4. 3 Satellite imagery of properties affected on Currie Road and Musgrave Road due to the project by Serengeti Rise (Author, 2018)

Many of the respondents indicated that they would not have objected to or been against the developer’s plans for the property had the project adhered to the GR 1 zoning initially allocated to the property. Advocate Aboobaker went further and stated that:

“Even if the building was taller than the one I reside in I would have been okay...My objection is to the disproportionate bulk and abuse of side, rear and front space which results in the invasion of my privacy and ultimately has undesirable impacts”
(Interview, July 2018).

Plate 4.1 (p. 65) shows the building under construction at 317 Currie Road in relation to 311 Currie Road which is Mr. Aboobakers place of residency for over thirty years. From the site observation, it clearly shows the imposing nature of the structure with just over half of its nine-storey height completed. It becomes evident that the building ‘wedges’ between the existing blocks of flats, and when complete will impact negatively on the privacy of the above-mentioned properties due to its close range. Additionally, residents were concerned that the infamous development left the precinct feeling somber. According to Mr. Robertson:

“The obtrusive nature of the project overlooks surrounding properties, blocking sunlight, and views of the sea and harbor. To some of us, having these sceneries were factors we considered when purchasing our properties. Not to have them snatched away by this development”. (Community meeting, July 2018).

Eighty-eight percent of the residents stated that the project at 317 Currie Road can set a precedent for similar developments and violations to occur in the Berea if Council turns a blind eye to the land use contravention by SR (Table 4.1, p. 68). According to Respondent 2:

“The project by SR has created a ‘monster that ate the Berea’ whereby irregular building activities and the faulty procedures applied by Council, has given rise to a slew of concerning developments within the locality. The constructional work at 340 Stephen Dlamini Road, 614 Currie Road and 515 Musgrave Road have also undertaken major deviations which do not comply with the Building Standards Act and to date, we have not received any answers from Council. From my observation, these developments are heading in the same direction as 317 Currie Road” (Community meeting, July 2018).

Consequently, sixty-one percent of the respondents expected many of the residents to move out of the area and relocate, notwithstanding that forty-three percent had been living in their current dwelling for more than 20 years. Figure 4.4 suggests that thirteen percent of the residents were concerned with the depreciation in their property values, and this could ultimately influence their relocation.

Other problems highlighted by respondents indicates that: ten percent of the residents expressed concerns with haphazard development; two percent indicated problems with traffic congestion within the precinct; seven percent of the respondents had issues with light intrusion and disturbances such as noise during construction phase. Sixty-eight percent stated all of the above, which is inclusive of environmental degradation, strain on current municipal plumbing and drainage systems, as well as all the other factors previously mentioned. Respondents’ collective responses recommend that town planning officials should not approve building plans which may devalue surrounding properties due to the factors mentioned above.

According to Respondent 3:

“Either SR was unaware of the law or been downright disingenuous. Why was the developer enriched by a town planning rezoning that lowers surrounding property values? Why do we need to suffer with all the inconveniences brought about by this property? It is no wonder that no politician nor city official, involved in this decision, will answer that question. Why? Because there is no reasonable answer to it!”
(Interview, August 2018).

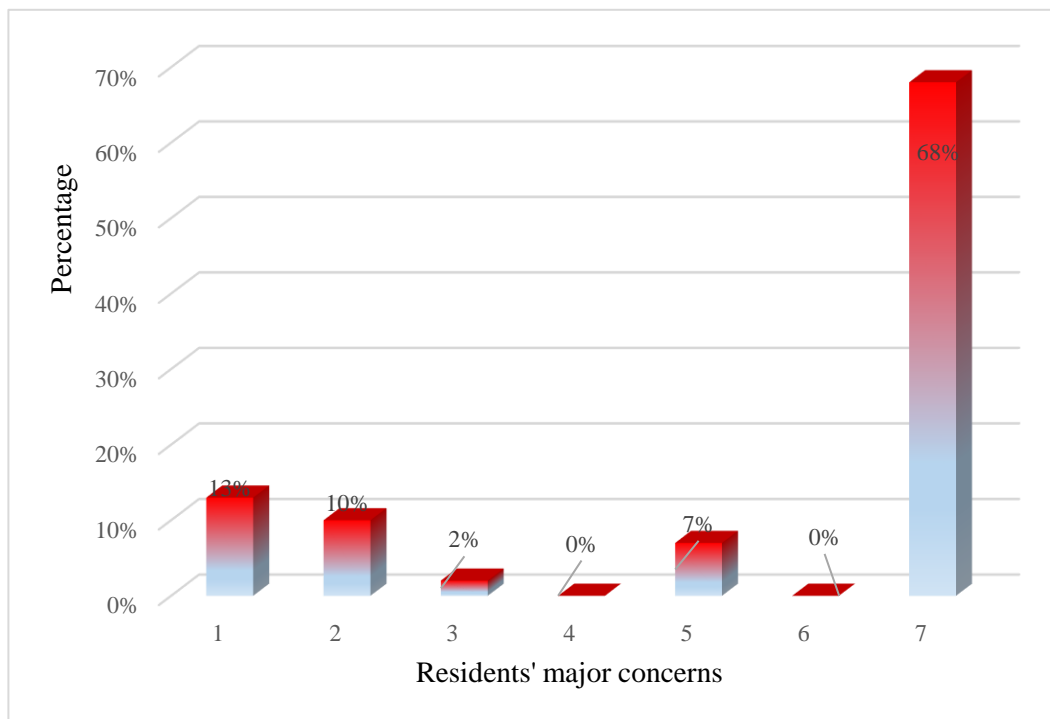


Figure 4. 4 Residents' concerns with the project at 317 Currie Road

In addition to this, Mr. Aboobaker explained that *“...this is not an issue of money. It’s an issue of principle and the preservation of our city”* (Community meeting, October 2018). Mr. Clive Bradshaw, who is an architect by profession and resident in Winter Avenue shared similar sentiments:

“The impact of the buildings surrounding the development has been very serious as it has blocked out views, created serious lighting problems and deep shadow problems. It also invades the privacy of the residents in a very real and substantial way.

Our concerns are not to safeguard our own interest and deny the developer of his rights. Our concerns are for the integrity of the area and violators should not get away so easily” (Interview, August 2018).

During site inspection, it was observed that 321 Currie Road was the most affected property in terms of the negative externalities experienced. The property remained engulfed by the project created by SR as depicted in Plate 4.3. The structural characteristics and design of the high-rise development renders the property next door an arm length away. The abuse of side, rear and front space restrictions resulted in a ‘cheek-by-jowl’ with the freestanding building at 321 Currie Road. Subsequently, the close-up views caused by the architectural style of this development imposes on the privacy of residents. The impugned decision to rezone the 317 Currie Road property resulted in the landscape of the neighboring properties been covered virtually in deep shade as a result of the bulk of the development at 317 Currie Road (Plate 4.3). At ground level, homeowners find their properties permanently dark.



Plate 4. 3 Currie Road dwarfed by development at 317 Currie Road (Author, 2018)

Many residents suggest that lack of privacy, overshadowing, and restricted views were not the only issue they were trying to deal with. However, the current aging infrastructure and lack of maintenance of facilities made it more difficult to incorporate a building of GR 5 zone within the precinct, on this further, Respondent 3 elaborated that:

“The rear balconies upon the 317 Currie Road development will impinge upon the privacy of residents on 6 Winter Avenue. However, this is not only the issue. We need to acknowledge that the reticulation systems have been designed in 1970’s and is now experiencing more strain as a result to accommodate for new piping systems. The road on the corner of Marriot and Currie Road has experienced several problems with burst pipes within the last four years as a result of the continuous digging. A similar scenario is seen at the corner of Winterton Avenue and Currie Road. This causes a massive inconvenience...” (Interview, June 2018).

Plate 4.4 illustrates one of the pipelines connected by the developer during construction in front of the development. This is excluding the haphazard connection to Municipal articulate systems along the road at different sites. Interference caused by continuous digging, changes and modifications made to previous infrastructure were done in an inconsiderate manner. This caused annoyance to the residents, especially with the impact of continuous burst pipes and water disruptions. Moreover, the exposure to incomplete building work, such as the pipes and scaffolding which remained on the site for years impinges on the safety of pedestrians.



Plate 4. 4 Exposure to incomplete pipelines and steel rods which are hazardous to pedestrians (Author, 2018)

Upon site inspection, it was observed that building equipment such as scaffolding, spades and other machinery were on the premises (as depicted in Plate 4.5 and Plate 4.6, respectively). This has been an unsightly visual experience to people passing by and remains a hazard to residents living adjacent to the development. Complaints by concerned respondents indicated that rubble and concrete were scattered onto their driveways and dust was entering their living rooms and bedrooms. According to Respondent 4:

“My window was damaged when a scaffolding pole crashed through it...a boulder or falling rock from the property had also smashed a windscreen off a vehicle parked in my neighbor’s property” (Interview, November 2018).



Plate 4. 5 Scaffolding which was re-erected after falling into neighbor’s yard (Author, 2018)

The site observation, together with respondent’s insight reveals that unsafe working conditions, precarious scaffolding, and improper disposal of construction materials can be a hazardous to those passing by or living next door. The project could not adhere to timelines, despite construction beginning before approval because residents questioned the creditability of the structure and developer. The tension between the developer and residents resulted in staggering construction work that ultimately exposed residents to the unsightliness of the development for years.

According to the Respondent 4 from 321 Currie Road:

“The scaffolding went up approximately 4 years ago at the site. The structure was intended to be temporary, yet it had never come down. The lingering scaffolding is unsightly and hideous. If no work is done on the property, developers should be ordered to take it down” (Interview, June 2018).



Plate 4. 6 Scaffolding on premises for approximately four years (Author, 2018)

Nela Kahle CC. is the company which hired out scaffolding material to SR for the development. However, the company claimed that SR delayed with payment either intentionally or because of internal problems. As a result, Nela Kahle CC. took to the High Court to settle the matter (Pillay, 2019; Erasmus, 2018). According to an article by Erasmus (2018), on the 28th of September 2018, the Durban High Court ordered SR to payback Nela Kahle CC. an amount of approximately R21 million together with interest for the scaffolding rented for the period of August 2015 to June 2017. The Court order obtained by Nela Kahele CC. brings to light the number of years residents were exposed to steel rods that angled around the property. Till to date, construction work has halted, however the structure remains supported by scaffolding. Mrs. Johnson raised a valid question in her interview:

“There are several controversies surrounding this development...Since the Nela Kahle ruling, it leads me to question if the scaffolding was removed, would the building’s structural integrity be undermined?” (Interview, November 2018).

While time can only tell if the structure will remain stable, Mr. Aboobaker testified that the wall between 311 Currie Road and the controversial building is not stable at all. According to advocate Aboobaker: *“cracks were noticed in the border wall between 317 and 311 Currie Road... which could be attributed to poor development of the foundation, and in the near future, this wall can collapse”* (Interview, November 2018). On numerous occasions respondents had called the Metro Police to halt the construction activities on the site for contravening building regulations and municipal by-laws. There were also complaints about noise pollution as well. However, the builder continued operational work and eThekweni Metro provided no assistance. Cheryl Johnson advised that:

“Residents informed me that building noise commenced at 6.30 am and continues unabated till late in the afternoon. On Saturdays, work continues till after 3.00 pm. We were advised by SR that operation would only be between 8.00 am till 18.30 pm on weekdays and 8.00 am till 14.00 pm weekends... Residents were tired of the sound of jackhammers, industrial compressors and mechanical breakers that operated with impunity into late hours of the night” (Interview, September 2018).

There were periods when development activities would cease, yet when it commenced, residents found themselves experiencing higher levels of irritation, and distress. Especially when construction activities progressed late in the evening, for years. Respondents were angered by the breach of trust between them and the developers. Various factors influence the value of properties such as the status of the area, the state of an apartment or free-standing dwelling, views or outlook and finishes. Once a new development goes up, contravening land use development controls and standards, residents start to reassess if living in an area which is going to derogate is in their best interest. More so if City officials have a role in the offensive development. According to Respondent 5:

“The City officials or committee involved in approving the plans for 317 Currie Road were materially influenced by an error of law. The officials failed to consider if the proposed development gave rise to any disqualifying factors, and the depreciation in property values is one of them” (Committee meeting, September 2018).

Residents expressed that it was impossible for SR’s plans to go through all the departments in town planning for pre-scrutiny by qualified professionals for approval without questions been raised. The spatial layout of Currie Road did not permit a development with this bulk (SCA, 2015). In conjunction with the developer’s defiance, Mr. Pappas stated that:

eThekwini Municipality was equally responsible for their part to this dilemma. Their inadequate role to monitor compliance with procedures and policies, lack of proper care in carrying out their duties, neglect in taking a complaint seriously and informing a complainant of their rights were all factors that contributed to this development (Interview, July 2018).

The degree and extent of SR’s violation is directly correlated with the laxity of Council and respondent’s collective response suggests that they are at the end of their tether with having hope that the Municipality will protect their rights. Fifteen percent of respondents suggested that that the lack of transparency and accountability of public officials made residents question their Constitutional rights as ratepayers of the precinct. This is owing to information never freely accessible, and their concerns never investigated. As a result, homeowners of Berea now consider the implications this irregular development will have on the value of their properties. A disqualifying factor not taken into consideration by local administrative prior to consent.

In tantamount to this, if respondents chose to relocate, they must settle for a decrease in resale value due to the oddly constructed project within the locality. Prospective buyers look to purchase houses in the Berea based on its central location, accessibility, spectacular views, and appreciating property values. Considering most of the residents' concerns were due to the detrimental impact this project has on their property values, Mr. Kevin Dunkley had undertaken a property valuation report on the 8th of September 2014⁸ to strengthen the communities' opposition against the development. His valuation report focused on the four adjoining apartment buildings depicted in Figure 4.3, as well as the freestanding dwelling at 321 Currie Road. It was understood that Mr. Dunkley had chosen to evaluate these properties as it was always the higher priced properties that experienced the 'knock' when faced with negative factors. He had uniquely assessed each property based on lot size, floor plan and amenities, amongst various other factors. His findings were tabulated in Table 4.2 which suggests that values have dropped by R 25 796 000 in total and 6 Winter Avenue was most affected with a drop in value by thirty percent. This report did not consider other households that might be affected in the community due to the development at 317 Currie Road.

Table 4. 2 Impact 317 Currie Road has on the derogation of surrounding property values (Dunkley, 2014)

Property	Name/Description	Drop in Value	Total Percentage Lost
311 Currie road		R 6 500 000	20%
321 Currie road	Property next to development	R 500 000	25%
323 Currie road	Surrey Mansion	R 1 321 000	10%
298 Musgrave road	Cadogan Gardens	R 7 830 000	15%
6 Winter Avenue		R 9 656 000	30%
Total		R 25 796 000	100%

⁸ An assessment of the derogation of property values of buildings surrounding 317 Currie Road prepared for the Supreme Court of Appeal of South Africa (2015)

In consideration that this research was conducted long after the valuation report was undertaken and bearing in mind fluctuations in real estate market value is based on the concept of supply and demand, the overall property values are likely to have depreciated further. Economic and social trends within a vicinity will affect property values. Therefore, the number of violating structures that came into existence after the approval of 317 Currie Road will not only cause derogation of adjacent properties values, but also affect the demand for housing in Berea. After the consent granted to SR, many property owners became more observant of non-conformity within the precinct. The developer of 317 Currie Road was the only individual to benefit from the re-sale of property values. Mr. Dunkley explained in detail that:

“If the developer (SR) paid R5.8 million for a property under its GR 1 zoning which allows approximately 11 units, then that is a land value of R527 000 per unit... By obtaining a GR 5 zoning...allow them to develop 46 units. It would mean that the property without any development would be worth R30 838 538 after been bought for R5.8 million” (Dunkley, 2014).

The analysis drawn from the evaluation report makes explicit that resident fear that they would have over-capitalized on their properties, whilst the developer could gain handsomely from the resale of his. Mr. Pappas stated that: *“losses count for a little if viewed against the permanent disfigurement of the most treasured jewel, we call the Berea. Let alone the sufferings of the neighbors (Interview, October 2018).*

People purchase properties in areas based on the residential fabric. For instance, privacy, proximity to amenities, effectiveness of law enforcement in the area, as well as in areas where their investments would appreciate. If residents feel this new development compromised their needs, as well as affected their property investment, they will choose to relocate to an area which safeguarded their interests. Collectively, residents have expressed disheartening responses when questioned about this project. This was mainly attributed to the insurmountable negative socio-economic and cultural factors that arise due to a quick stroke of a pen that to the developers favor.

4.3.2 Positive Perceptions of the Project

Considering the optimistic stance, as indicated in Table 4.1, fifteen percent of respondents indicated that the development could bring some benefit to the community upon completion. These respondents fell in two categories. Firstly, it incorporated respondents who were not significantly affected by the development during the construction phase. Secondly, it included respondents who were more accepting or welcoming of new, modernist development within the locality.

Figure 4.5 indicates the positive attributes of the project, as perceived by respondents. The graph suggests that, of those who perceive the development in a favorable light, forty-three percentage of those surveyed stated that it would increase housing supply for those seeking upmarket apartments. Also, the structure conformed to the Municipality's current plan to increase density and accommodate a higher demand for housing based on limited land. In addition, thirty-two percent of the respondents stated that it would increase the property rates payable to the city which would benefit the precinct, ten percent stated that it would increase safety and security, and fifteen percent contended that the development would reduce traffic congestion.

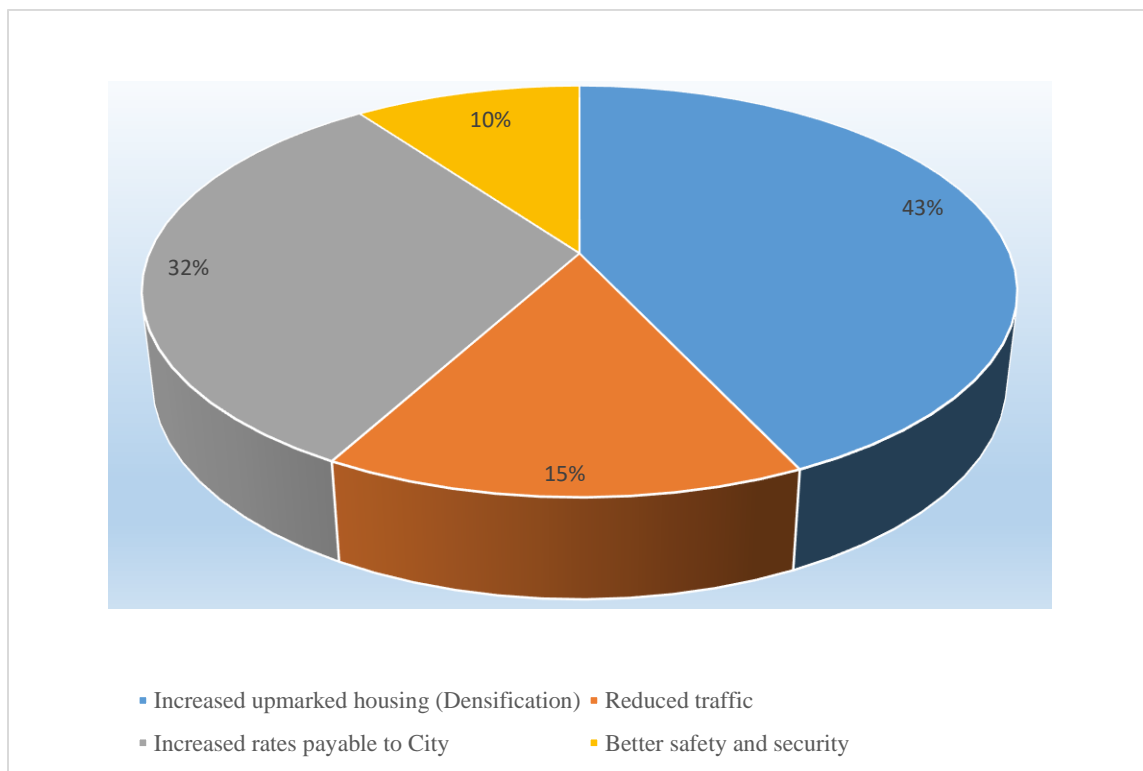


Figure 4. 5 Residents' perceptions of the benefits of the project

With regards to increasing housing, rapid urbanization has exerted tremendous pressure on urban development within the city. Due to the limited supply of land in areas, densification or the creation of compact cities has become an important factor in planning policies (Cheng, 2010). This was no different for the Department of Land use Management of eThekweni Municipality. At a meeting held on the 6th of December 2018 by the eThekweni Transport Authority (ETA), residents were able to meet the relevant officials and have them present their cases in terms of the 317 Currie Road project.

The meeting was facilitated by the Deputy Head of Town Planning, Mr. Musa Mbhele and chaired by Mr. Dunkley. The minutes reveal that, from the Department of Land use Management's perspective, the city needed change and amendments in the land use Scheme needed to be open for consideration. In the post-apartheid era, the Municipality's policy altered to promote residential densification and to settle people closer to amenities. In terms of 317 Currie Road, the Municipality suggested that the high-rise development, with lower occupancy density, could lead to a more habitable area for individuals. In this regard, Respondent 6 stated that:

“Many cities are undergoing transitions towards high-rise developments. We need to appreciate that 317 Currie Road has the possibility of adding architecture to the Berea...the evolution of the Berea is inevitable, especially since it is so close to the CBD” (Survey, September 2018).

A high-rise building like 317 Currie Road signifies compact growth. Many people would consider living in these apartments because of its convenience to work, basic amenities and services and so forth. Respondent 6 explained that: *“Many people look for better living conditions and facilities. Therefore, they turn to the Berea for property investment”* (Survey, September 2018). A new finding to this study suggested that respondents were willing and accepting of a population mix. They perceived that the development would integrate younger homeowners with the current population, which is predominantly of the older age grouping. Respondent 7 added that:

“High-rise development, as in the case of 317 Currie Road, may establish social interaction and consolidate a sense of community. It could also attract younger first-time homeowners, something this area lacks” (Interview, October 2018).

From the researcher's observation, it was gathered that the residential fabric of Currie Road composed of majority elderly members, who resided within the vicinity for years. Therefore, the prospects of 317 Currie Road adding to the diversity of the area in terms of incorporating a youthful mix, is an advantage on its own. In addition to this, residents would have the opportunity to live within comfortable walking distance from their place of study or work, even recreation and worship areas. Respondents suggested that the project by SR can offer a new option for living if it is sensitively integrated within the neighborhood. Although some of the residents acknowledged the merits of the development, there was concern that apartments built at 317 Currie Road only cater for few wealthy families and go against the policy of densification in the sense of creating affordable accommodation. Densification is intended to cater for people of different income, race, and education levels and alike, yet the development at 317 Currie Road seems to appeal to the elite. According to Mr. Mahomed Rafik Osman who resides at 6 on Winter Avenue, was informed that his nephew had planned to purchase an apartment at 317 Currie Road and had paid a deposit. He stated that:

“My nephew was offered an apartment with a living area of approximately 400 square meters. SR was selling the property at R 13,500.00 per a square meter. Which amounts to approximately R5 million for ownership” (Community meeting, July 2018).

It was apparent that the developer, SR planned a project that would appeal to a certain class of individuals who are seeking a luxury, upmarket lifestyle. However, Respondent 8 suggests that the possibility of this development increasing the overall security within the vicinity is something adjacent household can benefit from. According to Respondent 8:

“The proposal for 317 Currie Road is a first world state of the art design. It's proposed to be well located, as an upmarket attractive residential building, offering good security and will cater for those whom are in the top end earning category...such an upmarket apartment would also have high end surveillance cameras and security guards within the premises. This creates a sense of security and reassures one that their property, as well as those around it would be safe” (Interview, November 2018).

With regards to the former, freestanding private-owned residential building contribute little to the character of the street. Flat, free-standing houses or even double storey private properties are not always close to the street or tower over their wall surrounding the property. Due to the setback

nature of these buildings, homeowners from free-standing dwellings offer little or no surveillance over the street as they have restricted access from monitoring misdemeanors based on the design of their properties. (Krenz, 2001).

Therefore, by 317 Currie Road been built as high-rise will offer occupants from the building greater view of their surrounds so they can be more vigilant far as crime is concerned. Moreover, the advantage of residing in an upmarket high-rise building is the modern security systems or staff that are present to make life easier and safer for occupants. Residents adjacent to this development can be assured that their properties would, in the process, also be offered a degree of monitoring and surveillance.

Furthermore, since the Berea is an urban corridor with proximity to essential services and facilities, it draws a lot of interest from prospective homeowners in investing in a property. If high-rise, high density apartments were to be promoted, this would create a grid lock on the arterial roads based on the excessive vehicular movement. According to the Supreme Court of Appeal of South Africa (SCA, 2015) the development plan proposed for 317 Currie Road, would not add to an increase in vehicular movement that Currie Road currently experiences because of the physical design of the building whereby, it accommodates fewer occupants and restricts the parking bays per unit. Therefore, the precinct would not experience a significant change in vehicular movement on their main arterial roads. Respondent 8 suggests that:

“Under the previous GR 1 zoning, it granted the developer rights to provide at least 2 parking bays per a unit for the owner and 1 for a visitor. A developer is permitted to build at most 21 units with a total of 63 bays, this is less than what the developer is currently proposing under GR 5 rezoning.” (Interview, July 2018).

The Supreme Court of Appeal of South Africa (SCA, 2015) report verifies that the approval of the deviation plan and GR 5 rezoning, allowed SR to build a low density, eleven-unit apartment with 2 bays for residents and 2 bays for visitors, equating to 48 bays in total. This is significantly less than that prescribed under GR 1 zoning. Some residents, like Respondent 8, appreciated the developer considering ways to promote traffic reduction in the design process as the project would

not increase vehicular noise and traffic congestion in the area as a result of several vehicles getting into and out of the property.

Moreover, based on the neighborhood quality and preferences, some people may prefer public mode of transport due to convenience. The access to public transport influences the possibility of future residents not utilizing their vehicles, thus reducing pressure or congestion on the road and avoiding peak traffic. This proposes that the development would have minimal impact to the traffic generated from the site due to less car dependency due to the central location of the apartments. Respondents in favor of the development assert that sustainable development can be achieved through compact and centralized development, something clearly seen in the case of 317 Currie Road.

Another positive aspect of this development within the Berea is based on the Municipal Property Rates Act (referred to as MPRA henceforth). The Constitution of the Republic of South Africa gives municipalities the ability to value and rate properties in their area of jurisdiction. All immovable property owners are liable for the payment of rates. Municipalities need a reliable source of revenue to provide basic services and perform their functions (Government Gazette, No. 6 of 2004: *Local Government: Municipal Property Rates Act*). Therefore, revenue from property rates is used to fund services that benefit the community as opposed to individual households. The method used to assess rates is based on multiplying the market value of immovable property (for example, land and buildings) by a Cent amount in the Rand that a municipal council has determined.

For example, if the property is valued at R5 million (as in the case of 317 Currie Road), the Rates Policy stipulates that it is not permissible to levy a rate on the first R15 000 of a residential property. Therefore, you would subtract R15 000 from the market value of the property and thereafter multiply it by the Cent in the Rand.

$R5\ 000\ 000.00 - R15\ 000 = R\ 4\ 985\ 000.00$

Hypothetically, if the cent would be R0.015 to the Rand: $R\ 4\ 985\ 000.00 \times 0.015 = R\ 74\ 775.00$ per annum due by the owner.

Divided over 12 months = **R6231.25** a month property rate payable to the municipality.

The rates and levies paid is calculated per square meter rate. Under GR 1 zoning 317 Currie Road would be 1846 meters. However, based on the GR 5 zoning, the property would be 4262 meters. This would subsequently amount to more than twice the amount of rates paid to the municipality. In theory the revenue collected from the rates is used by the municipality for improvement of services and facilities within the city. Hence, the municipality would benefit by having this development successfully completed. This may well be the reason for supporting the revised plans for 317 Currie Road.

Therefore, thirty-two percent of respondents considered this development beneficial in terms of its contribution to property rates. Thus, the municipality would benefit generously in terms of increased rates payable and residents assume this would benefit them *inter alia* through maintaining streets, roads, sidewalks, lighting, and storm drainage facilities. The rates paid would also assist in the improvement of clinics, parks, recreational facilities, and cemeteries. Therefore, respondents contended that the higher rates and taxes payable by the developer will have a positive effect as it contributes to the upliftment of the city, allowing municipalities to promote local social and economic development. In light of the several concerns residents have with this project, few respondents remained optimistic that this development will prove well for the community.

4.4 Enforcing Land use Control Regulations and Bylaws

Several allegations of bias and corruption⁹ were made against municipal officials with regards to the approval of project at 317 Currie Road. SR submitted a building plan No. 241/058/140 for approval in accordance with the provisions of Section 4 of the National Building Regulations and Building Standards Act 103 of 1977. Initially, a Building Control Officer (hereafter referred to as BCO) was appointed by the Municipality to comment on the plans submitted. Approval was granted on the basis that the BCO was satisfied that the proposed building once completed would be complying with the requirements of a GR1 zoning. The fire, planning and health departments also approved the building plans. However, conflict arose between neighbors and developers when SR applied for rezoning and an application for a deviation plan was made. Residents' expressed

⁹ In the High Court of South Africa, KwaZulu-Natal Local Division, Durban. Judgement by J, Steyn reportable case (2014)

concerns (as stated in 4.2.3) because of lack of public consultation and involvement in the rezoning process, as well as discrepancies in the planning review and approval process by the Municipality. However, Mrs. Clair Norton who is the Head of Land Use Management at Department of Town Planning stated that: *“the rezoning application passed through a number of committees before it was considered and approved by full council”* (ETA meeting, December 2018). The committees considered inter alia, the Environment Transport Authority (ETA) and Land Use Management (LUM). However, Mr. Aboobaker contested the approval process by the Municipality indicating that: *“the rezoning application attracted eight objectors and SR was informed to re-advertise as some residents were not contacted or notified about the development”* (Interview, December 2018).

This appeal had not been formally considered by the Joint Advisory Committee of the Town Planning sub-committee, yet approval was granted for the project to proceed. This was the first offense by Council as they had not only turned a blind eye to the matters raised by residents, but also failed to investigate further to determine if residents’ concerns were justified. Moreover, residents were startled by the ineffectiveness of building professionals in Council to monitor constructional activities on the site. Judging from the fact that this project would be the first GR 5 zone, respondent felt that the Council should have had a firmer supervisory role. According to Respondent 9:

“The report by the Building Control Officer in terms of the deviation plan was nothing but a check-list which could be filled from his office. Nothing on the report indicated that investigations were carried out, neither were the views of the neighbors ascertained. (Interview, June 2019).

In agreement with this, Mr. Aboobaker stated that:

“The foundation laid at the onset at 317 Currie Road was built with the intention of erecting a monstrosity and development had showed signs of GR 5 characteristic three and a half years prior to rezoning approval. Municipal officials from enforcement and prosecution, as well as building inspectorates were not adequately consulting with developers or even following up on residents’ concerns. Their laid-back nature will be costing us” (Interview, May 2019).

Residents had placed an intensive amount on pressure for the Department of Land Use Management to provide answers as to how a development could be approved without the need for neighbors' consent and how building irregularities were overlooked with no consequences on the developer. The ETA meeting held on the 6th of December 2018 formed a medium between relevant officials and residents of the Berea, however the meeting hinted at a lack of capacity by the department to provide adequate explanations.

The department firstly requested to be given a week to collect the relevant information they needed, (pertaining to the approval of rezoning and deviation plan). After such time, reasoning provided to the community indicated approval was consented in terms of the 'Berea Core Extension Plan of 2018' which aimed to densify the locality by promoting integrated development and a socio-economic mix in the post-apartheid neighborhood as previously mentioned in Section 4.3.2. However, a collective response from the respondents and SOB activists suggested this developmental plan failed in conception for Currie Road as the project was intended for a few wealthy homeowners, which is against the motive of densification.

Furthermore, by introducing the first GR 5 zone in Currie Road as a need to enforce this plan requires a far greater Floor Area Ratio (FAR) under this zone. In this case, higher FARs indicate higher volume or greater bulk (Figure 4.6). Something unsuitable for Currie Road based on the spatial layout of existing apartments and freestanding dwellings. FAR is a measure of development intensity, which is expressed as a ratio of the gross floor area of a building to its total land area (Noble *et al.*, 1993). The purpose of the ratio is to control bulk of a building and intensity of activities to a level which is consonant with the level of existing households or infrastructure. Under the initial GR 1 zoning, the property had a FAR of 1. That is to say that the total floor area of the building may not exceed the total extent of the property, whereby one-storey of the development can cover hundred percent of the lot size (SCA, 2015). According to Mr. Aboobaker: *"Properties like Surrey Mansion and 311 Currie Road which are adjacent to 317 Currie Road, were built under the confines of GR 1 zoning, with forty percent coverage"* (Interview, October 2018).

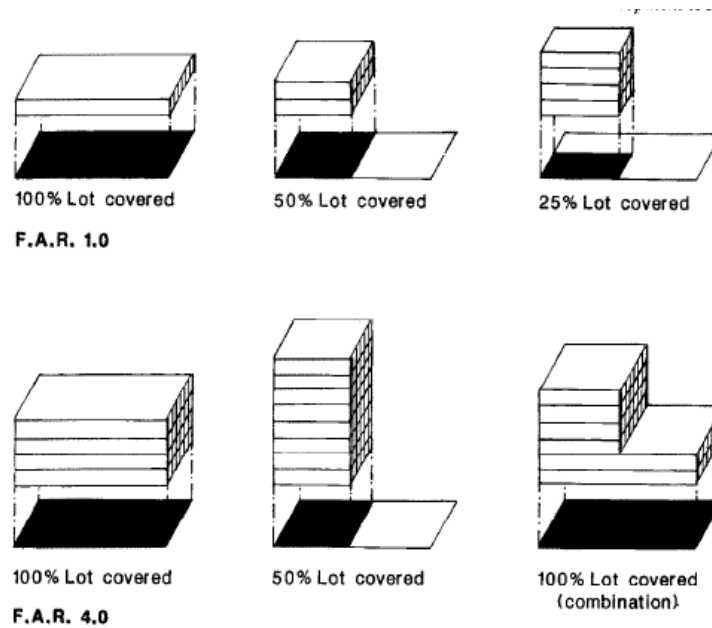


Figure 4. 6 Floor Area Ratio illustration (Noble *et al.*, 1993:129)

However, Planning and Development authorities approved a rezoning which granted the developer rights to build with a FAR of 5.3:1, whereby five storeys can be built covering hundred percent of the land. Subsequently, the project was 5.3 times greater than the GR 1 zoning prior to the rezoning been approved. The development therefore affects volume, shape and spacing of building on land. It permits the developers choice and innovations, with no consideration for height, setbacks, and volume. Therefore, Mr. Pappas indicated: “*A huge monster is bursting at the seam!*” (Community meeting, Dec 2018). The example below is a representation as to how FAR is calculated to justify the idiom claimed by Mr. Pappas. This creates limited or no space for social interaction through recreational spaces for occupants and the omission for setbacks after each storey creates a development visually displeasing.

For example:

The land on which the 317 Currie Road project stands on is 1846 m² and with the floor area ratio is 5.3:1. Under GR 5 zoning the allowable floor area for the building is:

$$1846\text{m}^2 \times 5.3 = \mathbf{9783.8\text{ m}^2}$$

Additionally, Mr. Clive Bradshaw suggested that:

“From an architects’ perspective, this development is appalling. The physical characteristics of the development is designed in a way which does not promote social interaction between occupants of the development or with their neighbors. Other than the violations regarding boundary spaces and height, the community of Berea appreciate interaction with their fellow neighbors. The community remains so strong because of its sense of ‘neighborliness’. This development fails in promoting this...”

(Interview, June 2018).

Therefore, the second purported offense by Planning and Development authority was their ineffectiveness to examine the location and spatial design of the project in its spatial context before approving the rezoning. The design of the residential high-rise project was not arranged in a manner that required the floor space to be provided along with consequent setbacks, recreational spaces and other land use and development plans promoted by the Municipality. The purpose and function of development controls and standards is to limit the intensity of land use to lessen the negative externalities which occur due to development.

Figure 4.7 therefore depicts the GR 5 rezoning allows the project far greater bulk and coverage on the site which perpetuates detrimental impacts on the surrounding community. This caused concern amongst residents who questioned why the municipality would allow this considering the proximity to residential dwellings, as the development under construction would magnify all the negative externalities previously mentioned. This includes overshadowing other properties by the development and the bulk of this project would be an aberration in contrast to the existing landscape (Figure 4.7).



Figure 4. 7 Overshadowing caused by higher Floor Area Ratio and increased volume (Walford, 2018)

Moreover, Mrs. Clair Norton’s justification for applying GR 5 rezoning to the property to promote densification according to the integrated development plan for the central eThekweni region is controversial. She suggested that: “*densification is allowed in areas deemed appropriate. Planners look at the whole of eThekweni Municipality, not one particular area*” (ETA meeting, December 2018).

Previously, GR 5 zoning has allowed high-rise construction in areas along the beachfront. Properties had been structurally designed in a manner which was viable for compact living and did not impinge on the rights of surrounding properties. However, the effectiveness of local authority in enforcing by-laws and regulations in Currie Road had been questioned as a “one size fits all” generalization cannot be made without properly assessing the ramifications such a project could have within the precinct. This ideology proves to be the third conviction made against the Municipality as the Berea had not been spatially and structurally designed to follow trajectory of a model that did not fit in context to the locality and the Municipality was criticized for not

conducting proper investigations prior to approving such development.¹⁰ Mrs. Cheryl Johnson contested Mrs. Norton’s opinion indicating that:

“Ratepayers are not happy. They participate in objections but are given the cold-shoulder by Council. Residents feel ignored. We welcome a new Berea, but decisions are being made and residents are not informed. We try to engage with the city, but we have gotten nowhere. People detest to 317 Currie Road and the height of the building should be in accordance with the Deed of transfer which is approximately 32 feet... If any more buildings like this go up, disfiguring the Berea, we will continue to oppose them because residents are appalled” (Interview, September 2018).

Furthermore, the deviation plan which was approved is controversial as developers had not complied with the provisions of Section 7 (1) of the Building Standards Act No. 103 of 1977 (which is outlined and explained in Figure 4.8), as the architectural appearance of structure disfigures the Berea with its obtrusive nature. The BCO and officials from LUM had not considered the development in light of the fact that the property was now rezoned as GR 5. It becomes imperative to determine if the development is permitted in terms of the zoning of the precinct. As Respondent 10 contended:

“The proposed building was not one a reasonable man would have expected. This poorly planned large-scale development creates urban spatial issues that can seriously impact on the qualitative aspects of a community” (Interview, June 2018).

¹⁰ The Supreme Court of Appeal of South Africa Judgement delivered on 2 June 2017 by Judge Dambuzza, ZA

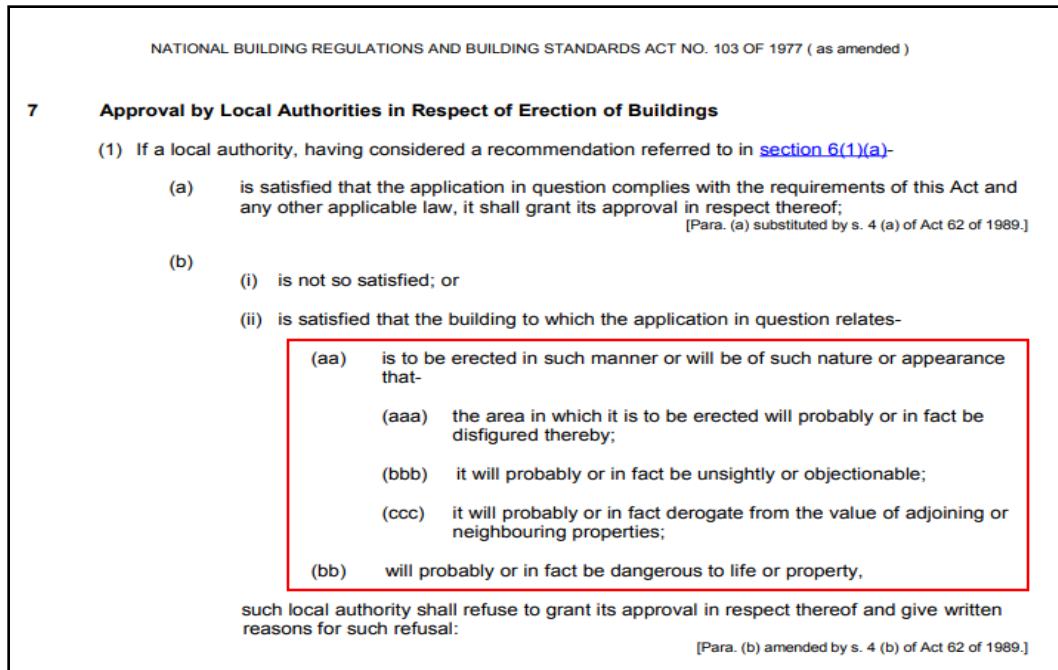


Figure 4. 8 Section 7 abstracted from the National Building and Building Standards Act No. 103 of 1977 (NBRA, 1997: 13)

According to Mr. Steven Moses, who is the Head of Enforcement and Prosecution at Department of Town Planning: “*Whether the development taking place at the property is an abomination or monstrosity, is a matter of subjected opinion*” (Interview, August 2018). However, this insubstantial response is the reason as to why Figure 4.2 (p.63) suggests twenty-five percent of respondents indicated discrepancies in the planning review and approval process. After SOB activists provided insightful information pertaining to the detrimental impacts this project has on the community, the leader of the Department of Enforcement and Prosecution trivializes the offenses by the developer.

Furthermore, fifteen percent of respondents indicated lack of transparency and accountability of public officials (Figure 4.2, p.63) is the reason as to why their opinions never changed. The failure of the municipality to provide the affected residents with supporting documentation upon request and access to deviation plans questioned the procedural effectiveness and transparency of local authority decision-making processes and raised suspicions about the legitimacy of the approval process for GR 5 zoning. Therefore, this renders the fourth defiance made against council as they

were ineffective in enforcing the law governing its constituents through access to information and transparency. According to Mr. Chris Pappas:

“The municipality indicated that the deviation plan and application for relaxation plans were not available to be viewed by the public for reasons unknown. Two months later, some documentation was provided. This raised suspicion as to why municipality failed to produce it in the beginning. Furthermore, the documentation only became available to applicants at a late stage whilst construction work already occurred at the site” (Interview, April 2019).

In opposition to the alleged accusations made by Mr. Pappas, Mr. Steven Moses states that:

“Plans submitted for approval are not considered public documents as it raises issues of privacy. Municipality can’t make copies available to 3rd parties. Persons wanting access to plans need to make an application in terms of the Promotion of Access to Information” (Interview, May 2018).

This was affirmed by Mrs. Clair Norton who expressed that:

“PAJA was enacted to deal with issues where 3rd parties request documents. If a resident wants to lodge an objection to rezoning applications, they are entitled to view the documents lodged in support of the application if he/she does so within the official advertisement/comment period of 30 days” (Interview, May 2018).

However, Mr Aboobaker suggests that local authorities are aware of the shortfalls inherent in PAJA procedures as they are at liberty to share information they deem is fit for disclosure, or may simply reject the application, hence use this method as an alternative to evade accountability. His statement indicated that:

“A formal request of information was made via PAJA to promote effective access to information and a fee was paid. However, access to the information was refused by the Information’s Officer as private bodies are not compelled or obligated to disclose all information. The Municipality used PAJA as a cloak of secrecy to try to silence us with no information, so council and developers are not held entirely accountable for the corruption or flaws in the process of granting the developer rezoning” (Interview, September 2018).

PAJA¹¹ is considered an empowering piece of legislature and holding back pivotal information heightened residents' concerns about public accountability and transparency in the municipality's decision-making processes. An inevitable question was whether the interests of private developers were being favored over the public? It would appear that the municipality was not at liberty to disclose information to third parties and the question which arises then is, when is a document public and when is it not? Based on an ETA meeting attended by the researcher on 6th of December 2018, a resident stated that:

“One of the members of SOB visited Town Planning (TP) within the official comment period, before the deviation plan was approved to view documents so that he could determine what was in store for the property at 317 Currie Road. However, he was denied access to the relevant documentation” (ETA meeting, December 2018).

Municipal officials attempted to defend their actions and decision by suggesting that the individual could not be identified, hence they were unaware of this (ETA meeting, Dec 2018). The fact that the Municipality had no recollection of this engagement, whilst respondents had proof of their requests suggested a degree of collusion between the developer and the Municipality. According to Respondent 11:

“Municipality plays a blame-game to defend themselves. There had been no notice boards erected on the premises indicating the intention of the developer or what was in the pipeline to be built. Had this been available to us, maybe then we would not have made so many appearances to their offices. Maybe we then, would we have cut them loose and not made so many attempts to gain information from PAJA. Municipality's response on numerous occasions has been that the developer needed to deal with the sign board allegations, however after raising the concern to them, nothing had been done to correct the violation” (Interview, September 2018).

The Municipality took no steps to check if a notice board was displayed on site, they placed trust in a developer who defied by-laws. This questions the local authority's effectiveness in demanding compliance with the by-laws and regulations which are outlined under the National Building

¹¹ The Promotion of Access to Information Act 2 of 2000 (PAJA) is a legislation in the Republic of South Africa allowing access to any information held by the State, and any information held by private bodies that is required for the exercise and protection of any rights.

Regulations and Building Standards Act No. 103 of 1977. SOB members believe that if the Municipality had conducted an intensive impact analysis, they would have been fully aware of the repercussions this development would have on surrounding buildings, especially in terms of the depreciation of property values. Furthermore, if council had followed up on the developer's unethical conduct in terms of construction from the onset, maybe then would they be more willing to divulge information.

In response to the impact this project will have on the surrounding property valuations, Mrs. Norton stated that: "*Municipality can't comment on valuations and the alleged derogation in value as they are not qualified enough*" (Interview, September 2019). On the basis of the string of irregularities that concealed this project, the residents of Berea had taken the matter to Durban High Court in June 2015 and Mr. Aboobaker contacted the City Integrity and Investigative Unit (hereafter referred to as CIU) to undertake investigations as he, together with residents within the precinct felt there were several flaws and deficiencies in the approval process. The High Court Judge ruled on the 29th of June 2015 ordered that most of the almost completed, R60 million nine-storey, luxury building developed by SR be torn down as the building plan governing the present construction was not in accordance with the law (Broughton, 2015).

However, developers SR escalated matters to the Supreme Court of Appeal where the order by the High Court was overturned on 2nd June 2017 (Walford, 2015). The High Court ruling by Judge Steyn (2015) concluded that any portion of the development which exceeded the GR 1 zoning be demolished. However, the SCA declared that the demolition of part of the property lacked clarity and certainty as there was no description of that portion (SCA, 2017). Furthermore, the decision was overturned as it was considered unsustainable as no evidence was provided ensuring the structural integrity of the building would survive if partially demolished¹². In June 2017, the SCA stipulated that residents were not public interest litigants but were simply motivated by the need to protect their property rights and had private interests at heart (Barbeau and Masuku, 2017).

¹² BSB International (Pty) Ltd v Readam South Africa (Pty) Ltd (2016). SCA 58, para 29.

At the time of the SCA ruling, the Municipality of Town and Regional Planning were in possession of the report undertaken by the City's Investigation and Integrity Unit (CIIU) in December 2015 and chose to withhold the contents of the report. Thus, making this the fifth defiance of the municipality, as they suppressed a valuable document which could have fundamentally influenced the SCA's ruling. Municipal officials were aware of the irregularities within various departments and the results from the report undertaken by CIIU in 2015 exposed Council's shortcomings. However, Council had side-lined the outcome of the report until it had been leaked to the *Berea Mail*, late in the year of 2018. When the researcher had asked an official from Council (who would like to remain anonymous) about the matter regarding the disclosure of information pertaining to the report, Official 1 stated that:

“The Municipality had no need to disclose the information in the report to SCA. The CIIU reports were internal documentation and are used as an internal measure to address misconduct by officials. The City had no need to be shared as it was between Municipality and its officials. These matters need to be treated confidentially...there's a reason as to why the document is considered as 'leaked'.” (Interview, September 2018).

Mr. Aboobaker challenged this view by stating that:

“Had the report been available at the time of the SCA hearing, the outcome would have played a vital role in the influencing the case. If Council is found guilty for misleading or holding back on necessary information from the SCA, they can be charged for perjury” (Interview, October 2018).

After the report was in possession of the *Berea Mail*, SOB activists and residents became aware of the misconduct of members in Council as the roles and responsibilities of various Municipal officials came under scrutiny by the CIIU on alleged irregularities surrounding the development at 317 Currie Road. SOB committee stated that the Municipality was duty bound to release the report to the public as they formed part of the complainants and since this project created outrage amongst residents (Community meeting, October 2018).

The thirty-six-page report conducted by CIIU revealed the following discrepancies:

- Six senior Municipal officials who were implicated in the unjust approval of the development were investigated and found guilty of dereliction of duty. They had failed to perform their in-office function and were not acting as public interest litigants.
- The approval of the rezoning application and deviation plans were made in conflict with the Municipality's policy which stipulated that only buildings which conformed to GR 1 and GR 2 zoning would be permitted in Berea. After months of intense investigation and internal audits, the report revealed that the incorrect legislation was applied when rezoning the site. The Planning development Act was followed, instead of the Town Planning Ordinance of 1949.
- The application was not processed accurately through the Joint Advisory Committee as it did not maintain the quality and integrity required when approving plans.
- Notices were not served to residents within a 100-meter radius to inform the affected community of the rezoning, thus rendering the process invalid.

Therefore, the saga between the developer and ratepayers of Currie Road were engrained by the incompetence of local officials in enforcing land use building control regulations and by-laws. Municipal officials and the developer were in cahoots with each other in contravening zoning regulations and development controls measures for the property. However, the developer has tried to escape liability by declaring that he had fulfilled his statutory obligations as approved by the Municipality. Hence, the GR 5 rezoned structure was in line with municipal requirements. (High Court of South Africa, 2015).

The entanglement between SR and Council has come to surface with the CIIU report conducted thereby rendering the project unlawful and invalid. In conjunction to this, the report from CIIU states that municipality officials have acted in a biased and fraudulent manner, therefore those implicated in the approval process should be dismissed from their function. Municipal officials, who are custodians of orderly development failed to act in line with the legislation. Therefore, SOB activists had turned to the Constitutional Court of South Africa to appeal their case. Whilst the preparations were underway, SR went under liquidation in February 2020 (Broughton, 2020). The property at 317 Currie Road was subsequently auctioned and residents could not object to this.

As a result, the appeal to Constitutional Court was wavered. Presently, the building remains as an eye-sore and development has been halted. However, no consequential relief has been sought. The lingering controversies surrounding this property has been transferred to another developer whose intentions are unknown at this stage.

4.5 Conclusion

The living standards of the residents of an urban area, more specifically 317 Currie Road are influenced either positively or negatively by land use regulation via its impact on land values, privacy and aesthetics. In terms of the development at 317 Currie Road, some residents considered the development in a positive light. However, it must be acknowledged that majority of the respondents surveyed were against the structure due to the multifaceted negative repercussions. This chapter further investigates the development control regime within the eThekweni Municipality and exposes the inept nature of local authority in effectively enforcing the stringent adherence to by-laws and regulations governing development.

Municipal officials, together with Serengeti Rise, were largely responsible for the land use contraventions that occurred on this site. This is related to the lack of transparency in the approval process, the disregard for neighbors' consent, building irregularities, derogation of property valuations, and the ineffectiveness of Land use Management in dealing with respondents' concerns. Issues of collusion, corruption, lack of transparency and bias are factors that influenced land use planning at 317 Currie Road, and this will be explained in more detail in the final chapter. These factors are not only negative because it clashes with the fundamental fairness and justice in terms of implementing and enforcing and regulations. It also reduces public trust in decision-making processes in the local authority. Residents placed trust in the local authority to safeguard their interests as ratepayers and it is the duty of these officials to act in public interest.

CHAPTER FIVE

EVALUATION, RECOMMENDATIONS AND CONCLUSION

5. 1 Introduction

Over the years there has been a growing recognition among contemporary geographers like Hewitt and Graham (2014) which reflect an interest to remake urban landscapes as vertical cities. The need for vertical dwellings has become the most probable solution due to rapid urbanization, population growth and land scarcity. Many suburban neighborhoods undergo changes in form, function, and demography to allow for compact living. However, the design and execution of vertical cities require development to conform to standards which would ultimately avoid potential problems. When these standards are not met, they constrain the vision of vertical cities and densification from materializing (Garg and Sharma, 2018). Using the case of Berea, suburban neighborhood in the metropolitan city in eThekweni Municipality, this thesis highlighted the plethora of social and economic impacts that a land use zoning change at 317 Currie Road has had on the community.

This final chapter focuses on the evaluation and key findings of the study. This chapter will address the research questions thematically and offer some theoretical reflections. The chapter conclude by offering some recommendations to reduce land use zoning conflicts.

This chapter provides an evaluation of the study in terms of the following objectives:

- Review the role of local authority in planning procedures, as well as enforcing land use building control regulations and by-laws in Currie Road, Berea
- Determine whether the developer, Serengeti Rise complied with land use and zoning regulations
- Analyze residents' concerns about development at 317 Currie Road and to determine how their constitutional rights as ratepayers have been infringed
- Identify reasons why land use and zoning regulations have been flouted by the developer

5.2 Summary of Key Findings

The development appears primarily as a giant, unwelcome intrusion in comparison to its surroundings. Consequently, the proposed structure is opposed within the neighborhood based on several violations of by-laws and regulations. This opposition has led to conflict and contestation between residents and the developer. The extensive number of irregularities that transpired within 317 Currie Road has failed to create a cohesive urban fabric that is supported by the community.

eThekwini Municipality has a myriad of by-laws for managing land use (Hansmann *et al.*, 2018). However, there were flaws in the approval and implementation of land use zoning at 317 Currie Road and this escalated tensions within the precinct. Building contraventions like that of 317 Currie Road will continue to infiltrate residential zones if a more accountable and transparent governance, with strict enforcement capabilities are not established (Garnett, 2001). The controversial partly completed high-rise development situated at 317 Currie Road was opposed by concerned residents in the neighborhood. The rezoning and subsequent deviation from the approved plan for the development was the subject of extensive litigation. The Supreme Court of Appeal overturned a demolition order made by the High Court. Several accusations were made by ratepayers about collusion between the developer, Serengeti Rise and Municipality.

There is a spectra of corruption and irregularities in the entire development process pertaining to 317 Currie Road. Outraged residents of Currie Road appealed to Council several times to rectify their decision as the building had set an adverse precedent, with an increase in illicit developments emerging within the neighborhood. However, residents' concerns continue to remain overlooked and disregarded. This section will provide a final evaluation of the findings with reference made to key points extracted from the literature review to highlight the degree of land use conflict and contestation which occurred because of the leaky building fiasco situated at 317 Currie Road, Berea.

5.3 Theoretical Reflections

Land use conflict theory Volumetric Urbanism provided a useful framework for this study. Conflict may range from that which is relatively easy to solve (for instance demolition of a wall which is not erected within its boundary) to conflict which is complex and difficult to solve (Ahsan, 2016; Matthewman, 2017; Charles, 2018b). Often illegal operations are considered as the rule rather than the exception and developers within the precinct exploit this weakness (Sideris, 1997).

Land use violations are a thorny issue when administering zoning regulations and become a bigger concern when there is opposition by the local community within a residential precinct. The land use conflict which arises is a complex phenomenon that is influenced by many factors which are reflected in the work of Wehrmann (2008). When property owners adjacent to a new development like 317 Currie Road perceive the physical condition of the building as degrading, conflict and contestation arises because of what Wehrmann (2008) refers to as the misuse over property rights to land. Not surprisingly, disputes over ‘vesting’ (property owner’s right to develop) are often the source of controversy and sometimes litigation during the development process. In certain instances, as in the case of 317 Currie Road, the Municipality’s decision to rezone a particular property and grant a developer vesting rights may be considered a contentious issue. This is attributed to the fact that not only were there several violations during construction phase, but illicit engagement with government officials had transpired throughout the approval process. Officials of the eThekweni Municipality have been accused of being less than transparent in terms of following procedures for processing the 317 Currie Road application.

The fragmented bureaucratic approval system typically makes it harder for the formal systems of governance to be executed. In the process the residential character of the neighborhood is ruined, and land use conflict is bound to occur. According to Wehrmann (2008) when zoning and land use contraventions are overlooked, land nepotism, corruption and disregard for regulations are considered normal by the transgressed population. This was particularly the case of 317 Currie Road as developers professed ignorance and were dismissive about their alleged violations.

This study confirmed Wehrmann’s (2005) assertion that the externalities which arise because of an ill-informed rezoning decision has negative implications for the built environment and the local

community. This in turn can induce conflict, fear, and suspicion amongst neighbors as was evident in Currie Road. Territories risk losing its social and compositional significance when uneven rules and regulations are applied.

Effective land use is ultimately structured around zoning laws that essentially regulate or influence development and growth. The Berea was once the most expensive real estate area in Durban. Some of the oldest mansions in Durban were built in this locality. The architectural design and structure of these buildings all add to the prestige of the area and zoning regulations ensure that such features are preserved. Introducing high-rise residential structures in the Berea has fundamentally altered the land use dynamics from previously single-family dwellings to multi-unit family homes.

Volumetric urbanism refers to the creation of vertical cities. Within the Berea, it has allowed for the construction of more modernized and contemporary structures which replace the former apartheid neighborhood dwelling types. From a preservationist perspective, building vertically is the most sustainable option that would reduce the pressure for land for housing. The fundamental reasoning for densifying the Berea was to not only to create a compact suburban neighborhood, but also create a racial and income mix of the population (Hansmann *et al.*, 2018).

However, Leitner *et al.*, (2020) have argued that high-rise development should not privilege the government and private sector interests over the general wellbeing of the public. The privatization of planning has led to unevenness which systematically favors the developer (Leitner *et al.*, 2020). In New Zealand, Sweden and in certain districts in the United Kingdom wealthy private sector developers get away with planning misdemeanors as a result of power, status and political involvement (Matthewman, 2017).

Due to this skewed imbalance, several land use zoning contraventions have been reported within the Berea. This ultimately led to residents forming the Save our Berea organization to create an interface between the residents of the Berea and eThekweni Municipality. The most controversial development which caused public outrage was that of 317 Currie Road. It was perceived to be an eye-sore development which aimed to become the leader of volumetric extension in Berea. This

not only required a change of current zoning, but also a deviation plan and relaxation on plans submitted to increase coverage, height, floor area ratio and increase building lines.

5.4 Zoning, Violations and Conflict

Land use zoning and regulations play a pivotal role in urban planning. The purpose of zoning is to separate incompatible property uses and prevent possible conflict (Nel, 2015; Jenson, 2019). Therefore, zoning differentiates between commercial, industrial, and residential uses, and determines the type of buildings permitted in each category. There can also be incompatible uses within each category, and normally existing tenants/residents have a right to oppose any infringement. In this study concerned residents complained that a high-rise development at 317 Currie Road of a GR 5 nature disfigured the Berea based on the landscape of the area.

Building lines, side space and height control restrictions are intended to maximize privacy, limit overshadowing of neighboring sites and allow for natural lighting and air movement. They also ensure attractive streetscapes are maintained. Additionally, height controls are supposed to preserve an acceptable character of the neighborhood and maintain the aesthetics of the area. 317 Currie Road fulfilled neither of these requirements when by-laws and regulations were flouted.

The rezoned development not only failed to add value to the precinct but had considerable financial implications for adjoining properties in terms of depreciation of value. Ideally, land use zoning for housing densities specifies building height, coverage, form, and function to facilitate harmonious planning. Conflict arose when affected neighbors perceived their rights to privacy, natural light and security infringed upon by the approval of the GR 5 deviation for the property at 317 Currie Road. The problem was aggravated because the rezoning application process was procedurally flawed and lacked transparency.

A building of this design, density and floor area ratio has previously only been permitted alongside beaches or in localities supportive of such size and scale. The Berea, more specifically Currie Road, is not conducive to support a development of this type based on the structural style of existing housing and infrastructure. Thus, the practicality of this development remains unclear. The battle between the developer, Council and residents escalated as residents feared that

permitting this high-rise development will make it easier for transgression to occur despite regulatory enforcement. Evidence provided by Walford and Charles (2017) and Walford (2017) give examples of non-conforming development which have occurred in Berea after the 317 Currie Road construction began.

5.5 Serengeti Rise Industries Deceptive Development

Despite differences in perspectives by the developer and residents, transparency remains a critical issue. A range of procedural deviations have caused social conflict within the community due to insufficient transparency and lack of meaningful public participation. Serengeti Rise had used their position to fulfil their commercial-profit agenda, whilst side-lining fears and concerns of residents. An outline of the key issues raised by residents in terms of the developer's deceptive behavior is outlined below:

- No formal notification was communicated to residents as prescribed in the Ordinance.
- No locality plan was attached to application submitted to Council for approval and there was no signage on site informing neighbors about the impending rezoning application.
- Building activities and timelines suggests that the extended development had commenced prior to receiving consent in terms of receiving approval for GR 5 zoning application.
- Boundary to boundary development infringed on the rights to privacy, sunlight, and views of adjoining properties.
- Additional noise created by construction equipment continued unabated at odd hours, disturbing the peace and tranquility of the neighborhood.

Residents felt their concerns were suppressed during the rezoning application process made by Serengeti Rise as they were not duly notified of the rezoning in terms of Section 74*bis* of the Town Planning Scheme of 1953. Thus, Serengeti Rise did not comply with one of the key requirements of the zoning regulation application which was to inform neighboring property owners of a development which could ultimately have an impact on their property values. The failure of the developer to recognize the importance of providing legal and physical details to the community is essentially a breach of planning regulations.

When a development is administered in a way that jeopardizes the quality of the environment and does not deliver a social and economic benefit to the community, residents are bound to oppose the construction. As in the case of 317 Currie Road, the moral rationale for non-disclosure was simply a way to keep prospective objectors ill-informed until consent was attained from Council. The decline in overall environmental quality because of this inappropriate development caused residents to fear a depreciation of their property's real estate market value. Craw's (2017) findings attest that it is not uncommon for residents to be emotive in pursuit of protecting the decline of their property values.

Against this background, notification to the public was considered wholly inadequate and failed to meet the requirements of the Ordinance. Since notices in the form of registered mails were not delivered in a manner prescribed by the Town Planning Ordinance in terms of Section 74*bis*, it is considered as a non-compliance by the developer. In addition to this, the omission of signage on site disclosing the nature of the development concealed the developer's plans and compounded the problem of a misled community. This rendered the rezoning process invalid.

In an act of defiance, both the developer and the municipality refused to accept that there were deficiencies in the notification process. Both chose to trivialize the matter which subsequently led to the developer proceeding with construction before it was approved. An underlying, hidden assumption was that this was done in anticipation that there will be no objections or opposition from the community. Walford (2016) cited a similar occurrence was observed at 615 Stephen Dlamini Road, Berea when residents were not informed about the development being built on this site and were denied access to the plans. This was a breach of the ratepayers' Constitutional right which encourages sharing of information, especially since such a decision would affect the livelihoods of neighbors (Walford, 2016).

Another underlying problem associated with the developer's lack of compliance is attributed to the various illegalities governing the process of rezoning and approval of the deviation plan. A foundation for a GR 5 development was laid prior to developers' application for rezoning which was approved in 2011. The deviation plan which was approved in 2014 was an administrative 'sleight of hand' since residents' objections were not considered. Also, the deviation plan was in

conflict with the Municipalities policy that stipulated only development of GR 1 and GR 2 zoning would be approved in Berea.

The illegal approving of the GR 5 rezoning application and deviation plan illustrate the inappropriate engagement between developer and Municipality. The private sector developer, Serengeti Rise had been accused of engaging in incentivized strategies that evade planning restrictions enabling the developer to build as per its desire. The approval of the plans was in clear conflict not only with the Zoning Scheme Regulations of the city, but also the National Building Regulations and Building Standards Act 103 of 1977.

Developers like Serengeti Rise are what Gebel (2012:121) refer to as “selfish rational utility maximizers”. Developers of this nature aim to increase their profitability often at the expense of the public. Boamah *et al.*, (2012) refer to a similar phenomenon that is experienced within the Wa Municipality in Ghana. Arimah and Adeagbo (2000) reveal that in Ibadan, Nigeria, comparable defiance’s occurred whereby eighty-three percent of developers either completely violated zoning regulations or built prior to consent. It is with this mindset that developer, Serengeti Rise managed to illegally construct seven-storeys of the development before attaining approval.

The developer attempted to exert a top-down approach by retaining control over a property and conducting activities which compromised the social and economic well-being of the community. However, residents who were negatively affected by the deviations were proactive in expressing their objections.

5.6 Residents Response to the Development Dilemma

The development at 317 Currie Road has caused pain and grief to residents surrounding the building. Most of these people are elderly and had resided in the community for decades. They are homeowners who valued the sanctity and privacy of their homes and took pride in the aesthetics of the neighborhood in which they lived. Design plays a pivotal role in the acceptance or rejection of a building. If a design is improved and amenity value is added, a development may be accepted with enthusiasm. A development which provides green spaces, infrastructure improvements and

is aesthetically pleasing is unlikely to be opposed by local residents (Whitehead *et al.*, 2015). Neither of these factors were evident in the development at 317 Currie Road.

The insensitive design of the proposed development has a detrimental impact on community spirit, social interaction, and overall neighborhood satisfaction. Thus, reinforcing neighborhood stress, issues with weakened mental health and lack of social cohesion. Berea is comprised of a close-knit community which has strong social ties with their neighbors. The poorly designed structure at 317 Currie Road breaks down the foundation of Gardiner's (2017) findings places emphasis on the need for the communities psychological needs to be adequately met to maintain social stability. It was evident from the mobilization by residents and Save Our Berea activists that the local community perceived the development at 317 Currie Road as a disruptive intrusion in their neighborhood. The design of urban spaces can intentionally evoke a specific sense for residents. In relation to the 317 Currie Road development, the enormous building evokes a sense of smallness and inferiority as it engulfs surrounding properties.

Most of the respondents were outraged by the construction and opposed the development at 317 Currie Road as it undermined the ambience and aesthetics of the neighborhood. Furthermore, they feared it will set a dangerous precedent for further contraventions to proliferate the precinct in future. The scale of this development was noted to have had a detrimental impact on surrounding properties for several reasons, including:

- The obstruction of existing views.
- The invasion of privacy previously enjoyed by neighbors.
- The casting of shadows on adjacent properties, and in some instance's amenities such as pools and gardens.
- The aesthetic nature and architectural design of this building would be out of kilter with those properties surrounding it, and
- All the above will lead to a diminution of adjacent property values.

Residents' concerns about the new high-rise development at 317 Currie Road is hinged on the fact that their concerns on design and structural characteristics were met with disdain. Ironically, the purpose of development controls and regulations are intended to protect all property owners. The

fact that this had not materialized heighten residents' concerns. According to Glaeser (2011:13), "the magic of a city comes from their people, but those people must be well served by the bricks and mortar that surrounds them".

Members opposing the development engaged in forms of community opposition which Iglesia (2002) suggest included lodging formal objections with planning authority, attending, and speaking at council meetings, making attempts to attract media interests, and taking legal proceedings. The attempt to reach out to media sources were to intensify their opposition and inform the public of various adverse effects created. For example, traffic congestion, noise pollution from heavy machinery operating at odd hours, increased level of crime due to development abandonment for periods of time, environmental deterioration, as well as the several building violations which occurred at the site.

Moreover, as an upmarket suburban residential precinct, ratepayers of the community consider it their right to live in an environment that is conducive to creating a civilized and secure territory. With the incidences experienced by collapsing scaffolding on-site into the neighbor's yard, exposed pipelines, and cabling carelessly connected, residents fear that the unmaintained and incomplete infrastructure can pose a significant safety risk to many people. The residents' emotive responses were reported in local newspapers and even attracted attention on social platforms like the Save Our Berea's Facebook page. In this way, the study delineates that public support is a pre-requisite for a new development to be successfully accepted. In the case of Currie Road, a sense of comradery was evident as residents mobilized to make their voices heard in opposition to the development.

Save Our Berea activists together with other ratepayers of Berea were no longer willing to listen to empty promises and demanded accountability. They desperately seek a proactive action from Council, and they want it sooner than later. The type of modus operandi of Serengeti Rise is not a very honorable one. Therefore, the heightened tension between the developer and community has been an ongoing battle for years. As residents grapple with issues of contravening development within the locality, they remain headstrong in demanding a just and equitable remedy to the 317 Currie Road development.

Craw (2017) has argued that for homeowners, their house does not merely provide shelter, it represents their most important financial asset and investment. Thus, it is understandable for residents to want to protect their investments from the disadvantages of a development which disfigures the precinct and in turn, will lower the value of their properties. Thibodeau (1990); Rawlings (2002) and Bailey (2005) echo similar concerns cited by residents residing in North Dallas, Nebraska, and Cape Town, respectively. The outcome of the research conducted in Dallas suggests that the size of the development and the proximity of the violating project to residents influences the impact it has on property values (Thiboudeau 1990). Similarly, in Omaha, Nebraska, aesthetically displeasing high-rise apartments lowered property values. In the case of Cape Town, residents suggested that the illegal development of bed and breakfasts in the Table View area obstructed their view and limited their privacy (Bailey, 2005). These externalities were of concern to many residents in Currie Road.

Due to the inconsistent and ineffective land use prosecution and enforcement, delinquent developers take to Berea as a lucrative option to make a fortune at the expense of the public. The Berea ratepayer's community and civic activists possess a wealth of information pertaining to 317 Currie Road, as well as other unlawful developments which have since mushroomed because of the initial approval in the study area. Excluding 317 Currie Road, Walford (2019) lists these controversial properties as follows: 18 Lilian Ngoyi Road; 50 Campbell Avenue; 340 Stephen Dlamini Road; 201 John Zikhali Road; and 560 Currie Road. Residents have lodged objections about these violations of building regulations. However, the eThekweni Municipality has failed to intervene curbing these transgressions.

5.7 Poor Land use Governance and Corruption in Council

Land use governance is ideally about implementing policies and ensuring there is effective adherence. In the instance of 317 Currie Road, there seems to be inherent weaknesses surrounding the effectiveness of the eThekweni Municipality in enforcing the law. The local officials from eThekweni Municipality appear to have been implicated in the rezoning application process, conducting site inspections, and approving the deviation plan at 317 Currie Road. The failure to identify and rectify faults in the stages of design, approval of plans, supervision and construction

of the building suggests that town planning officials deliberately overlooked or turned a blind eye to violations

Planning officials were unwilling to release information timeously to concerned residents, either shifted blame to other officials or simply seemed unconcerned when issues were raised by residents. Accusations made by concerned residents about illegal incentivization by the developer and Council officials have proved to be correct based on the investigation conducted in 2015 by the City Integrity and Investigation Unit (CIU) (Walford, 2018; Walford 2020). The leaked report gives identified serious misconduct pertaining to the 317 Currie Road development. Unknown officials from the eThekweni Municipality were dismissed from their duties as the assessment concluded that administrators had been found guilty of nepotism, bribery, and fraud (Walford, 2018).

The discretionary power by public officials over decision-making and the constant lack of accountability makes land governance a difficult task to accomplish (Quesada *et al.*, 2012; Quesada *et al.*, 2013; Quesada *et al.*, 2015; Benito *et al.*, 2015). According to Nuhu and Mpambije (2017) the opportunity for corruption is greater in situations where government officials have monopoly of power over developers or officials have a great deal of discretion and are not held accountable for their actions. The monopoly of power by the city is privileging the interest of a private sector developer by adjusting and implementing planning policies that are detrimental to the ratepayers of the community (Gutiérrez, 2014).

Okeke *et al.*, (2020) explains that planning authorities have a duty to prohibit, abate, remove, or demolish unauthorized or contravening development which encroaches on community's rights of space. The duties of planning officials need to be in alignment with land use regulations and schemes to avoid negative externalities and unfair building activities. For example, the National Building Standards Act of 1997 necessitates the importance of a building control officer. Section 5 of the National Building Standards Act (1997) makes provisions for the appointment of a building control officer whose powers and duties are outlined in the Act. According to Section 6 of the Act, the building control officer has the capacity to make recommendations to the local authority regarding the plans, documentation, and construction of the development (National

Building Standards Act, 1997). Section 6 (c) and Section 7 (1) of the Act is significant for this study. Section 6 (c) of the Act stipulates that the building control officer has the capability to inspect the erection of a building and any activities of the consented development to ensure compliance. If a development does not comply with the specified conditions, the officer has the right to report the violation. However, the formal report filed by the BCO was a mere checklist filled out with disinterest. Thus, in 2014 a very substantial deviation was built against the original plans. Considering the Act, it becomes apparent that the BCO had failed to carry out his functions.

Additionally, Section 7 (1)(bii) ensures that new developments can be spatially integrated appropriately within the precinct. However, 317 Currie Road was approved despite it disfiguring the precinct and contradicting the intention outlined by Section 7 of the Act. Hence, eThekweni Municipalities' administrative action is reflected as favorable to a single developer and causes an infringement of statutory rights to the ratepayers of the community. The unreasonable FAR permissible under GR 5 rezoning allows for a development which has been disproportionate to adjoining properties, thereby disfiguring the precinct and against the intention of the Act. Officials who kept a double code of conduct towards urban planning is the reason as to why land use conflict is experienced within Currie Road.

eThekweni officials argued that the plan was to increase residential occupancy in the Berea in order to address the housing shortage in the city. The push for densification as a way of achieving one of the normative planning principles within the new planning framework of the Berea Core Extension Plan of 2012 was considered the reason for approving the development (Hansmann *et al.*, 2018). The essence of densifying areas or organizing and arranging volume is to expand the City's territorial base to accommodate for more residential occupancy. However, most of the contraventions of the scheme have occurred in the context of increases in densities. The approval of 317 Currie Road by eThekweni Municipality appears to be concealed with fabrication and deception. Despite objections by residents, a poorly designed GR 5 development which lacked adherence to established building standards and by-laws were ignored by Council through poor supervision and secrecy.

Ideally, the aim of creating a vertical extension of the Berea was to accommodate for the demographic changes experienced and create housing for a greater populace, as well as promote a socio-economic racial mix (Hansmann *et al.*, 2018). However, the development by Serengeti Rise, which was approved by Council was structurally designed to be occupied by eleven wealthy families. This is dissimilar to the result which needed to be achieved under the densification policy. Mfusi (2016) and Skovbro (2001) suggest that compaction is intended for greater occupancy. Hence, the Municipal officials' explanation for approving a building which towers over adjacent properties, only to accommodate eleven family units proves inadequate.

Ratepayers of the community attest that Municipal officials have tacitly favored a 'flexible' approach to enforcing rules. The Promotion of Access to Information Act as prescribed in Section 32 of the Constitution has been exploited by officials due to the limitations in its provisions. Access to certain records and information for the protection of citizens' rights pertaining to the development were withheld by council. Requests were declined without any legal consequences or justification for their refusal. This undermines the objectives of PAJA which is to promote transparency, accountability, and effective governance. PAJA was a diversion tool used by council to delay access to records or deny access to information which in the process, failed to address the concerns of residents from Berea.

Okeke *et al.*, (2020) cites that non-enforcement of building codes, unqualified builders and poor supervision from government are some of the factors contributing to structures collapsing in Nigeria. Building plans are either not properly assessed and scrutinized for errors, are assessed by incompetent individuals, or are approved through greed and corruption (Okeke *et al.*, 2020). Similarly, Underhill (2009) exposes the City of Cape Town's Planning and Building Development Department for fraud and for turning a blind eye to many illicit developers. As a result, exacerbating the number of contravening developments arising within the City over the years. According to Chiodelli and Moroni (2015), a dysfunctional planning system can incentivize certain negative behavior which alters the fundamental fairness and respect for laws within the land use planning domain. Therefore, this generates unwanted conflict while damaging the legitimacy and creditability of institutions as seen within the eThekweni Municipality and the City of Cape Town.

5.8 Current Controversies and need for further research

After an extensive litigation process, the findings from the CIIU report have challenged the Supreme Court of Appeals ruling for overturning the demolition order granted by High Court. The report makes explicit that there were irregularities in the approval process which were not considered at the time of the SCA ruling. Serengeti Rise had thereafter professed to go under liquidation and had the project auctioned. On the 26th of August 2020, the nine-storey high-rise development was auctioned for R11 million, a project estimated to be worth R65 million - R115 million (Broughton, 2020b). The name of the bidder was not disclosed. Ian Wyles Auctioneers (2020) attributed the low price obtained to the cumbersome litigation process and the previous demolition order. Auctioning the building was a tactful response by the developer to shy away from the negative ramifications imposed on the Berea community. Transferring ownership does not rectify the problems intrinsically linked to this development. It only worsens the current case as residents are now uncertain as to whom the property now belongs to and what their intentions would be for the site. The need for further study is essential to assess and evaluate the consequences this auctioning process has for the future of Currie Road.

It is pivotal to establish whether the new owner of the development will:

- rectify the shortcomings of the previous developer and demolish the portion of the building which does not conform to the laws and regulations prescribed for Berea, or
- continue the work of Serengeti Rise until completion. Thereafter, selling the units as planned despite the tension created.

If the later proves true, conflict and contestation pertaining to this development would be an ongoing battle between the new developer and residents. Residents would become more vigilant of changes within their precinct, and this will ultimately affect the acceptance of vertical structures in Berea. Currently, the future of 317 Currie Road now lies vested in the hands of an unknown owner whose discretionary power will influence the quality lives of many residents residing adjacent to the property.

Further research is required to assess the disciplinary measures and development control procedures employed on these illicit, earmarked properties. If the current unlawful building

activities are curtailed within the Berea through stringent enforcement, this would create a deterrent for future transgressors. Otherwise, 317 Currie Road will become a model for other developers to replicate within Berea and other parts of the city.

5.9 Recommendations

It is important to work with residents, groups, and communities to create sustainable human settlements which provide decent quality of life and meet the social, economic, and cultural needs of the community. Good governance implies inclusion and representation of all groups in society. Active public participation should be encouraged and collective decision-making about the enforcement of rules and procedures for the protection of neighborhood property rights would be required. Public Participation forums should be formed to hold meetings with the City or respective stakeholders and give feedback to the community. One might not gain a holistic picture of conflict by simply talking to technical experts and local leaders (Wehrmann, 2008). One needs to learn the emotional needs, fears, or desires of affected parties.

Zoning decisions and applications should be policed both from top-down and from the bottom-up more extensively. Although local authority legally has the final word, it is essential to encourage neighborhood residents to participate actively in decision making processes to retain the harmony of the precinct. It is important for officials to address land use issues in a transparent manner to reduce the risks or corruption, whilst increasing integrity.

A complete moratorium on rezoning GR 5 development should be enforced within the Berea. Planning officials need to critically assess the size, bulk, and design of the development to prevent infringement on residents' rights. A 'one size fits all' model cannot be applied to all areas without proper evaluation. To densify the Berea successfully, Municipal officials need to strategically consider several factors to prevent problems which occurred at 317 Currie Road from being repeated. Some of the factors to seriously consider are for example, the size of the parcel of land, the total floor area ratio of the proposed development and if the current infrastructure will be able to accommodate the new building.

A comprehensive survey of all contravening developments within the Berea should be undertaken by eThekweni Municipality. An assessment of contravening transgressors within the Berea will prevent distrust as the Municipality will be involved in taking an active stance against violating developers. Municipal officials should be more effective in issuing stop orders, demanding compliance, imposing fines or even requesting demolition.

Some land use conflicts may be easy to solve, but others are not easy to comprehend. Thus, the first step towards conflict resolution is through analysis of the conflict. Community based land dispute resolution needs to be introduced within this precinct which may be highly effective. This can be efficiently carried out through consensual approaches (Wehrmann, 2008) which ideally incorporate mediation as well. This approach is important as it aims to find a consensus amongst the conflicting parties through intensive discussions and negotiations.

Reforms focusing on increasing transparency at Municipal level should be accompanied by measures for strengthening citizen's capacity to act upon the available information. In Netherlands, most cities and communities have developed a local integrity policy, and some cities have created local integrity offices which support Municipality with the following services: advice, handling of disciplinary cases and legal advice for investigations. The integrity offices act as a contact point for people who want to report a breach of integrity rules (Benito *et al.*, 2015). Furthermore, if a department proposes a penalty to be imposed for a breach in rules, it ensures the penalty is consistent and enforced (Benito *et al.*, 2015). Save Our Berea activists should consider proposing such a policy to Council and work alongside them. The activists have proved to be knowledgeable and experienced in assessing illicit developments for years.

When affected parties are not informed about a development or zonal changes, the Town Planning Ordinance of 1949 indicates that it is imperative for the application to be readvertised. In instances whereby plans and application are incorrect, for example if a developer does not adhere to the original plans approved, a new advert and new plans need to be submitted. This would subject the developer to unnecessary delays and costs which could have been prevented if the public were rightfully informed in the first instance.

Council needs to ensure that building inspectorates quarterly inspect plans and ensure the building under construction complies or is adhering to the plans submitted to Council. In addition to this, it is important to increase access to information for citizens and implement open data measures as it would enable residents to monitor the progress of the development regularly. This will be beneficial as council would be immediately informed of unlawful or contravening activities on the site. There is a need to make enforcement more rigorous, and any Municipal official found guilty of misconduct or failing to perform his or her duties should face consequences.

5.10 Conclusion

This case study has provided insight into the relationship between unlawful development activities and the impact it has on neighboring households within Berea. It has also effectively assessed the eThekweni Municipalities role in enforcing by-laws and regulations which govern developmental practices. The land use conflict between the developer and ratepayers of the community was due to an eyesore high-rise development been built which infringes on the rights of adjacent property owners. This scandalous development which remains partially incomplete had violated by-laws and development control measures by initially deviating from the master plan, failing to notify residents of the development, and obtaining a speculative GR 5 rezoning. With the rezoning approval, a deviation plan was consented which makes mockery of the entire purpose of the requirements of town planning schemes and controls. Residents of the Berea strongly believe that the developmental approval process was tainted by collusion between local Municipal officials and the developer, Serengeti Rise. In this context, it can be concluded that the eThekweni Municipality had been ineffective in assessing and approving the building plans for construction at 317 Currie Road. The Municipality failed to ensure strict adherence to by-laws and regulations and disregarded the views and apprehensions of ratepayers.

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Appendix 1: Conforming properties adjacent to 317 Currie Road (Source: Walford, 2017)



Appendix 2: Ethical Clearance



16 February 2018

Miss Sunayna Boodhoo 211508191
School of Agriculture, Earth and Environmental Sciences
Howard College Campus

Dear Miss Boodhoo

Protocol reference number: HSS/0100/018M

Project title: Developers versus Ratepayers? Contravening land use, zoning and development controls in Berea, Durban

Full Approval – Expedited Application

In response to your application received 5 February 2018, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment /modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

[Redacted Signature]

Dr Shamila Naidoo (Deputy Chair)
Humanities & Social Sciences Research Ethics Committee

/pm

cc Supervisor: Professor Brij Maharaaj
cc Academic Leader Research: Professor Onesimo Mutanga
cc. School Administrator: Ms Marsha Manjoo

Humanities & Social Sciences Research Ethics Committee

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Website: www.ukzn.ac.za

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Appendix 3: Berea Gatekeepers Consent Form



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PO Box 1014, Durban, 4000
Tel: 031 322 7030, Fax 031 311 3827
www.durban.gov.za

Clr CJ Pappas

081 017 6622

30 July 2017

To whom it may concern

I hope this letter finds you well.

I hereby acknowledge Sunayna Boodhoo as a registered student at UKZN.

Sunayna is a Masters student and is conducting research into the social costs associated with building violations on the Berea.

I kindly request that you assist Sunayna in her research.

Please do not hesitate to contact me.

Kind regards

Ward Councillor
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