

# THE SOUTH AFRICAN VALUER



*Annual National events:  
AGM • Gala Dinner • Seminar – presentations*

*Dr Llewelyn Curlewis becomes Honourary SAIV member*





## NATIONAL SEMINAR

This year's national seminar took place on 15 May and the theme, 'Disruption', was introduced by the Institute's General Secretary, Melanie Vallun. She reminded the audience that disruption means change, challenge and shake up. As Heraclitus, a Greek philosopher of the late 6th century BC, said: "There is nothing permanent except change."

Seven presentations were given on the day. The first four, by Niel de Klerk, Retired Judge Anthonie Gildenhuys, Dr Llewelyn Curlew and Professor Riël Franszen, as well as the sixth by Mashilo Pitjeng follow this introduction. The fifth was by Louis van der Watt, chief executive of the Atterbury Group, who spoke about the history of the group, and the beginnings and growth of Waterfall City and other developments. The last speaker Micheal Steenkamp, CEO of OneZoneDigital, is a specialist provider of web-based membership management technology. With a practical demonstration, he introduced his audience to the new Institute website and how to become familiar with it.

This short letter of appreciation to Melanie sums up the opinions of those who attended the seminar: "Ek wil jou en jou helpers geluk wens met een van die beste seminare die afgelope Vrydag. Die sprekers was van hoogstaande gehalte, en dit was 'n eer om na hulle te kon luister. 'n Mens voel sommer beter toegerus en ingelig nadat hulle gepraat het." (Riaan Nel)



### Valuation of mining land for rating purposes in terms of the Municipal Property Rates Act, No 6 of 2004

Before the valuer attempts to perform a valuation on mining land he must avail himself of the Mineral and Petroleum Resources Development Act no 28 of 2002 in which the following definitions are important:

#### Definitions

*Mineral and Petroleum Resources Development Act no. 28 of 2002* 'holder' in relation to a prospecting right, mining right, mining permit, retention permit, exploration right, production right, reconnaissance permit or technical co-operation permit, means the person to whom such right or permit has been granted or such person's successor in title;

'land' includes the surface of the land and the sea, where appropriate;

'mine' when used as a verb, means any operation or activity for the purposes of winning any mineral on, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and includes any operation or activity incidental thereto;

'mineral' means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposit, but excludes

(a) water, other than water taken from land or sea for the extraction of any mineral from such water; (b) petroleum; or (c) peat;

'mining area' - (i) in relation to a mining right of a mining permit, means the area for which that right or permit is granted;

(ii) in relation to any environmental, health, social and labour matter and any latent or other impact thereto, includes:

(a) any adjacent or non-adjacent surface of land on which the extraction of any mineral and petroleum has not been authorized in terms of this Act but upon which related or incidental

operations are being undertaken and, including: (i) any area connected to such an area by means of any road, railway line, power line, pipeline, cable way or conveyor belt; and (ii) any surface of land on which such road, railway line, power line, pipeline, cable way is located; and

(b) all buildings, structures, machinery, mine dumps or objects situated on or in that area which are used for the purposes of mining on the land in question;

'mining operation' means any operation relating to the act of mining and matters directly incidental thereto;

'mining permit' means a permit issued in terms of Section 27(6);

'mining right' means a right to mine granted in terms of Section 23(1);

'processing' in relation to any mineral, means the winning, extracting, crushing, screening, washing, reduction, smelting or gasification thereof.

#### Types of rights

After showing examples of a mining licence, a surface right permit and a stand outside permit, Niel listed ten types of rights: prospecting right, mining right, mining permit, retention permit, exploration permit, production right, reconnaissance permit, technical co-operation permit, surface right permit and stand outside township.

A surface right permit is of importance as some mines are situated on what was previously known as Proclaimed Land, which in terms of previous legislation (Act no. 20 of 1967 and Transvaal Act no. 35 of 1908), the use of the surface was controlled through a system of Surface Rights Permits (SRP). The permits are strong legal rights and were issued in perpetuity, which means that they are still valid today, despite the abolition of the laws that governed them. The consequence is that 'land' can trade today without a change in surface ownership because the surface area will fall inside the SRP area.

#### *Municipal Property Rates Act no. 6 of 2004*

Currently there is no definition for mining property in the MPRA but from the existing definitions we conclude as follows:

Exclusion: in relation to a municipality's rating power means a restriction of that power as provided for in section 17.

Owner: (b) in relation to a right referred to in paragraph (b) of the definition of 'property' means a person in whose name the right is registered.

Property: Includes (b) means a right registered against immovable property.

Rateable property: means property on which a municipality may in terms of Section 2 levy a rate excluding property fully excluded from the levying of rates in terms of Section 17.

Section 7: Municipality must levy rates on all rateable property. Municipality is not in terms of 7(2)(a)(iii) obliged to levy rates on properties referred to in paragraph (b) of the definition of 'property' in Section 1.

Section 17: (1) A municipality may not levy a rate – 17(f) on mineral rights within the meaning of paragraph (b) of the definition of 'property' in Section 1.

#### Section 46: Basis of valuation

46(2) In determining the market value of a property the following must be considered:

46(2)(a) The value of any licence, permission or other privilege granted in terms of legislation in relation to the property.

46(3) In determining the market value of a property the following must be disregarded for purposes of valuing the property:

46(3)(a) The value of any building or other immovable structure under the surface of the property which is the subject matter of any mining authorization or mining right defined in the Minerals Act, (Act no. 50 of 1991).

#### Basis of valuation

##### *Land value*

Only property defined as 'property' can be included in a valuation roll.

Section 5(1) of the MPRDA (2002) defines a right to mine as a limited real right whilst Section 5(2) of the MPRDA (2002) grants the rights to a holder and by implication not to the property. The rights of mining are therefore granted to a holder to mine over certain defined land as contained in the mining licence. The owner of the mining licence and the owner of the land need not be the same person.

The mining licence encumbers the freehold land and until the mining licence has been cancelled and the land has been rehabilitated, the value of the freehold land is nominal.

The MPRA states that in terms of Section 30(2), all rateable property must be valued including all properties fully or partially excluded from rates in terms of Section 17(1)(a),(e),(g),(h) and (i). However, Section 17(1)(f) referring to mineral rights is excluded from this provision and thus mineral rights are not to be included in the valuation roll.

#### *Improvements*

Section 5(3)(a) of the MPRDA (2002) gives the mining right holder the right to enter the land to which such right relates together with his or her employees, and may bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground infrastructure which may be required for the purposes of prospecting, mining, exploration or production.

The mining right holder has to, upon the expiry of the right or when the mine ceases operations, restore the land to the natural state which will include the demolition of all improvements and structures erected in the course of exercising the mining right as stated in Section 38(1)(d) of the MPRDA (2002). Therefore all improvements that form part of the right to mine do not attribute value to the land itself for rating purposes.

The above principle does not change when the owner of the freehold is also the owner of the mining title.

#### *Improvements under mining right*

The value of the improvements erected in terms of the mining right will only add value to the land if there is an agreement between the landowner and the Mining Title Holder and the following factors must be accounted for:

- economic lifespan of the mine;
- the amount of time it will take for the improvements to revert to the landowner (if allowed);
- will the improvements be economically feasible to use for purposes other than mining?
- upon reversion, will the land and improvements comply with the town planning requirements of the local authority?

The agreement to purchase the improvements is subject to the permission of the Minister and until such permission is obtained no value can be attributed to the land resulting from the building reversion to the land owner;

When considering types of rights, a surface right permit is of importance as some mines are situated on what was previously known as Proclaimed Land, which in terms of previous legislation (Act no. 20 of 1967 and Transvaal Act no. 35 of 1908), the use of the surface was controlled through a system of Surface Rights Permits (SRP). The permits are strong legal rights and were issued in perpetuity, which means that they are still valid today, despite the abolition of the laws that governed them. The consequence is that 'land' can trade today without a change in surface ownership because the surface area will fall inside the SRP area.

#### **So you have seen all the facts, WHAT IS THE VALUE?**

The property to be valued can be so encumbered that it has no real value. Every portion of mining land has different encumbrances, attributes and circumstances. The valuer must obtain all information that may affect the value.

In determining the market value of a property under a mining licence the value of the land must be determined as if unencumbered. That value must be deferred taking into account the life span of the mine and the period of rehabilitation and demolishing of buildings as a future value and discounted to the date of valuation. In some cases where gold was mined the land is so severely contaminated and not suitable for residential, industrial,

commercial and agricultural purposes as it may be polluted with radiation. Therefore it is of importance, that the valuer must avail himself/ herself with any deterrent factors that may influence the value further.

Considering the above factors the land has only a nominal value.

#### **MPRA Amendments**

##### *New definition included:*

"mining property" means a property used for mining operations as defined in the Minerals and Petroleum Resources Development Act 2002 (Act No. 28 of 2002)

##### *Section 17(f) changed to the following:*

On ~~mineral~~ mining rights or a mining permit within the meaning of ~~paragraph (b) of the definition of "property" in subsection 1)~~ the Mineral and Petroleum Resources Development Act, 2002 (Act No.28 of 2002), excluding any building other immovable structures above the surface of the mining property required for purposes of mining;

This amendment will be flawed in the MPRA for the following reasons:

- What will the life span of the mine be when determining the value of the buildings?
- What will the delay for mine closure be?
- Must the buildings be demolished or become the property of the land owner?
- Will the buildings be suitable for further use?

Economic lifespan

Time to revert back to owner

Economically feasible for purposes other than mining

Comply with town planning requirements

To my mind this amendment will open a can of worms for the valuer.

#### **Did you know?**

- South Africa is home to the world's deepest mine: Mponeng gold mine in Gauteng Province delves 3.9km into the earth?
- Moab Khutsong gold mine in North West province has the world's longest winding cable, able to lower workers to 3 054 metres in one uninterrupted four - minute journey? ■



By Niel de Klerk

Niel de Klerk, has been in real estate since 1985, as a valuer and estate agent, and has served the profession selflessly on various councils, boards and panels throughout the years. He has been city valuer for seven municipalities, owns a business in Vanderbijlpark and is a member of the Valuation Appeal Board of Gauteng. He was chairman of the Northern Branch of the SAV for five years and President of the Institute from 1993 to 1995. He is a Life Member of the SAV in recognition of the enormous contribution he has made to the Institute and to the profession as a whole.