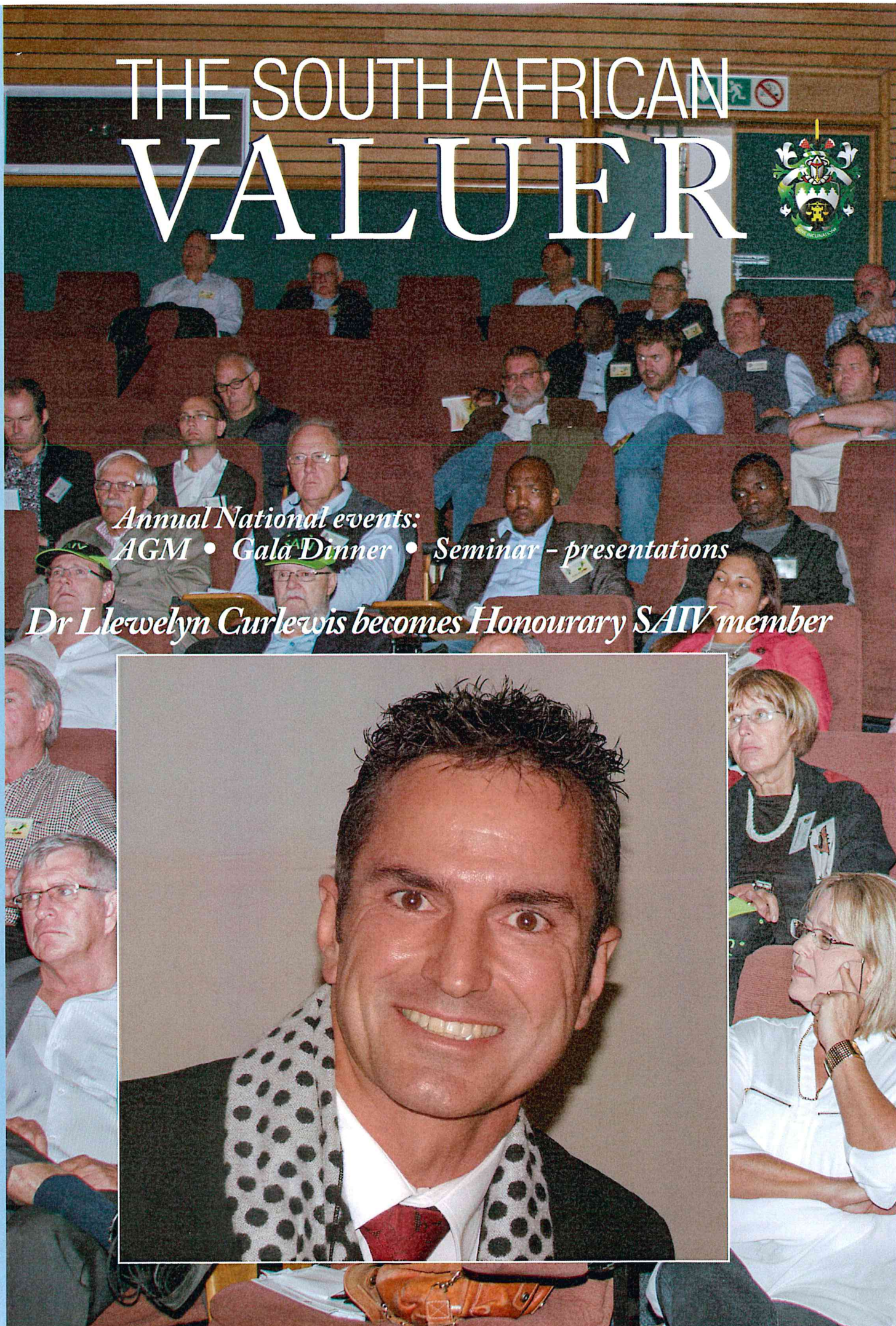


THE SOUTH AFRICAN VALUER



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Dr Llewelyn Curlewis becomes Honourary SAIV member



ABUSE OF THE VALUATION PROCEDURE

Introduction

This article deals with a common instance of abuse by municipalities of the valuation procedure described in the Local Government: Municipal Property Rates Act (MPRA), and what a consumer's rights and remedies would be were such an abuse to occur.

The valuation procedure

The MPRA prescribes that once every four to five years every municipality must publish a general valuation roll (GV), which is meant to contain the property details, municipal valuation and the rating categorisation of all properties situated within that municipality's jurisdiction. However, for a number of reasons the GV is not always complete. Properties are accidentally omitted from it, or only come into existence after it is published. For this reason the MPRA provides that the municipality must publish a supplementary valuation roll (SV) at least once every year for the duration of the GV.

The municipality would typically include properties that fall within the ambit of section 78 of the MPRA on supplementary rolls (which properties would include those that were accidentally omitted from the GV, those which only came into existence after the GV had already commenced, properties which have changed shape or form (for example with a sub-division or consolidation) or properties which need to be re-valued for any other exceptional reason – which might include properties which were vacant at the commencement of the GV but have subsequently been developed.

Intention of the legislature

The idea behind the valuation system as described above is to allow municipalities to value all properties within their jurisdiction once every four to five years. Ideally the value pegged by the municipality will then endure for the full duration of the GV unless, as described in section 78 of the MPRA, one of the stated reasons exist that would justify re-valuing the property during the currency of that GV.

Schindlers has seen several cases where municipalities re-value a property on a roll, where the owner of the property success-

fully defeats that valuation by proving to the municipal valuer or the Valuation Appeals Board that the value is substantially inflated, only to have the municipality simply elect to rehash the entire process and attempt to re-value that property again at an inflated rate on a subsequent valuation roll (or even rolls).

The authors are of the view that to the extent that a municipality is persistently re-valuing properties for the purposes of the same GV, if the municipality does not have a good reason for doing so (and in this case a good reason would comprise only one of the reasons listed in section 78 of the MPRA) then the municipality is abusing its powers in terms of the MPRA by persistently revaluing the property in order to increase the valuation, hoping that the property owner will either not notice that the property is being revalued and will fail to object or hoping that the property owner will tire of having perpetually to defend an inflated valuation.

Ultra vires

When any person or organ of state acts outside the scope of its authorisation in terms of legislation, any affected person can approach a court for an order that the action is unauthorised. This is known in the legal fraternity as action being declared ultra vires. If a court finds that a municipality is acting outside of the scope of its authorisation in terms of the MPRA, the court will be obliged to declare that municipality's conduct invalid and will be obliged to order that the consumer affected by the invalid conduct be compensated or another remedy be provided to that consumer in order to undo the damage done by the unlawful action.

Facts of the Pam Maggs case (14/09531 SGHC)

This was an unreported case in the South Gauteng High Court in which the applicant approached the Court for an order declaring that the City of Johannesburg Metropolitan Municipality (COJ) was abusing its powers in terms of the MPRA inasmuch as it had re-valued her property for the purposes of the 2008 GV at least four times without any reason for doing so as prescribed by section 78 of the Act.

To complicate things, the applicant was only aware of one objection and one appeal in relation to her property and was not

aware of any of the other instances in which the municipality had re-valued her property on a subsequent SV. It was only when the applicant received municipal accounts charging much higher rates than what she expected that she was alerted to the fact that something had occurred in relation to the valuation of her property without her knowledge. When she made enquiries she determined that her rates had increased because the municipality had re-valued her property again. This happened a number of times during the currency of the 2008 general valuation roll. Essentially the effect of the above was that, although the applicant went through the motions and defended an incorrect and inflated property value the first time, all her efforts and expense in doing so were undone when the municipality subsequently decided to re-value the property on a subsequent roll, not only once, but another three times. Perplexingly, in two of the instances in which the property was re-valued the re-valuation was set at roughly what the applicant believed it should have been but the other two times it was re-valued the value was almost double what the applicant believed it should be. To this day no-one from the municipality has explained why it sought to re-value the property four times on the same GV, or why the values that it tried to re-value the property at varied so much, or why this property was even included in any subsequent SV when none of the requirements of section 78 of the MPRA were met in any of the instances in which the property was re-valued.

Outcome of the Pam Maggs case

The applicant was a pensioner and as such was unable to afford the legal fees that would inevitably follow from a high court application to protect her rights and declare the municipality's actions as described above ultra vires. Schindlers accordingly assisted the applicant on a partly pro bono basis, as the matter was not only of great importance to the applicant, but is also of general public interest inasmuch as there are hundreds if not thousands of other consumers across South Africa facing the same situation.

Schindlers launched an application in the South Gauteng High Court for an order declaring the municipality's conduct as aforesaid ultra vires and the municipality settled the matter with the applicant by agreeing that a Valuation Appeals Board for the purposes of the entire 2008 GV would be convened, and that this board would determine one valuation for the applicant's property which would then subsequently be applied retrospectively to her municipal account in respect of the entire 2008 GV period (lasting five years).

The result of the above is that the inflated municipal valuations which the applicant had been unaware of and which she had not defended, would be negated inasmuch as those inflated valuations would be replaced with the valuation determined by the Valuation Appeals Board in terms of the settlement agreement.

The attorneys acting on behalf of the parties struggled to design

a court order that both agreed to because of the complexity of the law relating to the jurisdiction of the Valuation Appeals Board for this matter, because the law provides that a different Valuation Appeals Board is to be convened for each and every GV and SV. Seeing that in this case the valuation challenged was not the valuation on only one roll but was a valuation on four different rolls, it was tricky to figure out how precisely one board would be convened for four different rolls, especially where boards had already been convened for those rolls in prior years.

Conclusion

At the end of the day, however, the legal representatives came to an agreement as to the wording of the court order, which was handed down by agreement between the parties, and provided for one revaluation as aforesaid to replace all prior valuations for the currency of the 2008 GV period. In this manner the applicant saw justice done and the order granted will, for all intents and purposes, stand as a precedent for any consumer who finds themselves in the same position in the future. ■



By Chantelle Gladwin, Partner and Thando Mabasa, Associate, Schindlers Attorneys Conveyancers Notaries

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The financially pre-qualified buyers are also at an advantage in having access to the valuation report because they can inspect the property armed with the valuation report and see the property through the eyes of an unbiased and independent expert pointing out any anomalies and issues that may require attention. They will be aware that the mortgage financier will also see a copy of the valuation report and that the lender is likely to accept this valuation when the buyer applies for a loan.

Buyers will be made aware of the value-to-loan ratio likely to be imposed by the lender based on their financial information and they can correctly arrange their finances accordingly, and will know that they are getting value for money for the home they are purchasing as evidenced by the valuation report. ■

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