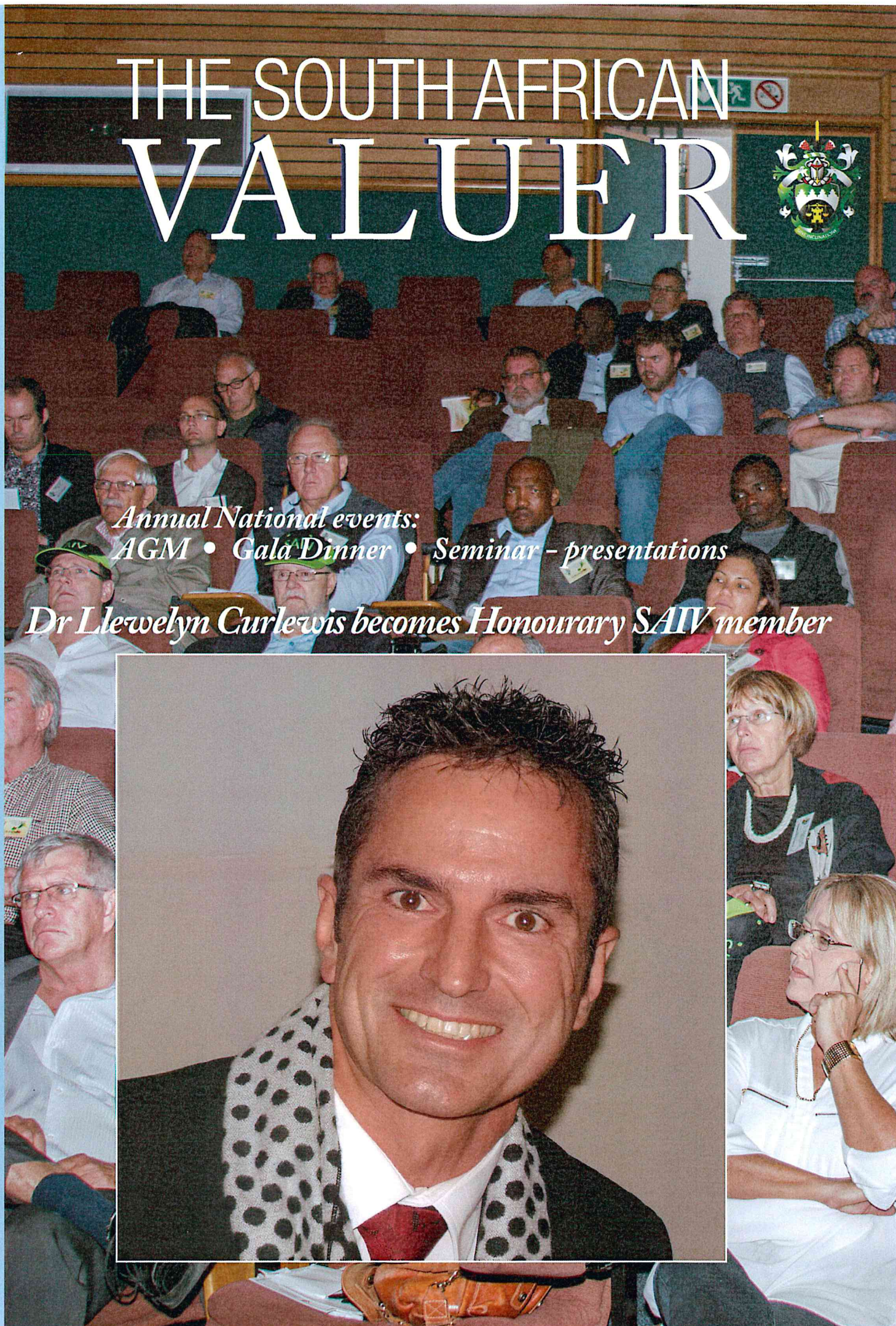


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TIPPING THE SCALE:

THE REMOVAL OF THE PUBLIC'S INTERNAL VALUATION REMEDY

Introduction

This article explains how the implementation of the Local Government: Municipal Property Rates Amendment Act No. 29 of 2014 (the Amendment Act) will affect consumers, and why the removal of the consumer remedy, provided for in section 80 of the Local Government: Municipal Property Rates Act No. 6 of 2004 (MPRA), although not the disaster that it was originally envisaged to be, will still prejudice consumers in a manner that the authors regard as unlawful.

Section 80 of the MPRA

Presently section 80 of the MPRA provides that any person (including a municipality) can approach the MEC for condonation for the late filing of any appeal or objection in the MPRA (or indeed for the failure to have done anything prescribed by the MPRA timeously).

This remedy is of vital importance to consumers who were unaware of the very strict time periods provided for in the MPRA and stipulated by the municipality for the filing of objections and appeals in relation to property information that appears on a property roll. The MPRA prescribes that a minimum period of 30 days must be allowed for consumers to inspect a property roll and object to it, and further that a minimum period of 30 days must be allowed for a consumer to file an appeal following an outcome received in respect of an objection decision.

Most municipalities, however, provide for slightly longer objection and appeal periods, of anywhere between 35 and 60 days. A failure by a consumer to lodge an objection or appeal within the prescribed time periods will result in that consumer being prevented from being able to challenge the offending valuation or categorisation, as the case may be, at any point in the future, unless that consumer is able either to apply for condonation for the late filing from the MEC, or to apply to have their property information re-visited on a subsequent supplementary roll and have any changes applied retrospectively to the commencement of the present general valuation roll.

Without this remedy (or another similar remedy providing the necessary relief) consumers who have 'missed the boat' so to

speak, would then be prejudiced inasmuch as they would be billed for property rates calculated on an incorrect valuation or categorisation for the remaining duration of the general valuation roll (which could be up to five years).

The Amendment Act

The Amendment Act has essentially removed the ability of the public to make application to the MEC for condonation for the late filing of an objection or appeal. However, the Amendment Act leaves it open to municipalities to continue to apply for this remedy. At first glance this appears unfair – why would the legislature give a right to a municipality to apply for permission for the late filing of an objection or appeal, but refuse that same right to a consumer? It feels manifestly unjust and unfair to require a consumer (who is seeking permission to file a late objection or appeal) to have to expend the necessary money and effort in approaching a court for relief, when this remedy is available to a municipality at no cost.

Furthermore, it is questionable whether a court would even have the authority to grant a consumer the ability to lodge an appeal or objection late, as courts are generally bound to make orders within the prescripts of the legislation that they are interpreting. In the absence of any challenge to the provisions of the legislation itself declaring those provisions unconstitutional, a court would be bound to make its judgment based on the wording of the act concerned. In this particular case the act (the MPRA) does not provide that a court has the power to grant a consumer permission to file an objection or appeal late. This would mean that a court may find that it has no power to condone the failure to lodge in the strict time periods prescribed, leaving a consumer with no other option to remedy the problem, other than to follow the mechanisms as provided for in the MPRA in the strict time periods that they are available for, to avoid a situation where it is necessary to investigate the mechanisms available to apply for permission or condonation to lodge an objection/appeal late.

Does section 78 present an adequate alternative remedy?

Section 78 of the MPRA is also being amended by the Amendment Act. Up until 30 June 2015 it could not possibly have assisted a consumer in remedying a prior incorrect valuation. However, the amendments to section 78 (which also commenced on 1 July 2015) now provide that when a property valu-

ation is reduced on any supplementary roll, the effective date of that increase or decrease will be the date that the property was incorrectly valued (provided that it is valued in terms of section 78(1)(e) – which refers to properties substantially incorrectly valued during the last general valuation). This means that from 1 July 2015 onwards, it is now possible to rectify an incorrect property valuation retrospectively to the commencement date of the general valuation roll, by putting the property on a subsequent supplementary roll. This has largely negated the need for the consumer remedy provided for in section 80 in relation to incorrect valuations that do not stretch back past the commencement of the current general valuation roll.

Section 78 further provides that the effective date of a change to a property categorisation is the date on which the property categorisation changed. This should be interpreted to mean the date on which the physical state of the property that gave rise to the occasion to amend the rating categorisation occurred. If this interpretation is followed then section 78 has always (and will continue after 1 July 2015) provided for relief to consumers who are seeking a retrospective change in their rating categorisation, because following a successful objection/appeal procedure declaring that the property categorisation has changed, the change will be backdated to when it actually happened.

So to recap, the newly amended section 78 will allow a consumer to backdate a reduced valuation to the commencement of the general valuation roll and it will also continue to allow (as it always has) for retrospective application of a categorisation change. Why then would consumers even need to apply to the MEC at all for condonation for the late filing of anything, when they can simply fix the problem by putting the property on the next supplementary valuation roll?

The answer to this is simple – consumers who need to deal with an incorrect valuation or categorisation on a prior general valuation roll (that has already closed) cannot make use of section 78 to assist them, unless the municipality actually publishes another supplementary roll – which it won't – because municipalities are of the view that it is not lawful to make changes to a prior general valuation roll after the next general valuation roll has already commenced. The authors are of the view that a roll never closes and that a municipality can always open another supplementary roll (but that is the subject of another article by the same authors and is hotly contested by municipalities). Further, the amendments to section 78 facilitate the handling of late lodgements to this effect in a manner that is now more effective than ever.

But short of municipalities opening further supplementary rolls to general valuation rolls that have already closed, where a consumer is seeking to rectify a problem that dates back past the commencement date of the current general valuation roll, that

consumer's only remedy (in the form of section 80) has, from 1 July 2015, completely vanished.

The ultimate result of the above is that any consumer who has filed an objection or appeal late and who seeks to remedy an incorrect valuation or rating categorisation on a prior general valuation roll, will probably, after 1 July 2015 (when the Amendment Act came into play) be completely precluded from ever rectifying same.

Tipping the scales: Has the legislature gone too far?

In order to assess the lawfulness of the above, one needs to question whether the municipality too has lost the ability to rectify a problematic valuation contained in a prior general valuation roll. The answer to this is unclear as the amended section 80 still allows a municipality to make application to the MEC for condonation for not having complied with any provision of the MPRA timeously. So a municipality could, when notified by an objector that there is a problem with a valuation or categorisation on a prior valuation roll, apply to the MEC for condonation for filing a late objection to its own roll. The authors are advised that this is how certain municipalities are choosing to manage the future dispensation, although whether this will happen in practice or not remains to be seen. If a municipality in question doesn't come to the party to help, what then?

Ultimately the authors are of the view that the removal of the section 80 consumer remedy will turn on the issue of whether it is lawful for any person (a municipality or a consumer) to effect changes to information contained on a prior general valuation roll. This is a complex and lengthy debate, and the subject of another article by the same authors, to be released shortly. To the extent that a court finds that there is no bar to this, then it is submitted that the removal of the section 80 remedy insofar as consumers are concerned, is unlawful, as it causes prejudice to them inasmuch as the right of a consumer to apply for condonation to rectify an incorrect valuation or categorisation on a prior general valuation roll has been completely destroyed by the Amendment Act.

Conclusion

Until such time as a concerned citizen or organisation approaches a court to declare the amended section 80 unlawful and strike it down, consumers can, from 1 July 2015 onwards, no longer approach the MEC for condonation for the late filing of an objection or review. Whether this is lawful or not will remain to be seen. ■

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