



Memo

MINISTER OF HOUSING, SPATIAL
PLANNING, ENVIRONMENT &
INFRASTRUCTURE.

To : Secretary General of Parliament, N.R. Guishard-Joubert
From : Minister A. Meyers
Cc : Cassandra Jansen, SG-Secretariaat Council of Ministers
Date : 13/05/2016

STATEN VAN SINT MAARTEN			
Ingek. 17 MAY 2016			
Volgnr. 15/749/15-16			
Par.			

Subject : Ontwerp Landsverordening tot wijziging van de Landsverordening ruimtelijke ontwikkelingsplan in verband met her herinvoeren van artikel 28a (ZJ 2015-2016-084) (IS/422/2015-2016 d.d. 14 januari 2016)

Dear Ms. Guishard-Joubert ,

Kindly find attached answers to the questions posed in the 1st and 2nd round while handling the subject matter in the Central Committee meetings of March 24 and April 18, 2016.

Should you have any questions, please feel free to contact me or my Cabinet.

Yours sincerely,



Hon. Minister Meyers

Minister of Housing, Spatial Planning, Environment
& Infrastructure

Questions from the Central Committee meeting 18 April 2016 (2nd round), re. the law proposal for: Reinstatement of Article 28a of the Zoning Ordinance

MP Theo Heyliger:

1. Please explain the role of Mr. Geert van der Leest.

Mr. Geert van der Leest is a Policy Advisor at the Policy Department of VROMI and the acting Head of the Department.

2. MP Heyliger gave certain examples of cases where it should be considered regular maintenance and insists that in the interest of transparency, the law needs some more detailed specifications about when a permit would be necessary, and requests if the Minister can specify the detailing of for example the length of the road, or the norms for cutting of land, to avoid that for every single activity a permit would be needed.

The sentiments of the MP are noted, however the Ministry is not of the opinion that this needs to be further detailed in the text of the law proposal. As was indicated in the answers to the questions in the first round, the limitative listing of works in the law proposal relates to such works or activities that may be regarded as major or profound and may drastically alter the situation in an irreversible manner, whereas this is also adequately elucidated in the Explanatory Memorandum. It is furthermore emphasized that it pertains the reintroduction of a law that was in effect and in force for 12 years, while it is not the intention to implement the law differently than it was done in the past.

MP George Pantophlet:

3. MP Pantophlet stated that the law is needed but should not be used to put the citizen in uncomfortable situations. The Minister explained that if no response is given within the timeframe, it is regarded as a fictitious rejection. As a legislator we should look at this to amend it. In other cases if the Government does not respond, then it should be regarded as granted. This is wrong.

Madame Chairlady, contrary to what MP George Pantophlet has indicated, and if I am wrong then I stand to be corrected, I know of no examples in our legal system wherein, if the Government does not respond to a request in a timely manner, then the request is automatically considered as granted. It may have been an interpretation given to the procedures to obtain certain permits in the past, such as even a building permit, however this was a wrong interpretation and it was certainly not regulated in the law that this was the case.

The position of the MP and as also other members of Parliament having expressed this as a concern is duly noted and acknowledged. However, the concept that the permit can then be regarded as issued if no timely response is given is not the premise of our legal system, and quite frankly it can be very dangerous and is certainly ill-advised.

The principle of legal certainty requires, that a fictitious denial, or the counterpart, a fictitious awarding, of a requested permit, needs to be based on the law. Current VROMI legislation, does not incorporate any fictitious aspects with regard to denying or awarding a requested permit. This means that the general rule of Article 3, section 3 of the National ordinance on Administrative Appeal Proceedings (LAR, A.B. 2010, GT no. 1 and A.B. 2010, GT no. 30), is applicable. The LAR stipulates that: (-)"Whenever the by law stipulated time to give a decision has expired, without a decision being given, or in case of the absence of such a stipulated time, whenever a decision is not given within a reasonable time, this is considered as the denial of giving a decision."

For example:

Article 21, section 1 of the Building ordinance, states that: (-)"Without prejudice to the application of the former article, as soon as possible but before one month after the request has been submitted, thereupon shall be decided."

This means that if no decision has been given within one month by the Minister of VROMI, the submitted request is considered denied. This denial can be appealed at the Court of first instance within 6 weeks.

It should be noted that the LAR and this provision to consider the permit as denied is designed specifically in the interest of the applicant, to allow the applicant the legal recourse to force a decision from the Government by verdict of the Court, or even the recourse of the Ombudsman, to prevent perceived misuse of power by the Government by excessively delaying a decision on an application for a permit.

In any case, the concern of Parliament is duly noted and the ministry will try to work on more specific guidelines within the Department of Permits to accommodate this valid concern of the Parliament and to offer a better and more expedient service to the public.

4. Does this 60 days response time apply for Civil works permit or Building permit or both?

The 60 days applies to the proposed Civil Works permit. The period of 30 days mentioned in connection with the building permit is proven to be not feasible.

5. What about if the tree is on a list of monuments, can we still cut the tree?

If a tree is designated on a list of protected monuments, and as for now there are no trees to my knowledge specifically designated on a (published) list of protected monuments, then a so-called Monument Permit is needed from the Minister of Culture to allow cutting, removal or otherwise changing a protected monument. As stated, the Civil Works permit refers to the

felling or clear-cutting of trees, not for the cutting of a tree. It should be noted that in the past there was a policy in place related to the prevention of cutting of large trees, measured by the diameter of the trunk. However the legal premise for this has also expired for now and it will be up to the Government to determine if it sees the need to reintroduce such a policy in the future.

6. Regarding controls, the Minister indicated that there is enough man power; how many persons are doing the inspections? It is important that the individuals indicate which articles of which law they are quoting when approaching citizens.

At present, the Department of Inspections of VROMI consists of 6 Inspectors, 2 Head Inspectors and one position of a Head Inspector being vacant. The Ministry is currently working on the development of a more transparent Inspection and Enforcement Policy, as a guide for the work of the Inspectors, as well as for the public to better understand their rights and obligations and the responsibilities and authorities of the Inspectors. Furthermore, it should be noted that the majority of the Inspectors have been trained as Extra Ordinary Officers of the Law, the so-called BAvPol, and as such are knowledgeable about the use of the relevant legislation and articles that govern their work. Of course there is also more room for learning and upgrading, this is a work in progress and will be dealt with through further training of the Inspectors.

7. Will the MP get a response on the issue if he informs the Minister (see question/answer 1st round)?

The MP should know that as Minister of VROMI I will certainly try my best to answer all questions and deal with any concerns brought forward by the members of Parliament.

MP Cornelius De Weever:

8. Statistics: since 2010, how many case of fictitious denials were there, how many appealed, how many approved thereafter, how many court cases, how many permits granted within the 60-90 day period (legal period)

Since 2010 there were no cases of Civil Works permits that were regarded as fictitious denials. There was one case, in 2015, of a "building permit" being regarded as a fictitious denial and challenged in court. The permit pertained to a complicated and contentious building permit case which involved objections from 3rd parties. The permit was actually granted before there was a verdict from the court, while in fact the Government at the time was not even aware that a court case was filed. In most cases where there may be a delay in the processing of permits, as was explained earlier, it pertains to cases where the applicants are given the opportunity to make corrections to a permit application, which otherwise does not meet code requirements and would normally be advised on for denial of the permit.

9. Is the current zoning consistent with the garbage collection area?

The answer is: No, the current garbage collection areas do not align with the boundaries of the proposed zoning plan areas. There are 8 garbage collection parcels, while for the purpose of the zoning, the island is divided into 13 areas. There is no specific reason for this.

10. L.B. Scott Road, the road was cut and someone was allowed to run their sewage into the road?

The specific case that the MP is referring to is not known to the Ministry, and it would help if the MP would indicate more specifically where this was done so that this can be investigated. There is one area along the L.B. Scott Road, where complaints of that nature were submitted. However this pertains to the draining of stagnant surface water from a property that is difficult to drain, due to the presence of wells in the area, and an otherwise high water table. In the interest of public health, to avoid breeding sites for mosquitos, it was decided to drain the property through the existing trench, which required the cutting of the road to allow the water to drain to the trench.

11. The MP requests that the Minister looks into the fictitious denials and make it more consistent. Give a realistic timeframe.

The Ministry has given serious consideration to the timeframe. It should be noted that when all information required for the processing of a permit is included in the application, the timeframe can be easily met. What is often the problem as regards the time it takes for a permit to be decided on, is when information is lacking and applicants are requested to supply such information, or when a permit application would require a correction or changes to the plans in order to meet the code requirements of the Government; in these case, often times it takes applicants quite some time to provide the required information or make the required adjustments to the plans. This time should not be regarded as the time needed to review plans. Furthermore, there is also often a problem with either the contact information of applicants or the mail system, where it concerns getting in contact with applicants to provide the required additional information or to make corrections. For this reason the Department of Permits tries to make much more use of telephone or email contact with applicants.

It was emphasized already in the first round of questions and answers, that the Ministry prefers to request applicants to make changes to plans if these are easy, because this is considered more client friendly than to deny a permit application simply if some information is lacking or if a change can be made to the application by the applicant.

MP Leona Marlin-Romeo:

12. Regarding to running water, the MP hopes that the prevention of flooding is properly addressed in the Storm Water Management Strategy, but it is still not clear to her what exactly is stated in that Storm Water Management Strategy.

Once again, the proposed Storm-water Management Strategy which has recently been presented to me for approval, includes certain specific structural measures that are direly required, such as construction and improvement of trenches and roadway drainage measures. An overview exists of the areas that are most urgent for the Government to address in this regard. Furthermore, the strategy also includes land use planning measures such as the guidelines to protect natural gutters, storm water management regulations to be included in new developments, as well as guidelines for works and developments that should be avoided that may have an adverse impact on the effects of storm water and flooding for residents and developments downstream. It is the intention that in future plans for extensive development of areas, such as subdivision of land for development that can have an impact on the drainage situation, that these guidelines as included in the strategy will be imposed on these subdivision plans. In this regard, the Storm-water Management Strategy will be published and made available online for all developers, so that these guidelines can be taken into consideration on forehand in the preparation of the subdivision or development plans.

13. Areas to be fixed (drainage) are related to budget; how much money is needed to execute these important things of capital investment?

In an advice dated July 17 2015, the Ministry of VROMI proposed that an amount of Naf 3 million be reserved annually on the capital budget for a period of 5 years, amounting to a total of Naf 15 million as capital budget over that period. That advice was put on hold due to uncertainty in capital funding at the time. That amount would represent mainly the hard-surfacing of various existing trenches, as well as other works, in order to minimize the risk of flooding in various lower lying areas.

14. The MP is wondering if the Minister ever addressed in the past, that numerous citizens have had issues when putting in their permit requests; what is in place to ensure that certain thing are not needed in order to get certain things done? What is being done now to ensure that the integrity of VROMI is being held now. Who can citizens complain to for the event of anything that is not according to the process and procedures.

What I believe that the MP is referring to is a matter of integrity. Quite frankly, I believe that as it pertains to issues of integrity within the Department of Permits, this is a matter of the distant past. There are procedures and checks and balances in place within the Ministry to prevent integrity breaches as regards the processing of permits. Furthermore, the institutional entity

currently in place to further deal with such matters is the Ombudsman, while there is currently also the proposal of an Integrity Chamber being dealt with.

MP Maurice Lake:

15. One of the biggest complaints is the time that it takes to process permits. The ministry needs to take this into consideration to stimulate investments and creation of jobs. We need to expedite the processing of permits.

The matter of processing permit applications in a timely manner has the full attention of the Ministry. Since 2013 a project was carried out to eliminate all permit back-logs since 2006, which was successfully carried out. At present, every effort is being made on a yearly basis to avoid the creation of any new back-logs. In that regard, it is emphasized that there is no back-log unless there are cases that need attention from the applicants, in the form of supplying additional information or making corrections to plans that would otherwise not be approved. Once again, this is in an effort to have as many permits as possible approved, rather than rejected for minor problems of non-conformance to code. The time that the permits are delayed usually relates to the time it takes for applicants to make the required corrections or supply the information needed.

16. Storm-water management in the area of St. Johns. As per the UNESCO-IHE report, we need to consider making the Mary's Fancy area a rain water retention area.

I can inform the MP that there are plans to consider making a rainwater retention area in the area of the Emilio Wilson Estate. This matter is identified in the Storm-water Management Strategy, however also in this case, the prioritizing of resources will play an important role.

MP Rudolph Samuel:

17. At times, assisting members of the community can go a long way. If the department can help the persons with advice as to which direction to go, this will help more.

The suggestion of the MP is noted. I can inform the MP that the Department of Permits does have consultation with applicants when needed, in the form of a helpdesk, to give advice on the manner in which permit applications can be amended to fit within the code requirement.

18. Concerning page 3 and 4 of the writing of the Council of Advice: What will the Minister do with these points?

I believe that the MP is referring to the remark of the Council of Advice that concerned citizens will not have the possibility to review an application for a Civil Works permit, because the application is not put on public review. The Government has chosen the system in this case, as will be applied in the future also to building permits and to all other permits, whereas the approval of the Minister to an application for a permit will be placed on public review and can be contested by concerned citizens. Obviously in the case of the denial of a permit, the applicant can appeal the decision, but in the case of the approval of a permit, the decision will be placed on public review and Concerned citizens will have a period of 6 weeks within which they can appeal the decision to approve the permit. In this case, the Government has sought to align the law proposal with the National Ordinance on Appeal Proceedings (LAR), which stipulates that all decisions of permits can be appealed within a period of 6 weeks. For this reason, the decision needs to be published and placed on public review.

**Questions from the Central Committee meeting 24 March 2016, regarding the law proposal for:
Reinstatement of Article 28a of the Zoning Ordinance**

MP Rudolph Samuel:

1. Requests clarity on Ordinance of the Netherlands Antilles, which one is being replaced?

There is no ordinance that is being replaced. The current National Ordinance on Spatial Development Planning or so-called Zoning Ordinance (AB 2015, GT no. 9), was preceded by the Island Ordinance on Spatial Development Planning, (A.B. 1993. nr 13). The latter mentioned Island Ordinance was premised on the National Ordinance of the (former) Netherland Antilles of 1976 (P.B. 1976, no. 195), which has since been replaced by the National Ordinance entailing regulations concerning the foundations for spatial development planning (AB2013, GT no. 403). The current proposal entails an amendment to reinstate a provision in the zoning ordinance (AB 2015, GT no. 9), that actually had already existed and was fully enforced between 2000 and 2012 for 12 years, namely the provision to require that a permit be requested and issued for the execution of certain types of works that could have a significant impact on the land or on the environment. With the expiration of the provision in 2012, it has become very difficult for the Government to adequately manage the spatial development.

2. The MP requests a copy of the former Netherlands Antilles Ordinance.

A copy of the old ordinance could not be provided at this time, however a copy of the Consolidated Text of the mentioned ordinance in the current form applicable for Sint Maarten at this time is provided.

3. For the activities/works mentioned, for example for a person digging up their land for agriculture, would that also need a permit? Or building a shed in the back of the house? There are no guidelines in the ordinance to indicate what you need or do not need to have a permit for.

The description of the relevant works regards excavation, raising, grading and blowing up of the earth as in the use of explosives. It is mentioned in the Explanatory Memorandum of the proposed amendment to the Zoning Ordinance, that this article applies to radical or major activities (Dutch: *'ingrijpende werkzaamheden'*). In other words, it is clearly not the intention that a civil works permit will be required for minor activities, such as digging up land for normal yard work or agriculture. It is also emphasized that Article 28a, when it was previously in effect, was unambiguously applied in this manner for 12 years, and this never led to any major issues. Article 28a, section 1 provides a limitative list of activities, and as such, building construction is not one of the activities included in this list. A civil works permit is therefore not required for the construction of a shed in the back of the house, because building construction is specifically

governed by the Building Ordinance, while the proposed amendment to the Zoning Ordinance does not make any changes in this regard.

4. Article 4 or Section 4, the minister can give permission, means that the Council of Ministers is not the body that will give the permission. The MP Proposes a change that the Council of Ministers has a say in this. Sometimes things take too long, as much as a year to obtain permission for works. If these works can be mentioned in the law somewhere it would clarify.

As is the case with building permits and all other permits that govern spatial development, it is proposed in the amendment to the Zoning Ordinance, that the concerned Minister (of VROMI) would grant the permit. As regards the timelines, for legal security of the citizens or applicants, it is stipulated that a request for a civil works permit shall be dealt with within sixty (60) days and may be delayed for a maximum of thirty (30) days (Article 28a, section 6). If no decision is made within this timeframe the request is considered to be denied, and the applicant may use the legal recourse of the National Ordinance on Administrative Appeal Proceedings or the so-called LAR. To be sure, to require a decision of this nature to fall under the responsibility of the Council of Ministers, as it would to require any other permit within the area of spatial development, would serve to make the decision making procedure more lengthy, which is in my opinion clearly contrary to the intention of the MP in this case.

MP Theodore Heyliger:

5. The MP finds that the proposal is a very broad and far reaching article and too open ended. If one is excavating 2 or 3 feet or building walls on the property, do you need a permit? Do you need a permit to pave a road to your house, or want to repair an existing road. What if a tree falls in your yard? The MP Requests to look into the possibility for more specific itemization of works so that this is not too broad.

It is reiterated that Article 28a, section 1 provides a limitative list of works or activities regarded as major or profound that require a civil works permit. The construction of walls and construction in general, with the exception of infrastructure works such as the construction of a road, is not mentioned in article 28a, and therefore does not require a civil works permit, as these types of works are already specifically governed by the Building Ordinance; nothing changes in this regard.

A civil works permit, in line with the Explanatory Memorandum, relates to profound activities only, that otherwise may drastically alter a situation in an irreversible manner. The construction of a driveway to a home, which is considered infrastructure works may require a civil works permit, depending on the nature of the works. However, even this is most often already taken into consideration in a building permit, and as such would not require a separate civil works permit. Repairing a road or clearing an uprooted tree also does not require a civil work permit since this is considered normal maintenance, and not works substantial in nature. The draft

Amendment Ordinance refers to the felling or clearing of trees, such as in the form of clear-cutting.

Considering the foregoing, the Government does not consider the description in the reinstatement of the Article 28a to be too broad and/or open-ended. Furthermore, it is emphasized that the reintroduction of Article 28a does not intended to hamper development, but to provide for better means in order to ensure that activities will be carried out in a responsible manner and in the sole interest of proper spatial development. For example, reference is made to the clearing and removal of topsoil of a large hillside parcel across from the hospital, or the excavation works that were taking place in the corner of Arch Road near the property of the late James Marlin, and there are other examples we can mention. These particular developments triggered widespread concern among the community of Sint Maarten for possible landslides waiting to happen in the case of torrential rainfall. Because of the expiration of article 28a, after 12 years of successful implementation, the Ministry had insufficient means to impose erosion control measures in order to proactively protect the surrounding properties, but would more than likely have had to clean up the disaster, if this had indeed occurred. These are cases where there was (and could still be) an accident waiting to happen, while the hands of the Government are tied; this should not be the case.

6. Do you have the man-power in the ministry to deal with all of these requests.

The answer is simply: yes. The Department of Permits as well as the Department of Inspections has been handling and dealing with these kinds of requests for 12 years with a smaller formation compared to the current man-power available. Currently the formation of the Permit Department is up to par while the amount of permit requests has decreased relative to several years ago. As a result, sufficient capacity is available in order to effectively handle the civil works permit requests.

7. Is it the intention of charging for the request that is submitted?

Yes, in the Explanatory Memorandum of this ordinance for amendment, it is mentioned that NAf 150 will be charged for the processing of the request and NAf 150 will be charged for issuing the permit, in accordance with Chapter 39, section 1 and section 5 of the Rates-Table of the Fees Ordinance (*Legesverordening* AB 2013, GT no. 33) . Also in this case, the charge has remained exactly the same amount as has been charged when the provision to the ordinance was in effect and implemented for 12 years.

8. How is the ministry intending to get income from these activities.

The Ministry is not intending to get income from these activities. The fees aforementioned are intended to cover a part of the processing costs or man-hours for the permit applications, to a maximum of NAf 300. The actual costs involved will likely be higher, but will be taken along in the regular operational costs of the Ministry. However, it should be taken into consideration

that this is not intended as a revenue generating measure, but simply as a measure to be able to manage spatial development by ensuring that the types of works in question, when executed have minimal or more manageable adverse effects for the surroundings. The reinstatement of Article 28a is budget neutral because the costs involved will be absorbed by the operations of the departments involved.

9. More specific criteria are necessary for the works being carried out.

For this I refer to question 5 as posed by MP Heyliger.

MP Lloyd Richardson:

10. Why can't the projected zoning plan be just executed at once?

The process to prepare and establish a zoning plan is a lengthy procedure, and can also be a complex procedure. For the various areas, the process to establish such zoning plans are in different stages of preparation. Therefore reinstating Article 28a is essential to have the civil work permit procedure in place on short term and for entire Country Sint Maarten at the same moment. It should be noted that for various areas where Planning Permits are currently in effect, civil works permits are required for these types of works based on the planning permits. Furthermore, indeed when a zoning plan is put in effect, Article 28a will no longer apply for the area of the zoning plan, because the zoning plan will regulate the types of permits, such as civil works permits, that may be required based on the zoning plan. The proposal for the reinstatement of Article 28a is intended as a provision for the void that currently exists, so that in areas where a planning permit, or preparatory resolution, or a zoning plan does not exist, there are still some legal means for the Government to scrutinize these types of "radical" works that could have an irreversible impact on the surroundings.

The fact that the preparation of zoning plans is often a time consuming process is a given. The zoning project has been underway now for some 3 year plus. And while I certainly intend to expedite the preparation process, this does not eliminate the fact that the preparation, taking all valid concerns into consideration, can take significant time.

11. The article expired 4 years ago; what scope of time can we expect before the eventual zoning plans come into play?

The preparation of the zoning plans is a phased process, wherein the various plans (13 in all) are in varying stages of preparation. While I anticipate that at least 3 of the plans will be approved by the Council of Ministers in 2016 and presented to Parliament for handling, if the Government and Parliament are committed to the process, then it could take up to 2018 for all the zoning plans to be presented for approval by Parliament. Optimistically 2017 could be suggested, but this may be unrealistic, especially for some of the more complex areas.

12. The issue of specificity. What about the rectification of pre-existing works carried out? People who now want to execute these works will be subjected to more extreme conditions than those who did not have to, so what about those that already carried out works?

Within the rule of law new legislation applies to new activities, and for legal protection it is not intended to give the proposed reinstatement of article 28a any retroactive effect. Therefore, works already carried out are not affected.

13. Explain how far, and to what extent this can happen. For example pumps to drain an area that need some hard-surfacing. This law should not put the population through undue hardship in getting certain things done. The paper work will increase while there is a capacity shortage. This should function well and not just as an obstruction, but to facilitate those doing so to get their work done timely without delay.

There is absolutely no intention to put the population in undue hardship by creating additional paperwork, and in that regard I agree fully with the MP. Therefore, as explained, a civil works permit is only required for activities of radical or profound nature and may only be rejected in view of the general interest, such as when the activities will cause irreversible damage to the property, the surrounding properties, the environment, or hamper expected or desired spatial development of the area. Furthermore, the amount of civil work permits requests should not be overestimated. In the period 2008-2012 an average of 20 civil works permits were requested annually. The Permits Department has sufficient capacity to process these applications.

MP George Pantophlet:

14. Where did the Netherlands Antilles get their law (1976) from?

It is not known where the National Ordinance of the Netherlands Antilles originated, but it is assumed that this is based on the legal framework of the Netherlands at the time. For the same token, it should be recalled that the mentioned national ordinance was declared in effect for the former Island Territory Sint Maarten in 1993, upon the request of Sint Maarten. Based on the Explanatory Memorandum of the Island Ordinance it is further assumed that it was requested to declare the National Ordinance effective for Sint Maarten, as a premise to enact the Island Zoning Ordinance, because the Government of Sint Maarten felt the need to have some better legal tools at hand to manage the spatial development of the island at the time.

15. With respect to the issue of controlling, people feel as if they are being targeted.

As Minister of VROMI I can say that I ensure that persons are not targeted, but that all applicable legislation and policies are enforced equally and fairly across the board. Furthermore,

I invite the MP to inform me of any cases where he feels that this may not be the case, so that this can be investigated and dealt with.

16. Are the Inspectors doing their job fairly, is each and every individual being treated fairly?

I believe that this question was answered in the previous question.

17. Why does it take so long to get zoning plans in place? Why zoning plans?

A zoning plan is a means for the Government, through Parliament, to establish the longer term development intentions for specific areas and a legal instrument to ensure that these plans can be facilitated. This is a process that the Government may feel is necessary as a legal instrument to manage the general interest of the country as regards spatial planning and spatial development. For example, recently the Parliament discussed and emphasized the importance of preparation for the phenomenon of Climate Change. Much of the issues related to Climate Change within the context of Sint Maarten have a spatial component, such as the prevention of flooding, and zoning plans present an opportunity of a legal framework to assist the facilitate the interests of Government in this regard. However, zoning plans, especially in the case of Sint Maarten, more often than not, affect private property ownership and great care should be taken with decisions that affect private property ownership.

Based on the Zoning Ordinance the government has undertaken to prepare zoning plans to manage the spatial development of Sint Maarten. The zoning plans have the purposes to provide a legal framework for possible future development, to designate and/or reserve land for desired use, to prevent undesired development and to offer legal security to residents about expected future development. The process to prepare and establish a zoning plan can be a complex and lengthy procedure based on the legal requirements of the care that the Government should demonstrate in such process as well as the required public consultation. In our specific case on the zoning plans currently in process, some delay was caused by the fact that new members of the Committee of Experts had to be appointed by National Decree. Furthermore, in the interest of thorough consultation with stakeholders, the Government has had two rounds of town hall meetings for each zoning plan prior and in addition to the legally prescribed consultation process. Although these consultations lengthened the procedure, it is considered important that zoning plans reflect as much as possible the input from the community.

Lastly it is noted that frequent changes in government, almost by definition are a delaying factor in the execution of long term projects like the process of establishing zoning plans. For reference, the project to prepare the zoning plans has thus far been executed under the responsibility of six (6) separate and successive Ministers in a period of less than six (6) years.

18. What happens when persons build ignorant of the law that is not compliant with the law that was built several years ago?

Building construction is specifically regulated by the Building Ordinance, that provides sufficient (legal) means to effectively enforce illegal building activities. It has not been the policy of the Government thus far to deal with possible illegal construction that has taken place years ago, but rather to concentrate on new construction activities.

19. Why is it that you cannot get your permit in a timely manner? What is the legal timeframe to get an answer on your permit?

With respect to civil works permits, the legal timeframe is mentioned in Article 28a, section 6. The Minister has to decide within 60 days and this period may be extended once, with a period of 30 days. The additional period of 30 days, will typically be applied in complex and relatively large developments that may also require external advice, which also takes time. For example, advice from the Fire Department may be requested in relation to the accessibility for emergency vehicles when the construction of a road network is being requested.

The experience has been also that possible delays may be caused by required revisions that are requested by the Permit Department prior to final decision making by the Minister of VROMI. This may, for example, be the case if drawings are incorrect, but could be revisited during the process. Despite the risk for delays, this is considered to be a much more client friendly procedure than simply rejecting a request, when a drawing has an omission that can be corrected. However the process of correction by the applicant or architect may take some time.

MP Maurice Lake:

20. It should be more specific, it should reflect our situation and not of the former Netherlands Antilles.

The proposal to reinstate the Article 28a as a means to better manage the spatial development by requiring a permit for certain specific works of profound nature is something totally reflective of the Sint Maarten situation, and based on the experiences of Sint Maarten, given the 12 years during which this provision was previously in place and enforced.

21. The timeframe needs to be faster for approval.

The indicated timeframe is the maximum timeframe; requests will be processed as soon as possible, and in cases when it can be faster than the indicated timeframe, this will be done by all means.

22. The permits should fall under the Minister of VROMI.

This is indeed the intention.

23. In terms of cutting of historical trees. There is no legislation to follow up, so this is a good basis for such.

The reinstatement of Article 28a provides a legal basis to this end.

MP Hyacinth Richardson:

24. Is there any district now that has zoning already? St Peters, Cay Hill?

The only zoning plan that is currently fully in effect is for the peninsula of Fort Amsterdam. The 3 draft zoning plans for Simpson Bay, Cay Hill – Little Bay and Cul de Sac were approved by the Minister of VROMI, and placed on public review; and, some objections were received. The Independent Committee of Experts has submitted an advice on the draft zoning plan for Simpson Bay and this advice is currently under review by the Ministry of VROMI. The draft zoning plans for Cay Hill – Little Bay and Cul de Sac are still pending the advice from the Independent Committee. After the advice of the Independent Committee of Experts has been taken into consideration by the Council of Ministers, the draft zoning plan needs to be channeled through the process for approval of legislation by the Parliament, which also includes a review by the Council of Advice.

25. Some residents want to do some work on their home, small additions, etc, will this ordinance affect that.

The answer is: No; this proposed amendment to the Zoning Ordinance does not affect that. Additions and changes in the construction of the existing building, depending on the exact size and nature of the construction, may require a building permit, in accordance with the Building Ordinance.

26. Will it affect persons in all areas the same?

The answer is: Yes. Where applicable, the reinstatement of Article 28a to the Zoning Ordinance will be uniformly enforced.

MP Cornelius De Weever:

27. Committee of experts, who is in the committee and how many members are there?

The new formation of the Independent Committee of Experts was established by National Decree (A.B. 2015 no.1) on March 13th 2015. The Committee consists of Chairlady: Mrs. Eveline Henriquez- Dijkhoffz, members: Mr. Ronald Daal, Mr. David Morrison, Mr. Brian Deher, Mr. Tadzio Bervoets, with 2 replacement members: Mr. Arun Jagtiani and Mr. Frank Carter, and as Secretary: Mr. Eunicio Martina. A copy of the decree is provided.

28. How long has the development plan been in process?

Effectively the process started in 2012 with the first series of town hall consultation meetings.

29. Why do we need this ordinance when the zoning plans are in process?

The fact that the zoning plans are not yet established and article 28a has expired has resulted in a legal void. The reintroduction of Article 28a will be essential in order to provide a solution to bridge this gap and to avoid undesirable and irreversible developments, while the process of preparation of the zoning plans are underway.

30. Since 10.10.10, how many objections have been filed and what was the outcome?

It is assumed that this question relates to objections to the zoning plans. A total of 28 objection letter were filed with respect to the draft Zoning Plan for Simpson Bay. 2 objections were filed regarding the draft Zoning Plan for Cul de Sac, and a total of 8 objections were filed regarding the draft Zoning Plan for Cay Hill - Little Bay.

The Minister of VROMI received the advice from the Committee of Experts regarding the draft Zoning Plan for Simpson Bay in January of 2016. The Ministry of VROMI is currently reviewing the Committee's advice on the process in order to proceed. The Ministry of VROMI did not receive an advice from the Committee regarding the draft zoning plans for Cul de Sac and for Cay Hill- Little Bay as yet.

31. The MP is concerned about the sewage plant

This question is unclear, however a sewage plant is not affected by this proposed ordinance.

MP Sarah Wescott Williams

32. In the correspondence was mentioned that 3 draft development plans were placed on public review, which are these and what is the status; what happens now? Also other development plans have been approved technically, which are these plans and what are the steps to be taken with respect to these development plans moving forward?

As was previously indicated, the 3 draft development or zoning plans placed on public review are those for the areas Simpson Bay, for Cay Hill – Little Bay and for Cul de Sac. An advice has been rendered by the Committee of Experts on the objections submitted with respect to the draft zoning plan for Simpson Bay, and the advice of the Committee is under review by the Ministry. The Government is still awaiting the advice from the Committee of Experts, as pertains to the draft zoning plans for Cay Hill – Little Bay and for Cul de Sac.

In terms of moving forward, the intention is to make some adjustments to the draft zoning plan for Simpson Bay and thereafter to present the plan to the community in an information session.

Subsequently the draft zoning plan will be submitted into the legislative process to eventually be tabled for consideration and approval by the Parliament.

The other areas for which separate zoning plans are being prepared concern: 1) The Hillside Conservation Areas, 2) Cole Bay, 3) Cay Bay – Billy Folly, 4) Dutch Quarter, 5) Middle Region, 6) Dawn Beach, 7) Over the Pond – Sucker Garden, 8) Point Blanche, 9) Greater Philipsburg and 10) Lowlands. One of the main and fundamental issues noted by the Committee of Experts with respect to the draft zoning plan for Simpson Bay, is the lack of an island wide strategy for spatial development to place the detailed zoning plans within a broader and more comprehensive perspective. It is anticipated that this will be a recurring point, therefore the Ministry of VROMI has accelerated the ongoing preparation of an overall and island-wide Spatial Development Strategy, which is ready in draft, as an overall cohesive plan for the spatial development of Sint Maarten. The precepts of the Spatial Development Strategy will be incorporated into all the other plans, and the intention is to place the other plans sequentially on public review after the organization of public hearings to get feedback from the communities and stakeholders on these plans, as a start to the legal process to establish the draft zoning plans as law.

33. What is the status of draft development plans when placed on public review?

A draft development plan, when placed on public review signifies that it has been substantively reviewed and approved by the Minister of VROMI. After a plan is placed on public review it affords the area in question a protective status for a period of 90 days if no objections are filed or 150 days if objections are filed. Pursuant to the placement of a plan on public review, depending on the objections that may be submitted and the subsequent advice of the Independent Committee of Experts, the draft plans may be subject to revisions. Eventually the (revised) draft zoning plans should be submitted to Parliament for final decision making.

34. Provide some more motivation to the differentiation between (re)introducing the Article 28a and not the planning permit procedure.

While the proposed reinstatement of Article 28a concerns a permit procedure pertaining to the proposed execution of specific civil works as mentioned in section 1 of the article, the legal provision for the so-called planning permit procedure, which was governed by articles 21 – 28 of the Zoning Ordinance, for which the legal premise indeed also expired on 8 January 2012. However, the planning permit in substance and procedure can be regarded as a miniature zoning plan, being a plan initiated by a private land owner with the intention to develop property with multiple buildings or to subdivide land with the intention for development. In the absence of a zoning plan, it was regarded at the time as necessary to have some provisions to regulate, through a sort of zoning regulations for smaller parcels of land, the manner in which land could be used and developed.

With the ambitious start-up of the zoning project in 2012, it was not regarded as necessary to reinstate the planning permit procedure, as it was anticipated that within soon the need for

such a provision in the law would be obsolete. While the same rationale could be used with the provision for the civil works permits, as regulated by article 28a of the Ordinance, it has proven by the pace of the preparation of zoning plans as a result of the complexity of the procedure, and by the pace of development on Sint Maarten, that there is a need to reinstate the requirement for the Government to scrutinize certain works that are profound or radical in nature and to require that a permit such as the civil works permit be obtained for such works.

35. A drainage masterplan for Sint Maarten and amendments to the Zoning Ordinance, where do we stand and when will they go on review?

A draft comprehensive Storm-water Management Strategy has been prepared and was discussed in a Council of Ministers' meeting on September 22, 2015. Decision making on the proposal was placed on hold by the Council of Ministers pending budgetary discussions between the Minister of Finance and the Minister of VROMI. The draft Storm-water Management Strategy has since then been adjusted to fit better within the structural financial constraints of the Government, and the adjusted plan strategy will be resubmitted to the Council of Ministers for handling within short.

It is uncertain of which amendments to the Zoning Ordinance the MP is referring, other than the current proposal for decision making. However, it can be mentioned that a comprehensive review is being carried out of all legislation within VROMI regarding administrative law, and these will be updated within what can be regarded as a proposed new National Ordinance VROMI. This ordinance aims to modernize the legislation of VROMI, regarding zoning and development, housing and building, environmental protection, waste and waste water management as well as uniform sanctions and enforcement in general, into one comprehensive umbrella ordinance titled: the VROMI National Ordinance. A draft of this umbrella ordinance has been completed and is currently under review by the Department of Legal Affairs and Legislation.

36. What are the priorities as regard drainage on the island? Even a small rainfall can have dire consequences for Sint Maarten.

The priorities regarding drainage are outlined in the Storm-water management strategy that was previously mentioned. The proposed measures in this strategy include structural measures that are direly required, such as construction and improvement of trenches and roadway drainage measures. However the strategy also includes land use planning measures such as the guidelines to protect natural gutters, storm water management regulations to be included in new developments, as well as guidelines for works and developments that should be avoided that may have an adverse impact on the effects of storm water and flooding for residents and developments downstream. However, as regards especially the execution of the drainage priorities, the Achilles heel of the Government of Sint Maarten is always the difficulty to secure the financial means necessary for the required investments. The structural investment possibilities, due to budget constraints always seem to fall short of the real needs as a result of

years of unbridled development, especially in areas like the hillsides and natural waterways without appropriate, though often very costly measures needed to contain the adverse downstream effects. As a result, the prevention of flooding in low lying areas during rainfall events has become a great challenge for the Ministry and a nuisance of sometimes great proportion to residents.

In this, the importance of the reinstatement of Article 28a, even as a temporary measure to ensure that the Government has some means to carefully scrutinize infrastructure plans of substantial nature and to ensure that these plans entail adequate provisions to address important issues such as mitigation of downstream flooding, erosion control to prevent landslides in the case of torrential rains and maintenance of some vegetation to assist in the absorption of rainwater.

37. What have been done with the recommendations of the 2 studies done as far as flooding is concerned. UNESCO-IHE report and the report of Recovering Lost Ground? What is the Ministers feeling on this report and what are some of the priority areas?

The UNESCO-IHE reports were reports commissioned by the Government of Sint Maarten and are important reports that study and model the drainage patterns within the areas of study, as well as provide fundamental recommendations about the approach of the Government with respect to the management of drainage in the event of severe rainfall. The recommendations often include physical measures that should be taken, but also policy recommendations that should be implemented. Several of the recommendations of these reports have been executed, such as the construction of the new floodgates between The Fresh Pond and The Great Salt Pond, the increase of the pumping and discharge capacity from The Great Salt Pond, and even the construction of rainwater retention basins in certain areas. However, the recommended physical measures as projects are being carried out on a rather ad-hoc basis depending on among others, resources, the availability of funds as well as availability of land, or often also the lack of cooperation of land owners and private developers. While in the more distant past the approach towards private land developments was a liberal one of *laissez faire - laissez aller*, which was arguably appropriate for the times, the approach of the Government in the more recent past has too often been in the form of negotiating with landowners and developers from a much too compromising position. This has been to the detriment of the quality of the infrastructure and of the so-called downstream developments in lower lying areas that more often than not experience the more severe brunt of the excessive rainwater runoff and flooding. However, many of the recommendations of these studies have been incorporated in the Storm-water Management Strategy that was previously mentioned and should be approved within short.

As regards the report entitled 'Recovering Lost Ground', this is an internal VROMI report of 2011, albeit a harshly honest representation of the state of play as regards drainage, sewage and solid waste management on Sint Maarten. The report was prepared in preparation for discussions with the Dutch Government at the time, about possible funding in these areas to

recover from what is evidently lost ground caused by lack of funding and investment possibilities of the former Island Territory of Sint Maarten, but also by an inherent neglect and lack of awareness in some of the areas mentioned previously. The insights provided by the report have also been incorporated to the degree possible within the Spatial Development Strategy mentioned earlier and in the Storm-water Management Strategy, also mentioned earlier.

38. What are we to do with the prioritized matter as regard the drainage projects for Cole Bay, Union Road, etc.

These measures are also included in the Storm-water Management Strategy, and depend on the prioritization of funds to execute the projects.

MP Leona Marlin:

39. Questions also relating to Sucker Garden in follow up to the questions of MP Wescott.

The hard-surfacing of the trench in the area Over the Pond East, originating along the Arch Road and traversing the residential and semi industrial property along the north side of the Great Salt Pond, is included as a measure in the Storm-water Management Strategy, and is also subject to prioritization of the available funds for capital investment.