

31 July 2020,

Notes on the reinstatement of article 28a of the Zoning Ordinance

[slide 1] I have the privilege today to present to the Parliament, the proposal for the reinstatement of the so-called article 28a of the Zoning Ordinance.

[slide 2] The main function of the Zoning Ordinance, is to allow the Government to establish development plans, commonly referred to as zoning plans to better manage and guide the spatial development of the country. In the case of Sint Maarten, having an economic development concept that has been the envy of many of our neighbors, this has led to the migration of persons from all parts of the globe to participate in the development of the country. [slide 3] This has also resulted in Sint Maarten becoming the most densely populated country of the Caribbean in a relatively short period. The result is also a high demand for land for spatial development with competing land uses, and a scarcity of developable land leading to very high land values.

[slide 4] While high land values are beneficial for land owners, the other side of the coin is that certain sectors of the society have great difficulty in accessing land for adequate and affordable housing. [slide 5] This has led to the tendency to develop the green landscapes of the hillsides, that by their nature are difficult and expensive to properly develop, and therefore are cause for many undesired hillside developments that leave severe irreparable scars on the landscape.

[slide 6] The Zoning Ordinance was established as the Island Ordinance on Spatial Development Planning (A.B 1993, nr 13) in 1993, and has since been transformed into a National Ordinance of Country Sint Maarten (AB 2013 GT no. 144). The Zoning Ordinance formerly included provisions that required Government approval for private subdivision plans, that are referred to as Planning Permits, as well as provisions for the Government to approve so-called "civil works permits" (Dutch: *aanlegvergunning*), for various types of civil works. The aforementioned provisions have expired in 2012. This new proposal is aimed at the reinstatement of the provision to require a civil works permit, which concerns Article 28a.

[slide 7] The reason that the requirement of a permit for civil works was originally established as a temporary provision in the Zoning Ordinance, was

because it was anticipated that these civil works permits would be regulated in zoning plans. While the Government has started with the preparation of zoning plans, the approach is a phased one, consisting of separate zoning plans per district, which will take several years for completion. The Government has started with the preparation of zoning plans for the various areas and districts, which are in different stages of preparation at this time. The first 2 plans area expected to be submitted to Parliament for deliberation within soon. However, because of the expected duration that it will take to approve all the zoning plans for the country, it is proposed to reinstate Article 28a, to require civil works permits, until such time that a zoning plan or a preparatory resolution is in place for a given area. Then, article 28a will no longer be applicable to those areas because the civil works requirement will be regulated in zoning plans.

In the interest of proper spatial planning and development, it is essential that certain profound civil works, like hillside excavations, construction of roads, land filling of water, or other works that affect water management, require a 'civil works permit' from the Minister of VROMI. This will enable the Government to review the planned works on forehand, to ensure that these do not cause undesirable and irreversible damage to the surroundings, and are carried out in an environmentally responsible manner. Because these kinds of civil works currently do not require approval by the Government from a perspective of spatial planning, it is proposed to reinstate Article 28a.

[slide 8] The handling of this proposal for the reinstatement of article 28a of the Zoning Ordinance has been pending for quite some time. The initial advice to propose the reinstatement dates from 2013. The proposal was submitted to the Parliament in January of 2016. Based on discussions held in the Central Committee, the members of Parliament wanted clearer guidelines concerning how the provision would be applied. The Government made an amendment to the original proposal to stipulate that that the requirement to obtain a civil works permit will pertain to "profound" or major works. This amendment is further clarified and elucidated in the Explanatory Memorandum.

Specifically, the reinstatement of Article 28a, pertains to the following works and activities, when regarded as 'profound in character':

- raising and excavating land,

- constructing of roads and pavement,
- activities and constructing works that impact the water management,
- felling and clearing cutting of trees,
- demolition of structures, and
- filling in of water.

[slide 9] In the Explanatory Memorandum, a further elucidation is given, with examples of what this entails and in what cases this applies. The reinstatement of Article 28a of the Zoning Ordinance does not mean that civil works can no longer be carried out. [slide 10] It simply means that these works will require approval from the Minister of VROMI, in the form of a civil works permit. A civil works permit may only be denied 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. [slide 11] The reintroduction of Article 28a is not intended to obstruct development, but is mainly intended to ensure that such works will be carried out in a responsible manner. Approvals by the Minister of VROMI include the possibility that the Minister of VROMI may impose certain conditions for this purpose.

In closing, I want to emphasize that the Ministry of VROMI will prioritize the completion of the zoning plans, in order to provide a more structural and longer term legal framework for spatial planning. The Ministry is in the process of preparing a Spatial Development Strategy, as an overall cohesive and sustainable plan for the spatial development of Sint Maarten. However, the reinstatement of Article 28a to the Zoning Ordinance is essential in the meantime, to provide a solution for the current legal vacuum and to avoid undesirable and irreversible developments, in the interest of a proper spatial development for the community of Sint Maarten.