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## **Property Law Update**

### **The ABC of town planning**

This article is one in a series on town planning. The series does not intend to provide an in-depth study of town-planning matters, but will rather provide a broad overview of the subject. The topics that will be dealt with in this series are rezoning applications, applications for the removal of restrictive title conditions, township establishment, Development Facilitation Act 67 of 1995 (DFA) applications and subdivisions.

In this series I will attempt to guide legal practitioners through the terminology of town planning without overwhelming them with the detail of each topic.

This first column will provide a broad overview of the extent of town planning and the manner in which a town-planning scheme affects the land uses that may be exercised on a property.

Town planning can broadly be divided into two main categories, namely

- 1** strategic planning; and
- 2** land-use management.

Strategic planning, more generally known as forward planning, is the planning done by provincial and local governments. This planning can be done either on a macro or a micro level. For example, the strategic development frameworks of municipalities are at a macro level while a policy for the development of business uses along a regional corridor would be at a micro level. These policies guide development in towns and are influenced by the budget and engineering services available in the areas of the municipalities.

Land-use management refers to the land uses that may be exercised on an erf without any permission from the municipality, those land uses that may be exercised only with permission from the municipality and also the conditions that will apply to each of these land uses.

Land uses are managed by what are known as town-planning schemes. Each municipality has its own, unique town-planning scheme. Therefore, before any development may be commenced on an erf, it will be important to determine whether the proposed land use is in accordance with the town-planning scheme.

Town-planning schemes consist of two parts:

- 1** A document with various sections dealing with matters such as building lines, coverage and special uses. In this document the control measures applicable to a certain zoning are set out.
- 2** A plan which covers the whole of the area to which the town-planning scheme is applicable and on which the zoning of each erf is indicated by way of hatching.

Each zoning is restricted to the following:

- 1** For which land use an erf may primarily be used.
- 2** What may be established on the erf only with the special permission of the municipality.
- 3** What may not be established under a specific zoning.
- 4** What building line, floor area ratio, density, etc, are applicable to a specific erf.

The land use rights which may be exercised on an erf can be illustrated by means of the following examples taken from the Krugersdorp Town Planning Scheme, 1980 (published alongside):

### **Example 1 – Primary rights**

The client wants to build a sectional title complex on the erf.

Column (3) lists the primary land uses ('uses permitted') which may be exercised on the erf. Each land use is defined in the town-planning scheme and these definitions should be studied to determine whether a specific land use may be allowed on the erf.

In terms of the town-planning scheme, dwelling units are allowed as a primary land use on the erf. The number of dwelling units is, however, restricted to a maximum of 44 units per hectare (column (6)). If the number of units, which the client wishes to build on the erf, does not exceed the maximum of 44 units per hectare and the development complies with the coverage, height and building line, then the client is entitled to develop as he intends and he may submit the building plans to the municipality. In most cases, however, a building plan has to be accompanied by a site development plan. This plan shows the aerial view of an erf (also known as the block plan) and is normally on a scale of 1:200.

The site development plan indicates the layout of the buildings, the storm water drainage, etc.

### **Example 2 – Secondary rights**

The client wants to build a crèche on the erf. In terms of the town-planning scheme, a crèche is defined as a 'Place of Instruction'. In the town planning scheme a 'Place of Instruction' is dealt with in column (4). This implies that a crèche may be operated only with the special consent of the municipality. Application must be made to the municipality for its consent to use the erf for a 'Place of instruction' and only once the municipality has consented to the land use, may the crèche be established on the erf. The procedure to be followed to obtain the special consent of the municipality is set out in the town-planning scheme. It usually requires that the application must be advertised in a local newspaper and that notices have to be displayed on site for the duration of the advertisement period, etc.

### **Example 3 – Land uses not permitted**

The client wishes to develop the erf for a shopping centre. A shop does not fall within the ambit of any of the primary land uses permitted under column (3) nor of the secondary land uses permitted under column (4).

The next step then is to determine under which of the other zonings provided for in the town-planning scheme, would a store be permitted. In this case, a store may be accommodated in any of the business zonings, that is, 'Business 1', 'Business 2' or 'Business 3'. The difference in these zonings lies only in the intensity of the land uses. The table below provides a comparison between two such zonings:

|                  | <b>Business 1</b> | <b>Business 2</b> |
|------------------|-------------------|-------------------|
| Coverage         | 90%               | 60%               |
| Floor area ratio | 5.0               | 0.8               |

The municipality must be approached to determine which of the zonings will be supported in the neighbourhood in which the erf is located. Should the municipality support it, an application for the rezoning of the erf from 'Residential 3' to, for example, 'Business 3' can then be lodged.

| Use zone                | Notation on map "A" series | Table "A" (uses)   |   | Table "A" (densities)      |                                  |                                    | Table "C" (Height) height zone "O" | Table "D" (Coverage) (Height zone "O") | Table "E" (building lines)       |                               |   |
|-------------------------|----------------------------|--|---|----------------------------|----------------------------------|------------------------------------|------------------------------------|--|----------------------------------|-------------------------------|---|
|                         |                            | Uses permitted   | Uses permitted only with special consent of local authority | Notation on map "B" series | Max no of dwelling units allowed |                                    | Maximum Floor area ratio (FAR)     | Max height allowed in storeys          | Max coverage allowed as % of erf | From street boundary (metres) |   |
|                         |                            |  |   |                            | Number per nett ha.              | One per erf area (m <sup>2</sup> ) |                                    |  |                                  |                               |   |
| (1)                     | (2)                        | (3)  | (4)   | (5)                        | (6)                              | (7)                                | (8)                                | (9)                                    | (10)                             | (11)                          |   |
| III<br>RESIDENTIAL<br>3 |                            | Dwelling units with or without outbuildings<br>Residential Use |   |                            |                                  | 44                                 |                                    | 0.6                                    | 3                                | 40                            | 8 |
|                         |                            |  | Hotel   |                            |                                  |                                    |                                    | 0.8                                    | 2                                | 40                            | 8 |
|                         |                            |  | Place of Public Worship                                     |                            |                                  |                                    |                                    |  |                                  | 50                            | 8 |
|                         |                            |  | Place of Instruction  |                            |                                  |                                    |                                    | 0.8                                    | 2                                | 50                            | 8 |
|                         |                            |  | Social Hall   |                            |                                  |                                    |                                    |  | 2                                | 50                            | 8 |
|                         |                            |  | Institution   |                            |                                  |                                    |                                    | 0.8                                    | 2                                | 50                            | 8 |
|                         |                            |  | Special Use   |                            |                                  |                                    |                                    |  |                                  |                               |   |

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