

Re-zoning: Conveyancer's explanations for entrants to property development

Each parcel of land in South Africa is uniquely categorised as belonging within a certain zoning area, and the zoning types can range from residential, industrial and agricultural to recreation, mining, educational and mixed-use. Zoning regulations are municipal rules that essentially dictate what the respective parcels of land within the jurisdiction of that municipality, may be used for and how it may be developed. In each instance, the permissible uses of the relevant property will be defined in the relevant municipality's By-Laws.

Accordingly, when a property owner wants to develop or use property for an activity or purpose that is not allowed in terms of the zoning that applies to that property, the municipality must be approached by way of an application for re-zoning of the relevant land.

Rudimentary legislative framework

A nationwide framework for land use planning, including zoning and re-zoning, exists in the form of the Spatial Planning and Land Use Management Act. In turn, every municipality is empowered, in terms of the Act, to make its own By-Laws regarding land use and land use planning within its jurisdiction, including zoning and re-zoning allowances, amongst other things.

Considerations that affect a rezoning application

A host of factors are relevant when these applications are considered, and in each event, it will depend on the specific circumstances. The following are some of the usual criteria:

- *The current nature of the property's zoning area and the proposed change*

Each zoning type has different aims and requirements that apply in respect thereof. These will impact on the type of land use deviations that may be allowed and the extent thereof. For example, it is usual for developers and home owners to re-zone a property in a residential area into that of a small business. On the other hand, it may prove to be insurmountable to attempt the re-zoning of a property in a quiet residential area to industrial to allow for a factory.

- *The applicable By-laws*

As noted, certain areas have more zoning limitations than others. As a result, a municipality's rulings in a particular area will take note of the existing limitations and the reasons therefore when considering a re-zoning application.

The rezoning application process

All municipalities do not prescribe the same procedures for a re-zoning application. Below we set out the basic steps that form part of most municipalities' requirements.

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- (i) A formal application must be made to which various supporting documents will be attached. It is usually a time-consuming and technical application and an applicant must be prepared to exercise patience and consider using the services of a town planner throughout. A fee will also be payable to the municipality for considering the application.
- (ii) If there are any restrictive conditions in the title deed of the property that prohibits the re-zoning being pursued, an additional application for the removal of restrictive conditions must be made.
- (iii) If the property is bonded, the bondholder's consent to re-zoning must be obtained before the application may be submitted to the municipality.
- (iv) Once an application is submitted, the municipality will assess it for completeness.
- (v) If it is found that the application is complete, an advertisement process will commence. Depending on the municipality concerned and its By-Laws, the re-zoning application may have to be advertised in the provincial Gazette, Government Gazette, newspapers, on-site and it is likely that neighbouring owners must be formally informed as well. (The latter applies especially where the re-zoning will affect properties in a residential area.)
- (vi) The application is then circulated to the relevant internal departments at the municipality for their respective inputs and comments.
- (vii) The council then reaches a decision, informs the developer (as applicant) as well as the public about the outcome.

Depending on the outcome, the developer and the public will have the chance to appeal. If in this period, objections are lodged against the application or the approval thereof, additional hearings and consideration processes will result, which in turn will prolong the period to finalise.

Once approved, the owner (developer) has to comply with the conditions as set out in the approval letter of any application. The developer will also be liable for the costs of any bulk contributions for engineering services raised by the municipality, following on its assessment of the increased usage of the property after re-zoning. The engineering departments only confirm in writing the amounts and conditions once the application is lodged and circulated within Council.

Town planners and property law specialists

Successful developments go hand-in-hand with engagement of a dedicated team, including a town planner and a property law specialist from the start.

The town planner is best equipped to guide you with the re-zoning process and to deal with

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the many technical complexities that arise.

The property law specialist will liaise with you and the town planner and guide you regarding various aspects that apply to the parcel of land involved and related financial implications. There are often issues regarding existing servitudes on the land and title deed conditions that a conveyancer should address early on. In addition, your conveyancer can guide you in your application for financing with a bank in respect of the property: The bank applies different criteria in respect of differently zoned land. Furthermore, if the property was previously zoned as residential and is to be zoned commercial but you, for example, will take up residence in the building as well, it may be possible that a bank will consider home finance for the commercial property.

Developer as purchaser: Remember this

When purchasing a property with the intention to develop it further, always make proper enquiry regarding the zoning and permissible uses within that zoning. The general rule is, as explained above, that an owner may not use property for any purpose other than that for which it is zoned. It is therefore advisable to consult with your property law specialist (conveyancer) early on, prior to signing the agreement to purchase. For buyers planning to re-zone, it may be advantageous to ensure that the agreement is made subject to the local authority's approval of the re-zoning or permission to use the property in a specific way, and to include a provision regarding which party shall bear the cost of the application.

Contact us at info@stbb.co.za for assistance or to speak to a member of our Development Law Unit.

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