

10 September 2021

MUNICIPAL ZONING LAWS VERSUS COMMERCIAL USE OF PROPERTY

In a recent court case decided in the High Court of South Africa, Limpopo Division, the importance of keen consideration for zoning laws and bylaws within a specific region, was once more highlighted. The aforementioned case, "Investec Property (Pty) Limited v China City Limpopo (Pty) Limited and Others", established an important precedent regarding the prioritisation of the use of a property for commercial/ retail purposes, versus the industrial use thereof as determined by a town planning condition.

In the abovementioned case, a lease agreement was concluded between the Applicant and the Second Respondent. In terms of a clause of the main lease agreement, the Second Respondent was entitled to use the property for the purpose of conducting its business- with the condition that such use did not contravene any town planning conditions or any laws or bylaws applicable to the property.

The Polokwane/ Perskebult Town Planning Scheme, 2016 (hereafter "the Scheme") however did find application on the matter as the Scheme allowed for only the following primary land uses: "Warehouse, Builder's Yard, Mortuary, Industry, Public Garage, Service Industry, Panel Beating and Scrap Yard". Any secondary land use rights had to be acquired through written consent from the Municipality.

The Spatial Planning and Land Use Management Act 26 of 2013 (hereafter referred to as "SPLUMA") is also to be considered and states that: "(1) An adopted and approved land use scheme-

- (a) has the force of law, and all land owners and users of land, including a municipality, a state-owned enterprise and organs of state within the municipal area are bound by the provisions of such a land use scheme;
- (2) Land may be used only for the purposes permitted-
 - (a) by a land use scheme;
 - (b) by a town planning scheme, until such scheme is replaced by a land use scheme; or
 - (c) in terms of subsection (3)".

The subject property was zoned "Industrial" in terms of the zoning certificate. It is furthermore common cause that the First Respondent did not conduct any of the abovementioned businesses on the subject property, but instead conducted retail-based business, which is in contravention with the Scheme and SPLUMA. The court therefore ordered in favour of the Applicant and the respondent was interdicted from conducting any retail activities on the property.

In conclusion, the abovementioned case is important to take note of, in that it sets

out the significance of considering potentially restrictive town planning conditions and zoning-related laws, bylaws and ordinances before entering into a new lease agreement.