

LAND USE ZONING TERMINOLOGY: "GYMNASIUMS" VS "FITNESS CENTRES"

Members may have been confronted with challenges pertaining to the interpretation of definitions in certain town planning/land use schemes, alluding to a "gymnasium" forming part of, say a "place of instruction". What follows is an interpretation of this often confusing combination of land use categories and the historic rationale from where it originated.

1. INTRODUCTION

- 1.1 Most Use Zones in a town planning scheme include a number of different purposes or uses in each zone. Typically for example, an Institutional use zone may include Institutions, Places of Public Worship and Places of Instruction. These are land uses which are permitted without the need for any planning or land development application and are commonly called "primary rights".
- 1.2 The permitted uses in a land use zone are usually defined in the town planning scheme where the various purposes of each use are described. Thus an Institutional use may include the purposes of a hospital, a nursing home and an orphanage. Similarly, a Place of Public Worship would include the purposes of a church, synagogue and a mosque.
- 1.3 The individual purposes in each land use category are however not always defined. This can lead to uncertainty and dispute. A particular case has recently arisen and which in a number of municipalities remains unresolved, is the land use purpose of a "gymnasium".
- 1.4 This memorandum sets out to clarify the proper meaning of the term gymnasium in the context of most town planning schemes.

2. PLACE OF INSTRUCTION

- 2.1 In many, if not most town planning schemes in a number of provinces (e.g. Gauteng, Natal and Mpumalanga), a "Place of Instruction" is a land use purpose which is included as a primary right in an Institutional use zone, an Educational use zone and in certain Business use zones. Thus a school or college, which is self-evidently a place of instruction, would be a permitted land use purpose on a school property, a hospital property and on a shopping centre site.
- 2.2 In almost all the town planning schemes in the provinces mentioned above and elsewhere, the definition of a Place of Instruction is practically identical. The definition is as follows:

"Place of Instruction" –
means a building designed for use, or a building or land which is used, as a school, college, technical institute, lecture hall or other educational centre, and includes a crèche, monastery, convent, public library, art gallery, museum and gymnasium.
- 2.3 Two aspects of this definition are notable. All the purposes listed, leaving aside for the moment a gymnasium, are related to some form of education, learning or study. This is logical as these purposes are instructive in nature. Secondly, again setting aside gymnasium, a Place of Instruction does not include any other land uses which are not educational or learning related.
- 2.4 The inclusion of a gymnasium as a Place of Instruction requires some explanation. Is it intended as a form of educational use activity or is it included simply because it is a sufficiently similar or related purpose that is convenient for town planning administration or zoning purposes?
- 2.5 The difficulty which arises is that a gymnasium is not specifically defined. It is necessary to understand what is meant by a gymnasium in the context of a town planning scheme and what was intended in the drafting of the scheme.

3. GYMNASIUM

- 3.1 Dictionary definitions of a gymnasium give two distinct and very different meanings. The first meaning is that of an educational establishment. The word has a German origin meaning a secondary school usually of an academic nature in preparation for university. This kind of gymnasium is familiar in South Africa in the examples of Paarl Gymnasium and Paul Roos Gymnasium which are well known high schools in the Western Cape.

- 3.2 The second meaning of gymnasium, which is now more commonly used is that of a building or hall used for physical exercise. This kind of gymnasium is now frequently referred to as a “fitness centre” when describing the premises of establishments such as Planet Fitness or Virgin Active.
- 3.3 In the past, a gymnasium for physical exercise was almost only found in schools, universities and in major sports clubs. They were not public facilities and were used for sports activities. It is only more recently, in the past 10 to 15 years, that commercial gymnasia such as Planet Fitness and Virgin Active have existed.

4. LAND USE ZONING

- 4.1 Land use zoning was introduced in South Africa when town planning schemes were first produced in 1946. That is very nearly 70 years ago and two generations before modern fitness centres were conceived.
- 4.2 It must be noted that the definition of a Place of Instruction including the term gymnasium is still exactly the same as in the original schemes and has not changed. It is quite impossible so long ago that the inclusion of the term gymnasium contemplated the fitness centres such as Planet Fitness and Virgin Active of today.
- 4.3 It has to be concluded that the “gymnasium” in the definition of a Place of Instruction only meant a school, college or similar educational institution when the town planning schemes were drafted. It should further be obvious to any student of town planning that a modern day fitness centre is not a compatible use in a land use zoning for educational purposes.

5. FITNESS CENTRE

- 5.1 A “fitness centre” is referred to here as a commercially operated establishment. It is a business enterprise which provides a service to the public of facilities for physical exercise. It is not a private club restricted to members only. A fitness centre is a business open to the public on payment of a fee. This is not a “gymnasium” contemplated in a town planning scheme.
- 5.2 A fitness centre is a relatively new kind of land use purpose. Town planning schemes have not been amended or the definitions changed to described this land use activity. As a result there is no specific provision in schemes for a fitness centre.
- 5.3 There is however zoning which provides for a fitness centre. Where a business zone provides for “business purposes” this would include a fitness centre.
- 5.4 Town Planning schemes generally define business purposes as:
- “the use of land or the use of a building for offices, a showroom, warehouse, restaurant and for other business purposes which are not elsewhere defined in this clause...” (emphasis added)
- The rule of interpretation is that if another business purpose is separately defined, such as a shop, an industry (which is a business) a public garage or a cinema, then such uses are not included as a “business” land use.
- 5.5 A gymnasium as a fitness centre is not separately defined. It therefore follows that a fitness centre is a permissible use in a zone which allows business purposes. In most Gauteng town planning schemes this is applicable in a Business 1 zone.

6. THE ISSUE

- 6.1 Difficulties have arisen in a number of different instances. In Kwa Zulu-Natal recently a municipality ruled that on a site zoned for business purposes a fitness centre was not permitted because the zoning did not include a Place of Instruction.
- 6.2 In Gauteng numerous municipalities will not accept a fitness centre on a property zoned Business 1 for the same reason. These municipalities insist on the property being rezoned to include a Place of Instruction. It was also argued in a recent appeal before the Gauteng Townships Board that a fitness centre is a Place of Instruction.

- 6.3 The above circumstances result in dispute, unnecessary rezoning applications and difficulties and delays with the approval of development plans. This situation needs to be clarified and the issue resolved. This is just one example in the administration of land use management where unnecessary time and costs can be avoided.

7. CONCLUSION

- 7.1 Clearly, a fitness centre as described in this memorandum is not a “gymnasium”. It is a land use purpose which is a business, both by definition and in town planning logic. It is a business providing a service to clients.
- 7.2 To interpret a fitness centre as being a Place of Instruction is an incorrect understanding of a town planning scheme and ignores the origin and meaning of the term gymnasium in the context of town planning schemes.
- 7.3 The historical background and proper reading of the town planning scheme is clear. A fitness centre (gymnasium) is not a Place of Instruction.

***The SAACPP thanks Les Oakenfull for this valuable contribution
5 June 2015***