

# THE SOUTH AFRICAN VALUER



*Annual National events:  
AGM • Gala Dinner • Seminar - presentations*

*Dr Llewelyn Curlewis becomes Honourary SAIV member*





# A MUNICIPALITY MAY CHARGE

## AN 'ILLEGAL USE' PROPERTY RATE TARIFF, IE IF A BUSINESS OPERATES AT A RESIDENTIAL PROPERTY

City of Tshwane v Blom 433/2012 [433/12] 86  
ZASCA [31 May 2013]

### Introduction

This issue herein relates to whether sections 8(1) and 8(2) confer authority on a municipality to add to the list of categories of rateable property by creating in its rates policy a category called 'non permitted use' or 'illegal use' and to levy a higher rate accordingly.

The issue arises because the Appellant has categorised the Second Respondent's property (zoned for residential purposes) as 'non permitted use' and levies a higher rate on the property than it levies on properties used for the purpose permitted.

The Second Respondent leased its property to a firm of attorneys ('the First Respondent') for business purposes. The City, detecting that the property was being used for business purposes (as opposed to residential purposes, which the property was zoned for) levied a non-permitted use rate on the Second Respondent's account for which the First Respondent, in terms of the lease agreement, was liable for.

### Supreme Court of Appeal

Subject to section 19 of the Act a municipality may levy different rates for different categories of rateable property determined according to the actual use of the property, permitted use of the property and the geographical area in which the property is situated.

Counsel for the Respondents argued that the list of rateable property is exhaustive and that the creation by the Appellant of a category of 'non-permitted use' was contrary to the provisions of sections 8(1) and (2) of the Act and that it was unfair to levy a punitive rate on the property.

The Court, however, agreed with the court a quo that the list of rateable property was not exhaustive and went a step further by holding that in the light of the ordinary rules of grammar and syntax, the context in which the words appear and the apparent purpose to which they are directed, it is clear that 'use' is wide

enough to include 'non permitted use'. Non-permitted use is a form of 'use' contrasted with 'permitted use' and therefore it is competent for the municipality to include in its rates policy a 'non permitted use' category for the purposes of determining applicable rates.

The SCA further rejected the Respondents' contention that the Appellant breached the audi alteram partem principle when it determined that the property's use falls under a 'non permitted use' category without any prior reference to the Respondents. The Appellant was not obliged to provide the Respondents with prior reference.

Furthermore, the SCA held that the court a quo was incorrect in its argument that a punitive rate imposed on the property as a result of it being categorised as 'non-permitted use' amounts to the imposition of a penalty without due process. A property owner who is aggrieved by a rate that has been levied on his or her property is not without a remedy, he or she can object within a stipulated period to the valuation and categorisation of the property (on the applicable General Valuation and Supplementary Valuation Rolls, as the case may be). The Respondents should have used the legal mechanisms provided for in the Act if they wished to challenge the correctness of the property categorisation and the rate determined. This they failed to do.

### Order

The Appeal was upheld with costs including the costs of two counsel. The order of the court a quo is set aside and replaced with the following: The Application is dismissed with costs.

### Value

The list of rateable property is not exhaustive and the municipality is competent to add new categories including 'non-permitted use' or 'illegal use'. Occupying a premises contrary to the provisions of the Town Planning Scheme is an offence and owners will be charged a higher property rate than for example on a 'Business and Commercial' or 'Residential' tariff. ■

By Gary Boruchowitz and Gabriel da Matta, Schinollers Attorneys  
Conveyancers Notaries