

Changing the Use of Land in Kenya

Under the new Constitution of Kenya, 2010, the County Government is now vested with the authority to ensure that land owned by county residents is used for the purposes it has been intended for by the Director of Physical Planning established under the Physical Planning Act. This means that if you intend to buy agricultural land and convert it into commercial use, you will be forced to seek approval for this kind of change of user of the land.

So what is the procedure for obtaining change of user?

Any person intending to change the use of land must first start by advertising the same in two local newspapers of wider circulation. The

purpose of this is so as to give a 14 days-notice to any person who wishes to object or make any comments regarding the proposed change of user.

After the lapse of the notice, if at all there are no objections or comments made, the applicant should then, through a duly registered planner, make an application to their respective County Governments for approval of change of user pursuant to Section 31 of the Physical Planning Act. This is done by way of filling a form known as a **PPA1** in which the Applicant will be required to give his details as the owner of the property as well as details of the property and its current use.

This application should be accompanied by a report known as a project brief/report which is prepared by a registered physical planner. The report should contain the development plan as well as particulars indicating the purpose of the development. Pursuant to Section 31(2) of the Act, this application is accompanied by development plans of the subject property as well as the particulars necessary to indicate purpose of the development. This report should also explain how the different interests in the subject property have been put into consideration

in view of the change of the use of land. This process of preparing a detailed project brief could take a maximum of 7 days depending on the scale of the subject property.

Upon receipt of the development application and project report, the county government shall within 30 days forward the same to the Director of Physical Planning and other relevant authorities such as the Land Control Board (where the subject property is agricultural). The County Government, subject to the comments of the Director of Physical Planning and the relevant authorities to which the application was forwarded to, and upon having regard to such other factors such as health and amenities may grant the applicant a development permission in form of a form known as **PPA2** or refuse to grant the development permission.

In case of refusal to grant the development permission, the County Government will inform the Applicant in writing, of the grounds of its refusal. The Applicant is then at liberty to appeal against the decision, to the relevant Liaison Committee established under Section 13.

After approval by the County Government of the change of user by issuance of a PPA2, the process does not end here as the applicant will

need to have the deed plans and the title deeds changed. Once the Applicant receives the PPA 2, they should endeavor to submit it to the National Land Commission for approval. The form is then circulated to the Director of Survey and the Director of Physical Planning for their comments. These comments are submitted by a licensed surveyor on behalf of the two directors. Once the comments have been submitted, the Applicant will need to get a valuer for purposes of enhancing the Land Rate.

Once the subject property has been valued and the Land rate determined, the National Land Commission Technical Committee will approve the development which is thereafter followed by a re-survey of the property for purposes of preparing a new deed plan and formulation of a new land reference number for the subject property which will then be approved by the Director of Survey.

With the re-survey and deed plans complete, the Applicant will then be required to surrender the old titles and the new deed plan to the registrar who then files what is known as a deed file. The registrar will then proceed to process a lease for the property with the new user included. The applicant is then required to commence development of the apartments within two (2) years from the date of approval.

Challenges

As earlier seen, the process of obtaining approval of change of user is quite lengthy and relatively costly. The Applicant may therefore need to have the necessary documents ready, such as the clearance certificates for land rates, before commencing the whole process as well as seek the services of professionals such as advocates, registered surveyors and planners.

What are the consequences of failing to obtain approval for change of user?

Change of user is a mechanism used by the government of Kenya to control the use of land in Kenya. Failure to obtain a change of user therefore may lead to repossession of land by the government. In addition, the government may require the owner of the land to restore the land in question to its original condition as was ordered by the Court in **Ocean Freight E.A Limited v Esmailji & Another (2004) KLR 463**



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