

Newsletter December 2009

Dear Member .

I hope this finds you and your loved ones well and happily enjoying a well deserved break.

For those of you who have not yet abandoned their e-mail for the year I wish to remind you of the AGM that will take place at the Munus hall in Waenhuiskrans Arniston at **10h00 on Monday 28th December**. For convenience and to avoid the congestion of last year arrangements have been made for multiple tables where you can register from 9h00.

A main topic of discussion at the meeting will undoubtedly be the Judgment in favour of your Association in the Court action against Verreweide. An extract from the Suidernuus is attached for your information if you haven't yet seen the article.



Hofuitspraak
(AFR).doc



Court Verdict
(ENG).doc

Crime in Arniston is also a hot topic. We will be having a presentation by Johan Smal on the issue during the meeting which you will surely find most interesting.

A full report on the other activities of your committee over the past year will also be available at the meeting.

If you are unable to attend the meeting in person you may appoint a proxy as long as the proxy is not a member and is not already holding a proxy. Only members who own property, have a Kassiesbaai house occupation right or their proxies, in person, may vote at the AGM. Only one vote per owner or occupation right holder.

Remember that if you have not already paid your membership fee for 2009 (ending 31 October 2009) you may still pay the fee up to the start of the meeting on the 28th without having your membership lapse.

Your Association must reinforce the overwhelming support its members gave for continuing to act at the highest level possible to protect their heritage and the wellbeing of the community of Waenhuiskrans Arniston. Your attendance at this coming meeting is therefore very important. Your voice must and will be heard. Please be there.

Kind regards,

Colin Bird

Court verdict: How does this affect the people of Arniston and Cape Agulhas?

The Cape High Court has just delivered judgement in the case concerning erf 599 at Waenhuiskrans/Arniston. All unlawful and unauthorised development on the erf has been declared null and void and the land must be returned to the Municipality. The court also determined that the Cape Agulhas Municipality and Verreweide have to bear the legal costs including those of the Ratepayers. The Ratepayers' Association (WARA) is receiving enquiries from people from all quarters about the meaning of this judgement and how it affects them. We present some of the most generally asked questions, with answers.

What does the court's verdict mean in terms of the residents and/or ratepayers of Arniston?

The court determined that the Cape Agulhas Municipality sold the erf in question, with business rights and views of the bay, without consideration of its market value, as is required by law. With the Municipality having sold the erf for R426 000, it was resold for an effective R4 million shortly after transfer. Both sales have been nullified. This means that the Municipality is now able to sell the erf at its market value, which means the Municipality, and thereby both the inhabitants and ratepayers, will be better off by millions of rands.

Why was it decided to take legal action?

WARA believed that the strategically situated erf 599 was sold below its market value at R426 000. The erf happened to be municipal property and the proceeds from the sale should have accrued to the ratepayers. The erf was subsequently transferred to Verreweide Property Development (Pty) Ltd., and Verreweide was sold to Robert Haarburger and his partners for an amount of approximately R4 million. The Cape Agulhas Municipality responded unsatisfactorily, and at times not at all, to objections raised by WARA in this regard, while the efforts to reach an agreement with Haarburger, who had illegally commenced building operations, were fruitless. This meant that there was no option but to take the matter to court.

Who were the parties involved in the court action?

WARA was the applicant. The defendants were Verreweide, the Cape Agulhas Municipality and the Registrar of Deeds. The Waenhuiskrans Action Group (WAG), which was established because Haarburger tried to take over WARA in an effort to prevent the court action, later became a party to the action as a second applicant.

What happened during the hearing?

WARA applied for an interdict when Verreweide continued with building operations while the amended building plans had not been approved and the provisions for rezoning had also not been met. Judge Willem Louw approved an interdict in the Cape High Court on 22 April 2008, pending a final court judgement on review procedure. The building operations were then halted.

What happened afterwards?

The Waenhuiskrans Action Group (WAG) was admitted as party to the court case. WAG had been established because WARA feared that Haarburger was planning a take-over of the ratepayers' association by attempting to enrol 116 persons, many of whom depends on him, as new members and instructing them to vote as he wanted them to vote. He would then – "whether by fair means or foul", according to the judge – be able to prevent the court case and set aside opposition to his development of erf 599. His efforts failed, however.

And then?

The review case was continued and acting judge Madelein de Swardt announced judgement on 19 November 2009, pronouncing that WARA and WAG were in the right in almost every instance. The judge set aside the transfer and rezoning of erf 599, as well as the amended building plans.

Who has to bear the legal costs?

Judge De Swardt instructed Verreweide and the Cape Agulhas Municipality severally to pay the legal costs of WARA with regard to the final hearing. Verreweide was instructed to pay the WARA and WAG costs concerning the other applications.

Does the half-finished structure on erf 599 have to be demolished?

Judge De Swardt found that Verreweide was "the author of its own misfortune". If Verreweide and its shareholders had acted with reasonable vigilance, they would have adhered to the provisions of the Act on Municipal Financial Management. If the municipality still wanted to develop erf 599, there would be no reason for not recommending the process from the start. According to the judge, the existing building has to be demolished in part or as a whole.

Did the Cape Agulhas Municipality act correctly?

The judge found that there had been ostensible collusion between the then municipal manager, Keith Jordaan, and Verreweide/Haarburger. Jordaan, as a public official, was obliged to act in good faith, but he had not been impartial or objective. When it came to his attention that the rezoning of the erf had lapsed, he instructed

municipal officials to backdate the approval of the Verweide building plans. The court found that Verweide had commenced construction before its amended plans had been approved. That a municipal official was party to such inappropriate action is seen as a serious reflection on the municipality.

Is it normal for a municipality to become actively involved in such a court case?

It is highly uncommon, as a municipality works with the money of its ratepayers and usually simply submits to a court judgement in such cases. In this instance, the Cape Agulhas Municipality became involved, however, by giving instructions to a senior advocate.

Was WARA amenable to negotiating a settlement?

WARA continuously indicated willingness to come to an agreement.

What was or is WARA's view with regard to provisions for a settlement?

WARA is of the opinion that what is effectively a four-storey building is inappropriate for erf 599 and that the plans for the development can be adjusted. WARA also believes that the fishing community as permanent residents of the town could be directly advantaged or empowered.

Is WARA ready to collaborate with the Municipality in the future?

WARA and WAG, in having acted in the public interest and in viewing the lawsuit as a test case in terms of the new Act on Municipal Financial Management, welcomes the judgement by which all unlawful and unauthorised development on erf 599 was nullified. The judgement in the Cape High Court is seen as a triumph for the whole Waenhuiskrans/Amiston community, therefore WARA and its aesthetic committee would be glad to collaborate with the Cape Agulhas Municipality in a coordinated manner in the future. Reciprocal good faith and adherence to the Constitution and the laws of the country will be essential for the future successful and harmonious development of this unique town.

Is it possible to start collaborating immediately?

It is probably not possible. Mr Haarburger has indicated that he intends to submit an application for an appeal. The Cape Agulhas Municipality has done the same. Observers comment that the Municipality's application for leave to appeal is strange, because it makes no sense financially. The judgement by the court means that the Municipality is better off by millions of rands. In spite of this, the Municipality desires to oppose a judgment which is strongly in its favour financially. The municipality, by appealing the judgment, will be spending even more money on legal costs to try and prevent receiving what could be many millions of rand!