

**Waenhuiskrans Arniston Ratepayers Association
Waenhuiskrans Arniston Belastingbetalersvereniging**

25 November 2015

Dear Members

SALE OF ERF 599, ARNISTON

Members were recently circulated with a translation of the minutes of the Cape Agulhas Municipality ("CAM") council's meeting on 27 October 2015 when it was decided that CAM enter into a settlement agreement with Verreweide Eiendomsontwikkeling (Edms) Bpk ("Verreweide") relating to outstanding issues between the parties. I subsequently wrote to the municipal manager requesting a copy of the deed of settlement and the municipal manager replied on 4 November 2015, which reply we also circulated to you. A copy of the deed of settlement was not made available.

On Thursday 19 November 2015, we, for the first time, received a copy of the settlement agreement which I attach hereto for your due consideration. The settlement agreement appears to settle all the matters between CAM, Robert Ivan Haarburger, the Arniston Hotel and Verreweide (in liquidation) under various case numbers.

The WARA executive and other interested parties have taken legal advice on the terms of the settlement agreement and the advice is that the legal representatives are of the view that the settlement agreement appears to be unlawful, irregular and stands to be set aside.

The Arniston Bay Consortium (Pty) Ltd ("ABC") a company of which Robert Haarburger is the sole director, has purchased the claims of Verreweide against CAM and it is substituted as the party with whom the settlement is concluded and which will become entitled to the benefit of the settlement. Of interest to the members is that an unincorporated entity called the Arniston Bay

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Consortium was awarded the right to develop Erf 599 in April 2003; it was later substituted by Verreweide.

In terms of the settlement, CAM undertakes to pay in settlement of the claims of Verreweide (now ABC) the sale price of Erf 599 subject to a maximum of R9,5 million. ABC (or its nominee) is obliged to participate in the auction and bid up to at least R9,5 million (assuming there are other bids above the reserve price). Should ABC be the successful bidder, and if the price obtained on auction does not exceed the amount of R9,5 million, then CAM will receive no money in return for the property.

Members will recall the history of this property when WARA was obliged to institute proceedings against both Verreweide and CAM to

- (i) prevent the illegal construction of the building thereon, for lack of duly authorised plans and
- (ii) ultimately to have the property transferred back to CAM.

WARA was successful in an interim interdict to stop the building of the construction thereon and further to have the property returned to CAM. Verreweide applied for leave to appeal against the judgment to the Supreme Court of Appeal. The application was refused, it thereafter applied to the Constitutional Court for leave to appeal against the judgment. That application was also refused.

Accordingly the High Court, confirmed by the Supreme Court of Appeal and the Constitutional Court found that the property should revert back to CAM for the benefit of the inhabitants of the area controlled by CAM and accordingly also for the benefit of all ratepayers which CAM is obliged to serve. We are concerned that the consequence of the settlement will be to alienate Erf 599, to the detriment of all ratepayers.

The legal advice we have taken with regard to the claims of Verreweide against CAM referred to in the settlement agreement (and now taken over by ABC) is that the claims are without merit, and have little or no reasonable prospects of success.

Subsequent to the High Court finding that the property must be returned to Verreweide, CAM requested a forensic report regarding actions of certain officials of CAM, as alluded to by Mrs Acting Justice De Swardt in her judgment as being "*ostensible collusive*" dealings in the conduct of the matter. We have requested a copy of this forensic report as it might also be relevant to what has subsequently transpired with the property. CAM has not provided a copy of the forensic report to us.

On 11 November 2015, and before we received a copy of the settlement agreement we requested CAM to give an undertaking that pending the resolution of a review application to set aside the settlement that it would undertake not to proceed with a public auction of Erf 599 and further that it would not proceed to give effect to the settlement agreement or the implementation thereof. CAM has failed to give such an undertaking.

Over the weekend of 20 November 2015, and without CAM or its legal advisors informing us thereof, it became public that Erf 599 is to be auctioned on 9 December 2015. There is no reason why the property has to be auctioned in such undue haste. It seems that CAM will not receive any funds from the auction/sale of the property, the first R9.5 million to go to ABC, this on a property that CAM values at R5.3 million! It is highly unlikely that in these financial times the property will obtain a price of almost double the price of its fair market value as contended by the municipality. A serious issue regarding the settlement is that in reality there can only be one purchaser, ABC or its nominee.

CAM's decision not to agree to the auction being stayed pending the resolution of the review proceedings fortifies our concern regarding the settlement. WARA has also been unable to obtain a copy of the conditions of auction. On enquiry on Monday 23 November 2015 the auctioneer stated that the conditions of auction were not yet available.

Unfortunately, because of the stance adopted by CAM it is necessary for WARA to institute legal proceedings to interdict the auction so as to protect the rights of all ratepayers, not only of Waenhuiskrans but of the entire municipal area against CAM's possible misuse of its funds and assets.

The envisaged litigation will be in two stages: first, to interdict the alienation of Erf 599 by CAM. Secondly, to review and set aside:

- (i) the decision of CAM to conclude the settlement
- (ii) the conclusion of the settlement agreement by CAM
- (iii) the decision of CAM to alienate Erf 599.

We shall also consider whether there are grounds to review and set aside the decision of CAM to rezone Erf 599.

In all litigation the costs are substantial and we accordingly have to look to all our members to contribute to finance this litigation. We request our members to generously donate to the litigation. Members can request that their donations be confidential and in this regard the identity will be known only to myself and the secretary. WARA's banking details are as follows:

Waenhuiskrans Arniston Ratepayers Association
Bank: First National Bank
Branch: Bredasdorp
Branch Code: 200112
Account No: 51793707635


We are advised by our legal representatives that they are of the view that the whole process adopted by CAM since it was decided to enter into settlement negotiations with the various parties referred to, should be investigated and

that all the steps taken to give effect thereto be considered and if necessary reviewed.

Naturally this matter is urgent and members are requested to donate as soon as possible.

Members will be kept advised of developments.

Yours faithfully,


Murray van Heerden