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Newsletter 3-2008

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Dear Member

You will have noticed that work on the building opposite the camp site (erf 599) has stopped. This is because the Cape High Court issued an order that the developer cease building operations pending a judicial review of the processes followed by the Cape Agulhas Municipality (CAM) in the original sale of the land and in the approval of the building plans. This follows an application brought by your Association arising out of its mandate from members at the AGM last December.

In his ruling, the judge indicated that there are solid grounds for believing that both the original sale of the land and the building being erected are illegal. CAM is therefore required to present to the court all documentation surrounding the original sale and the approval of the plans for review. If the evidence proves that the sale of the land and present structure on the site were illegal it is likely that the plans for the rest of the building will have to be modified to comply with the conditions of the zoning. In addition, there is a possibility that the property will have to be transferred back to the Municipality.

It is most unfortunate that the developer chose to start building without approved plans. It is even more unfortunate that the CAM chose not to take any action and apparently allowed construction to recommence without first ensuring that the building work could comply with approved modified plans and the applicable conditions of re-zoning.

The present situation has arisen entirely as a result of the CAM disregarding comments and questions from this organisation, the Conservation Association and many individuals over the years since this property was first put out to tender. Considerable cost, time and energy on all sides could also have been avoided if the rules applicable to all of us had been followed in the first place.

I doubt any of us are happy to have been forced into the present situation. After we turned to legal action as a last resort, your Association indicated, both formally and informally, that we are open and even keen to negotiate a settlement. That remains our position. We would prefer a settlement that prevents a win-lose situation and would rather seek the best possible solution for all.

What is also unfortunate about the present situation is that Robert Haarburger, a director of the company developing erf 599, is now trying to prevent the court from passing final judgement. He is not a member of our Association, but he has nevertheless been soliciting new members for the Association and paying their annual membership fees. His intention, expressed in letters to us, is to secure from these new members majority support so that he can remove the present Executive Committee and force the Association to halt the litigation against his company, thus preventing the law from running its course. It appears to be an attempt to avoid and bypass the consequences of the court application.

We are presently processing the new applications presented by Mr Haarbarger and will report back on progress in the matter as soon as the executive committee has had its next meeting. We of course welcome bona fide new members and will fully abide by our constitution in processing the applications.

In addition to all of the above, Robert Haarbarger's company has now also made application to have the conditions of re-zoning applicable to the property changed so that, for example, it will allow the building:

- 3 storeys high
- sectional title flats
- a bottle store

- All with reduced parking requirements and no requirement, as is presently the case that the plans be subject to approval by the Ratepayers Association Aesthetics Committee.

Clearly there are many people very concerned about the potential for changing the zoning and for a variety of good reasons, least of which is the precedent that it would set. The zoning and other conditions for the site were set after a public process with good reason. If the present application is approved, it would not only have a major impact on the town in terms of planning and the community, but it would also further change the tender conditions upon which erf 599 was sold.

Apart from the many community and planning consequences of ignoring the regulations, erf 599 was put out to tender on the basis of the currently applicable zoning conditions and restrictions, which had a direct bearing on the price realised by the CAM for erf 599. It is self-evident that the municipality would have realised substantially more money for the public benefit if erf 599 had been put on tender on the basis of the more developer-friendly zoning, conditions and waivers that are now being sought.

Thus far, we have been greatly vindicated in our action in this matter and are strongly motivated to continue to the logical conclusion of a process we have considered as being the right thing to do, not only for ourselves but also for the community and future generations. I must, on behalf of the EXCO, once again thank all those who strongly support this action both morally and financially.

Clearly, litigation of this form is very expensive and I once again appeal to all of those who are supportive to again consider the essential nature of what we, as a community trying to do, and the long term value and benefits that all will derive from success. Your continued generous financial support is therefore very much appreciated.

Contributions should be sent to:

John Taylor Attorneys

Investec Bank

Branch code 58 01 05

Account # 100 109 527 39

Please reference the deposit with the letters WARA and your name so that it can be identified.

Thank you in anticipation for your generous support.

Yours sincerely

Colin Bird

