

LANGEBAAAN
RATEPAYERS AND RESIDENTS ASSOCIATION
BELASTINGBETALERS EN INWONERSVERENIGING

17 September 2018

The Act Municipal Manager
Saldanhabay Municipality
Private Bag X 12
VREDENBURG.

Dear Sir,

Att. Doreen.dunn@sbm.gov.za

- i) PROPOSED REZONING OF A PORTION OF REMAINDER FARM 292, LANGEBAAAN ALSO KNOWN AS UNREGISTERED ERF 10367, GRYSBOK STREET, LANGEBAAAN; and**
ii) DEPARTURE IN TERMS OF SECTION 15(2)(b) TO PERMIT THREE STOREYS.
APPLICANT: ELCO PROPERTY DEVELOPMENTS'
OWNER: DORMELL PROP 391 (PTY) LTD

Your reference number is 10367/LBN.

In terms of section 50 of the SBM Bylaw on Municipal Land Use Planning, the Association wish to comment as follows on the above application:

Introduction.

Since its inception, the Association (LRRRA) has been involved with this development and it is on record that the LRRRA opposed this development. It commented on the EIA process, contested the Department of Environment Affairs and Planning's Record of Decision and furthermore approached the Western Cape High Court in an application to review the decision of the Minister of Local Government, Environmental Affairs and Development Planning (Case 4917/2013).

The LRRRA has been unsuccessful in these steps to obtain the desired results. It is now clear that the development will take place and it should be managed according to the conditions of its approval.

In submitting its comments, the LRRRA wish to refer to the following aspects relative to the application.

1. The applicant mentions that the property is located in the "approved Shark Bay development". According to the approval dated 31 July 2013 the property is zoned Residential II and the property "has been registered at the Surveyor General's office but not with the Deeds Office".

The LRRRA is of the opinion that the zoning of Res II cannot vest in the property as long as it has no separate title deed, in other words as long as it is not registered in the Deeds Office. The LRRRA therefor argues that the proposed Erf 10367 cannot be the subject of this application because it is still zoned "Agricultural" or "Subdivisional" and not Res II. In order for this application to proceed, the transfer of this erf should be affected to Dormell Prop 391 (Pty) Ltd in which case it will also be possible to determine whether there is any title restriction against the application.

2. The subdivision approval dated 31 July 2013 expressly determines that the following portions and rights will be approved:

Portions 1 – 68 : Residential Zone II (68)

Portions 69 – 74 : Open Space Zone III (7)

Portions 75 – 78 : Authority Zone (4)

Portions 79 – 84 : Transport Zone (6).

It was further determined "that the subdivision approval shall be valid for a period of 5 years from the date of approval by the Council or such extended period as determined on application to the Council

In terms of the Council's Bylaws – section 21 – a subdivision or part thereof is confirmed and cannot lapse when-

"(a) approval by the Surveyor-General of the general plan or diagram contemplated in section 20(5);

(b) completion of the installation of engineering services in accordance with the conditions contemplated in section 20(4) and other applicable legislation;

(c) proof to the satisfaction of the Municipality that all the conditions of the approved subdivision that must be complied with before compliance with paragraph (d) have been met in respect of the area shown on the general plan or diagram; and

(d) registration of the transfer of ownership in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan, including the vestment transfer of public places in the name of the municipality.

(2) Upon confirmation of a subdivision or part thereof in terms of subsection (1), zonings indicated on an approved subdivision plan are confirmed and cannot lapse."

Subsection (d) above expressly determines that transfer of the land should be registered in the Deeds Office before this application can be considered.

The above conditions of subdivision determine that there will be 68 erven with a Res II zoning. The application can therefore not be considered nor approved because it will mean that the conditions of subdivision will be negated.

3. Section 32 of the Spatial Planning and Land Use Management Act, 2013 obligates the Council to enforce the Scheme. It is well known that the Council did not meet its obligations when approving the building plans for this structure. The position now

is that the owner "forces" the Council in approving the application well aware that the structure was illegal in the first place.

4. Section 28 of the Bylaws prescribes the conditions under which the Council may certificate the transfer of property. It is noted that 5 other erven are under development of Res II improvements. It is trusted that these transfers have taken place with appropriate certificates. It also implies that the common properties and municipal properties have been transferred and that a Home Owners Association has been established. Should this statement not be correct, the application is premature?

Comments on specific paragraphs of the motivation

SECTION C: LEGAL AND GENERAL INFORMATION.

C) 1. TITLE ASPECTS

The Title Deed of the original farm land (Title Deed T25548/2005) is subject to a servitude as determined by a Court Order of the Western Cape High Court (Case No A632/2012) which reads as follows:

"3. Appellant (owner) will:

3.1 At its costs, register a servitude of right of way in perpetuity ("the servitude"), six (6) meters wide, as indicated on the draft general plan, annexed hereto, marked as "A," in favour of the general public. The aforesaid servitude will have the same status as the public servituted right of way, constituted by ancient use, confirmed by the judgment of the Court a quo.

3.2 Ensure that the servitude is registered over the proposed Portions 10356, 10357 and 10358, as indicated on the said annexure "A."

3.3 Provide a separate deed of servitude to the Saldanha Bay Municipality, as well as the Respondent, as the custodians of the rights of the public emanating from the servitude." (own underlining).

It should be pointed out that the LRRRA is still awaiting the "separate deed of servitude" as mentioned in paragraphs 3.2 and 3.3 above.

a) No comment

b) No comment

c) The statement that Dormell Prop 391 Pty Ltd is the registered owner of the said land (original farm land and proposed Erf 10348) is correct and a further reason that a separate title deed should be registered in the Deeds Office.

d) No comment

e) This statement cannot be taken on face value. A separate title deed will give a clear indication that there may be no restrictive title conditions.

f) It is true that the subject erf is not subject to the servitude described above. That is the more reason that a separate title should be registered in the Deeds Office. See the remarks above regarding the Court Order.

C) 2. GENERAL INFORMATION

a) The statement that the “development is linked with Oostewal Road which provides direct access to the R27” is incorrect. The access to Oostewal Road is closed to vehicular traffic and cannot be used as an access road. Access should only be obtained via Park Road.

b) No comment

c) Although the Council's approval dated 31 July 2013 determined that the subject erf is zoned Res II, it is the opinion of the LRRRA that the zoning rights can only vest once a separate title deed has been registered in the Deeds Office. See the remarks under paragraph 2 of the Introduction. The terms of section 21 of the Council's Bylaws should first be complied with. Without such compliance the subdivision approval may have lapsed.

d) It is confirmed that a residential building is located on the site. The LRRRA maintains that this structure was constructed illegally although building plans may have been approved – wrongfully.

e) Due to the inaccessibility of the subject property via Oostewal Road, the established guest houses/tourist facilities mentioned holds no relevance to the application. It is true that, if approved, the facility would be the only one in the Shark bay development. It is the LRRRA viewpoint that the existing character of the subject property clashes with the unique sense of character of the Shark Bay development envisaged by the authorities when a single residential development was approved.

SECTION D: DEVELOPMENT PROPOSAL

D) 1. PROPOSED LAND USE

In the documents made available to the LRRRA in order to comment on the proposed development, Annexure E was not included. The LRRRA therefor has no idea what the proposed development will look like. What is concerning, is the additional three rooms to be made available for the guest house manager. Will these rooms be included in the existing development or are they additional to the existing structure. It is mentioned that the “existing building will be extended by 453m² in order to accommodate the proposed use. It appears as if the erf is improved to its maximum and that there is no more land available for such expansion.

It is relevant to state that this application is to apply for a departure to permit a height of 3 storeys. The structure already consists of 3 storeys which are indicative of the owner's view to first construct and then apply for permission.

E) 2. PROPOSED ZONING AND REGULATIONS

The quotation regarding the requirements of the Langebaan Zoning Scheme, is correct. It is clear that the improvements on the subject property, comply with these requirements although the requirement of height does not comply. This is also the reason for the application of a departure. As stated earlier in this comment, the height already comprises of three (3) storeys and is the cause to confront the Council with a completed

structure well knowing that it is illegal in its present form. However, the applicant should be congratulated for his efforts to rectify the situation.

The second paragraph regarding the amendment of condition b) of Council's approval dated 31 July 2013 is also addressed. This aspect of the application was not advertised and is creating a false impression. The opinion is held that this aspect should also be addressed because the new zoning as applied for, is in conflict with the Council's approval as quoted.

SECTION E: PLANNING POLICY & CONTENT

E) 1. NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998

It is not understood how it can be said that this application does not have an impact on the Environmental Authorisation. It is also stated that the EIA was received on 1 October 2010 in respect of the approved Shark Bay development. As pointed out in the motivation, the Shark Bay development was approved on 31 July 2013. The statement is therefore not true. The EIA was undertaken on the premise that the development will consist of single residential properties with little impact on the visual aesthetics and not "a three (3) storey Res VI property" with a devastating impact on the visual environment.

The LRRRA had no access to the referred Annexure H but it doubts the correctness of the statement that "the building was lawfully built before the Shark Bay development approval".

SECTION F: MOTIVATION IN TERMS OF DESIRABILITY

The applicant correctly refers to section 65 of the SBM Land Use Planning Bylaw which outlines the criteria to be considered when assessing an application. The particular section outlines 19 criteria of which the applicant only mentions 1 viz. "the impact of the proposed land development on municipal engineering services" – see section 65 (h).

The applicant further discusses those aspects mentioned in paragraphs F) 1 to 4. In the opinion of the LRRRA these points do not address the requirement of section 65 and are irrelevant. The conclusion is that the applicant does not properly motivate the application in terms of desirability.

DISCUSSION OF MOTIVATION

1. Compatibility with surrounding land uses.

It is correct that the land uses in the immediate surrounding area are medium density residential erven. The reference to Oostewal Road and the mixed uses located next to the said road, is irrelevant **vis a vis** this application due to the vehicular restriction from Langebaan town to the Shark Bay development via Oostewal Road extension. The access to Shark Bay is via Park Road which lies to the East and which causes the Shark Bay development to be isolated and not physically linked to Langebaan town.

Due to its isolation, the reference to the other established guest houses in Langebaan, is irrelevant. If approved, the application site will be the only guest house in a predominantly residential development.

2. Impact on the character of the surrounding area.

It is the opinion that the existing building does not blend in with the approved Shark Bay development due to its size and the proximity of the site to the predominantly natural environment. The existing style and impact of the existing structure on the immediate vicinity which is described as a "nature orientated development", is devastating and not compatible.

It is not clear how the coverage will stay as per existing building when it is envisaged that the structure will be increased by 453 m² to make provision for the manager's living quarters. Whether the basement locates only the wine cellar and parking, it remains a floor and means that the structure already consists of three (3) storeys.

3. Accessibility, parking on erf and traffic impact.

No comments

4. Environmental, Economic and social impact.

No comments

Yours faithfully.

Signed

**FRANS PALM
CHAIRMAN/SECRETARY**

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