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FRIENDS OF STELLENBOSCH MOUNTAIN

Written submission on 2021-05-25

ahead of the oral appeal hearing on 2021-05-27 re Blaauwklippen Agricultural Estates Appeal against the MPT decision of 2020-11-27 regarding LU/8567 re Portions 52, 53, 54 and 71 of Farm 510 Stellenbosch

To the Appeal Authority and the Municipal Manager
Stellenbosch Municipality

BY EMAIL to Lenacia.Kamineth@stellenbosch.gov.za

2021-05-25

1. General support for dismissing the appeal

- (a) The FSM comments on the appeal dated 2021-01-06 as well as the FSM comments on the original application dated 2019-06-29 are reaffirmed and should be taken into account.
- (b) The comments made by Jamestown Erfenis dated 2021-01-10 and on the original application are supported.
- (c) The Stellenbosch Municipality Department of Planning has consistently indicated that the proposed development is undesirable and not compatible with the MSDF and the heritage inventories. The successive assessments by Planning are supported. In particular, the views and conclusions of the written assessment of 2021-03-18 as provided by the SM Department of Planning are supported.
- (d) In our view, the decision taken by the Municipal Planning Tribunal at its meeting on 2020-11-27 was correct, properly motivated and not based on misunderstanding or any single consideration.
- (e) No site-specific issues or considerations were raised by the then applicant (now the Appellant) because there are none.
- (f) As set out in detail in the FSM comments of 2021-01-06, the Appeal dated 2020-12-20 by Blaauwklippen Agricultural Estates and its attorneys has in our view no merit in its assessment, its arguments, its requests or its threats.
- (g) Given that the Jamestowners themselves, the Department of Planning, the Municipal Planning Tribunal and FSM are in unanimous agreement that the proposed development is undesirable and without sufficient merit, **FSM requests that the Appeal be dismissed in its entirety and that no compromise or partial development approval be handed down.** The precedent-creating character of this application does not permit half-baked pretenses or cursory nods to the MSDF and heritage and to spatial justice. The dismissal should be unconditional.

2. Urban edge

- (a) The urban edge is a necessary but not a sufficient condition for an application for development to have merit. Location inside the urban edge does not confer any rights. Like many other applicants, the Appellant has, however, chosen to misinterpret location of a property inside the urban edge as a development right.
- (b) If the Appeal Authority were to use the location of the proposed development inside the urban edge as a primary motivation for upholding the Appeal, the Appeal Authority would thereby signal that the misinterpretation of the urban edge as a development right was valid. This would change or circumvent the true legal meaning of the urban edge and in so doing constitute an *ultra vires* act.
- (c) As FSM commented and requested on several previous occasions, including the most recent IDP public participation process, the inclusion of the Jamestown water erven inside the urban edge was a historical error and should be rectified in the next MSDF iteration so as to exclude these erven from the urban edge and prevent similar applications on these Jamestown water erven from being made in future.

3. Heritage issues: implications of the timeline

- (a) First the timeline itself: There is no dispute that the Appellant's consultant submitted a Notice of Intent to Develop (NID) to Heritage Western Cape (HWC) on 9 May 2018, and that on 25 May 2018 HWC stated that "no further action under Section 38 of the National Heritage Resources Act is required."
- (b) The Appellant submitted his development application to SM on 17 September 2018.
- (c) The pre-application consultation was held on 12 September 2018.
- (d) At a meeting on 8 February 2019, the HWC Inventories, Grading and Interpretation committee considered and approved the Heritage Inventory's *Tangible Heritage Resources Phase 4* and communicated this in a letter on 18 March 2019. Phase 4 is the last and most site-specific of the four phases of the heritage inventory process.
- (e) Written comments by the SM Department of Planning are dated 5 and 6 August 2019.
- (f) Now the interpretation and conclusions: It is well known that applications made to HWC are not circulated to third parties and often omit important information. The application which led to the HWC 25 May 2018 letter has not been made available, so it is quite possible that crucial heritage information was omitted from the Appellant's application to HWC.
- (g) In any case, the consideration and approval by the full HWC committee of Phase 4 occurred *nine months after* HWC had considered the original site-specific NID. Phase 4 plan is quite specific in emphasising the heritage value of the Jamestown water erven; in other words, the detailed information provided in Phase 4 far surpasses the cursory consideration given to the matter in the earlier NID submission.
- (h) It is submitted that HWC would have come to a different conclusion on 25 May 2018 if the information of Phase 4 had been available to it at that point in time.
- (i) Secondly, the Department of Planning *did* have exactly that Phase 4 information at its disposal in 2019, and logically took it into account in coming to its recommendation that the application be refused.
- (j) Given that the crucial new information of Phase 4 did become available in the course of this application's consideration, it would be irrational and dishonest to disregard it, and indeed the Department of Planning and the MPT rightfully and rationally did so.
- (k) It therefore behoves the Appeal Authority to correspondingly give greater weight to the information on Jamestown in the Phase 4 report than to the HWC letter of 25 May 2018.

- (1) The Mayor is, of course, well aware of the superior merit and quality of the Heritage Inventory in all its phases, having praised it in Council on 25 October 2019.

4. Heritage and planning authorities

- (a) The National Heritage Resources Act (“the Act”) defines a *planning authority* as (our emphasis):

*“planning authority” means an office of the State, including a province, a local authority or a regional authority, **which is invested with a physical planning capacity**;*

- (b) Section 8(6) of the Act specifies that (our emphasis)

*8(6)(a) A provincial heritage resources authority or **a local authority shall not perform any function** in terms of this Act or any other law for the management of heritage resources **unless it is competent to do so**. The capacity of a provincial heritage resources authority or local authority shall be assessed in terms of criteria prescribed by the Minister, including the availability of adequate staff, expertise, experience and administrative systems, to be applied — (i) by SAHRA, in the assessment of the capacity of provincial authorities to perform specific functions in relation to prescribed categories of heritage resources; and (ii) by provincial heritage resources authorities, to establish the capacity of local authorities to perform any function under this Act: Provided that, in the event of a dispute, the matter shall be submitted to arbitration.*

and further

8(6)(b) If an authority at provincial or local level does not have the capacity or is not competent to perform a specific function for which it is responsible under this section, that function shall be performed on an agency basis by an authority at a higher level or a competent authority on the same level.

- (c) To our knowledge, the capacity (to act as a planning authority in terms of the Act) of Stellenbosch Municipality has not been determined, and it is common knowledge that heritage decisions regarding Stellenbosch development proposals are handled by HWC. Barring such formal determination in terms of Section 8(6) of the Act, neither the administration nor Council of Stellenbosch Municipality has the authority to make heritage resources decisions.
- (d) Given that Stellenbosch is not the relevant planning authority, the tabling and approval of the Stellenbosch Heritage Inventory or any of its parts in Council is irrelevant to the present development application, its assessment, the MPT decision, the Appeal or to the consideration of the Appeal. The HI contents, not its Council approval, was and remains highly relevant.

5. Wider implications and ramifications

- (a) **Gentrification** of Jamestown has been consistently raised by many parties, including the Jamestown residents, the FSM comments and the Department of Planning itself. Naturally poor neighbourhoods must be upgraded — but the present process is not one of upgrading but of displacement, where rich people buy erven and poor people are forced to move out due to rising property rates.
- (b) The proposed development would create a precedent of more gated estate development and urban sprawl which directly contradicts the spirit and letter of SPLUMA, the PSDF and the MSDF. There is little doubt that, once the first water erven are developed into a gated estate, others will soon follow.
- (c) As pointed out in the FSM appeal comments and the MSDF, there is ample evidence that further attempts to extend the existing urban edge around both Jamestown and

Paradyskloof are imminent. Disregard of the MSDF in the present Appeal decision would encourage further such disregard and disdain for what is the central pillar of spatial planning in Stellenbosch. Plans are there to be implemented, not to be flaunted and then ignored.

- (d) The poor, the homeless and the uneducated in Jamestown may not have been able to participate in this process by high-level written comments, but they can see clearly how over decades the rich have become richer and the poor have become poorer. This development would be one more milestone on the road to greater inequality and less justice. For details we refer the Appeal Authority to the submissions of the Jamestown residents themselves.