



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Mr Linda Bernard Tshabalala
Municipal Manager
Dr Pixley Ka Isaka Seme Local Municipality
By email: mm@pixleykaseme.gov.za

Mr CA Habile
Municipal Manager
Gert Sibande District Municipality
By email: cahabile@gsibande.gov.za
And to his secretary, Ms Marinda Booth: marinda@gsibande.gov.za

Our ref: Mabola/ZO/SP
2 July 2019

Dear Messrs Tshabalala and Habile

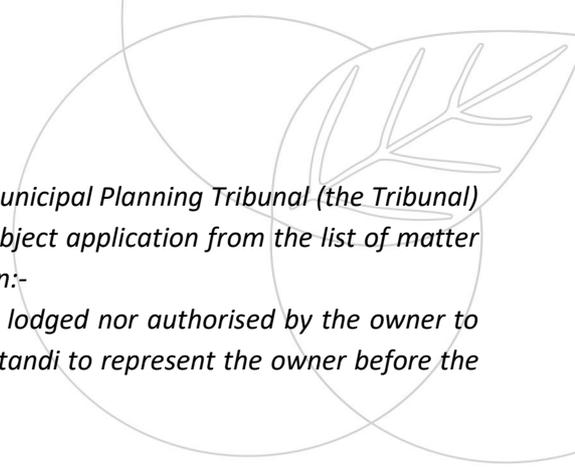
APPLICATION FOR CHANGE IN LAND-USE IN RESPECT OF PORTION 1 OF YZERMYN 96 HT, IN THE DR PIXLEY KA ISAKA SEME LOCAL MUNICIPALITY AND THE GERT SIBANDE DISTRICT MUNICIPALITY, MPUMALANGA

1. We address you at the instance of our clients, Earthlife Africa Johannesburg, BirdLife South Africa, the Mining and Environmental Justice Community Network of South Africa, the Endangered Wildlife Trust, the Federation for a Sustainable Environment, the Bench Marks Foundation, the Association for Water and Rural Development (AWARD) and groundWork.
2. We refer to the above application for change in land-use brought by the Practice Group Town Planners (the Practice Group) on behalf of Atha-Africa Ventures (Pty) Ltd (Atha), which application was purportedly approved by the Gert Sibande Joint Municipal Planning Tribunal (the Gert Sibande Tribunal) on 29 April 2019.
3. We submit that the Gert Sibande Tribunal's decision to approve the application was unlawful, and is therefore invalid, for the reasons set out below.

The decision by the Dr Pixley Ka Isaka Seme Local Municipality Joint Municipal Planning Tribunal (the Pixley Tribunal) (hereinafter called 'the first decision')

4. In April 2018, Atha brought an application to the Dr Pixley Ka Isaka Seme Local Municipality (the Local Municipality) in terms of Regulation 18(1)(b) of the Spatial Planning and Land Use Management (SPLUM) Regulations (the SPLUM Regulations), read with section 98 of the SPLUM By-Law for the Local Municipality (amongst other municipalities), for a change in land-use of Portion 1 of the farm Yzermyn 96 HT. We filed, on behalf of our clients, a detailed objection to the application on 30 May 2018.
5. Atha, through the Practice Group, responded in detail to the objection by letter dated 27 June 2018; and we responded thereto by letter dated 16 July 2018.
6. No further correspondence was received until December 2018, when it came to light that the Local Municipality had issued correspondence dated 30 November 2018 in which it stated that:

Cape Town: 2nd Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa
Johannesburg: 9th Floor, Southpoint CNR, 87 De Korte Street, Braamfontein, 2001, South Africa
Tel 021 447 1647 (Cape Town) | Tel 010 442 6830 (Johannesburg)
Fax 086 730 9098
www.cer.org.za



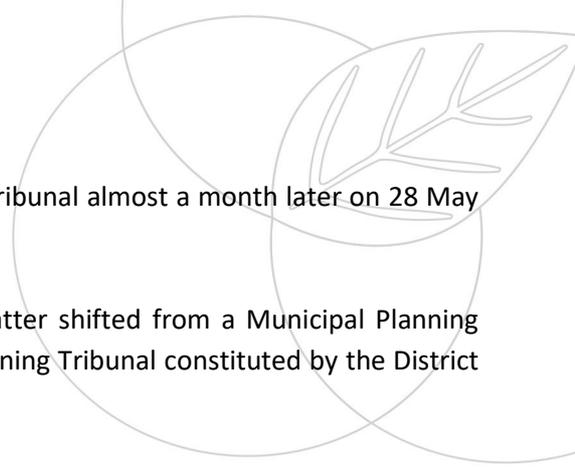
*'During the sitting of Dr Pixley Ka Isaka Seme Local Municipality joint Municipal Planning Tribunal (the Tribunal) on 14 November 2018, the Tribunal resolved to struck (remove) the subject application from the list of matter that were put up for consideration by it, because of the following reason:-
The applicant was neither the owner of the land over application was lodged nor authorised by the owner to lodge the subject application. The application therefore had no locus standi to represent the owner before the Tribunal. (sic)'*

7. Atha then filed a notice of appeal by way of letter dated 8 January 2019. In response thereto, our clients filed a petition to be granted intervener status in Atha's appeal on 29 January 2019.
8. Thereafter, the Practice Group issued a letter dated 30 January 2019, addressed to the Local Municipality's Acting Municipal Manager, and in which it stated *inter alia* that:
 - 8.1. It had been informed telephonically that the Pixley Tribunal's decision had been erroneously communicated;
 - 8.2. It had been informed that the application's dismissal had not been an official decision of the Pixley Tribunal;
 - 8.3. It had been informed that the application would be re-submitted to the Pixley Tribunal which would conduct a hearing on the application;
 - 8.4. Atha was consequently withdrawing its notice of appeal and went on to ask the Acting Municipal Manager for all parties in the matter to be afforded ample notice with regard to the hearing date and for all parties on record to receive, in advance, the full version of the recommendation report which, according to the letter, had been prepared by the Municipality to serve before the Pixley Tribunal.
9. By letter dated 15 March 2019, we asked the Local Municipality to advise us on the status of Atha's application, of Atha's appeal, and of our petition to intervene in that appeal. We received no response to that request.

The decision by the Gert Sibande Tribunal (hereinafter called 'the second decision')

10. On 12 June 2019, we were surprised to learn through a media article in *Mining Weekly*, dated 11 June 2019, that the Gert Sibande Tribunal had approved Atha's application.
11. We followed-up with Mr Ramukosi Mbekanyeni, the Local Municipality's Town Planner, and requested to be provided with formal notification of the Municipality's decision.
12. That same day, on 12 June 2019, we were provided with email notification of the decision attaching a resolution of the Gert Sibande Tribunal in which Atha's application had purportedly been approved.
13. According to that resolution, on 29 April 2019 the Gert Sibande Tribunal purported to make a resolution in the following terms:

*'That the use of the farm Yzermyn 96 IT for agriculture is recognised as a legal land use in terms of section 26(4) of the Spatial Planning and Land Use Management Act 16 of 2013;
The farm Yzermyn 96 IT is incorporated into the Volksrust Town Planning Scheme of 1974 in terms of section 30(2) of the Chief Albert Luthuli, Dipaleseng, Dr Pixley Ka Isaka Seme, Lekwa, Mkhondo and Msukalingwa Local Municipalities, 2016;
The rezoning of Portion 1 of the farm Yzermyn 96 IT from AGRICULTURE to SPECIAL, be APPROVED in terms of Section 66 of the Special Planning and Land Use Management By Law for: Chief Albert Luthuli, Dipaleseng, Dr Pixley Ka Isaka Seme, Lekwa, Mkhondo and Msukalingwa Local Municipalities, 2016 as per (attached) amendment scheme;
...'*

- 
14. That resolution was signed off by the Chairperson of the Gert Sibande Tribunal almost a month later on 28 May 2019.
 15. It is peculiar to us that the consideration of the application in this matter shifted from a Municipal Planning Tribunal constituted by the Local Municipality to another Municipal Planning Tribunal constituted by the District Municipality.

The first decision

16. It is evident from the Local Municipality's 30 November 2018 correspondence that the Local Municipality duly established a Joint Municipal Planning Tribunal (the Pixley Tribunal) to consider Atha's application. The Local Municipality is empowered to do this in terms of section 34 of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) and Part C of the SPLUM Regulations.
 - 16.1. From available evidence, the Pixley Tribunal sat on 14 November 2018 and considered Atha's application. The Pixley Tribunal's resolution at that sitting was communicated by way of an official letter dated 30 November 2018 (**Annexure A**) and signed by the Acting Municipal Manager, 'MM Phetla'.
 - 16.2. The covering e-mail attaching the letter (**Annexure B**) came directly from the Acting Municipal Manager, 'Mercy Phetla'.
 - 16.3. The letter conveyed the Pixley Tribunal's resolution dismissing Atha's application.
17. We submit that, whatever the merits of that resolution, it was an official decision of the Pixley Tribunal which, as administrative action, remains valid and lawful until and unless reviewed and set aside by a court of law.

The purported telephone call to the Practice Group

18. According to Mr Peter Dacomb (a director of the Practice Group), he was telephonically informed that the notice on the outcome of the Pixley Tribunal sitting (referring to Acting Municipal Manager Phetla's letter dated 30 November 2018), was erroneously communicated to Atha.
19. This allegation is contained in Mr Dacomb's letter dated 30 January 2019 (**Annexure C**). We point out that that letter is headed 'Draft for Comment' and furthermore:
 - 19.1. Mr Dacomb does not disclose the identity of the person/s who allegedly conveyed this information to him, or the date/s of the alleged telephone call/s;
 - 19.2. There is no verifiable official status of the information provided and the basis upon which it was allegedly provided;
 - 19.3. There is no confirmation of the alleged telephone call/s (e.g. a confirmatory email from the person allegedly spoken to).
20. There is also nothing to suggest that Mr Dacomb deposed to an affidavit regarding these events; thus the alleged telephone call and the information purportedly conveyed during the call remain a mystery.
21. Furthermore, in the letter, Mr Dacomb went on to withdraw the appeal and indicated that he envisaged a situation where the Pixley Tribunal would conduct a *hearing* as contemplated in the SPLUM By-Law and that all the parties would be given notice of such hearing.
22. Our clients, being registered objectors and interested parties to Atha's application, at no point received any notice of such a hearing, in the event that a hearing was held.

The second decision

23. A letter on the Local Municipality letterhead, dated 6 May 2019, and signed by the Municipal Manager, Mr Linda Bernard Tshabalala, (**Annexure D**) has been provided. In the letter it is stated that the Gert Sibande Tribunal had resolved to approve Atha's application on 29 April 2019.
24. We note that whereas the letter indicates that this notification was copied to the objectors to Atha's application, including the CER, it was in fact not sent to the CER until we received it by email – pursuant to our own request – on 12 June 2019.
25. The date on the above letter was subsequently amended to *6 June 2019* by Mr M Ramukosi from the Local Municipality (**Annexure E**). It was explained by Mr Ramukosi, in an e-mail sent on 23 June 2019, that an incorrect date of *6 May 2019* had been inserted in the initial letter and that date had been 'corrected' to 6 June 2019 (**Annexure F**).
26. The basis upon which the Gert Sibande Tribunal was constituted after the Pixley Tribunal had decided Atha's application six months prior is puzzling and requires a full explanation.

Status of the resolutions of the two Tribunals

27. The first resolution dismissing Atha's application was taken by the Pixley Tribunal on 14 November 2018. That decision was final and communicated to interested parties, including Atha and the CER on behalf of our clients.
28. The Pixley Tribunal has no authority arising from SPLUMA, the SPLUM Regulations or the By-Law to revoke final decisions already taken – much less in the absence of a hearing being granted to interested parties such as our clients. The decision to dismiss Atha's application is administrative action as contemplated by the Promotion of Administrative Justice Act, 2000 and thus has legal consequences. We submit that the Pixley Tribunal is therefore, in relation to its decision to dismiss Atha's application, *functus officio*. Accordingly, until that decision by the Pixley Tribunal is set aside by a court in proceedings for judicial review, it exists in fact and has legal consequences that cannot simply be overlooked.
29. It follows then, that the subsequent decision by the Gert Sibande Tribunal to approve Atha's application on 29 April 2019 is unlawful and invalid.
30. We hereby request clarity on the issues we have raised herein.

31. We reserve our clients' rights.

Yours sincerely

CENTRE FOR ENVIRONMENTAL RIGHTS



per:

Zahra Omar
Attorney

Direct email: zomar@cer.org.za