

TO: MR LINDA BERNARD TSHABALALA
MUNICIPAL MANAGER
REGISTRAR, APPEAL AUTHORITY

By email: mm@pixleykaseme.gov.za

Copied to: khanyisile@pixleykaseme.gov.za; records@pixleykaseme.gov.za;
mbekanyeni@pixleykaseme.gov.za; peter@practicegroup.co.za; malansp@vodamail.co.za;
planning.wakkerstroom@gmail.com; cwc.muller@gmail.com; aburns@wwf.org.za; info@sallythorp.com;
chabile@gsibande.gov.za; marinda@gsibande.gov.za; centrec@gsibande.gov.za

RE: SUPPLEMENTARY NOTICE OF APPEAL AGAINST THE RESOLUTION OF THE GERT SIBANDE DISTRICT MUNICIPAL PLANNING TRIBUNAL DATED 29 APRIL 2019 APPROVING A LAND DEVELOPMENT APPLICATION FOR PORTION 1 OF THE FARM YZERMYN 96 HT, MPUMALANGA PROVINCE

IN RE: APPLICATION BY THE PRACTICE GROUP (PTY) LTD (ON BEHALF OF ATHA-AFRICA VENTURES (PTY) LTD) FOR CHANGE IN LAND-USE IN TERMS OF REGULATION 18(1)(b) OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT (SPLUM) REGULATIONS: LAND USE MANAGEMENT AND GENERAL MATTERS, 2015 READ WITH SECTION 98 OF THE SPLUM BY-LAW FOR DR PIXLEY KA ISAKA SEME LOCAL MUNICIPALITY, 2016

IN THE APPEAL OF:

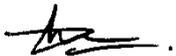
EARTHLIFE AFRICA JOHANNESBURG	FIRST APPELLANT
BIRDLIFE SOUTH AFRICA	SECOND APPELLANT
MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA	THIRD APPELLANT
ENDANGERED WILDLIFE TRUST	FOURTH APPELLANT
FEDERATION FOR A SUSTAINABLE ENVIRONMENT	FIFTH APPELLANT
BENCH MARKS FOUNDATION	SIXTH APPELLANT
ASSOCIATION FOR WATER AND RURAL DEVELOPMENT	SEVENTH APPELLANT
GROUNDWORK	EIGHTH APPELLANT
AND	
GERT SIBANDE DISTRICT MUNICIPAL PLANNING TRIBUNAL	FIRST RESPONDENT
ATHA-AFRICA VENTURES (PTY) LTD	SECOND RESPONDENT

SUPPLEMENTARY NOTICE OF APPEAL IN TERMS OF SECTION 143(2) OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT (SPLUM) BY-LAW FOR THE DR PIXLEY KA ISAKA SEME LOCAL MUNICIPALITY

INTRODUCTION

1. In terms of section 143(2) of the SPLUM By-Law¹ (“the by-law”), the Appellants hereby amend their Notice of Appeal by means of this **supplementary notice of appeal**.
2. This supplementary notice of appeal is to be read with the Appellants Notice of Appeal submitted on 3 July 2019.
3. In this supplementary notice of appeal, the Appellants respond to the Second Respondent’s Notice to Oppose (“Notice to Oppose”) the Appellant’s appeal dated and received by the Appellants on 23 July 2019.
4. The Appellants confirm that this notice is submitted timeously, within seven days from receipt of the Second Respondent’s Notice to Oppose, as prescribed in section 143(2) of the by-law.
5. The grounds of appeal as supplemented are as outlined hereinbelow.
6. For the purposes of this supplementary notice of appeal, the Appellants utilise the above citation of the parties, and do not retain the citation used in the Second Respondent’s Notice to Oppose.

SIGNED AND DATED AT **CAPE TOWN** ON THIS **31ST** DAY OF **JULY 2019**.



APPELLANTS' REPRESENTATIVE
CENTRE FOR ENVIRONMENTAL RIGHTS
2nd Floor, Springtime Studios
1 Scott Road, Observatory
Tel: 021 447 1647
Fax: 086 730 9098
Ref: Suzanne Powell/Zahra Omar

¹ Section 143(2): “An appellant may, within seven days from receipt of a notice to oppose an appeal amend the notice of appeal and must submit a copy of the amended notice to the appeal authority and to every respondent.”

SUPPLEMENTATION OF GROUNDS OF APPEAL (Section 143(2) of the SPLUM By-Law)

Supplementation of B1: The decision of the District Planning Tribunal is unlawful and invalid (first ground of appeal)

1. In paras 2.2 – 2.6 of its Notice to Oppose, the Second Respondent states that the “Gert Sibande District Joint Municipal Planning Tribunal (JMPT)” was the authority that both removed the Second Respondent’s application from the list of application to be considered, and then purportedly considered and granted that application when it was resubmitted to it. This is incorrect. The letter received from the Dr Pixley Ka Isaka Seme Local Municipality (“the Local Municipality”) dated 30 November 2018, and referred to in para 7 of the Appellants’ Notice of Appeal, says that the resolution was made “*during the sitting of Dr Pixley Ka Isaka Seme Local Municipality Joint Municipal Planning Tribunal*” (own emphasis). The Local Municipality’s later letter of 6 May 2019 (subsequently corrected by the Municipality as 12 June 2019) states that it “*serves to confirm the decision of the Gert Sibande District Municipal Planning Tribunal*” (own emphasis).
2. In para 2.2 of the Second Respondent’s Notice to Oppose, it asserts that the letter by the Local Municipality dated 30 November 2018 addressed to the parties “*...was not a formal decision for the approval or dismissal of the application by the relevant Tribunal*” and that “*The letter merely stated that the application had been removed from the list of applications to be considered by the Gert Sibande District Joint Municipal Planning Tribunal (JMPT). This was later corrected and reversed by the Municipality.*”
3. In its 30 November 2018 letter, the Local Municipality relies on section 90(2)(a) of the SPLUM by-law (“the by-law”) as the basis for the Local Planning Tribunal’s decision to strike Atha’s application off the list of matters that were put up for consideration by it, stating that Atha failed to provide the requisite power of attorney in terms of the by-law.
4. We note that section 92(2) says that the Municipality may refuse to accept an application if, *inter alia*, “*the application is not in the form required by the Municipality or does not contain the documents required for the submission of an application as set out in section 90.*”

5. Section 93(b) instructs the Municipality to notify the applicant of any outstanding information that it may require within the stipulated timeframe, and the applicant to thereafter provide the Municipality with the information or documentation required for the completion of the application within the stipulated timeframe in terms of section 94(1).

6. Notably, section 94 goes on to say the following:

“(2) The Municipality may refuse to consider the application if the applicant fails to provide the information within the timeframes contemplated in subsection (1).

(3) The Municipality must notify the applicant in writing of the refusal to consider the application and must close the application.

(4) An applicant has no right of appeal to the appeal authority in respect of a decision contemplated in subsection (3) to refuse to consider the application.

(5) If an applicant wishes to continue with an application that the Municipality refused to consider under subsection (3), the applicant must submit a new application and pay the applicable application fees.” (own emphasis)

7. On the assumption that the Local Planning Tribunal’s decision was, as the Second Respondent alleges in its notice, “not a formal decision for the approval or dismissal of the application by the relevant Tribunal” but rather simply a letter which “merely stated that the application had been removed from the list of applications to be considered by the Gert Sibande District Joint Municipal Planning Tribunal (JMPT)”, the Local Municipality’s letter of 30 November 2018 appears to be a written notification of the refusal to consider the application in terms of section 94(3) of the by-law as stated above.

8. Thus, in terms of section 94(3) of the by-law, following written notification of the Municipality’s decision to refuse the application, the Municipality must “close the application”. The applicant has no right of appeal in respect of such a decision, and if it wishes to continue with an application that the Municipality refused to consider under section 94(3), the applicant must submit a new application and pay the applicable application fees.

9. In the light of the abovementioned provisions of the by-law, the Appellants submit the following:

9.1. Firstly, the Second Respondent itself originally regarded the Local Planning Tribunal's decision, as relayed in its 30 November 2018 letter, as a refusal of the Second Respondent's application. In the Practice Group's letter of 8 January 2018 – which constituted the Second Respondent's notice of appeal – it clearly characterised the Local Planning Tribunal's resolution as refusing the application based on *locus standi*, and regarded the resolution as an appealable decision, hence the submission of its notice of appeal.

9.2. Secondly, it is submitted that even if the nature of the Local Planning Tribunal's decision was merely a refusal to accept the application as contemplated in sections 92 and 94(4) of the by-law, and not a decision to refuse the application as contemplated in section 114 of the by-law, the Local Planning Tribunal remains *functus officio*. This is because, according to the by-law, a refusal by the Municipality to consider an application effectively "closes" that application and requires the applicant to submit a new application altogether. The District Planning Tribunal considered the same application which ought to have been 'closed' after the Local Planning Tribunal's refusal to consider it.

9.3. Furthermore, neither the Second Respondent nor the Local Planning Tribunal has provided the Appellants with any proof of that the Tribunal's decision was "*corrected and reversed*", as is alleged in para 2.2 of the Second Respondent's Notice to Oppose.

9.4. The Appellants therefore reiterate that the Local Planning Tribunal's decision, whether it constitutes a refusal of the application or merely a refusal to accept the application, stands as a final decision on the Second Respondent's application, unless it is reviewed and set aside by a court of law. Therefore, the subsequent decision by the Gert Sibande Tribunal to approve Atha's application on 29 April 2019 is unlawful and invalid.

10. It is submitted here, again, that the first ground of appeal is dispositive of the entire appeal. In the event that the Appeal Tribunal is nevertheless minded to entertain the appeal on its merits, the further grounds of appeal are supplemented as below.

Supplementation of B2: Failure of to consider the Appellants' Objection (second ground of appeal)

11. The Second Respondent asserts in para 2.5 of its Notice to Oppose that "*...the objections formed part of the submission to the JMPT and that such objections and the Second Respondent response were in fact considered by the JMPT.*" However, the Second Respondent then says in para 2.16 that it "*is not in the possession of the full record of the meeting of the JMPT.*"

12. It is unclear how the Second Respondent can, without having had sight of the full record of the Tribunal's proceedings, be certain that the Appellants' objection was considered by the District Planning Tribunal in making its decision.
13. Moreover, there is no evidence in the District Planning Tribunal's resolution of 29 April 2019 that the Appellants' objection was considered.
14. The District Planning Tribunal has also not provided the appellants with reasons for its decision. In this regard, we draw the Appeal Authority's attention to sections 40(5) and (6) of SPLUMA which require that a Tribunal "*must keep a record of all its proceedings*" and "*must provide reasons for any decision made by it.*"
15. With reference to para 22 of the Appellants' Notice of Appeal, the Appellants did not re-annex the annexures to its objection to the Notice of Appeal as those annexures are already on record with the Local Municipality. However, for convenience, the Appellants attach the annexures to the objection hereto.
16. In addition, the Appellants' letter of response dated 16 July 2018 and its annexures (all attached hereto as **Annexure B**) to the Second Respondent's response to the Appellants' objection **is reiterated and hereby incorporated into the Appellants' Notice of Appeal, and thus form part of the grounds of appeal to be considered in the Appeal.**

Conclusion

17. It is notable that although the Second Respondent's Notice to Oppose says that it constitutes the Second Respondent's opposition of the whole of the appellants' appeal (para 1.2), its para 2 in which its 'grounds for opposing appeals' are set out does not contain any substantive opposition to the Appellants' ground of appeal B2, specifically para 22 by virtue of which the Appellants' objection is incorporated into the appeal, or the Appellants' ground of appeal B3.
18. It is not correct, as para 2.6 of the Second Respondent's Notice to Oppose asserts, that the Appellants' grounds of appeal '*are narrowly focussed on [the locus standi] aspect*'. Indeed, the Appellants' Notice of Appeal, as well as this Supplementary Notice, do not raise or deal with the *locus standi* aspect at all. Yet the Second Respondent spends most of its Notice to Oppose dealing with this point, and in doing so fails to address the Appellants' grounds of appeal B2 and B3 at all.

19. Thus, the Appellants persist in the relief sought in their Notice of Appeal, namely that the appeal be upheld and that the appeal authority revoke the decision of the District Planning Tribunal in terms of section 169(1) of the by-law and remit the matter to the Tribunal in terms of Regulation 26(2).

XXX