

GREATER TABLE VIEW ACTION FORUM

(Non-Profit Organisation No. APP-16/244140)

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CHEMPET

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Friday, October 21, 2022

Erf 38251

Dear Premier Winde

We have engaged with the Western Cape Government over the disposal of land which is now known as Erf 38251. Our interactions have, for the most part been disappointing. Given that the land in question was public land. The rights of the public should have been protected and protected by the officials of the Western Cape Government.

1. Freedom of Information Request.
 - a) In February we made a request for information through the correct channels for all documents relating to the transfer of land from the Western Cape Government to the land claimant.
 - b) After many months, these document arrived.
 - c) Letter reference 3233/11/A2/F was received as part of these documents. We have attached this document. The copy that was received from the Western Cape Government had the reference redacted.
 - d) Why was the reference number redacted by The Western Cape Government?
2. Land Disposal Time Line
 - 1975 land was gifted to the community for the purposes of Education.
 - 2008 2.1 Ha was offered to the claimant
 - 2010 the Flandorp Trust was formed
 - 2010 / 11 Claimant offered 2.4ha this was later increased to 2.9 Ha
 - 2011 17 June Western Cape Provincial Gazette 6882 1201 17 June 2011 gives notice of disposal of Provincial land where it is noted that: A portion of erf 9556, Blaauwberg T7979/1975 2.4 hectares, Single Residential Vacant – Milnerton.
 - 2011 The process of transferring the 2.4 Ha of land to National Government begins
 - 2011 July the Flandorp Land Use Application 70180574 is created (FP/072011/642)
 - 2012 The City of Cape Town included this land in the Blaauwberg District Plan as an urban infill area. It must be noted that this was years before the first land use application for this area.
 - March 2015 City of Cape Town received Land Use Application 70180574 which proposed a development on 2.9 Ha or the entire Erf 38251. With No access or road. This was 12 months before the offer by the land claimant to purchase the additional 0.58 Ha.
 - October 2015 the Western Cape Director of Immovable assets send letter 3233/11/A2/F clearly stating that the Western Cape Government and the director of immovable assets

are aware of application 70180574. And that the Western Cape Government intends on road access on the slither of land. This is confirmed

- 2016 The Land claimant approaches the Western Cape Government to buy the additional 0.58Ha slither of land.
- 2017 15 February The transfer of the 2.4HA from Western Cape Government to National Government was officiated at the Registrar of Deeds
- 2017 The Western Cape Government values the land on the basis that the land claimant provides access and an access road on the slither of land at the cost of the land claimant.
- 2017 offer to purchase was drawn up
- 2018 Erf 38251 was formed by way of consolidation this is Case ID 70400024 which refers to letter 3233/11/A2/F and refers to the area being required for access purposes. It is clear that the Western Cape Government still was intent on a road being built, access being provided to the two proposed schools. This road as per valuation was to be provided at the expense of the land claimant or in this case the buyer.
- 2019 Erf 38251 is registered in the land Claimants name.
- 2020 Land Claimant makes land use application 70494419 this application has no provision for a road or access to the school or for the provision of services.
- 2021 Letter undated and without a reference. From Shane Hindley HEAD OF COMPONENT: IMMOVABLE ASSET MANAGEMENT to the City of Cape Town makes the claim. *'Although the DTPW is the custodian of Remainder Erf 9556, the WCED is the official user of the property and thus only the WCED was notified of the proposed development when it was initially circulated for comment. It therefore only recently came under the custodian's attention that the above-mentioned residential development being proposed by the Trust on Erf 38599 Milnerton originally did not make any provision for access or bulk service supply to the Western Cape Government's adjacent land, as had been envisaged in the valuation and disposal of the 10m sliver of land. Over the last few weeks, since the custodian became aware of the proposed development and land use application that has now been submitted for approval, we have been actively engaging with the applicant's planners and Trustees in order to resolve this issue in an amicable manner. To this end it has now been agreed by all parties concerned that sufficient provision should be made, in the plans and development of the Trust's erf, to secure access to the erf on which we plan to erect future schools, i.e. Remainder Erf 9556 Milnerton, at some stage in the future as well as bulk service connection capacity following a number of consultation and engagement sessions between the DTPW, the applicant and the City of Cape Town, a proposal was submitted by the applicant to DTPW which makes provision for two of the proposed vehicular accesses to the proposed residential development to be secured in our favour by way of servitudinal rights; and which will hence enable access to the future 2 schools once developed on Remainder Erf 9556, Milnerton. In addition, the Applicant has agreed to the registration of a bulk services servitude on the sliver of land too. We note that the Director of Immovable Assets was aware of the 2015 application that did not propose an access road or access.*
- March 2021 The Flandorp Family Trust resolve the following. The Trust take cognizance of the feedback from Fiona Steward, legal services department at the Western Cape

Provincial Government regarding the possible implications of the valuation report relating to the sale of Erf 38598 Milnerton (R150,000.00) (Email Communication attached as annexure 'A')

Why did the Western Cape Government not protect the public interest by making the provision of a road and access a part of the sale agreement?

Why did Shane Hindley claim that the custodian of the land was not aware of the intention of the owner to build on the land when the Director of Immovable assets in letter 3233/11/A2/F clearly states he is aware of application 70180574. An application that in 2015 did not make provision for access, a road and services? This clearly shows the intension of the applicant to use the slither of land for development purposes?

Why did the Director of Movable assets not act in 2015 when he became aware of land use application 70180574 and question the applicant as to why they had applied for a land use change on land was still owned by the Western Cape Government? Given that the applicant only approached the Western Cape Government in 2016 to purchase the remainder of the Land.

Why did the Western Cape Government not protect the public interest by adding a restrictive clause to the sale agreement preventing the slither of land from being developed?

What legal advice was given to the Flandorp trust around the possible implications of the valuation report? What did Fiona Steward mean by possible Implications of the valuation report?

Can you please provide us with the e-mail referred to as annexure 'A' application Case ID 70494419 from Fiona Steward? Can you please send us the full file of legal advice around the valuation report compiled by Fiona Steward.

What is clear to us is that it seems it was the intension of the Western Cape Government was to ensure that the land claimant received 2.9 Ha of land. The Western Cape Government tried but failed to transfer 2.9Ha in 2011.

It is also clear to us that the land claimant intended to develop the full 2.9ha as contained in land use application 70180574. It is documented that the Western Cape Government director of immovable assets was aware of this intension and application 70180574. It appears that the western Cape Government has attempted to frustrate the community in its investigation by wrongfully redacting the reference from letter 3233/11/A2/F. It would seem deliberately preventing the community from linking this letter to application 70400024.

The Western Cape Government valued the slither of land at R50,000.00 then sold the land at R150,000.00 on the basis of the provision of a road access and services. However, it failed to protect the public interest by ensuring that these provisions were placed as restrictive conditions on the deed of sale.

It is fair to say that the claimant had a claim for 2ha and received 2.9ha at a cost to them of R150,000.00. It is also fair to say that the Western Cape Government has failed to protect the public interest and has sold valuable immovable assets at a price that is far below market rates.

It is our opinion that the Western Cape government has admitted that it required this land for access and services in the 2021 letter from Shane Hindley and that the Western Cape Government had to embarrassingly back track and ask the land owner to allow for access and services which should have been a right. It also appears that it took the legal opinion from the Western Cape Government to force the owner of Erf 35899 to supply two access points and critical services. It is well documented that the slither of land was to be a road and service with the cost covered by the applicant. Clearly the public purse has suffered with the financial gain being for the benefit the now owners of Erf 35899. It would seem to us that the Western Cape Government had intended to transfer 2.9 Ha to the land claim applicant. For reasons we cannot understand being far in excess of the applicants land claim. When the Western Cape Government were frustrated in its attempt to do this it created a method to ensure this happened to the detriment of public purse and the public good.

It must also be noted that in an area that is critically short of schools the Western Cape Government decided to sell this land claimant, school land.

Given the cloud that hangs over this land transaction and particularly the sale of the slither of land. And given that the Western Cape Government own legal representatives have pointed to possible implications of the valuation report we call on the Western Cape Government to apply have this land sale set aside and that this land be returned to public ownership and be used for the public good. Specifically for the education of our children.

David Ayres



Greater Table View Action Forum (Planning & Biodiversity)
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