



REPUBLIC OF BOTSWANA
IN THE LAND TRIBUNAL HELD AT GABORONE

CASE NO: GLT 0006/2017

In the matter between

BRIXTON BURG PTY LTD

APPELLANT

And

GABORONE CITY COUNCIL

RESPONDENT

CORAM:

S. B. Kaisara
K. Rutherford
V.T. Gaborone

APPEARANCES:

1. H. Mazidi (Director of the Appellant)
2. S. Coles (Assisting the Appellant)
3. O. Baemisi (Principal Physical Planner of the Respondent)

JUDGMENT

S. B. KAISARA

This is an appeal against rejection of Appellant's application for change of land use from recreational to civic and community (College) in plot 74180 Gaborone. The basis for the rejection is that the proposed development is incompatible as the plot is sitting on a flood plain. The plot is situated at Gaborone Block 9 along Segoditshane River and measures 6.5205ha.

BACKGROUND

The Appellant is the holder of plot 74180, Gaborone registered under Deed of Fixed Period State Grant No. 2244/2013 dated 8th November 2013. The development covenant in the title deed provides that the plot should be developed for recreational (amusement park) purposes.

Following allocation, the Appellant applied to the Respondent for change of land use from recreational to Civic and Community (college) intending to develop a sports college. The application was rejected at the Respondent's meeting of the 17th May, 2017 as follows;

“The proposed development is incompatible with the flood plain”

Thereafter, the Appellant filed the present appeal.

APPELLANT'S CASE

The representatives stated that they sought change of land use from recreational to civic and community (College- sports science). Further that the basis for rejection of Appellant's application was that the proposed developments were incompatible as the plot was situated in a flood plain.

The representatives also stated that they prepared an environmental impact study in an effort to mitigate against the negative impacts of developing on a flood plain. Further that a consultant studying the area 30 years ago had found that the area where their plot was

situated was a flood plain. However, recent studies revealed that due to the dumping of construction rubble in the area, land which was initially a flood plain, had risen about 5m above the level it was before, making it developable.

The Appellant also elaborated that the envisaged project being a sports and culture facility would be beneficial particularly for those youth challenged academically. He argued that they would get an opportunity to perfect their skills in sports and performing arts. He observed that some youth are gifted in music, dance and sports; hence promotion of these, would go a long way in meeting the aspirations of the Education Strategic Plan of the country.

The Appellant's representative Mr. Mazidi, expressed his passion in education and general development of Botswana education system. He noted his contribution in that regard which he said includes operation of Rainbow English Medium Primary and Secondary Schools.

RESPONDENT'S CASE

The Respondent's representative noted that in 2013 Appellant's similar application was rejected by the then Town and Country Planning Board because the proposed development was not compatible with the primary land use. She confirmed that the current rejection was on the basis that the proposed development is incompatible as it is in a flood plain. She said a flood plain is normally

designated for recreational purposes/open spaces and cannot be used for construction of any habitable developments.

The Respondent's position is therefore that the Appellant's application be rejected because Gaborone Development plan indicates that the area is suited for passive recreation and therefore prohibits intensive developments. Moreover, if the proposed buildings are constructed, they would be prone to flooding.

ISSUE FOR DETERMINATION

The court is to determine whether the proposed change of land use is compatible with the zoning of the area.

COURT'S FINDINGS & DETERMINATION

In terms Gaborone Development plan the Appellant's plot is situated along Segoditshane River in an area zoned ecological linear corridor.

Paragraph 5.4.15 of the plan defines ecological linear corridors as being;

“major corridors of continuity of natural systems. The natural system in this category of the open system of Gaborone is the Segoditshane River that traverses the city for about 15kms and the flood plains that abuts it on either side. The widest portion of this natural system within the city limits is approximately 900 metres. The biodiversity of this river corridor which is a natural habitat to a variety of fauna and flora needs to be secured and a balanced ecological functioning along its entire course maintained”

Paragraph 5.4.17 provides that Segoditshane river valley system is

“the only linear and continuous green area bisecting the city, thus breaking the monotony in the cityscape created by the built-up areas. It is therefore important that much of the valley system is retained in its natural state given its ecological value and its fragility. As a natural linear system, Segoditshane valley presents tremendous opportunities for development as areas for passive recreational activities”

Therefore, the Development plan provides that no intensive physical development should be permitted in the area except for passive and creative recreational uses. It is further noted that in terms of Paragraph 5.4.18 of the Development Plan, further studies were to be carried out on the Segoditshane river system to provide for a firm and long term development guide inclusive of an Environmental Impact Assessment.

The above provisions are consistent with **Paragraphs 3.10.4 and 3.10.5 of the Development control Code (DCC)** in respect of River/stream buffers standards and Flood Plains Protection. These resources are to be managed to enhance and maximize their unique value. Hence no developments or land disturbance shall occur within these areas. Therefore activities such as those of filling or dumping as alleged in this case are not permitted. In terms of **Paragraph**

3.10.4.8 of the DCC, permitted structures, practices and activities are limited to;

- Flood control structures;
- Utility right of way and structures
- Biking and walking trails;
- Road crossings
- Storm water management facilities
- Recreational and park uses.

In terms of the drawings submitted, the Appellant proposes to build permanent physical structures covering 40% (school) and 60% (recreational activities). These kind of developments fall within the class of developments not permitted in terms of the planning instruments cited above. They are therefore in compatibility with the zoning of the land as an Ecological linear corridor comprising the river and the surrounding flood plain. That is, the intensity of the developments have the potential of altering the natural condition of the land.

Therefore whilst it is appreciated that the Appellant has good intentions of promoting non - academic education particularly among the youth, it is also important to balance these benefits with the long term impacts on the Segoditshane Ecological zone. Hence owing to the environmental sensitivity of the area, the proposed developments cannot be allowed. Further, if there was any study carried out in the

area, findings of such could only be applied once adopted and the approved plan varied.

In light of the above, the appeal stands to be rejected. Accordingly, it is **dismissed** with no order as to costs.

The parties are hereby informed of their right to appeal to the High Court within eight (8) weeks of delivery of this judgment if any feels aggrieved.

Judgment read in open Court at Gaborone this **29th** day of **September 2017**.

S. B. KAISARA
CHIEF PRESIDENT OF THE LAND TRIBUNAL