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Letter by hand delivered and by email

Oranjestad, November 28, 2019
KvKno. 082-19/SV/rc

TELEPHONE:

Topic: opinion on the ROPv 2019 documentation

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Your Excellency,

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Through this letter the Aruba Chamber of Commerce and Industry (KvK) would like to express her opinion on the content of the draft Ruimtelijke Ontwikkelingsplan voorschriften 2019 (cROPv 2019). The KvK has the responsibility to represent its ca. 17,000 registered businesses and has made an effort to consult the opinion of the private sector and take into consideration their input based on expertise. The KvK represents and expresses an objective and sectoral point of view and attempts to present these ideas and concerns in a constructive manner to improve our economic and social well being.

The KvK is in support of the cROPv 2019 and its endeavors; however there are certain areas and topics which require clarification, adaptations and improvements in its execution. We have included our opinions in writing and we look forward to your prompt reply on the issues presented herein and a continuation of good communication and enforcement of the mindset of "Trahando Hunto".

BANK ACCOUNTS:

Aruba Bank:
112.354.6

Banco di Caribe:
814771.01

Caribbean Mercantile
Bank:
611.799.06

RBC Royal Bank:
90.06.176

REMARKS FROM THE CHAMBER OF COMMERCE:

Construction, development and compensation:

The ROPv 2019 should describe what can be understood under 'protection and conservation of green areas'. A clear decision has to be taken to what will happen to owners of properties that fall within the borders of the protected green areas.

Linking regulations to the ROP implies that in some cases existing destinations will be changed, limiting current or future economic activities after the ROPv comes into effect. Owners who have an ongoing land development business, economic use of plots, developed or being developed, should be excluded from restrictions of their ongoing initial activities/plans. It conflicts with constitutional property rights. The owners have the right of compensation according to articles 1.19 and 1.22 of the "Staatswet" and article 30 of the LRO. The stipulations in the ROPv violate the rights. In such cases, the owners must be compensated in some form. Either through monetary compensation or through a land swap or a zone swap.

The capacity should be considered: if a green area is removed for tourism activities, then other areas destined for tourism activities should be taken in and assigned as a green area.

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The intrinsic value of an area should be considered and a switch does not imply extra destruction to the natural environment but this should be executed with consideration to maintain green areas. It has to entail a zone swap and not a land swap which is compensation through exchanging properties and not for money. The process for compensation should be described.

A policy needs to be in place for reforestation and sustainable green areas that are not in use anymore for industrial/commercial residential, or have been cleaned up in the past for other uses. Furthermore, the conservation and protection against further destruction of nature for example the mangroves which is habitat for several species should also be specified.

These are very critical points for the ecosystem and survival of different stakeholders ranging from fisherman to tourism related businesses.

The ROPv 2019 should stipulate the requirements for parcels or zones which currently have assigned a commercial destination as mentioned in the previous ROP 2009 and indicate the reasons why there are certain areas which now have a different purpose such as residential in the ROP 2019. Likewise there are land plots located in the middle of commercial and residential areas, with all utility infrastructure present, ideal building surface and connectivity to main roads, that have been unexpectedly and without any previous consultations or explanation converted into natuurgebied, while the best use is to fill-up empty plots among houses, and businesses to avoid these needs be served with new land development in undisturbed areas further away.

The ROP of 2009 and the ROPv of 2019 requires all properties in the "landelijk gebied" to be partitioned in 6 buildings per hectare, i.e. 6 homes per 10,000m² resulting in each lot to be a minimum of 1,667 m² in size. This supposedly is applicable for all buildable properties to include leased land and property land. This requirement has no logical substantiation:

- There are limited plots of land available for construction.
- The large size per lot is exaggerated compared to other areas. The average lot is about 300-400m² for other areas.
- It inhibits property owners to make proper use of their inheritance.

The suggestion is to require 15 lots per hectare resulting in roughly 667m² per lot instead of 1,667m². Having a lot of 667m² is sufficiently large to build a reasonable sized home for any family.

The KvK suggest indicating industrial areas but also areas which will allocate business incubation in order to stimulate and provide more incentives for (international) investors and startups to participate in business incubation through Aruba Business Incubation Island.

Investors who have already invested into the development of certain projects in areas that now according to the ROP 2019 have a different zone purpose should not be jeopardized in their business and have their projects ostracized or ruined.

These victims rightfully feel their constitutional property protection rights violated if there are economic or financial damage as a consequence of these decisions. These affected persons and companies should be properly compensated for the financial damage incurred.

Furthermore, the investors should receive a clarification on the continuation of their projects.

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On the other hand there are zones indicated which are clearly assigned projects for hotels. Please elaborate on the motivation to have these zones with assigned projects for hotels included in the ROPv. It raises also questions to see property land being assigned for activities of windsurfing near the Baby Beach area whereas this is not an adequate location for this type of sport. We would suggest it to be assigned for snorkeling and not windsurfing due to capacity.

It is not clear how the government wants to achieve turning a commercial area into a highly valued residential area. There are buildings which have already an assigned purpose, either residential or commercial, and the latter is an ongoing business which should not be jeopardize as a consequence of the transformation zone. The ratio of a multidisciplinary zone should be explained further and the existing buildings/houses should be protected. The building requirements do not specify the parking allocation and construction guidelines. What is the ratio between a building and the capacity of a parking lot or garage adjacent to the building?

The ROPV is not only for protection but must also stimulate desired developments. It must be prevented by these regulations that the lead time for processing applications for permits and plans will be delayed. This can be prevented by including strict deadlines for processing applications for permits and plans. The Ordinance Spatial Development (LRO) from 2006 can be adjusted for this. The inclusion of inspection periods is a good thing. According to the LRO, the minister must inform the applicant of his decision within 3 months of inspection. However, the period between submitting the application and making it available for inspection has not been set.

ROPv should clearly establish allowed number of units to be built per square meter of land, same as it does with heights. More so, Aruban policy so far has established the number of units allowed per hectare (i.e 40/hectare), so for example in a hectare you can have 40 units of 1000 square meter units each for a total of 40.000 square meters of sellable area or just 40 units of 100 square meter units for a total of just 4000 square meters of sellable area; a huge difference (36.000 square meters!!). More advanced legislations establish how much sellable area per hectare. For example 70% of lot area can be sold as sellable area regardless of the number of units. For transparency the density must be established in the law and not just a discretionary policy.

Nature and environment:

KvK is concerned about the fundamentals and motivation for the areas assigned to the 'shocos'? On the map it shows that these area's are situated within residential areas. Furthermore, it is implied that no construction can take place in the shoco areas. Similar requirement applies for the prikichi areas. In our opinion, a disproportionate amount of attention has been paid to certain species, while other species such as the trupial and the turtles have remained unmentioned. We would like to know what the motivation is. It remains unclear for the KvK how the size (total surface) of each zone has been determined. Has there any consideration been taken for other species, in particular the sea turtles? How will the nesting areas be protected? There should be allocation and protection of these nesting areas along with regulations to protect them.

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We suggest including an indication of the percentage of the share of the surface of the areas that are being allocated to each zoning category as defined on the map, compared to the total island surface. Preferably, according to any international standard/benchmark definition or matched with a need/requirement for Aruba as to a minimum (or maximum) of total area allocated for a specific zoning category.

An appropriate balancing of the share square meter of each area is recommended. The KvK is of the opinion that there should be an explanation to clarify how the new zones are defined and why there is such a big difference between the zones of the ROP selected in 2009 and the same areas in ROP 2019.

Due to the fact that it is unclear how the partition has been formulated, in percentages for each zone determined, it is likewise unclear if there is a balance between all zones at all. There are zones mentioned in the ROP that do not comply with their existing assigned description or purpose, meaning that the purpose is different in the ROP from the existing purpose. Destruction to green areas during the period under the ROP of 2009 has not been accounted for and no one has been held responsible for damages made.

There are also cases where property land was absorbed to be part of Parke Arikok which would have been reimbursed. However, we understand that the Government has never paid these owners or compensated them in any way. How will the Government of Aruba (GOA) compensate these people and avoid this from happening again? Some people have actually put these properties as collateral for financing or have invested family savings in property that is now worthless.

In the previous draft they had a prohibition on new jetties and piers. GOA thru DOW has the power to authorize new jetties and piers, or not, so why put a straitjacket upon them. Many reasons for possible future jetty/piers: new marinas, new beaches, climate change, etc. Case in point Fisher Island in Miami after building beaches with required jetties became the most expensive real estate in the US. We see similar scenario with neighboring Island Curacao. The argument of raising sea levels in the future.

The ROPv 2019 needs to mention the Watty Vos Boulevard (WVB) and how urban development impact is included in the planning. It is very important to indicate in the ROPv 2019 that the WVB was planned for the use of the local population to reach places of work, places of residence, schools and personal services and not to create land use for the expansion of or the creation of industrial areas alongside the WVB. The KvK is of the opinion that these industrial and intensely commercial areas should be concentrated in clusters of common use in a particular zone (Barcadera, Eagle, Dakota zuid, Kibaima Tanki Flip road for example for their commercial incentives). Savaneta for example is a residential area where many commercial activities take place amongst the residential zones. For Savaneta consideration must be taken to specify and separate the marine area from residential area and define its purposes.

It is not practical to request for input on an incomplete ROPv document. There appears to be many blank pages in the ROPv document and therefore we cannot provide a complete analysis on the contents, for example there are no details on the chapter: Process.

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The colors used in the mapping are to some extent confusing. Certain areas that border each other are not clear due that the colors are very similar. Also, when requesting detailed explanation to the exact border of the colored areas this is not available either. We suggest having the Spatial Department (*Kadaster*) mark the specific borders and make them available online, with a detailed explanation of every color category and icons.

The ROPv 2019 should categorize the tourist activities of houses (home-sharing like AirBnB) as touristic activities but does not direct to the regulations such as nuisance permit and recreational permit to regulate the AirBnB, either established or in the planning. Furthermore, what action will be taken for the protection of the home owners within a residential zone who have a right to peaceful enjoyment of their home, without increased foot traffic, recreation activities (parties with loud music) and such.

There is no indication whether the carrying capacity of the island has been taken into consideration in order to be able to identify and protect sensitive areas against overuse.

Tourism-related projects and developments:

Any development, in particular of hotels near the Baby Beach and Rodgers Beach area, should keep into consideration the nesting areas and spatial requirements for ocean life, by way of protection of mangroves, turtle nesting space, control of water pollutant risk (oil from cars leaking in parking lots and roads close to water, harsh cleaning detergents, fertilizers etc.)

The ROPv 2019 should clarify that the beach area will remain accessible for locals to enjoy their island's natural assets and no more construction that increases population density close to the beaches should be allowed and keeping consideration with the carrying capacity. Fencing beach areas should also be at a very minimum with clear limits of chairs and parasols to be offered for rental.

We recommend for the hotels to be build in San Nicolas be destined for eco tourism, boutique resorts, located in planned subdivisions (*verkavelingsplannen*) divided in small plots 2,500 to 5,000m² for hotels of 50 to 100 rooms with a planned pedestrian traffic access of these multiple plots towards the beach, via wide landscaped boulevards, without crossing vehicle roads (higher tourism value).

Mass tourism is not recommended and discouraged, because of labor impact and quick use of available land, leaving nothing for the future generations.

To justify the construction of a 900 room hotel it is implied that a growth in tourism and airlift is expected. The study for this growth should be mentioned to support the construction of new (boutique) hotels in the Colony area. The results and recommendations of studies made for the development of this area should be explained and publicly discussed.

This zone mentions the AirBnB and other company that rent houses as a tourism activity. These activities should therefore only be allocated in the tourism zones. The GOA is aware of the development of these tourism activities in the areas that are allocated for residential areas. The ROPv 2019 should clarify whether the GOA will take action against these tourist developments in residential zones as this is a direct breach of the ROP 2009 and 2019.

The criteria for AirBnB activities in Aruba should be stipulated. Furthermore, the AirBnB type of accommodation should be monitored by a law independent from the ROPv and the recreational accommodations should remain compliant with local taxation.

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The KvK has noticed that there is no plan or regulations formalized regarding the AirBnB development in Aruba. This is of importance for the safety in residential areas. It is also in conflict with the zoning regulations for residential areas. AirBnB is not included in the sectors for tourism development and are not regulated through a nuisance permit or any other required licenses or permits. The ROPv 2019 needs to stipulate on which grounds it makes exceptions for tourist activities in residential zones. Similar to certain businesses located in residential areas (such as septic tank). The KvK is of the opinion that only AirBnB should be allowed in residential areas (home rental), not resort construction. A clear description for the AirBnB should be included in the ROPv as to addressing discrepancies which would come in conflict with the "vergunningsoverordening" in regards of the purpose for the accommodation, its permits and the taxes it will need to comply with. The ROPv should steer clear from conflicts with other existing laws such as LRO and allow other existing regulations their space to be executed as written in the law.

Without a nuisance permit there will be a proliferation of activities in residential areas. This should also be applicable for condominiums near residential areas. As of now there is an agreement with AirBnB, but there are other similar type of business models that do not have any agreement and this can be considered as illegal and not easily controlled.

Port City and other economical developments:

The development of Port City should compensate the economic aspects of the ROP 2019. The status and developments regarding the "Port City" the last large plot of land in a very crucial and socially (potential quality of life impact) and strategic location have not been discussed in public or made available to the public and NGO's Trade organizations, local investors, interested persons to view in order to give an opinion in regards of the destination of this very important part of Aruba, in the ROP 2019. The KvK is aware of planning for two hotels (!) but no indication of any decision regarding condominiums.

The KvK strongly advises to reconsider this project and its purpose. At this moment, more rooms are not needed to alleviate employment. it is currently already difficult to fill vacancies in the tourism industry.

What is the motivation for excluding Oranjestad and San Nicolas from a moratorium for the construction of hotels and condominiums? What research has been conducted to support this exception and what will this imply on the job creation needs. Taking into account the land shortage problem of 'Erfpacht', the insurmountable land development requirements for 'Eigendom plots', that makes it almost impossible for families to split inherited property, the KvK would strongly advice to allocate primarily local residents to the new Port City residential location and keep new commercial initiatives on a minimum in order not to cannibalize on the current long term established (and long term jobs held) in the businesses in the area and create possibilities to stimulate commerce in the main street area with population moving more into down town and opening homes for next generation and current home seekers. Port City area should not be targeted for further commercial development which would create a competitive threat the main street businesses. Properties in the mainstreet areas will decrease in commercial value as well due to a commercially developed Port City. A waterfront residential development should be carried out to support the existing commerce. There is no mention to what international agreements and other requirements the Port City needs to comply with.

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Furthermore, there should not be buildings constructed that obstruct the current view to the ocean. These should be of high rise and with ample space in between for public and vehicle access up to the waterfront, which should be exclusively pedestrian. View to the ocean between buildings of architectural value and beauty from an amplified (more lanes) L.G. Smith Boulevard should be the goal.

Monuments and cultural history:

The criteria for building / infrastructure that fits Aruba should be identified. The ROPv 2019 should include recommendations and examples of how its culture and identity factors are safeguarded in order to remain touristic and attractive.

The requirements for the archeological and monumental protected areas should be specified in the ROPv 2019. In particular the natural (geological) monuments such as the various rock formations, caves, dunes and public beaches needs to be strictly protected with specific instructions and restrictions. Eagle Beach is one of the most famous beaches in the world and there is no protection or restriction to maintain this geological monument and should be preserved in pristine condition for this and all future generations.

There are many abandoned (monumental) buildings in San Nicolas and Oranjestad and the ROPv 2019 should provide guidance to their preservation and use. What is the difference with what has been defined as "cultural/historic" as mentioned in 3.5.10 and how is this any different from archeological and monumental. Which instance will have oversight and management over the monumental buildings and other cultural infrastructure?

The GOA needs to make clear how it will tackle the situation of the existing commercial buildings which are currently not rented or long-term in abandonment without any maintenance, and which do not resemble the desired infrastructure of Oranjestad and San Nicolas in order to be an asset to the economy.

We are always willing to explain this to you during a personal conversation. If there are any questions please contact the Secretary, Mrs. Sonja Velthuisen, tel. 5821120 /ext. 41/29.

Sincerely yours,



Kawish Misier
President



Sofia (Sonja) J. G. Velthuisen
Executive Director