

**AGENDA of the
Portfolio Committee: Planning & Development
7 August 2024
(Also the agenda for the Mayoral Committee Meeting: 14 August 2024)**

to make my driveway from that bush road to my yard. The Municipality found my application favorable and then gave me written permission to make my driveway there.

In 2010 I submitted plans to build a garage on my West side and then this driveway came under discussion again because the garage's entrance would only be accessible through that driveway's position. A person from Nature Conservation and 2 people from building control then met on my erf to investigate and discuss this situation. Environmental's finding was that it is indeed wet in front of my house, but apart from that there is already a "scar" in the mountain with the bush road and if I want to make another road along the bush road there will now be 2 Scars. The Municipality then gave me two conditions if I wanted to keep the permission:

- 1.) I may never block the road so that Eskom and municipal vehicles will always have access, and*
- 2.) I have to combat soil erosion at my own expense, because at that stage the soil had already washed down into the tarmac Disa Circle in front of my house.*

I agreed to have that road paved and with that agreement I was again allowed to keep my driveway on the West side and my garage plan was approved. In 2014 I had another garage built on my South side and its door is also on the West side where the existing driveway enters my yard.

If I now have to have a new driveway made, I will have to incorporate a lot of building material to solidify the wet soil and thereby obstructing the natural water flow and incorporate many alkaline elements into the acidic soil which will spread further into our natural system with the underground water running down through my yard to the wetland reserve directly opposite my house. I have also had 2 motor houses built which have a comfortable and safe entrance where my driveway is now.

Following the Municipal requirement to retain permission, I also incurred great expense to pave the existing bush road used by Eskom and municipal vehicles. A new road on my West border will make the angle to my South garage very sharp and it will not be possible for me to be able to pull my boat or trailer in there. The space past my house's South-West corner will also be very small for my Bakkie to pass to the garage on the West side."

There are copies of the approvals from the Municipality's Operational Department in 2006 and Building Department in 2010 for the use of the road for entrance to the Applicant's property on the file.

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Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 54: “A servitude can be defined as a right which one person has over the immovable asset of another and includes instances in which the Municipality grants a party a right over a municipal owned immovable property. Servitudes result in a burden on the immovable property for extensive periods of time, sometimes permanently. It is for this reason that servitudes should only be granted after careful assessment of the impact of the proposed servitude on the immovable asset”.

This application is for a right of way servitude across municipal property.

Paragraph 55: “If the proposed servitude will result in the immovable property, in discretion of the municipality, being negatively affected, including the impairment of the ability to productively enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then such servitude might not be granted”.

The comments received do not indicate that the Property will be negatively affected by the proposed servitude. The route was determined to have the least possible effect on the subject municipal property.

Paragraph 56: “Subject to paragraph 55 above, servitudes may be granted to any person (private or state organ) subject to payment of an appropriate market related compensation by such person provided that in certain circumstances, e.g. where another organ of state requires a servitude for the benefit of the general public or in cases of so called “land locked” property, and subject to the necessary authority having been obtained, the payment to the granting of the servitude, may be waived.”

HCB Property Valuations determined the market value for the servitude at an amount of R460.00/m² (FOUR HUNDRED AND SIXTY RAND PER SQUARE METRE) (VAT excluded). Should the servitude be 160m² (ONE HUNDRED AND SIXTY SQUARE METRES) the amount payable to the Municipality will be an amount of R73,600.00 (SEVENTY-THREE THOUSAND SIX HUNDRED RAND) (VAT excluded).

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Paragraph 57: “The party requiring the servitude on municipal immovable property is responsible for all costs relating to the granting and registration of the servitude”.

The Applicant will be responsible for all costs. Currently, no application fee has been approved in the budget for the type of application. The Applicant paid for the valuation and will indeed have to pay for the servitude registration costs.

For the registration of the servitude, a servitude diagram will have to be approved by the Surveyor-General for inclusion in the servitude agreement. The latter must be registered against the Title Deed of the municipal property. This will be at the cost of the Applicant.

Conclusion

With reference to the above discussion, it is recommended that a servitude right of way over the Property in favour of the Applicant be approved at a market related price for the servitude.

7. Financial Implications

The Municipality stands to gain an amount of R460.00/m² (FOUR HUNDRED AND SIXTY RAND PER SQUARE METRE) (VAT excluded) for the right of way servitude.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Town Planner – Ms H van der Stoep

“Please note that there is no objection against the servitude, however the area right up to the northern boundary is not necessary and it is recommended that the servitude be registered from the road up to the entrance and paving to the garage. The area on the western side of the garage (grass area) is not needed for access and is not supported.”

Comments from Property Management: The servitude area will only be the area necessary for access to the garages on the Applicant’s property and the other encroachments on Municipal property has already been removed by the Applicant.

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Principal Technologist Civil: Kleinmond - Mr D van Rhodie

“The Operational Services Kleinmond has no objection to the application. Condition that Eskom & Municipal vehicles should have access at all times in case of an emergency/routine maintenance should be embedded in the agreement.”

Divisional Manager: Expenditure, Fleet and Asset Management - Mr J Vorster

“As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection”.

10. Annexures

Annexure A1 & A2: Locality maps

RECOMMENDATION TO THE COUNCIL:

that a servitude right of way over municipal property, being a portion of Erf 3476 Betty's Bay, in favour of the owner of Erf 3477 Betty's Bay, at a market related price of R460.00/m² (FOUR HUNDRED AND SIXTY RAND PER SQUARE METRE), **be approved.**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	17 SEPTEMBER 2024
TARGET DATE TO INFORM APPLICANT :	17 SEPTEMBER 2024
TARGET DATE TO INFORM OBJECTOR :	N/A

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9.

A PORTION OF ERF 3476 BETTY'S BAY: SERVITUDE RIGHT OF WAY IN FAVOUR OF THE OWNER OF ERF 3477 BETTY'S BAY

**A Le Roux
5 July 2024**

Divisional Manager: Property Management

(028) 316 - 5623

THIS MATTER SERVED BEFORE THE PLANNING & DEVELOPMENT PORTFOLIO COMMITTEE ON 7 AUGUST 2024, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

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