

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
20 February 2018
(Also the agenda for the Mayoral Committee Meeting : 28 February 2018)**

**7.
HERMANUS: AMENDMENT OF COUNCIL RESOLUTIONS DATED
25 NOVEMBER 2015 AND 30 MARCH 2016 FOR THE ALIENATION AND
TRANSFER OF A PORTION OF ERF 4771 (ADJACENT TO ERF 4075)
HERMANUS (±205M² IN EXTENT)**

7/2/3/2/

A Le Roux

(028) 316 - 3724

Hermanus Administration

27 December 2017

1. Executive Summary

To obtain approval for the amendment of Council Resolutions dated 25 November 2015 and 30 March 2016 and subsequently the Deed of Sale entered into on 13 August 2016 as to:

- (a) The amendment of the approval that the property may only be used for gardening purposes to include the retaining walls and planter;
- (b) The removal of the condition that a servitude must be registered over Erf 4771 Hermanus for access to the consolidated property; and
- (c) Removal of the condition that access to the consolidated property will only be from 10th Street, Hermanus as to the Deed of Sale.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
The encouragement of structured community participation in the matters of the municipality
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

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- Local Government: Municipal Finance Management Act (Act 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion/Evaluation

A: Application to purchase

An application to purchase a portion of Erf 4075, Voëlklip, Hermanus ($\pm 205\text{m}^2$ in extent) was originally received in September 2013. The Applicants indicated in the application that the portion applied for "will afford privacy screening via landscaping, security provision via boundary fencing and ease site access. In short, the additional land portions will be used for domestic gardening purposes". This meant that the Applicants were to obtain access to their property over the subject portion of property to the garage at the back of the house (access was to be between the boundary wall of the consolidated property and the building as indicated in the attached locality map and drawing, being Annexure A).

B: Approvals for the sale of portion of Erf 4771 Hermanus

Subsequent to the above, Council resolved on 25 November 2015 as follows:

- "1. that Council's resolution dated 29 April 2015 for the alienation of a portion of Erf 4771, Voëlklip, Hermanus, ($\pm 205\text{m}^2$ in extent), by means of a competitive process **be rescinded**;*
- 2. that the deviation from paragraphs 7 and 15.1 of the Administration of Immovable Property Policy of 2014 **be approved**;*
- 3. that the direct alienation of a portion of Erf 4771, Voëlklip, Hermanus, ($\pm 205\text{m}^2$ in extent) to Mr Paul Mark and Mrs Beverley Lewin **be approved in principle**;*
- 4. that the abovementioned approval in principle be subject to a public participation process being followed due to the non-viability of the property and the costs involved in advertising a tender;*
- 5. that the costs pertaining to the transaction, e.g. subdivision, consolidation, rezoning, transfer costs, water- and sewer connections, bulk services contribution, advertisements, etc., excluding the valuation costs, be paid by the purchaser; and*

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6. *that an access servitude be registered over the remainder of Erf 4771, Voëlklip, Hermanus to provide access to the proposed subdivided erf at the cost of the purchaser;*
7. *that the subject portion of Erf 4771, Voëlklip, Hermanus, must be consolidated with the adjoining property of the Applicants, being Erf 4075, Voëlklip, Hermanus; and*
8. *that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003)."*

Council further resolved on 30 March 2016 as follows:

- "1. *that the transfer of a portion of Erf 4771 adjacent to Erf 4075, Hermanus (Voëlklip), ±205m² in extent, for gardening purposes to Mr Paul Mark and Mrs Beverley Lewin for the amount of R1,509.00/m² (ONE THOUSAND FIVE HUNDRED AND NINE RAND ALONE PER SQUARE METER) (VAT excluded), **be approved;***
2. *that the Municipal Manager be authorised to sign all documents relating to the transfer of a portion of Erf 4771 adjacent to Erf 4075, Hermanus (Voëlklip) to Mr Paul Mark and Mrs Beverley Lewin;*
3. *that cognisance be taken of the fact that the subject portion of Municipal property is **not required** for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act, No 56 of 2003;*
4. *that Mr Paul Mark and Mrs Beverley Lewin be responsible for all the subdivision, consolidation, rezoning, transfer costs, water- and sewer connections, bulk services contribution, advertisements, excluding the valuation costs, the transfer and the registration of the property in the Deeds Office;*
5. *that an access servitude be registered over the remainder of Erf 4771, Voëlklip, Hermanus to provide access to the proposed subdivided erf at the cost of the purchaser; and*
6. *that the subject portion of Erf 4771, Voëlklip, Hermanus, be consolidated with the adjoining property of the purchaser, to wit Erf 4075, Voëlklip, Hermanus."*

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After the approval for the transfer of the said property was obtained, a deed of sale was entered into between the parties with the following special conditions:

“17.3A servitude right of way over the remainder of Erf 4771, Hermanus to ensure access to the property must be registered at the cost and in favour of the PURCHASER.

17.4 The property must be consolidated with the PURCHASER’S property being Erf 4075 Hermanus.

17.5 The property herewith sold, thus also more specifically the respective portion of the Erf to be consolidated shall only be used for domestic gardening and security purposes and no structures will be allowed to be built on the property.

and these conditions shall be registered against the title deed of the property as conditions imposed by the Overstrand Municipality.

17.6 The PURCHASER must attend, at its own costs, to the subdivision of the property for registration purposes. The registration of the transfer in the deeds office will only be affected once the subdivision is approved.

17.7 The PURCHASER must, at its own costs, attend to the closure of the portion of road and the rezoning of the said property to the required zoning status.

17.8 Access to the property will be only be from Tenth Street, Hermanus.”

C: Town Planning Application

After signing of the deed of sale, the Applicants proceeded with their application for the subdivision, consolidation, closure of public road and rezoning of the subject portion of property. In their application they indicated, in separate paragraphs, the following:

“The intent is to utilize the portion of land, to be obtained, for security and gardening purposes. The acquisition of the portion of land would enable them to extend their dwelling and use the portion of land to gain access to the proposed garage.”

“Access to the consolidated erf will be from 10th Street as indicated on the aerial photograph. The access to the proposed garage will be over the portion of 205m² to be acquired from the Overstrand Municipality, as indicated on the attached site plan.”

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“The impact on the character of the area will however remain unchanged as the portion of 205m² will be used to gain access to the consolidated erf.”

“The portion of unmade road to be closed of 205m² will be consolidated with Erf 4075 Hermanus to form a consolidated erf of ±701m², however there will be a restriction that there may be no structures placed on this portion of land. It is proposed to extend the dwelling on Erf 4075 Hermanus, the proposed extensions to the dwelling to be on the southern portion of the property and to this extent it made perfectly good sense to obtain a portion of unmade road being a portion of Erf 4771 Hermanus to gain access to the back of Erf 4075.”

“One of the conditions of the Deed of Sale signed with the Municipality states that a right of way must be registered over the Remainder of Erf 4771 Hermanus to ensure access to the consolidated property. This is however not feasible as the noting sheet indicates the area as road and it would therefor not be an option to register a servitude of way over a portion of Erf 4771 Hermanus, being public street. Access to the consolidated erf will be from 10th Street.”

D: The Lease agreement

A lease agreement was entered into between the Applicants and Overstrand Municipality in order for them to be able to erect a security wall pending the outcome and finalization of the application to purchase. The lease agreement clearly indicated the purpose of the lease being that it *“shall be used exclusively for the purpose of fencing the area for domestic gardening and security purposes and no other activities will be allowed on the leased land”*.

In terms of the said lease agreement, the Applicants obtained approval to erect a boundary wall on the border of the proposed consolidated erf subject to the approval of the necessary building plans. The Applicants submitted a building plan for a boundary wall on the boundary of the to be consolidated property, which was approved. However, they did not indicate on the building plan as a new addition together with the boundary wall, the retaining walls that were needed to support the boundary wall. These retaining walls would have the effect that the portion of property applied for could not be used as access as indicated in all their applications. This was not picked up (as not marked as a new addition on the building plan) by the Building Department and Property Administration Department when the approval for the building plans was obtained. The Applicants unfortunately did this knowing that

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they were not permitted to build on the portion to be acquired (except the boundary wall) and that the said portion was to be used for access to the consolidated property. Additional to this, they also build a planter in this area which also restricted access from 10th Street as indicated in their applications (see Annexure B).

E: Access Road

As the Applicants built in the area (to be acquired) where they were supposed to have access to the garage at the back of the property, they took the liberty to build a two track road in the unmade portion of 17th Avenue (public road) on a main sewerage pipe line (see Annexure "B1/2" attached). Their entrance to the property was also changed from 10th Street to 17th Avenue, Hermanus. Once this came to the Municipality's attention, the Applicants were requested stop with the proposed two track road and to submit an amended application to subdivide, consolidate, close public road and rezoning of the 205m² to be acquired and also to have the Council approvals and deed of sale amended.

F: Application to amend Council resolutions and Deed of Sale

The application to amend the deed of sale and Council approvals were received in August 2017. The Applicants proposed the following:

- (i) Deletion of condition 17.3 of the deed of sale dealing with the right of way servitude over the remainder of Erf 4771, Hermanus to ensure access; and
- (ii) Amendment of condition 17.5 of the deed of sale as to the condition that no structures may be built on the portion to be acquired; and
- (iii) Amendment of condition 17.8 of the deed of sale dealing with access to the property from 10th Street.

The above means that the Council approvals will also have to be amended before the Deed of Sale may be amended as the conditions were imposed by Council.

In motivation of the above request, the Applicants indicated in their application that:

"As the legal documents in the Surveyor-General's office do not reflect the realignment of the position of 10th Street it would not be possible to register a servitude over the portion of Erf 4771 Hermanus as it is a public street."

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Due to the slope/topography of the property it was proposed to build a retaining wall and access way over the portion that was earmarked only for security and gardening purposes. The entrance on 10th Street has also been amended to be more aesthetically pleasing. It is therefore requested that condition 17.5 be altered to make provision for the paving in front of the garage, the plant box, the retaining walls, access walkway and entrance wall.

During the design phase of the building it came to light that it was not feasible to provide access over the 4m portion of land to the garages at the back of the property. It is however the only area where the new garages could be placed and hence the only option was to utilize the remainder of 17th Avenue (status Public Road, but unmade) as access to the garages at the back. (see attached Annexure C).

It should be noted that the building plans were approved with the access over the unmade portion of 17th Avenue and hence the access has been paved with grass blocks and cobblers in front of the garage. The paved area and grass blocks do not have a foundation. The architect and owners were unaware that access over the unmade portion of 17th Avenue would be restricted and an application to utilize the portion of unmade section of 17th Avenue has been submitted to the relevant department of the Overstrand Municipality.

The owner is aware that there are services situated in the unmade portion of 17th Avenue and would waiver any claims if the grass blocks or cobbling stones would have to be removed due to service or repairs to the underlying municipal services."

It must be clearly noted that the Applicants have not indicated why they were not able to submit the necessary application before all the works were done. This is specifically mentioned as all the Council approvals as well as copy of the deed of sale and lease agreement were provided to the Applicants.

The matter was subsequently investigated by the Building Department as well as the Town Planning Department. It was confirmed that the boundary wall will not comply with building regulations without the retaining walls. If the Applicants are forced to demolish the boundary wall, it will defeat one of the reasons for their application, hence for security purposes.

Approval for the two track grass blocks/cobblers as indicated on Attachment C has not been obtained yet. However, the grass blocks/cobblers were placed on unmade public road (extension of 17th

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Avenue) and therefore the Applicants cannot be prohibited to have access over the public road. As this is a registered public road and as the garages are now situated at the back of the property (erf 4075 Hermanus), it is more favourable to give access from 17th Avenue and thus it will not be necessary to register a servitude right of way.

Conclusion

Taking the comments of the Town Planning and Building Departments into consideration, it is recommended that:

- (a) Condition 6 of the Council Resolution dated 25 November 2015 be deleted as it will not be necessary to register a servitude right of way;
- (b) Condition 5 of the 30 March 2016 be deleted as it will not be necessary to register a servitude right of way;
- (c) Condition 1 the of Council Resolution dated 25 November 2015 be amended to read as follows:

*“that the transfer of a portion of Erf 4771 adjacent to Erf 4075, Hermanus (Voëlklip), ±205m² in extent, for gardening purposes and the erection of retaining walls for the boundary wall, to Mr Paul Mark and Mrs Beverley Lewin for the amount of R1,509.00/m² (ONE THOUSAND FIVE HUNDRED AND NINE RAND ALONE PER SQUARE METER) (VAT excluded), **be approved;**”*

The abovementioned will have the effect that the deed of sale can be amended by means of an addendum.

7. Financial Implications

The Municipality stands to gain the market related purchase price of R1,509.00 (ONE THOUSAND FIVE HUNDRED AND NINE RAND) per square metre (VAT excluded).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Town Planner: Ms Hanneen van der Stoep – (028) 313 8906

A site inspection was conducted by the Building Department to validate the request with regard to the retaining walls in the approval area for the purpose of an access to the garages. It is evident that the retaining walls are

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necessary due to the topography of the erf. It is thus not possible and or practical to request that the structures in the aquired portion of land be removed. The boundary wall will not be able to comply with the National Building Regulations. The grassblocks are aesthetically and environmental friendly building material and the impact is less than a tar road. It is also easier to remove should it be necessary for maintenance of the municipal pipeline.

The eco friendly method is imperative in this case due to the upmarket development proposed to the adjacent proposed De Mond development and beneficial to the area and the community of the Overstrand.

The proposed access directly from 17th Avenue will have no detrimental effect on traffic flow. It should however be made clear to the applicant that the Municipality will not be responsible for any maintenance, rectification of any damage caused should work be necessary and or done in the unmade 17th street.

10. Annexures

- Annexure A: Locality plan and diagram
- Annexure B: Picture of retaining wall and planter with building plan
- Annexure C: Picture of garages, paving and two track access

RECOMMENDATION TO THE COUNCIL:

1. that Condition 6 of the Council Resolution dated 25 November 2015 be deleted as it will not be necessary to register a servitude right of way;
2. that Condition 5 of the 30 March 2016 be deleted as it will not be necessary to register a servitude right of way; and
3. that Condition 1 the of Council Resolution dated 25 November 2015 be amended to stipulate as follows:

*that the transfer of a portion of Erf 4771 adjacent to Erf 4075, Hermanus (Voëlklip), ±205m² in extent, for gardening purposes and the erection of retaining walls for the boundary wall, to Mr Paul Mark and Mrs Beverley Lewin for the amount of R1,509.00/m² (ONE THOUSAND FIVE HUNDRED AND NINE RAND ALONE PER SQUARE METER) (VAT excluded), **be approved.***

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RESPONSIBLE OFFICIAL :	A LE ROUX
TARGET DATE FOR IMPLEMENTATION:	9 MARCH 2018
TARGET DATE TO INFORM APPLICANT:	30 APRIL 2018
TARGET DATE TO INFORM OBJECTOR:	N/A

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7.

HERMANUS: AMENDMENT OF COUNCIL RESOLUTIONS DATED 25 NOVEMBER 2015 AND 30 MARCH 2016 FOR THE ALIENATION AND TRANSFER OF A PORTION OF ERF 4771 (ADJACENT TO ERF 4075) HERMANUS ($\pm 205\text{M}^2$ IN EXTENT)

7/2/3/2/

A Le Roux

(028) 316 - 3724

Hermanus Administration

27 December 2017

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 20 FEBRUARY 2018, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that Condition 6 of the Council Resolution dated 25 November 2015 be deleted as it will not be necessary to register a servitude right of way;
2. that Condition 5 of the Council Resolution dated 30 March 2016 be deleted as it will not be necessary to register a servitude right of way; and
3. that Condition 1 the of Council Resolution dated 25 November 2015 be amended to stipulate as follows:

*that the transfer of a portion of Erf 4771 adjacent to Erf 4075, Hermanus (Voëlklip), $\pm 205\text{m}^2$ in extent, for gardening purposes and the erection of retaining walls for the boundary wall, to Mr Paul Mark and Mrs Beverley Lewin for the amount of R1,509.00/m² (ONE THOUSAND FIVE HUNDRED AND NINE RAND ALONE PER SQUARE METER) (VAT excluded), **be approved.***

RESPONSIBLE OFFICIAL :

A LE ROUX

TARGET DATE FOR IMPLEMENTATION:

9 MARCH 2018

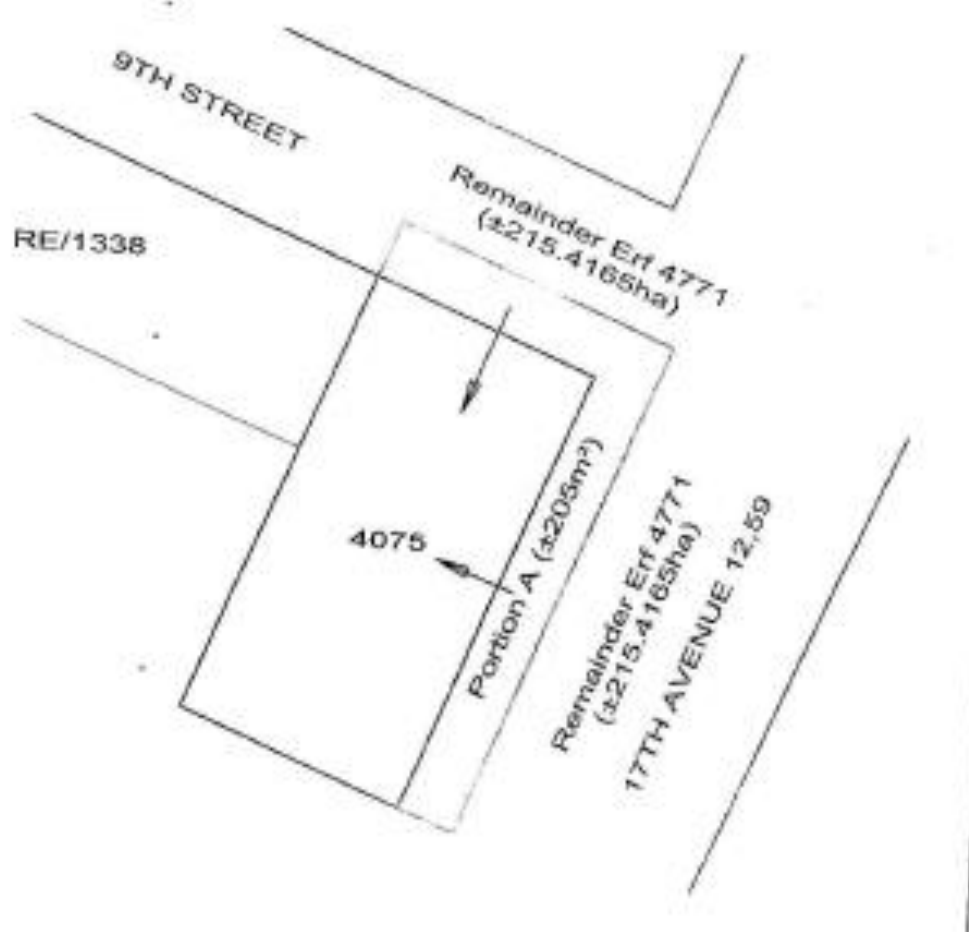
TARGET DATE TO INFORM APPLICANT:

30 APRIL 2018

TARGET DATE TO INFORM OBJECTOR:

N/A







**POSITION OF RETAINING WALL, PLANTER AND PAVING ON 4M STRIP
GRASSBLOCKS ON UNMADE PORTION OF 17TH AVENUE IS ALSO VISIBLE**

