

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
17 March 2020
(Also the agenda for the Mayoral Committee Meeting: 25 March 2020)**

**8.
IN PRINCIPLE APPROVAL FOR THE ALIENATION OF ERF 1153 HAWSTON
(SITUATED ON THE CORNER OF CHURCH STREET AND WOODLANDS ROAD,
HAWSTON) BY MEANS OF A COMPETITIVE PROCESS**

7/2/3/2

A le Roux

Manager: Property Administration

10 February 2020

(028) 316-3724

1. Executive Summary

To obtain approval in principle for the alienation of Erf 1153 Hawston (1980m² in extent) (hereinafter called the “property”) by means of a competitive process. See locality map attached hereto marked Annexure A.

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

- Local Government: Municipal Finance Management Act, Act 56 of 2003 (“MFMA”)
- Municipal Assets Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended
- Overstrand Municipality Supply Chain Management Policy, as amended

6. Background/Discussion/Evaluation/Conclusion

Background

Erf 1153 Hawston, situated on the corner of Church Street and Woodlands Road, Hawston, is a subdivision of Erf 1147 Hawston (general plan 12590 and

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SG4568/1989) which general plan was duly registered against the title deed of Erf 1147 Hawston. The title deed of the parent erf (Remainder Erf 1147 Hawston) shows that Erf 1153 Hawston formed part of a batch of several erven that were transferred under the same general plan no. 12590 from Province to Overstrand Municipality in January 2013.

The property is zoned as Community Zone 1: Community Facilities.

In 2013 it came to the Property Administration Department's attention that the property is occupied by the Calvin Protestant Church of S.A. (Hawston) (hereinafter called the "Church"). The necessary investigations were done to establish how they got occupancy of the property and whether any agreement is in place.

During this investigation the following was found:

1. The Church has been occupying the property since 1993 and started to erect buildings thereon.
2. The property was awarded to the Church by the House of Representatives (Ministry of Local Government Housing in Agriculture) in 1992/1993;
3. The Overberg Regional Services Council advertised the sale in 1992;
4. Since 1992 this matter was dealt with by the Hawston Management Board and thereafter the Greater Hermanus Municipality.
5. In 1993 a deed of sale was entered into between the Overberg Regional Services Council and the Church, although the Overberg Regional Services Council was not the owner of the property. Unfortunately, no deed of sale, signed by both parties, could be found. The Church could also not present a signed deed of sale.

The relevant Council's decision (Overberg District Municipality) for the sale as well as any deed of sale signed by both the respective parties could not be obtained/found in either our archives or the archives of Overberg District Municipality.

As there was no clarity as to the status of the deed of sale (whether there is a valid sale), a legal opinion was requested and it was confirmed that there is no binding agreement for the sale of the property.

The recommendation received from the Attorneys on record was as follows:

"It is our recommendation that the money paid by the church in lieu of the purchase price under the mistaken belief that there was a valid agreement be refunded to the Church with interest.

Should the Municipality be of the view that it wants to sell the property, it will have to do so in terms of section 14 of the MFMA."

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A different report will serve before Council dealing with the financial matter between the Overstrand Municipality and the Church.

Section 14 of the MFMA deals with the disposal of capital assets and stipulates that the transfer of ownership of a capital asset must be fair, equitable, transparent, competitive and consistent with the supply chain management policy. Thus taking this into consideration, the Municipality cannot proceed with the sale of the property to the Church.

Discussion

The Municipality receives numerous applications for church properties in the Overstrand and many applications have been received from the community of Hawston.

The Administration of Immovable Property Policy, as amended in 2005, in line with section 14 of the MFMA, clearly stipulates that the alienation of immovable property must be affected by means of a competitive process. As the property is not needed for the provision of a minimum level of basic services and not required for operational services, it is recommended that the property be sold by means of a competitive process.

Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 9.1(a): *“The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services;*

The comments received from the relevant officials confirmed that the subject property is not needed for the provision of the minimum level of basic municipal services.

Paragraph 9.1(b): *“The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA considered the fair market value of the immovable property and the economic and community value to be received in exchange*

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for the immovable property in accordance with Section 14(2) of the MFMA, and

Boland Valuers determined the market related value for Erf 1153 Hawston on 14 February 2020 at an amount of R130,000.00 (ONE HUNDRED AND THIRTY THOUSAND RAND) (VAT included)

Paragraph 9.1(c): “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA has as a consequence to 9.1(a) and (b) above approved in principle that the immovable property may be transferred or disposed of, and the method of disposal or transfer.”

The reason for this report is to request an in principle approval from Council for the alienation for the said property by means a competitive process.

Paragraph 15.1: “The transfer of immovable property must, except in the case of non-viable immovable property, be affected by means of competitive process, which may include a public or closed tender, auction or proposal call.”

It is proposed that the property be alienated by means of a competitive process.

Paragraph 28: “All costs pertaining to a transaction shall be borne by the successful bidder/purchaser, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs”

The successful bidder/purchaser will be liable for all costs, excluding the cost for the valuation of the property. Subsequently the cost will entail the Section 14 advertisement, transfer costs and the connection of services.

Paragraph 29: “Should existing services need to be relocated or secured by means of the registration of a servitude in favour of the Municipality as a result of the alienation of the immovable property, all related costs shall be for the account of the successful bidder/purchaser.”

A clause to this affect will be included in the deed of sale.

Paragraph 31: “Where immovable property is alienated for development, a condition, taking into consideration the nature of the

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development, might be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise a condition may be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless a written extension has been granted by the Municipality”

A clause to this affect will be included in the deed of sale.

Paragraph 32 ***“Save with prior approval, the immovable property alienated may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme regulations pertaining to such purposes.”***

A condition to this effect will be included in the deed of sale.

Paragraph 34: ***“A 10% deposit of the agreed/tendered purchase price will be due and payable by the purchaser/successful bidder within 10 days of date of request in writing thereof by the Municipality.”***

A condition to this effect will be included in the deed of sale.

Paragraph 35: ***“Interest on the purchase price, as from date of signature of the deed of sale, must be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder/ purchaser.”***

A condition to this effect will be included in the deed of sale.

B. Advertisement/Notification

The necessary advertisement in terms of Section 14 of the MFMA will be placed after the tender is duly awarded. The successful bidder/purchaser will be liable for the costs of the Section 14 advertisement.

Conclusion

Taking the above in consideration, it is recommended that Council approves the alienation of Erf 1153 Hawston (1980m² in extent) by means of a competitive process at a market related value.

Furthermore, it is recommended that the successful bidder/purchaser be liable for all costs relating to the sale of the property. Subsequently the costs will entail the Section 14 advertisement, transfer and related costs and the connection of services.

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7. Financial Implications

The Municipality stands to gain a market related purchase price for the property.

8. Staff Implications

N/A

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets: Mr J Vorster – (028) 313 8046

Erf 1153 Hawston, is currently reflected in the fixed Asset Register for Property, Plant and Equipment: Land with a carrying value of R30'000. The disposal of the erf will have to be accounted for at the selling price in order to remove it from the Fixed Asset Register and to account for the gain / (loss).

There is no objection as the application complies with the Administration of Immovable Property Policy.

10. Annexures

Annexure A: Locality plan

RECOMMENDATION TO THE COUNCIL:

1. that the alienation of Erf 1153 Hawston (1,980m² in extent) for church purposes by means of a competitive process at a market related purchase price be **approved in principle**;
2. that the costs pertaining to the transaction, e.g. transfer costs, water-, sewer and electricity connections, the section 14 advertisement, etc., but excluding the valuation costs, be paid by the successful bidder/purchaser; and
3. that it is confirmed that Council has taken cognisance of the fact that the municipal property herewith envisaged to be 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).

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RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	24 APRIL 2020
TARGET DATE TO INFORM APPLICANT :	N/A
TARGET DATE TO INFORM OBJECTOR :	N/A

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 MARCH 2020, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the alienation of Erf 1153 Hawston (1,980m² in extent) for church purposes by means of a competitive process at a market related purchase price be **approved in principle**;
2. that the costs pertaining to the transaction, e.g. transfer costs, water-, sewer and electricity connections, the section 14 advertisement, etc., but excluding the valuation costs, be paid by the successful bidder/purchaser; and
3. that it is confirmed that Council has taken cognisance of the fact that the municipal property herewith envisaged to be 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).

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