

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
19 February 2019
(Also the agenda for the Mayoral Committee Meeting: 27 February 2019)**

7.

HERMANUS: IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF ERF 2350 AND A PORTION OF ERF 2352 VERMONT, TO THE AUVERGNE HOMEOWNERS ASSOCIATION

7/2/3/2

M Erasmus

(028) 316 - 3724

Hermanus Administration

11 January 2019

1. Executive Summary

To obtain approval in principle for the direct alienation of Erf 2350 Vermont (63m² in extent) and a portion of Erf 2352 Vermont (±2,100m² in extent) to Auvergne Homeowners Association. See locality map attached 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 Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

An application was received from Mr Johan Visser, the owner of Bogone Investments (Pty) Ltd, who is the current developer of the development known as Auvergne in Vermont. He, on behalf of the Auvergne Homeowners Association, hereinafter referred to as "Auvergne", applied to purchase Erf 2350 and a portion of Erf 2352 Vermont for the purpose of incorporating it into the development to create a closed development and have a security gate at the entrance to the development.

Erf 2350 Vermont is a public open space and the portion of Erf 2352 Vermont is a public road, both of which will be closed at the cost of Auvergne. The subject properties vest in the Municipality in terms of Section 37 of the Western Cape Land Use Planning Act, Act 2 of 2014, but have not been transferred to the Municipality by the current owner, Rapiprop 223 (Pty) Ltd. Thus a simultaneous transfer will have to take place should the alienation be favoured.

Due to the locality and use of the property applied for it cannot be developed independently and taking into consideration the above discussion it can thus be classified as a non-viable property. Non-viable property can in terms of the current Administration of Immovable Property Policy be alienated directly to the adjoining property owner, subject to certain conditions.

Subsequent costs

Auvergne will be liable for the costs of the transaction which will include, but not limited to, the application fee, the cost for the valuation, subdivision, closure of the portion of public road and public open space and rezoning of the property as well as the required Section 14 advertisement in terms of the MFMA and Administration of Immovable Property Policy.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy will apply:

Paragraph 7: "The transfer of ownership of immovable property must be fair, equitable, transparent, competitive (unless it is not applicable or unpractical e.g. non-viable immovable property) and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA."

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Non-viable immovable property is defined the relevant Policy as “a property that, owing to urban planning, physical constraints or extent, cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner’s property”. The subject properties can be classified as a non-viable immovable property due to the location and proposed use thereof.

Paragraph 9.2: “The Municipality may transfer ownership or otherwise dispose of a non-viable immovable property, as non-exempted immovable property which can be of no practical use to any other person, directly to adjoining property owner(s), only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA:

- (a) decided on reasonable grounds that the non-viable immovable property is not needed to provide the minimum level of basic municipal services;**
- (b) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and**
- (c) has as a consequence to 9.2(a) and (b) above approved in principle that the immovable property may be transferred or disposed, provided that, when giving the in principle approval, it is recorded in the minutes the full reasons for the Municipality preferring such direct transfer.”**

- (a) The comments received from the relevant departments indicate that the subject portion of municipal property is not needed for the provision of municipal services. A condition can be included in the Deed of Sale stipulating that should the Municipality need to install services beneath the properties envisaged to be sold in the future, they will have the right to do so with prior notice.
- (b) Boland Valuers determined the market related value for Erf 2350 Vermont at an amount of R68,000.00 (SIXTY EIGHT THOUSAND RAND) (VAT excluded) and the market related value for a portion of Erf 2352 Vermont at an amount of R92.46/m² (NINETY TWO RAND AND FORTY SIX CENTS PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, locality, zoning and proposed use of the property.
- (c) The reasons for preferred direct sale are discussed above and will subsequently be recorded in the minutes.

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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.”

Auvergne will be liable for the costs of the transaction which will include, but are not limited to, the application fee, the cost for the valuation, closure of the portion of public road and public open space, subdivision, rezoning, Section 14 advertisement and transfer costs.

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.”

The purchaser will be liable for all cost in this regard should it be necessary.

Paragraph 30: “Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exists which, in the opinion of the Municipality, make such consolidation undesirable.”

As the applicant is a homeowners association which consist of various adjoining property owners it is not practical or desirable to have the properties consolidated to adjoining properties as there are too many but the said properties will form part of the development and will be classified as common ground for the closed development.

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 33: “The agreement might contain a suspensive condition in respect of immovable property which is sold subject to approval in terms of land use planning legislation.”

A condition to this effect will be included in the Deed of Sale.

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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 published after obtaining this in principle decision. The purchaser will be liable for the costs of the Section 14 advertisement.

Conclusion

Taking the comments of the internal departments as well as the above discussion into consideration, it is recommended that the direct alienation of Erf 2350 Vermont (63m² in extent) and a portion of Erf 2352 Vermont (±2,100m² in extent), to Auvergne Homeowners Association, be approved in principle.

Furthermore the purchaser will be liable for all cost involved to affect transfer of the property in the deeds office. Subsequently the costs will entail the subdivision, closure of portion of public road and public open space, rezoning, Section 14 advertisement and the transfer costs.

7. Financial Implications

The Municipality stands to gain a market related purchase price of R68,000.00 (SIXTY EIGHT THOUSAND RAND) (VAT excluded) for Erf 2350 and R92.46/m² (NINETY TWO RAND AND FORTY SIX CENTS PER SQUARE METRE) (VAT excluded) for the portion of Erf 2352 Vermont. The Municipality will also receive payment for rates on the properties once rezoned and transferred.

The Municipality will most probably be responsible for the payment of the transfer fees, to be estimated at R5,500.00 (FIVE THOUSAND FIVE HUNDRED RAND) to ensure that the properties are transferred to the

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Municipality should the current owner not exist anymore. Provision is made for this expense.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Town Planning, Mr H Olivier - (028) 313 8900

“The development was approved with a public road, and therefore a gate cannot be placed in the road. The applicant would therefore have to purchase the road portion and also submit a planning application to change the road from a public road to a private road. In such process it would also be necessary to submit a site development plan to address issues such a placement of the gate, stacking distances, provision of a refuse area, installing bulk meter for services, etc. Careful consideration will also have to be provided to existing municipal services which run within the existing public roads and public open space and it would necessitate the registration of servitudes over municipal infrastructure.

Should it therefore be considered to allow the applicant to apply to purchase the portion of public road and public open space, the applicant will also have to apply for the following in terms of the Overstrand Municipality By-Law on Municipal Land Use Planning:

- 1. Closure of a portion of Public Road and Public Open Space;*
- 2. Subdivision of a Public Road and Public Open Space;*
- 3. Rezoning of a portion of Public Road to Private Road purposes and a portion of Public Open Space (Open Space Zone 11) to Private Open Space (Open space 3), and*
- 4. Registration of servitudes if so required.*

Note that the above-mentioned town planning application will have to go through a public participation and circulation process, and ultimately the Municipal Planning Tribunal will have to make a final decision on the desirability of such application.”

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

Erf 2350 Vermont & Erf 2352 Vermont are currently zoned as public open space and public road respectively. Although both properties vest in the Municipality in terms of LUPA, they have not yet been registered in the name of the Municipality and as such are not currently recognized in the Fixed Asset

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Register. In the event of the disposal of the two erven a simultaneous deeds transfer will have to be done, firstly to the name of the Municipality and then to the name of the buyer.

In terms of Generally Recognised Accounting Practices 17 ("GRAP 17") the properties must be registered in the Fixed Asset Register and the subsequent alienation thereof must 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 Immoveable Property Policy.

Senior Manager: Engineering Services (Hermanus), Mr D Hendriks – (028) 313 8972

The application is supported subject to the comments hereunder:

Should Erf 2350 and a portion of Erf 2352 be alienated to Auvergne the property will be rezoned and will no longer be public road and public open space and will become private and the Municipality will no longer be responsible for maintenance on the property. The Deed of Sale MUST specifically stipulate that the Municipality will not be responsible for the maintenance of the said erven once they are transferred.

All services on or beneath the said properties which are for the supply to the Auvergne development only, will after registration of the properties be the responsibility of Auvergne Homeowners Association, which responsibility will include the maintenance thereof.

A condition must be included in the Deed of Sale stipulating that should the Municipality need to install further services on or beneath the properties they can do so with written notice to Auvergne and if necessary that a servitude be registered in favour of the Municipality. This will then have the effect that the Applicant will never be able to build on the properties, which can also be included in the deed of sale and subsequent title deed.

Senior Manager: Traffic, Law Enforcement and Task Team, Mr R Fraser – (028) 313 8165

Following this request, Superintendent Smith himself carried out an inspection at the above address. Upon arrival, he noticed that the gate was already erected and that it was also in operation. Access is controlled by a remote controller. No unauthorized access is therefore possible from outside. It is suspected that the gate has been erected without prior approval, but from a traffic point of view it does not pose a threat to other road users. It is a

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security complex and the gate is only used for access control. The gate was erected on the corner of Goshawk and Blue Crane Street.

Senior Manager: Operational Services, Mr J de Villiers– (028) 313 8312

With regard to the application of the proposed purchase of Erf 2350 and a portion of Erf 2352, Vermont, placement of a security gate on Blue Crane Street between Erven 2331 and 2342, use of the said Portion of Erf 2352 as private road, and closure of the thoroughfare (Erf 2350) to prohibit unauthorized entrance to the area, the Department Operational Services (Hermanus) has no objection to the application, subject to the following conditions:

1. That the development be converted to a closed development.
2. That the ownership of all municipal assets (open spaces, roads and the entire internal infrastructure i.e. water- and sewer networks) within the closed development be transferred to the Home Owners Association.
3. That the Homeowners Association will be responsible for maintenance of the open spaces, roads and the entire internal infrastructure (i.e. water- and sewer networks) within the closed development.
4. That the Homeowners Association will be responsible for the maintenance to-, repair- and /or replacement of the internal water distribution network including water meters to e.g. individual erven and open spaces as well as for any internal metering, and that the municipality will not become involved in the internal metering-, recovery from- and or allocation of costs w.r.t individual homeowners within the development.
5. That the Homeowners Association will be responsible for the maintenance to- repair- and/or replacement of the internal sewer network.
6. The Homeowners Association will be responsible for the maintenance to, repair and/or replacement of the internal road network.
7. That should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval.
8. That the proposed development be provided with a central refuse collection facility, which must comply with the standards of the Department: Operational Services (Hermanus).

Response from Property Administration:

There were 23 conditions stipulated in the Senior Operational Manager's recommendation of which only the most important and applicable comments are cited above. All relevant conditions will be included in the Deed of Sale. It must be noted that these comments will also have to be

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considered once the application for the closure of the public place and public street is submitted.

10. Annexures

Annexure A: Locality plan

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of Erf 2350 Vermont (63m² in extent) and a portion of Erf 2352 Vermont ($\pm 2,100\text{m}^2$ in extent) to the adjoining homeowners association, being Auvergne Homeowners Association, at an amount of R68,000 (SIXTY EIGHT THOUSAND RAND) (VAT excluded) for Erf 2350 Vermont and an amount of R92.46/m² (NINETY TWO RAND AND FORTY SIX CENTS) (PER SQUARE METRE) (VAT excluded) for a portion of Erf 2352 Vermont, be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said properties can be classified as a non-viable property;
3. that, subject to the approval in 1 above, a public participation process be followed at the cost of the Applicant/Purchaser;
4. that the alienation of said properties be subject to a suspensive condition that the Applicant/Purchaser obtains approval for the closure of the public road and public open space, subdivision of Erf 2352 Vermont and rezoning of the properties;
5. that a condition be included in the Deed of Sale that should the Municipality need to install services beneath the properties in the future they will have the right to do so with prior written notice to the Applicant/Purchaser;
6. that the relevant conditions stipulated by the Senior Manager: Operational Services be included in the Deed of Sale;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision, closure of portion of public road and public open space, rezoning, transfer and related costs, advertisements, etc., be paid by the Applicant/Purchaser; and
8. that it be noted 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 :	20 MARCH 2019
TARGET DATE TO INFORM APPLICANT:	13 MARCH 2019
TARGET DATE TO INFORM OBJECTOR:	N/A

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7/2/3/2

M Erasmus

(028) 316 - 3724

Hermanus Administration

11 January 2019

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 19 FEBRUARY 2019, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of Erf 2350 Vermont (63m² in extent) and a portion of Erf 2352 Vermont (±2,100m² in extent) to the adjoining homeowners association, being Auvergne Homeowners Association, at an amount of R68,000 (SIXTY EIGHT THOUSAND RAND) (VAT excluded) for Erf 2350 Vermont and an amount of R92.46/m² (NINETY TWO RAND AND FORTY SIX CENTS) (PER SQUARE METRE) (VAT excluded) for a portion of Erf 2352 Vermont, be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said properties can be classified as a non-viable property;
3. that, subject to the approval in 1 above, a public participation process be followed at the cost of the Applicant/Purchaser;
4. that the alienation of said properties be subject to a suspensive condition that the Applicant/Purchaser obtains approval for the closure of the public road and public open space, subdivision of Erf 2352 Vermont and rezoning of the properties;
5. that a condition be included in the Deed of Sale that should the Municipality need to install services beneath the properties in the future they will have the right to do so with prior written notice to the Applicant/Purchaser;
6. that the relevant conditions stipulated by the Senior Manager: Operational Services be included in the Deed of Sale;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision, closure of portion of public road and public open space, rezoning, transfer and related costs, advertisements, etc., be paid by the Applicant/Purchaser; and

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8. that it be noted 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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