

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
18 February 2020
(Also the agenda for the Mayoral Committee Meeting : 26 February 2020)**

**7.
TRANSFER OF A PORTION OF ERF 4410 HERMANUS TO MR GJ & MRS E
FOURIE FOR THE ERECTION OF A BOUNDARY WALL**

7/2/3/2

A le Roux

Manager: Property Administration

3 January 2020

(028) 316 - 3724

1. Executive Summary

To obtain final approval for the transfer of a portion of Erf 4410 Hermanus (adjacent to Erf 4453 Hermanus), 148m² in extent, for the erection of a boundary wall to the owners of the adjoining erf, Mr GJ & Mrs E Fourie, located at 8 Mountain Drive, Northcliff, Hermanus. See the locality plan attached hereto marked Annexure "A".

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priority/ies

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
- Local Government: Municipal Finance Management Act (No 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008)

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Council on 2 December 2016 approved in principle the direct alienation of a portion of Erf 243 Hermanus (adjacent to Erf 4453 Hermanus), ±126m² in extent, for the erection of a boundary wall to the owners of the adjoining erf, Mr GJ & Mrs E Fourie at a market related purchase price subject to a public participation process being followed and subject to further conditions (i.e. closure of public road, subdivision, consolidation and rezoning). A market related value was determined at an amount of R698.00/m² (SIX HUNDRED AND NINETY EIGHT RAND PER SQUARE METRE) (VAT excluded). The public participation process was followed as discussed in more detail below.

Council on 30 October 2019 resolved that the Council resolution dated 2 December 2016 be rectified through substituting the reference to erf number 243 with erf number 4410.

Council approved in principle the alienation subject to amongst others the suspensive condition that the Applicant obtains the necessary approvals for the closure of public road, subdivision, consolidation and rezoning of the property.

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.”

Non-viable immovable property is defined in 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 portion of Erf 4410 Hermanus (adjacent to Erf 4453 Hermanus), can be classified as a non-viable immovable property due to the location, size and proposed use thereof by the adjoining owner.

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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.”

Council, when the in principle approval was obtained, confirmed that the subject property is not needed to provide 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, 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 for the immovable property in accordance with Section 14(2) of the MFMA.”

Boland Valuers determined the market related value on 12 October 2016 at an amount of R698.00/m² (SIX HUNDRED AND NINETY EIGHT RAND PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, locality, zoning and proposed use of the property.

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.”**

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- (a) The comments received from the relevant departments confirm that the subject municipal property is not needed for the provision of the minimum level of basic municipal services.
- (b) Boland Valuers determined the market related value on 12 October 2016 at an amount of R698.00/m² (SIX HUNDRED AND NINETY EIGHT RAND PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, locality, zoning and proposed use of the property by the adjoining owner.
- (c) The reasons for preferred direct sale are discussed above and was recorded in the minutes of the in principle approval granted by the Council on 2 December 2016, of which is attached hereto marked Annexure "B".

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 Applicant/purchaser will be liable for all the costs relating to the transaction, including but not limited to the application fee, valuation costs, advertisement costs, transfer and related cost and all the costs related to the Town Planning processes.

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 shall 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 exist which, in the opinion of the Municipality, make such consolidation undesirable."*

A condition to this effect 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*

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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.

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

An advertisement for the transfer of a portion of Erf 4410 Hermanus (adjacent to Erf 4453 Hermanus), 148m² in extent, was placed in The Village News on 16 October 2019 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

It is recommended that the transfer of a portion of Erf 4410 Hermanus (adjacent to Erf 4453 Hermanus), 148m² in extent, for the erection of a boundary wall to the owners of the adjoining erf, Mr GJ & Mrs E Fourie, at an amount of R103,304.00 (ONE HUNDRED AND THREE THOUSAND THREE HUNDRED AND FOUR RAND) (VAT excluded) be approved.

7. Financial Implications

The Municipality stands to gain an income of R103 304.00 (ONE HUNDRED THREE THOUSAND THREE HUNDRED AND FOUR RAND) (VAT excluded) for the sale of the property.

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8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

The full extent of Erf 4410 Hermanus, is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land with a carrying value of R100 000.00. The disposal of the portion adjacent to Erf 4453 will have to be accounted for at the selling price in order to adjust the carrying value of the remaining portion of Erf 4410 in the Fixed Asset Register.

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

10. Annexures

Annexure A: Locality Plan

Annexure B: Council resolution dated 2 December 2016

Annexure C: Council resolution dated 30 October 2019

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of a portion of Erf 4410 Hermanus (adjacent to Erf 4453 Hermanus), 148m² in extent, for the erection of a boundary wall to Mr GJ & Mrs E Fourie, at an amount of R103,304.00 (ONE HUNDRED AND THREE THOUSAND THREE HUNDRED AND FOUR RAND) (VAT excluded), **be approved;**
2. that Council take cognisance of the fact that the direct alienation and subsequent transfer is only approved as the subject portion of Erf 4410 Hermanus is classified as a non-viable property;
3. that it be noted that a condition of transfer will be that the subject portion of Erf 4410 Hermanus must be consolidated with the adjoining property of Mr GJ & Mrs E Fourie, being Erf 4453 Hermanus;
4. that the transfer of a portion of Erf 4410 Hermanus, 148m² in extent, be subject to obtaining the necessary Town Planning approvals;

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5. that a condition be registered against the title deed of the to be consolidated property that the portion of property envisaged to be transferred may only be used for safety and access purposes and no structures, excluding a boundary fence or wall, may be erected thereon;
6. that all the costs pertaining to the transaction, e.g. valuation costs, subdivision, consolidation, closure of public road, rezoning, transfer and related costs, advertisements, etc., be paid by the Applicant/purchaser;
7. that the Applicant/purchaser must contact the Electrical Department to point out the position of electrical cables before any trenching commences for the foundation of the wall to be built by the purchaser;
8. that it be noted that the municipal property envisaged to be transferred 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); and
9. that the Municipal Manager be authorised to sign all documents relating to the alienation and transfer of the subject portion of Erf 4410 Hermanus.

RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION :	13 MARCH 2020
TARGET DATE TO INFORM APPLICANT :	27 MARCH 2020
TARGET DATE TO INFORM OBJECTOR :	N/A

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7/2/3/2

A le Roux

Manager: Property Administration

3 January 2020

(028) 316 - 3724

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

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of a portion of Erf 4410 Hermanus (adjacent to Erf 4453 Hermanus), 148m² in extent, for the erection of a boundary wall to Mr GJ & Mrs E Fourie, at an amount of R103,304.00 (ONE HUNDRED AND THREE THOUSAND THREE HUNDRED AND FOR RAND) (VAT excluded), **be approved;**
2. that Council take cognisance of the fact that the direct alienation and subsequent transfer is only approved as the subject portion of Erf 4410 Hermanus is classified as a non-viable property;
3. that it be noted that a condition of transfer will be that the subject portion of Erf 4410 Hermanus must be consolidated with the adjoining property of Mr GJ & Mrs E Fourie, being Erf 4453 Hermanus;
4. that the transfer of a portion of Erf 4410 Hermanus, 148m² in extent, be subject to obtaining the necessary Town Planning approvals;
5. that a condition be registered against the title deed of the to be consolidated property that the portion of property envisaged to be transferred may only be used for safety and access purposes and no structures, excluding a boundary fence or wall, may be erected thereon;
6. that all the costs pertaining to the transaction, e.g. valuation costs, subdivision, consolidation, closure of public road, rezoning, transfer and related costs, advertisements, etc., be paid by the Applicant/purchaser;
7. that the Applicant/purchaser must contact the Electrical Department to point out the position of electrical cables before any trenching commences for the foundation of the wall to be built by the purchaser;

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8. that it be noted that the municipal property envisaged to be transferred 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); and
9. that the Municipal Manager be authorised to sign all documents relating to the alienation and transfer of the subject portion of Erf 4410 Hermanus.

RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION :	13 MARCH 2020
TARGET DATE TO INFORM APPLICANT :	27 MARCH 2020
TARGET DATE TO INFORM OBJECTOR :	N/A



5.5

HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF A PORTION OF ERF 243, MOUNTAIN DRIVE, NORTHCLIFF, HERMANUS TO GJ & E FOURIE

(ITEM 5, PAGE 98 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 2 DECEMBER 2016)

RESOLVED (UNANIMOUSLY):

1. that the direct alienation of a portion of Erf 243 Hermanus (adjacent to Erf 4453 Hermanus), ±126m² in extent, for the erection of a boundary wall to the owners of the adjoining erf, Mr GJ & Mrs E Fourie, at an amount of R698.00 (SIX HUNDRED AND NINETY EIGHT RAND PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that Council take cognisance of the fact that the direct alienation is only approved as the subject portion of Erf 243 Hermanus is classified as a non-viable property;
3. that the abovementioned approval in principle be subject to a public participation process being followed due to the non-viability of the property;
4. that the subject portion of Erf 243 Hermanus must be consolidated with the adjoining property of Mr GJ & Mrs E Fourie, being Erf 4453 Hermanus;
5. that the alienation of the subject portion of Erf 243 Hermanus, be subject to obtaining the necessary closure, subdivision, rezoning and consolidation approvals;
6. that all the costs pertaining to the transaction, e.g. valuation costs, subdivision, consolidation, closure of public road, rezoning, transfer and related costs, advertisements, etc., be paid by the purchaser;
7. that the purchaser must contact the Electrical Department to point out the position of electrical cables before any trenching commences for the foundation of the wall to be built by the purchaser;
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); and
9. that the Municipal Manager be authorised to sign all documents relating to the alienation and transfer of the subject portion of Erf 243 Hermanus.

MINUTES : ORDINARY MEETING OF THE COUNCIL 30 OCTOBER 2019**5.4**

HERMANUS: RECTIFICATION OF COUNCIL RESOLUTION DATED 2 DECEMBER 2016 FOR THE ALIENATION OF A PORTION OF ERF 243, MOUNTAIN DRIVE, NORTHCLIFF, HERMANUS TO GJ & E FOURIE

(ITEM 7, PAGE 240 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 OCTOBER 2019)

RESOLVED (SUPPORTED BY 24 COUNCILLORS):

that the Council resolution dated 2 December 2016 be rectified through substituting the reference to erf number 243 with erf number 4410.

RESPONSIBLE OFFICIAL :

A LE ROUX

TARGET DATE FOR IMPLEMENTATION :

13 NOVEMBER 2019