

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 June 2022
(Also the agenda for the Mayoral Committee Meeting: 27 June 2022)**

12.

TRANSFER OF ERF 4913 HERMANUS (ROAD RESERVE) ADJACENT TO ERF 341 HERMANUS, SITUATED AT 24 WESTCLIFF ROAD, HERMANUS TO JC DAVIS

7/2/3/2

A Le Roux

Manager: Property Administration

12 May 2022

(028) 316 - 5623

1. Executive Summary

To obtain final approval for the transfer of Erf 4913 Hermanus adjacent to Erf 341 Hermanus, situated at 24 Westcliff Road, Hermanus, 107m² in extent, to the owner of Erf 341 Hermanus, being JC Davis. 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 Priorities

Provision of democratic, accountable and ethical governance
Creation and maintenance of a safe and healthy environment
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

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Council on 25 November 2020 approved in principle the direct alienation of Erf 4913 Hermanus (adjacent to Erf 341 Hermanus) situated at 24 Westcliff

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Road, Hermanus, 107m² in extent (hereinafter referred to as “the Property”) to the owner of the adjoining Erf 341 Hermanus, JC Davis, (hereinafter referred to as “the Applicant”), at a market related price for gardening purposes and a boundary fence or wall. The approval was subject to a public participation process being followed and subject further to gaining the approval for the closure of the public road, consolidation and rezoning and all applicable Town Planning approvals. A market related value was determined at an amount of R55,000.00 (FIFTY FIVE THOUSAND RAND) (VAT excluded). The public participation process was followed as discussed in more detail below.

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 Property can be classified as a non-viable immovable property due to the fact that it is a very small property which cannot be developed on its own. Due to the restrictions imposed on the Property no construction will be allowed besides a boundary fence or wall and can only be used for gardening purposes.

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 section 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 Property is not needed to provide the minimum level of basic municipal services.

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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 fair market value on 4 September 2020 at an amount of R55,000.00 (FIFTY FIVE THOUSAND RAND) (VAT excluded). The valuation was done taking into consideration the size, locality, zoning and proposed use of the Property (restriction imposed).

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.”***
- (b) The comments received from the relevant departments confirm that the Property is not needed for the provision of municipal services.
- (b) Boland Valuers determined the fair market value on 4 September 2020 at an amount of R55,000.00 (FIFTY FIVE THOUSAND RAND) (VAT excluded). The valuation was done taking into consideration the size, shape, locality, zoning and proposed use of the Property (restriction imposed).
- (d) The reasons for preferred direct sale are discussed above and was recorded in the minutes of the in principle approval granted by the

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Council on 25 November 2020, which is attached hereto marked as 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 will be liable for the costs of the transaction which will include, but not limited to, the application fee, valuation, closure of public road, rezoning and consolidation (Town Planning processes), Section 14 advertisement and all cost related to the transfer.

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 Applicant 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."

A condition to this effect was 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 was 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 was 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"

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within 10 days of date of request in writing thereof by the Municipality.”

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

B: Advertisement/Notification

An advertisement for the transfer of Erf 4913 Hermanus (adjacent to Erf 341 Hermanus), 107m² in extent, was published in The Village News on 28 January 2022 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

It is recommended that the transfer of the Property to the Applicant for the amount of R55,000.00 (FIFTY FIVE THOUSAND RAND) (VAT excluded) for the gardening purposes and a boundary wall or fence be approved.

7. Financial Implications

The Municipality stands to gain an income of R55,000.00 (FIFTY FIVE THOUSAND RAND) (VAT excluded) for the sale of the Property.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

“Erf 4913 Hermanus (adjacent to Erf 341 Hermanus) is currently reflected in the fixed asset register for PPE: Land at a carrying value of R600’000-00 as at 30 June 2021. Once the proposed alienation has been concluded the erf will have to be written out of the fixed asset register at the applicable selling price in order to account for actual gain / (loss) on the disposal of the asset.

There is no objection against the proposed alienation as the application complies with the Administration of Immovable Property Policy.”

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10. Annexures

- Annexure A: Locality map
Annexure B: Council resolution dated 25 November 2020

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of Erf 4913 Hermanus (adjacent to Erf 341 Hermanus) situated at 24 Westcliff Road, Hermanus, 107m² in extent, to the owner of the adjoining Erf 341 Hermanus, JC Davis, at an amount of R55,000.00 (FIFTY FIVE THOUSAND RAND) (VAT excluded) for gardening purposes and a boundary fence or wall, **be approved**;
2. that Council take cognisance of the fact that the direct alienation and subsequent transfer is only approved as the subject Erf 4913 Hermanus is classified as a non-viable property;
3. that it be noted that a condition for the transfer is that Erf 4913 Hermanus must be consolidated with the adjoining property of JC Davis, being Erf 341 Hermanus simultaneous with the transfer of the property;
4. 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 gardening purposes and no structures, excluding a boundary fence or wall, may be erected thereon;
5. that the transfer of a portion of Erf 4913 Hermanus be subject to a suspensive condition that the applicant/purchaser obtains approval for the closure of the public road, consolidation and rezoning and all related town planning approvals applicable;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, closure of portion of public road, consolidation, rezoning, transfer and related costs, advertisements, etc. be paid by the applicant/purchaser; and
7. 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).

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RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	14 AUGUST 2022
TARGET DATE TO INFORM APPLICANT:	27 AUGUST 2022
TARGET DATE TO INFORM OBJECTOR:	N/A

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12.

TRANSFER OF ERF 4913 HERMANUS (ROAD RESERVE) ADJACENT TO ERF 341 HERMANUS, SITUATED AT 24 WESTCLIFF ROAD, HERMANUS TO JC DAVIS

7/2/3/2

A Le Roux

Manager: Property Administration

12 May 2022

(028) 316 - 5623

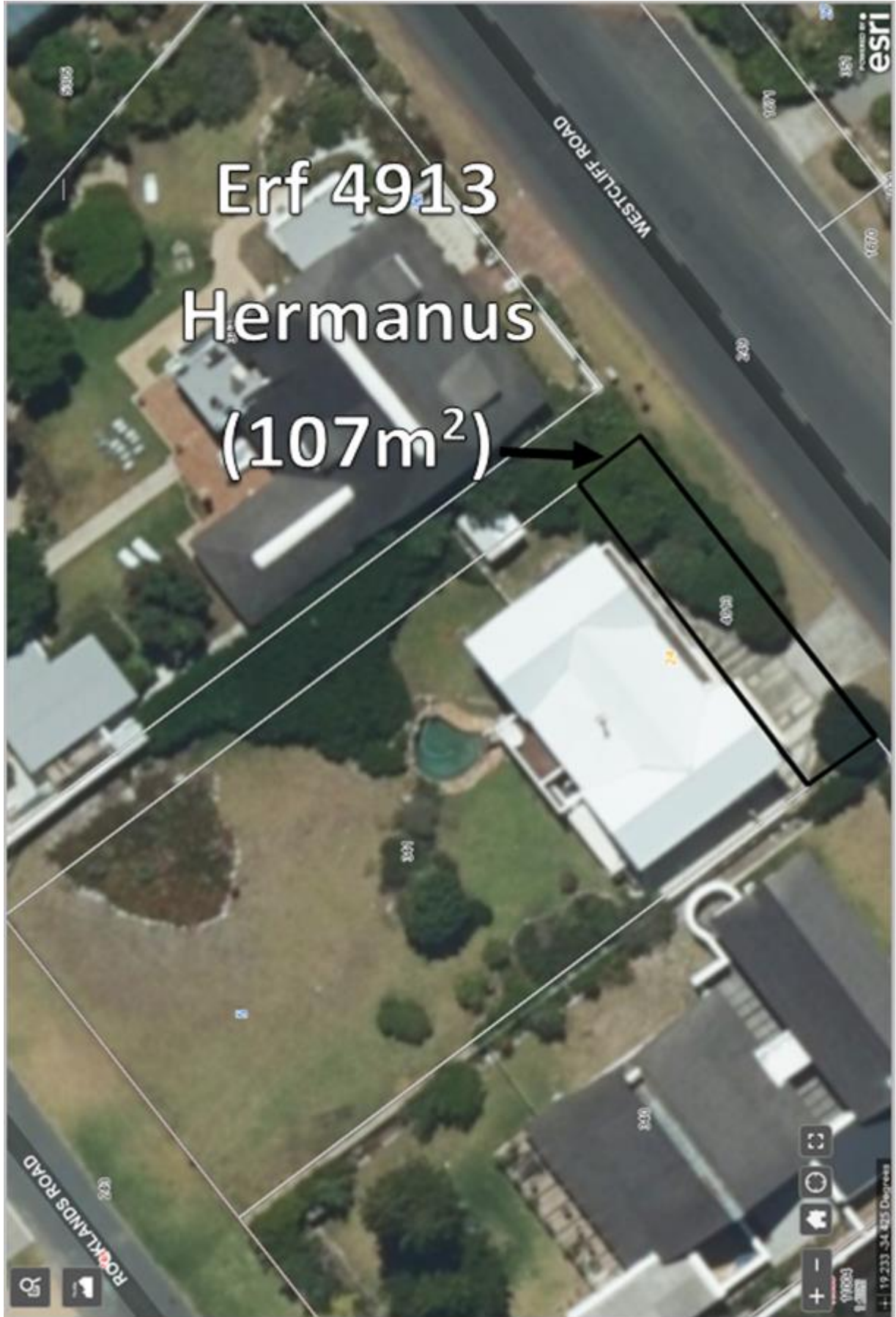
THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 2 JUNE 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of Erf 4913 Hermanus (adjacent to Erf 341 Hermanus) situated at 24 Westcliff Road, Hermanus, 107m² in extent, to the owner of the adjoining Erf 341 Hermanus, JC Davis, at an amount of R55,000.00 (FIFTY FIVE THOUSAND RAND) (VAT excluded) for gardening purposes and a boundary fence or wall, **be approved**;
2. that Council take cognisance of the fact that the direct alienation and subsequent transfer is only approved as the subject Erf 4913 Hermanus is classified as a non-viable property;
3. that it be noted that a condition for the transfer is that Erf 4913 Hermanus must be consolidated with the adjoining property of JC Davis, being Erf 341 Hermanus simultaneous with the transfer of the property;
4. 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 gardening purposes and no structures, excluding a boundary fence or wall, may be erected thereon;
5. that the transfer of a portion of Erf 4913 Hermanus be subject to a suspensive condition that the applicant/purchaser obtains approval for the closure of the public road, consolidation and rezoning and all related town planning approvals applicable;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, closure of portion of public road, consolidation, rezoning, transfer and related costs, advertisements, etc. be paid by the applicant/purchaser; and
7. 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).

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RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	14 AUGUST 2022
TARGET DATE TO INFORM APPLICANT:	27 AUGUST 2022
TARGET DATE TO INFORM OBJECTOR:	N/A



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MINUTES : ORDINARY MEETING OF THE COUNCIL 25 NOVEMBER 2020

5.9

IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF ERF 4913 HERMANUS (ROAD RESERVE) ADJACENT TO ERF 341 HERMANUS SITUATED AT 24 WESTCLIFF ROAD, HERMANUS TO JC DAVIS

(ITEM 7, PAGE 233 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 25 NOVEMBER 2020)

RESOLVED (SUPPORTED BY 24 COUNCILLORS):

1. that the direct alienation of Erf 4913 Hermanus (adjacent to Erf 341 Hermanus) situated in Westcliff Road, 107m² in extent, to the owner of the adjoining Erf 341 Hermanus, JC Davis, at an amount of R55,000.00 (FIFTY FIVE THOUSAND RAND) (VAT excluded) be **approved in principle**;
2. that it be noted that the direct alienation is possible as Erf 4913 Hermanus 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;
4. that it be noted that a condition for the alienation will be that Erf 4913 Hermanus must be consolidated with the adjoining property of JC Davis, being Erf 341 Hermanus;
5. that no structures of any kind (excluding a boundary wall or fence) may be erected on Erf 4913 Hermanus, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of Erf 4913 Hermanus be subject to a suspensive condition that the Applicant obtains at own cost all the applicable town planning approvals;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, closure of public road, rezoning, consolidation, transfer and related costs, advertisements, etc. be paid by the Applicant, JC Davis; 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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MINUTES : ORDINARY MEETING OF THE COUNCIL 25 NOVEMBER 2020

RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	31 DECEMBER 2020
TARGET DATE TO INFORM APPLICANT:	15 DECEMBER 2020
TARGET DATE TO INFORM OBJECTOR:	N/A