

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
17 November 2015
(Also the agenda for the Mayoral Committee Meeting : 25 November 2015)**

13.

HERMANUS: REQUEST FROM THE HERMANUS BOWLING CLUB TO REMOVE CERTAIN TITLE DEED RESTRICTIONS

7/2/3/2

Marí Müller

(028) 316 - 3724

Hermanus Administration

13 October 2015

1. Executive Summary

A Deed of Sale was entered into between the Overstrand Municipality and the Hermanus Bowling Club as a consequence of Council's decision of 6 December 2005. In terms of said Deed of Sale Erven 4576, 4580 and 4581 were sold to the Hermanus Bowling Club and a reversion clause in respect of each erf was included and subsequently included in the Deed of Transfer as conditions of title of the respective erven. The transaction was duly registered in the Deeds Office on 25 January 2008.

The Hermanus Bowling Club requests that Overstrand Municipality give permission to remove Clause B2, D2 and E2, the restriction clauses, from Title Deed No. T4588/2008 in lieu of the Hermanus Bowling Club paying rates to the Overstrand Municipality based on the market value of the erven.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

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

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6. Background/Discussion /Conclusion

Background

On 6 December 2005 Council resolved as follows:

- “1. *that erven 4576, 4580 and 4581, Hermanus, in extent ±1,0477 hectares, be sold to the Hermanus Bowling Club at R150 000 (VAT excluded), subject thereto that the club be liable for all costs incidental to the transfer of the property, and*
2. *that a reversionary clause be included in the deed of sale by stipulating that the purchaser will only be refunded the original purchase price without any interest.”*

Discussion

The Hermanus Bowling Club purchased erven 4576, 4580 and 4581, Northcliff, Hermanus, hereinafter referred to as “the property”, respectively 1,4078 hectares, 779 square metres and 740 square metres in extent, from Overstrand Municipality on 19 May 2006 for an amount of R150,000.00 (VAT excluded), which erven was subsequently transferred in the Hermanus Bowling Club’s name on 25 January 2008 under Title Deed Number No. T4588/2008.

Clause 9 of the Deed of Sale made provision for reversion (the restriction clause) of all three properties, through stipulating:

“9. Reversion

- 9.1. *The Property shall be utilised by the Purchaser exclusively for the purpose of promoting and encouraging the playing of the game of bowls and providing facilities therefore and establishing and maintaining congenial social amneties for men and women, without practising discrimination on the grounds of race, religion or political association, who wish to become members of the Purchaser.*
- 9.2. *Should the Purchaser cease to utilise the Property as stipulated in 9.1 above, or attempt to alienate the Property to a third party, the Property shall revert to the Seller at the purchase price which the Purchaser paid in terms of this Agreement, and the Purchaser shall have no claim for any improvements on the Property, irrespective of whether it was made with or without the*

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consent of the Seller, or whether it was made before or after the Date of Transfer.

9.3. The stipulations of this clause 9 shall be included in the Deed of Transfer as conditions of title of the Property.”

Furthermore, in the execution of the abovementioned Council’s resolution and the subsequent Deed of Sale the following clauses were inserted in the Deed of Transfer, which read as follows:

Clause B1 and 2 applicable to Erf 4576, Hermanus

“B1: The Property shall be utilised by the Purchaser exclusively for the purpose of promoting and encouraging the playing of the game of bowls and providing facilities therefore and establishing and maintaining congenial social amneties for men and women, without practising discrimination on the grounds of race, religion or political association, who wish to become members of the Purchaser.”

and

“B2: Should the Purchaser cease to utilize the Property as stipulated in B1 above, or attempt to alienate the Property to a third party, the Property shall revert to the Seller at the purchase price which the Purchaser paid in terms of this Agreement, without any interest and the Purchaser shall have no claim for any improvements on the Property, irrespective of whether it was made with or without the consent of the Seller, or whether it was made before or after the Date of Transfer.”

Clause D1 and 2 applicable to Erf 4580, Hermanus

“D1: The Property shall be utilised by the Purchaser exclusively for the purpose of promoting and encouraging the playing of the game of bowls and providing facilities therefore and establishing and maintaining congenial social amneties for men and women, without practising discrimination on the grounds of race, religion or political association, who wish to become members of the Purchaser.”

and

“D2: Should the Purchaser cease to utilize the Property as stipulated in D1 above, or attempt to alienate the Property to a third party, the Property shall revert to the Seller at the purchase price which the Purchaser paid in terms of this Agreement, without any interest and the Purchaser shall have no claim for any improvements on the Property, irrespective of

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whether it was made with or without the consent of the Seller, or whether it was made before or after the Date of Transfer.”

Clause E1 and 2 applicable to Erf 4581, Hermanus

“E1: The Property shall be utilised by the Purchaser exclusively for the purpose of promoting and encouraging the playing of the game of bowls and providing facilities therefore and establishing and maintaining congenial social amenities for men and women, without practising discrimination on the grounds of race, religion or political association, who wish to become members of the Purchaser.”

and

“E2: Should the Purchaser cease to utilize the Property as stipulated in E1 above, or attempt to alienate the Property to a third party, the Property shall revert to the Seller at the purchase price which the Purchaser paid in terms of this Agreement, without any interest and the Purchaser shall have no claim for any improvements on the Property, irrespective of whether it was made with or without the consent of the Seller, or whether it was made before or after the Date of Transfer.”

In light of the fact that the Hermanus Bowling Club is a sport body, they are, in terms of Council’s Rates Policy, exempted from paying rates for the abovementioned property.

The property was sold to the Hermanus Bowling Club for the purpose of promoting and encouraging the playing of the game of bowls and providing facilities therefore and establishing and maintaining congenial social amenities for men and women.

The Hermanus Bowling Club has requested the Overstrand Municipality to consider the removal of Clause B2, D2 and E2 from the title deed in return that the Hermanus Bowling Club pay rates on the market related value of the property. This request and motivation of the Hermanus Bowling Club is attached hereto as “Annexure B”. The total current value of the properties in terms of the General Valuation Roll for 2012/2013 is an amount of R1,698,000.00.

Should the above restrictive conditions be allowed to be removed, the Municipality stands to lose the opportunity to have the first choice to purchase the property at a mere R150,000.00 (VAT excluded) from the Hermanus Bowling Club. This would entail that in the event that the Hermanus Bowling Club decides to sell the property they will be under no obligation to firstly sell back the property to the Overstrand Municipality and secondly the purchase

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price will be market related and not anymore the purchase price as dictated by the Title Deed.

The financial implication will be dire seeing that the Municipality will lose out to purchase the property at a value below market price should the Bowling Club decide to sell the properties or not use the property for the purpose it was bought for.

The fact that the Hermanus Bowling Club is willing to pay rates on the market value of the property cannot be seen as the financial equivalent of the loss the Overstrand Municipality stands to lose should the conditions be removed from the Title Deed.

Conclusion

In the event that the Hermanus Bowling Club decides to sell the property, Overstrand Municipality should exercise its rights in order for the property to revert back to the Overstrand Municipality at the purchase price which the Hermanus Bowling Club paid in terms of the agreement, without any interest on the said amount. This would also be in the instance where the property is no longer utilised for the above described purpose.

It is thus recommended that the request of the Hermanus Bowling Club not be approved, and more specifically that the required consent for the removal of the said conditions not be granted.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Director Finance: Ms S Reyneke- Naude (028) 313 - 8040

The request for the removal of the restrictive title conditions is not supported."

10. Annexures

Annexure A: Locality Map
Annexure B: Request received from Applicant

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RECOMMENDATION TO THE COUNCIL:

that the request for a consent to remove the title deed restrictions contained in Clauses B2, D2 and E2 respectively from Title Deed No. T4588/2008 **not be approved.**

RESPONSIBLE OFFICIAL :	M MÜLLER
TARGET DATE FOR IMPLEMENTATION :	9 DECEMBER 2015
TARGET DATE TO INFORM APPLICANT :	9 DECEMBER 2015
TARGET DATE TO INFORM APPLICANT:	N/A

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13 October 2015

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 NOVEMBER 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

that the request for a consent to remove the title deed restrictions contained in Clauses B2, D2 and E2 respectively from Title Deed No. T4588/2008 **not be approved.**

RESPONSIBLE OFFICIAL :

M MÜLLER

TARGET DATE FOR IMPLEMENTATION :

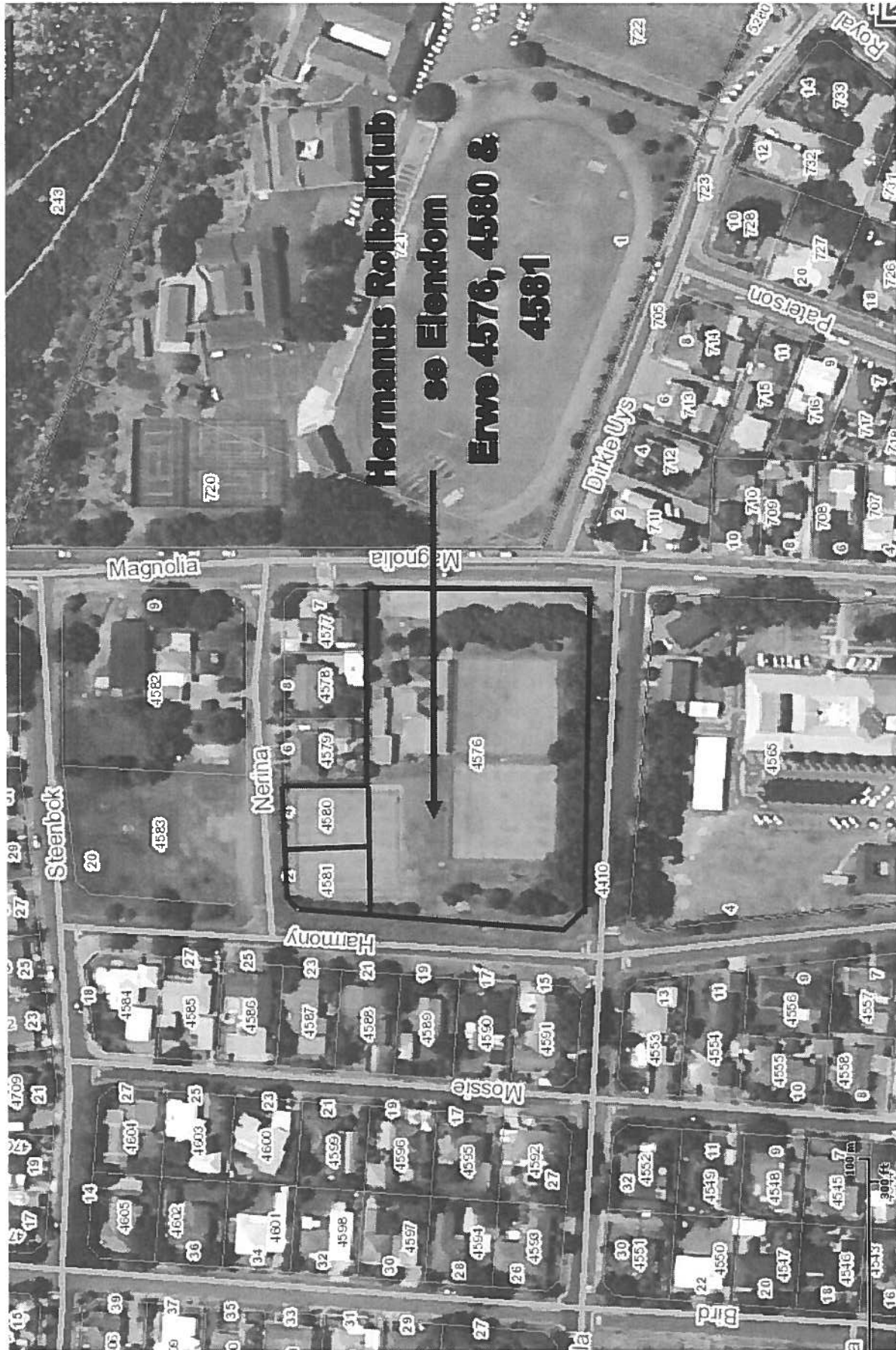
9 DECEMBER 2015

TARGET DATE TO INFORM APPLICANT :

9 DECEMBER 2015

TARGET DATE TO INFORM APPLICANT:

N/A



HERMANUS



ROLBALKLUB

BOWLING CLUB

Magnolia Street / P O Box 41 Hermanus 7200
Tel & Fax Club/Klub (028) 312 4073

6 Maart 2015

Administratiewe Amptenaar / Eiendomsadministrasie
Overstrand Munisipaliteit

Mnr/me

Koopakte: Hermanus Rolbalkklub / Overstrand Munisipaliteit
Opheffing van Titelvoorwaardes: Erwe 4576,4580 en 45581.

U brief van 21 Oktober 2014 in bogaande verband, het betrekking.

Dit word bevestig dat die aansoek om die opheffing van die terugkoop-voorwaarde in die titelakte op erwe 4576,4580 en 4581 betrekking het, soos verly in klousule B2, D2 en E2.

Om die Raad in staat te stel om 'n oorwoë besluit te neem, word versoek dat u die volgende agtergrond aan die Raad voorlê, by oorweging van die klub se ondergaande standpunt oor eiendomsreg.

Die Rolbalkklub Hermanus is tans een van die voorste en grootste klubs in Suid-Afrika. Dit bestaan sedert 1937 en het op eie stoom die klubhuis en terrein tot 'n puik sport- en ontspanningsfasiliteit ontwikkel. Die klub se ledetal van 200 spelende lede en 20 sosiale lede is, met die uitsondering van Durbanville, die tweede grootste Klub in die Wes-Kaap en inderdaad een van die grootstes in Suid Afrika. Dit bied aan beide die inwoners van en besoekers aan Hermanus die geleentheid om rolbal as sport te beoefen. Daarbenewens bied dit ligte maaltye aan, het 'n eie kroeg, 'n groot skerm televisie en sitkamer geriewe waar lede en besoekers kan ontspan of gaste onthaal. Die klub bied aan 'n groot aantal van Hermanus se senior burgers en enkelopendes 'n heenkome en dien ook die Hermanus besigheidsgemeenskap en skole met die aanbied van toernooie en spanbou funksies.

Die maatskaplike behoeftes van die gemeenskap van Hermanus word ondersteun deur die klub wat tans permanente werk bied aan ses persone. Die Hermanus besigheidsgemeenskap verleen ook ondersteuning vir die ontwikkeling van jong spelers uit alle sektore van die gemeenskap en tydens die onlangse Besigheidsliga Toernooi is n span van jong spelers as die wenners aangewys om Hermanus te verteenwoordig in die Boland Besigheidsliga finaal in Worcester.

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Aangesien die Hermanus Rolbalklub uiters hoë standarde handhaaf wat die fasiliteite en setperke betref is die klub 'n gesogte keuse vir die aanbieding van belangrike toernooie en kompetisies wat deur Boland Rolbal gereël word. Die oudste toernooi Ayala, is vanjaar vir die 87ste keer deur die klub aangebied met groot deelname vanuit die hele Wes-Kaap. Rolbal Suid-Afrika het ook die Hermanus Rolbalklub aangewys om die prestige nasionale rolbal kampioenskap vir Gemengde Pare in Junie 2015 in Hermanus aan te bied.

Dit is 'n besondere eer wat slegs in enkele gevalle aan klubs buite die groot stede soos Kaapstad, Johannesburg, Pretoria, Bloemfontein en Durban bewys word.

Van die voorafgaande is dit vanselfsprekend dat die Klub dit geensins sal oorweeg om die eiendom in enige stadium te vervreem nie. Om 'n fasiliteit van hierdie aard van meet af te ontwikkel in hierdie stadium, is buite die bereik van die rolbalklub. Die daarstelling van die perke is van 'n gespesialiseerde aard, benewens die koste van 'n alternatiewe perseel en die oprigting van 'n klubhuis en werksgeboue vir toerusting, stoor- en personeelbehoefte

Uiteraard sal die Klub, indien die Raad sou wou voortgaan om eiedomsbelasting op 'n sportklub te hef, as eienaar vir die belasting aanspreeklik wees.

By opheffing van die terugkoopvoorwaarde sal die Klub in staat wees om die perseel verder te ontwikkel met die ondersteuning van die privaatsektor en sodoende die eiendoms waarde verhoog. Dit sal die Munisipaliteit tot voordeel strek om belasting op 'n hoër waardasie-grondslag te genereer.

Indien 'n belastingratio ingestel word wat nie strook met die terugkoop prys nie, is dit onversoenbaar en botsend met die beginsel waarop die koopakte berus. Dit maak inderdaad die ooreenkoms in geheel ongedaan. Die instelling van eiedomsbelasting op die eiendom sou meebring dat die Raad eensydig afwyk van die ooreenkoms en botsend is met klousule 14.2 van die koopakte.

Indien u aanvullende inligting verlang, word dit graag aan u voorsien.

Dit sal waardeur word indien u hierdie vertoë aan die Raad sal voortê. U word bedank vir u insette tot in hierdie stadium.

Die uwe



F. De Swardt
President: Hermanus Rolbalklub