

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

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**7.  
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**

**7/2/3/2**

**A Le Roux**

**Manager: Property Administration**

**18 September 2020**

**(028) 316 - 5623**

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**1. Executive Summary**

To obtain approval in principle for the direct alienation of Erf 4913 (107m<sup>2</sup> in extent) Hermanus, adjacent to Erf 341 Hermanus, situated at 24 Westcliff Road, Westcliff, 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**

An application was received from Mr JC Davis, hereafter referred to as "the Applicant" for the purchase of Erf 4913 Hermanus (107m<sup>2</sup> in extent), adjacent

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to Erf 341 Hermanus, situated in Westcliff Road, hereafter referred to as “the Property”.

The Applicant is the owner of Erf 341 Hermanus and explained that when he purchased Erf 341 Hermanus from the previous owner, he was unaware that the Property was incorporated into his garden. The Applicant wishes to consolidate the Property with his own and enclose it with a boundary wall. If approved, the applicant will use the Property for gardening purposes as the Property is already incorporated into their garden.

Erf 4913 Hermanus was created to widen Westcliff Road, however Erf 341 is the only erf created for this proposed widening on the north side of the road as none of the other residential erven north of Westcliff Road have a similar restriction. Thus alienating the Property will bring the boundary of Erf 341 in line with the other residential properties in Westcliff Road.

Due to the locality, shape, intended use and size of the Property applied for, it cannot be developed independently, and thus it can 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 adjoining property owner, subject to certain conditions.

One of the conditions to the alienation will be that no structures of any kind (excluding a boundary wall or fence) may be erected thereon and this condition will be registered against the title deed of the property.

#### Subsequent costs

The Applicant will be liable for the costs of the transaction which include, but not limited to, the application fee, valuation, closure of public road, rezoning and consolidation of the property and transfer costs, as well as the required Section 14 advertisement in terms of the MFMA and the 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 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 property can be classified as a non-viable immovable property due to the location, shape, size and restricted 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 Property is not needed for the provision of municipal services.
- (b) Boland Valuers determined the market related value in 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 (restriction).of the property
- (d) The reasons for preferred direct sale are discussed above and will subsequently be recorded in the minutes.

**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.”**

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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, consolidation, Section 14 advertisement and transfer costs and related 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."***

No services will have to be relocated nor any servitude is required for services.

***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 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 and registered against the title deed of the property.

***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"***

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***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 approval. The Applicant 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 the Property to the owner of Erf 341 Hermanus, JC Davis, be approved in principle.

Furthermore the Applicant will be liable for all cost involved to affect transfer of the property in the deeds office. Subsequently the costs will entail the application fee, valuation costs, closure of public road, rezoning, consolidation, Section 14 advertisement and the transfer costs and related costs.

**7. Financial Implications**

The Municipality stands to gain a market related purchase price of R55,000.00 (FIFTY FIVE THOUSAND RAND) (VAT excluded).

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

**Senior Manager: Operational Services Hermanus: Mr T Marx – (028) 313 8092**

*“The Department: Operational Services (Hermanus) has no objection to the application for proposed purchase of a Portion of Erf 4913 adjacent to Erf 341, Westcliff as indicated in the application, subject to the following conditions:*

1. *That the applicant must comply with all statutory requirements that may be applicable to the undertaking of the proposed development on Portion of Erf 4913, Westcliff.*
2. *That the developer investigate and determine the limitations of the site in*

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*terms of sewer drainage, subject to the minimum requirements of SANS 10400 – P:2010: Drainage.*

3. *That on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Directorate: Infrastructure and Planning.*
4. *That any additional and / or extended vehicle entrances will be for the owner's account.*
5. *That, 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 Senior Manager: Operational Services (Hermanus) for written approval.*
6. *Water and road infrastructure is available in the vicinity of Portion of Erf 4913, Westcliff.*
7. *It is incumbent upon the applicant / developer to ensure that all operational requirements in terms of water, sewerage and storm water provision to the property are met."*

Comments from Property Administration: Conditions 1 -3, 6 and 7 are not applicable to this alienation. Conditions 4 and 5 will be included into the deed of sale as special conditions to the alienation.

**Manager: Engineering Services: Mr R Andrews – (028) 313 5073**

*"The Engineering Services Department has no comment."*

**Senior Town Planner: Ms H van der Stoep – (028) 313 8900**

*"The application is supported. The applicant will have to rezone and consolidate with erf 341. The portion was created to widen Westcliff road, however erf 341 is the only erf subjected to this proposed widening. None of the residential erven north of Westcliff Road have a similar restriction."*

**Manager: Environment Management: Ms P Aplon – (028) 316 3724**

*"This office has no objection to the sale of Erf 4913, Westcliff, Hermanus. This office has no objection to this application."*

**Manager: Building Services: Mr L Coetzee – (028) 313 8091**

*"Building Control has no objection to the purchase of land. Any Building plan application has to comply with National Building Regulations and all other applicable law."*

**Chief: Fire Safety and Health and Safety: Mr L Smith – (028) 313 8091**

*"No Comments from Fire."*

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**Assistant Chief: Traffic Operations, Admin, Logistic & Fines: Mr X Titus  
– (028) 316 8255**

*“The Traffic Department does not have any objection. As long as the entrances comply with building regulations.”*

**Manager: Hermanus Administration: Ms B Mbane (Plaatjies)**

*“I do not have objections on the application.”*

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

*“There is no objection against the alienation. 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 2020. 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 an asset.”*

## **10. Annexures**

Annexure A: Locality Map

### **RECOMMENDATION TO THE COUNCIL:**

1. that the direct alienation of Erf 4913 Hermanus (adjacent to Erf 341 Hermanus) situated in Westcliff Road, 107m<sup>2</sup> 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;

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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).

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

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**7/2/3/2**

**A Le Roux**

**Manager: Property Administration**

**18 September 2020**

**(028) 316 - 5623**

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

**RECOMMENDATION TO THE COUNCIL:**

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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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