

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 September 2015  
(Also the agenda for the Mayoral Committee Meeting : 30 September 2015)**

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14.

**HERMANUS, ERF 640 (A PORTION OF ERF 560), ZWELIHLE: DEVIATION FROM PARAGRAPH 15.1 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY ALLOWING THE MUNICIPALITY TO APPROVE IN PRINCIPLE THE ALIENATION OF MUNICIPAL PROPERTY TO THE CHURCH OF CHRIST MISSION**

7/2/3/2

Madelein Erasmus  
14 August 2015

(028) 316 - 3724

Hermanus Administration

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**1. Executive Summary**

To obtain approval for the deviation from paragraph 15.1 of the Administration of Immovable Property Policy allowing the Municipality to approve in principle the alienation of Erf 640 (a portion of Erf 560), Zwelihle, Hermanus, (±852m<sup>2</sup> in extent) to Church of Christ Mission on basis of archaic reasons.

**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**

- Administration of Immovable Property Policy of the Overstrand Municipality, as amended
- Local Government: Municipal Finance Management Act, No. 56 of 2003
- Municipal Asset Transfer Regulations (R. 878 of 2008)

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**6. Background/Discussion/Evaluation/Conclusion**

**Background**

The Church was started in 1975 and services were held from the Elder's home. It appears that as the member numbers grew Erf 640, Zwelihle was assigned and allocated to the Church of Christ Mission in 1994 by the then Zwelihle Municipality.

Further, an application was made to the Municipality to build a church on the property. In approximately 1994 the property was allocated to the Church and a temporary structure was built on the property until the Church could raise enough money to erect a permanent building. The permanent building was later build on Erf 640 at the cost of the church. According to the Church permission from the Municipality was granted with the understanding that the Title Deed would follow as they were in the process of issuing the Title Deeds to property owners in Zwelihle.

The Church further paid the cost for the connection of water and electricity to the property, as well as all subsequent municipal accounts related to the property.

**Discussion**

During an investigation into the history of the transaction no documents could be found at the Zwelihle offices or the archives regarding the said property.

Instalments were levied on the account in 1998. It can however not be determined whether the instalments levied were for a lease or for the payment of a purchase price in instalments. This could be construed as payments made for the right to use the property, whether as a lease or a sale.

Seeing as building plans were approved on 14 July 1994 for the erection of a structure and further plans were approved in 1997 to build a formal church building and since a municipal account was opened in 1998 and services were levied on the account it suggests that there must have been some form of agreement between the Church and the Municipality.

The property is further zoned for Community Purposes which use is in line with church purposes, which in our opinion support the version of the church.

The Municipal valuation for the building on the property is currently R100,000.00 (ONE HUNDRED THOUSAND RAND). Should the Municipality decide not to alienate the property to the Church and take back possession of

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the property the Church will need to be refunded for the building they have erected on the property. The Municipality have not budgeted for this.

Should the approval not be obtained, the Municipality might be liable for damages suffered by the applicant as we allowed them to build on municipal property.

Paragraph 15.1 of the Administration of Immovable Property Policy stipulates that the transfer of immovable property must be affected by means of competitive process. There is sufficient indication that a process was previously followed and that this is an archaic matter that needs to be rectified. Although a competitive process will not be followed a public participation process will however be followed which includes the advertising of the proposed sale for comments.

### **Evaluation**

#### **6.1 Application process in terms of the Administration of Immovable Property Policy of the Overstrand Municipality:**

The following conditions of the Administration of Immovable Property Policy of the Overstrand Municipality apply:

- (1) 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:"**

The comments received from the relevant officials confirmed that the subject property is not needed for basic municipal services. It was however requested that a condition be included in the Deed of Sale that no building will be allowed within 1 metre from the property boundary as Municipal services are present underground. And further that the Municipality must at all times have free access to the property and specifically the area where the municipal services are located. Access must be provided for construction plant (construction machinery).

- (2) 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 asset:"**

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Boland Valuers determined the market related value of Erf 640 (a portion of Erf 560), Zwelihle, Hermanus in August 2015 at an amount of R47,000.00 (FOURTY SEVEN THOUSAND RAND ALONE) (VAT excluded) for the land portion.

- (3) Paragraph 27: “All costs pertaining to a transaction shall be borne by the bidder/buyer, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim costs should it be to its advantage to bear the costs.”**

The cost pertaining to the transaction will be borne by Church of Christ Mission. It is however requested that the application fee be waived in this instance since this is an archaic matter and since the Church was under the impression that all legal requirements were fulfilled in the 1990's.

- (4) Paragraph 31: “Save for prior approval, the 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.

- (4) Paragraph 15.1: “The transfer of immovable property must be affected by means of competitive process, which may include a public or closed tender, auction or proposal call.”**

A deviation from this clause is requested in order to receive in principle approval for the alienation of the property directly to the Church.

### **Conclusion**

It is recommended that approval be granted for the deviation from paragraph 15.1 of the Administration of Immovable Property Policy allowing the Municipality to approve in principle the alienation of Erf 640 (a portion of Erf 560), Zwelihle, Hermanus (±852m<sup>2</sup> in extent) at a market related value to the Church of Christ Mission on basis of the archaic matter, and subject to a public participation process.

It is further recommended that the application fee be waived in this instance since the matter is an archaic matter and the Church was under the impression that all legal matters were dealt with.

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**7. Financial Implications**

The Municipality stands to gain the market related purchase price of the property in an amount of R47,000.00 (FOURTY SEVEN THOUSAND RAND ALONE) for the alienation of the property.

**8. Staff Implications**

None

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

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

Once the alienation has been registered at the Deeds Office, it will have to be recognised as a disposal of Erf 640 (a portion of Erf 560) HZW in the Fixed Asset Register.

**10. Annexures**

Annexure A: Locality plan

**RECOMMENDATION TO THE COUNCIL:**

1. that the deviation from paragraph 15.1 of the Administration of Immovable Property Policy **be approved**;
2. that the alienation of Erf 640, (a portion of Erf 560) Zwelihle, Hermanus, ( $\pm 852\text{m}^2$  in extent) to the Church of Christ Mission be **approved in principle** to rectify this archaic matter subject to a public participation process being followed;
3. that all costs pertaining to the transaction be paid by the purchaser;
4. that the application costs be waived on grounds that the transaction is an archaic matter; and
5. that it **be** noted 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, No. 56 of 2003.

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<b>RESPONSIBLE OFFICIAL :</b>	<b>M ERASMUS</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>5 NOVEMBER 2015</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>5 OCTOBER 2015</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

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**7/2/3/2**

**Madelein Erasmus  
14 August 2015**

**(028) 316 - 3724**

**Hermanus Administration**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 22 SEPTEMBER 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

1. that the deviation from paragraph 15.1 of the Administration of Immovable Property Policy **be approved**;
2. that the alienation of Erf 640, (a portion of Erf 560) Zwelihle, Hermanus, (±852m<sup>2</sup> in extent) to the Church of Christ Mission be **approved in principle** to rectify this archaic matter subject to a public participation process being followed;
3. that all costs pertaining to the transaction be paid by the purchaser;
4. that the application costs be waived on grounds that the transaction is an archaic matter; and
5. that it **be** noted 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, No. 56 of 2003.

**RESPONSIBLE OFFICIAL :**

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**N/A**

