



MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON WEDNESDAY, 23 JANUARY 2019 AT 14:00 IN THE COMMITTEE ROOM: CORPORATE SERVICES

PRESENT

Internal members:

Municipal Manager, Mr J J Scholtz (chairperson)
Director: Corporate Services, Ms M S Terblanche
Director: Protection Services, Mr P A C Humphreys

External members:

Mr C Rabie
Mr W Steyn

Other officials:

Acting Director: Development Services, Mr A M Zaayman (advisor)
Manager: Secretariat and Records, Ms N Brand (secretariat)
Senior Town and Regional Planner, Mr A J Burger
Town and Regional Planner and GIS Administrator, Mr H Olivier
Town and Regional Planner, Ms A de Jager

1. OPENING

The chairperson opened the meeting and welcomed all members.

2. APOLOGY

No apologies were received.

3. DECLARATION OF INTEREST

RESOLVED that cognisance is taken that no declaration of interest was received.

4. MINUTES

4.1 MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON 14 NOVEMBER 2018

RESOLVED

(proposed by Mr C Rabie, seconded by Mr P A C Humphreys)

That the minutes of a Municipal Planning Tribunal Meeting held on 14 November 2018 are approved and signed by the chairperson.

5. MATTERS ARISING FROM THE MINUTES OF 14 NOVEMBER 2018

None

6. MATTERS FOR CONSIDERATION

6.1/...

6.1 PROPOSED REZONING, SUBDIVISION AND CLOSURE OF PUBLIC OPEN PLACE ON ERF 495 AND ERF 115, YZERFONTEIN (15/3/3-14, 15/3/6-14, 15/3/7-14, 15/3/12-14) (WARD 5)

The chairperson requested, Ms A de Jager, as author of the item to give a brief summary of the application.

A discussion followed on the impact of the development on the Upper Road/Buitenkant Street-intersection. However, this matter was already considered by the Department: Civil Engineering Services when the alienation of the relevant portion of land was tabled to Council. The finding was that the development will not have a negative impact on the upgrading of the intersection in future.

The Director: Corporate Services mentioned that the transaction regarding the alienation is subject to the successful finalisation of the land use process and is concerned that development already commenced on the relevant portion of land.

RESOLUTION

- A.** The application for the rezoning of Erf 495, Yzerfontein, is approved in terms of section 70 of the Swartland Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017);
- B.** The application for the subdivision of Erf 495, Yzerfontein, is approved in terms of section 70 of the Swartland Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017);
- C.** The application for the consolidation of Erf 495, Yzerfontein, with Erf 115, Yzerfontein, is approved in terms of section 70 of the Swartland Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017);
- D.** The closure of a public place on Portion A of Erf 495, Yzerfontein (107m² in extent), is approved in terms of section 70 of the Swartland Municipal Land Use Planning By-Law (PG 7741 of 3 March 2017);
- E.** Approvals A, B, C and D above are subject to the conditions that:

E1 TOWN PLANNING AND BUILDING CONTROL

- (a) Erf 495 be rezoned from Transport Zone 2 to Subdivisional Area;
- (b) Erf 495, Yzerfontein (±14,3979ha in extent) be subdivided into two portions, as presented in the application, namely:
 - (i) Portion A: 107m² in extent; and
 - (ii) Remainder: ± 14,3872ha in extent.
- (c) Portion A (107m² in extent) be zoned Business Zone 1;
- (d) Portion A (107m² in extent) be consolidated with Erf 115 (761m² in extent);
- (e) Any development of Portion A be limited to the development of parking bays only;
- (f) The maximum height of the boundary wall around Portion A be limited to 1 meter;
- (g) A minimum of 12 on-site parking bays be provided on the consolidated erf, as presented in the application;
- (h) Parking bays be finished in a permanent, dust free material, being either concrete, tar or paving or any other material previously approved by the Director: Civil Engineering Services and that parking bays be clearly marked;
- (i) Access to the consolidated portion be restricted to the existing access from Buitenkant Street;
- (j) An erf diagram be submitted to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - (i) the municipality's decision to approve the subdivision and consolidation;
 - (ii) the conditions of approval imposed in terms of section 76; and
 - (iii) the approved subdivision and consolidation plan;and that a copy of said diagram/General Plan be made available to the Municipality;

6.1/E1...

- (k) Building plans be submitted to the Director: Development Services for consideration and approval;
- (l) Application for the right to construct, affix and/or display an advertising sign be made to Director: Development Services for consideration and approval;
- (m) The approval is in terms of section 76(2)(w) of the By-Law valid for a period of 5 years. All conditions of approval must be complied with within the 5 year period and failing to do so will result in this approval expiring;

E2 WATER

- (a) The consolidated erf be provided with a single water connection. This condition is applicable at building plan stage;
- (b) The water mains situated on Portion A of Erf 495 be moved outside the subdivided portion of the erf;
- (c) The developer appoints an Engineer, appropriately registered in terms of Act 46 of 2000, to complete the abovementioned task;
- (d) The design be submitted to the Director: Civil Engineering Services, for consideration and approval, after which construction of the system must be completed under the supervision of said Engineer;
- (e) The abovementioned conditions are applicable at clearance stage;

E3 SEWERAGE

- (a) The consolidated property be provided with a conservancy tank, of a volume approved by the Director: Engineering Services, and that the tank be accessible to the Municipal service truck;
- (b) The abovementioned conditions are applicable at building plan stage;

E4 STREETS AND STORMWATER

- (a) Access to the consolidated property be limited to the existing access from Buitenkant Street, as presented in the application;

F. GENERAL

- (a) Should the extension of any of the existing services be necessary in order to provide service connection to the development, costs incurred will be for the account of the owner/developer;
- (b) A landscaping plan applicable to Portion A be submitted to the Director: Civil Engineering Services for consideration and approval;

G. The application is supported for the following reasons:

- (a) Portion A of Erf 495 cannot viably function as a developable land unit and may be optimally utilised as part of Erf 115;
- (b) The development proposal will enable the owner/developer to optimally utilise the existing commercial property and to comply with parking requirements;
- (c) The geometry of Portion A prohibits the meaningful utilisation thereof for the upgrading of the crossing between Buitenkant Street and Upper Road, therefore the development proposal is considered a viable alternative;
- (d) The application complies with section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA;
- (e) The application complies with the land uses proposed for this area of Yzerfontein, as determined by the SDF;
- (f) This application promotes the provision of infrastructure and amenities in Yzerfontein, in the form of parking;
- (g) The development is envisioned to indirectly promote economic opportunities in the CBD;
- (h) The proposed rezoning, subdivision and consolidation will not negatively affect the character of the neighbourhood;
- (i) All development parameters of the By-Law will be adhered to;
- (j) Confirmation was received from the Department: Civil Engineering Services during the alienation process that development on Portion A will not have a negative impact on the future development of the intersection of Upper Road and Buitenkant Street.

6.2/...

**6.2 APPLICATION FOR CONSENT USE AND DEPARTURE ON PORTION 18 OF THE FARM
YZERFONTEIN NO 560, MALMESBURY RD (15/3/10-15; 15/3/4-15) (WARD 5)**

Mr Olivier, as author of the item, mentioned that the property is currently being used as an agricultural gypsum mine. The current mining right and land use rights are concurrent and expires on 28 November 2020.

The application is therefore to ensure the existence of the gypsum mine and entails the extension of the existing rights in order to use the farm as a whole for mining purposes.

Mr Olivier also motivated the departure on the boundary between the mining activity and the neighbouring property owners' dwellings not to be approved up to 9m from the boundary of Portion 18 and that mining activities are allowed up to 20m to accommodate the adjacent land owners.

UNANIMOUSLY RESOLVED

- A.** The application for the consent use on portion 18 of farm Yzerfontein No. 560, Malmesbury Registration Division be approved in terms of section 70 of the Swartland Municipality: By-law on Municipal Land Use Planning (PG 7741 of 3 March 2017), subject to the following conditions:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent use entails the mining of Gypsum in accordance with an approved mining right and Environmental Authorisation (including an approved Environmental Management Programme). The consent use is restricted to the life of the mine;

A2 WATER

- (a) No municipal drinking water can be provided;
(b) The conditions of the Department of Water and Sanitation be adhered to;

A3 SEWERAGE

- (a) Sewer services can only be provided for household sewerage with a vacuum tanker;
(b) The conditions of the Department of Water and Sanitation be adhered to;

A4 ROADS

- (a) The conditions of the Department of Transport and Public Works be adhered to;

A5 STORMWATER

- (a) The conditions of the Department of Water and Sanitation be adhered to;

A6 REFUSE REMOVAL

- (a) Prepaid garbage coupons must be acquired from any Swartland municipal office before the dumping of household refuse in any of the landfills / waste transfer stations in the Swartland Municipal area;

A7 DEPARTMENT OF MINERAL RESOURCES

- (a) The applicant/developer comply with the conditions of the Environmental Authorisation of the Department of Mineral Resources dated 8 May 2018 with reference number (WC) 30/5/1/2/3/2/1/272 EM;

A8 CAPE NATURE

- (a) The owner/developer complies, where applicable, to the contents of the letter from CapeNature: Scientific Services letters dated 5 May 2017 and 5 September 2017;

A9 DEPARTMENT OF WATER AFFAIRS

- (a) The owner/developer complies, where applicable, to the contents of the letter from the Department of Water and Sanitation: Western Cape Region letter dated 1 June 2017 and 11 September 2017;

A10/...

A10 DEPARTMENT OF TRANSPORT AND PUBLIC WORKS

- (a) The owner/developer complies, where applicable, to the contents of the letter from the Department of Transport and Public Works: Road Network Management letter dated 12 June 2017 and email dated 28 August 2017, and letter from District Roads Engineer (Department of Roads) dated 18 January 1994;

A11 CAPE WEST COAST BIOSPHERE RESERVE

- (a) That the owner/developer complies, where applicable, to the contents of the letter from the Cape West Coast Biosphere Reserve letter dated 30 May 2017;

A12 TELKOM

- (a) The owner/developer complies, where applicable, to the contents of the email from Telkom dated 10 May 2017;

A13 HERITAGE WESTERN CAPE

- (a) The owner/developer complies, where applicable, to the contents of the letter from the Heritage Western Cape dated 19 June 2017;

B. GENERAL

- (a) The approval does not exempt the applicant from adherence to any and all other legal procedures, applications and/or approvals related to the intended land use, as required by provincial, state, parastatal and other statutory bodies;
- (b) The approval is valid for a period of 5 years, in terms of section 76(2)(w) of the By-Law, during which time the land use must be utilised and all conditions of approval adhered to for the land use rights to be established;
- (c) The applicant/objectors are informed of the right to appeal against this decision of the Municipal Planning Tribunal, within 21 days of this notice, in terms of section 89(2) of the By-Law;

- C.** The application for the departure on portion 18 of farm Yzerfontein No. 560, Malmesbury Registration Division be approved in terms of section 70 of the Swartland Municipality: By-law on Municipal Land Use Planning (PG 7741 of 3 March 2017), subject to the following conditions:

C1 TOWN PLANNING AND BUILDING CONTROL

- (a) The mining activities may exceed the 30m building line to only 9m for the entire property, except for the property boundary za¹ as indicated on the Surveyor General approved diagram no. 3200/1962. At the latter boundary, mining activities can only take place up to 20m from the boundary;

- D.** The application is supported for the following reasons:

- (a) The proposal adheres to the spatial planning principles referred to in Chapter VI of LUPA and is consistent with the legislative measures mentioned in Section 42 of SPLUMA;
- (b) The proposed extension as well as continued operation of the existing mining operations will not have a significant impact on biodiversity;
- (c) The increase in surface water may also attract birds and natural life contributing to the biodiversity of the area;
- (d) The application will not result in the loss or alienation of agricultural land and given its nature it will also not have any cumulative impact there upon;
- (e) The proposed activity will not compromise any existing or potential farming activities in the vicinity of the property;
- (f) The mine is not seen as inconsistent with the cultural and scenic landscape given the low visual impact;
- (g) It is not foreseen that the proposed expansion and continued mining of the subject property will have any real cost or risks to the Municipality and will not have a negative impact on municipal engineering services or the delivery of services to the community;

6.2/D...

- (h) The mining and rehabilitation process is such that it will not infringe on the authenticity of the rural landscape;
- (i) The use of gypsum increase the productivity of soil and therefore the proposed activity indirectly contributes to job creation, food security as well as economic development in the Western Cape as well as the country as a whole;
- (j) The continued support by means of contributions made in terms of the socio and labour plan will have a positive impact on local economic development;
- (k) There are no long term risk as rehabilitation of the mined areas is on-going as well as that in terms of the mining permit the Mine Right Holder must give financial assurance that the area will be rehabilitated should the mine not function anymore / when the mine has reached end of life;
- (l) The processing of the gypsite material to extract gypsum is done on site at the processing plant;
- (m) No accommodation for workers or labourers is provided on-site;
- (n) Due to the extent of the property the visual impact of existing structure is minimal;
- (o) Appropriate conditions are imposed as part of the environmental authorization as well as approved EMP for the effective management of waste;
- (p) The processing plant is located in the adjoining buffer area and not within the CBA;
- (q) No new structures are proposed;
- (r) The application is not deemed to be in conflict with the spatial objectives and strategies of the MSDF, 2017. The deviation from the recommendation in the MSDF regarding mining activity in CBA areas are noted, it is however justified in this specific case;
- (s) The proposed development is not perceived to have a detrimental impact on the health and safety of surrounding landowners, nor will it negatively impact on environmental / heritage assets;
- (t) The departure is seen as desirable given the fact that mining activity will still remain 20m from the edge of the pan as well as that the concerns from the objectors has been addressed;
- (u) Site specific circumstances in accordance with section 22(2) of SPLUMA justify the departure of the provisions of the MSDF.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**