



MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON WEDNESDAY, 12 JUNE 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:

Senior Manager: Building Environment, Mr A M Zaayman (advisor)
Manager: Secretariat and Records, Ms N Brand (secretariat)
Director: Development Services, Ms J S Krieger
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.

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 15 MAY 2019

RESOLVED

(proposed by Mr P A C Humphreys, seconded by Mr W Steyn)

That the minutes of a Municipal Planning Tribunal Meeting held on 15 May 2019 are approved and signed by the chairperson, subject to the following amendment –

ITEM 6.1: APPLICATION FOR CONSENT USE AND AMENDMENT OF AN EXISTING APPROVAL ON ERF 423, DARLING (15/3/10-3) WARD 5)

E: The application is supported for the following reasons:

(c) All activities... The proposed expansion, ~~as well as consent use,~~ [delete] will result in ...

ITEM 6.4: PROPOSED REZONING AND SUBDIVISION OF ERF 3715, MOORREESBURG (15/3/3-9, 15/3/6-9) (WARD 2)

C The further subdivision ~~Erf 3715, Moorreesburg as well as~~ [delete] of portion A and portion B ...

5. MATTERS ARISING FROM THE MINUTES OF 12 APRIL 2019

None

6. MATTERS FOR CONSIDERATION

6.1 APPLICATION FOR A CONSENT USE ON ERF 1649, RIEBEEK WEST (15/3/3-12) (WARD 3)

The chairperson requested the author, Mr A J Burger, to table the item. Mr Burger mentioned that a meeting was held between the Riebeek Wes Community Forum, the Weltevreden Home Owners Association, the applicant, the owner of Duke's Sports Pub and the Municipality to determine mitigating measures as complaints are received on a regular basis regarding noise nuisances. Mr Burger confirmed that although mitigating measures were agreed upon, the objections were not withdrawn.

A discussion followed on problems experienced regarding the operation of the pub and the reluctance of the owner to adhere to requirements set by the Municipality, e.g. soundproofing. The chairperson confirmed that the operating of the pub and activities have a significant negative impact on the adjacent owners.

Although the Municipal Planning Tribunal has the responsibility to consider the application against the applicable parameters and principles, conditions may be determined for the owner to adhere to before the entertainment license is issued, such as soundproofing and the installation of mechanical ventilation. A further consideration is to determine whether the liquor licence can be used to determine operating hours.

RESOLUTION

That, given the historical background regarding public nuisances, the item be referred back to reconsider the conditions imposed in order to properly take into account the public interest.

[The chairperson excused himself and requested the Director: Corporate Services to chair the meeting.]

6.2 APPLICATION FOR A REZONING AND CONSENT USE ON FARM 869, DIVISION MALMESBURY (15/3/3-15, 15/3/10) (WARD 7)

Mr A J Burger, as author, highlighted important matters in the report, amongst others, that most of the structures on the farm have building plan approvals but that the uses of these structures have changed.

The impact on traffic is discussed and although the Department of Transport regards the impact as minimal, the concern is raised that the latter is not consistent in its assessment and requirements. It is proposed that the Swartland Municipality should take up this matter with the relevant department.

RESOLUTION

- A. The application for the rezoning of a portion of farm Weltevreden no. 869, Division Malmesbury from Agricultural Zone 1 to Agricultural Zone 2, is approved in terms of Section 70 of the Swartland Municipality: By-law on Municipal Land Use Planning (PG 7741 of 3 March 2017);
- B. The application for a consent use for 3 additional dwelling units and a tourist facility on farm Weltevreden no. 869, Division Malmesbury, is approved in terms of Section 70 of the Swartland Municipality: By-law on Municipal Land Use Planning (PG 7741 of 3 March 2017);
- C. Approvals in paragraphs A and B are subject to the following conditions:

C1/...

C1 TOWN PLANNING AND BUILDING CONTROL

- (a) The Agricultural Zone 2 zoning be restricted to 200 m² for the storage of wine as well as wine tasting and selling as part of the existing wine cellar, as presented in this application;
- (b) The consent use authorises 3 additional dwelling units (Agricultural Zone 1), a tourist facility (reception facility 85 m² in extent) (Agricultural Zone 2) and tourist facility (restaurant 220 m² in extent) (Agricultural Zone 2) as presented in this application;
- (c) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval for the change in use of the existing buildings;
- (d) An application for a business license be made at Swartland Municipality and for a compliance certificate for the operation of the restaurant to the West Coast District Municipality;
- (e) Proper signage to be put up along OP5373 in order to guide traffic to farm 869/0, Division Malmesbury. Application be made at the relevant authorities for the erection of road signs;
- (f) The owner of farm 869/0, Division Malmesbury ensures that a written agreement regarding the maintenance of OP5373 be made between all the land owners on the road and the Department of Transport and Public Works. This agreement must be provided to Swartland Municipality within a period of 3 months after the date of this decision before consideration be given for the occupation certificate to be issued;

C2 WATER

- (a) No municipal water can be provided and the owner must comply with SANS 241-1984 standards for the provision of water to the facility;

C3 SEWERAGE

- (a) Sewerage services can only be provided for household sewerage by means of a vacuum truck. For this purpose a conservancy tank with sufficient capacity and connection point must be provided in accordance with Swartland Municipality By-Law relating to water supply, sanitation services and industrial effluent (PG 7285 of 11 July 2014). The service will be levied according to the tariff for this service on farms;

C4 REFUSE REMOVAL

- (a) If any of the municipal dump sites are to be used, pre-paid coupons must be bought at a municipal office and handed in at the dump site in accordance with the Swartland Municipality Waste Management By-Law (PG6935 of 15 December 2011) prior to dumping taking place;

C5 DEPARTMENT OF WATER AFFAIRS AND SANITATION

- (a) No pollution of surface water or ground water resources may occur due to any activity on the property;
- (b) No abstraction of surface or groundwater may be done without prior authorisation from this Department, unless it is a Schedule 1 Use or an Existing Lawful Use;
- (c) Storm-water runoff must be controlled to ensure that on-site activities do not culminate into off-site pollution;
- (d) All the requirements of the National Water Act, 1998 (Act 36 of 1998) in terms of water use and pollution control management must be adhered to at all times;

C6 ESKOM

- (a) The approval is valid for 12 months only, after which reapplication must be made if the work has not been completed;
- (b) The following building and tree restriction on either side of centre line of overhead power line must be observed:
 - (i) Voltage 11kV;
 - (ii) Building restriction either side of centreline 9.0 m;
- (c) No construction work may be executed closer than 6 (six) metres from any Eskom structure or structure-supporting mechanism;

6.2(C6)/...

- (d) No work or no machinery nearer than the following distances from the conductors:
 - (i) Voltage 11kV;
 - (ii) Not closer than: 3.0 m;
- (e) Natural ground level must be maintained within Eskom reserve areas and servitudes;
- (f) A minimum ground clearance of the overhead power line must be maintained to the following clearances:
 - (i) Voltage 11kV;
 - (ii) Safety clearance above road: 6.3 m;
- (g) That existing Eskom power lines and infrastructure are acknowledged as established infrastructure on the properties and any rerouting or relocation would be for the cost of the applicant/developer;
- (h) Eskom rights or servitudes, including agreements with any of the landowners, obtained for the operation and maintenance of these existing power lines and infrastructure be acknowledged and honoured throughout its lifecycle which include, but are not limited to:
 - (i) Having 24 hour access to its infrastructure according to the rights mentioned in (a) above;
 - (ii) To perform maintenance (structural as well as servitude – vegetation management) on its infrastructure according to its maintenance programmes and schedules;
 - (iii) To upgrade or refurbish its existing power lines and infrastructure as determined by Eskom;
 - (iv) To perform any other activity not listed above to ensure the safe operation and maintenance of the Eskom power lines or infrastructure;
- (i) Eskom must have at least a 10 m obstruction free zone around all pylons (not just a 10 m radius from the centre);
- (j) Eskom shall at all times have unobstructed access to and egress from its services;
- (k) Any development which necessitates the relocation of Eskom's services will be to the account of the developer;

D. GENERAL

- (a) The approval is in terms of section 76(2)(w) of the By-Law valid for a period of 5 years. Seeing that proposed land uses are already in use, all conditions of approval must be complied with within a period of 3 months and that failing to do so will result in this approval expiring;
- (b) The applicant/objector is informed of the right to appeal against this decision of the Municipal Planning Tribunal, in terms of section 89(2) of the By-Law;
- (c) 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;

E. The application is supported for the following reasons:

- (a) This application is in compliance with the Spatial Development framework as this application is an example of the expansion of an existing tourism development in the Paardeberg;
- (b) The proposed land uses complements the existing agri-tourism land uses on the property;
- (c) The character of the area will not be impacted on negatively;
- (d) Existing buildings will be converted to accommodate the proposed uses. The property has no physical restrictions that will impact negatively on this application;
- (e) Access to farm 869/0, Division Malmesbury is sufficient;
- (f) The impact of the activities on farm 869/0, Division Malmesbury will have a minimal impact on surrounding farms;
- (g) The application complies with the principles of LUPA and SPLUMA.

6.3/...

6.3 REMOVAL OF TITLE RESTRICTION AND DEPARTURE ON ERF 2050, MALMESBURY

The author of the report, Mr H Olivier, mentioned that the purpose of the removal of the restrictive title condition is to allow for a transmission tower to be erected on the property.

Mr Olivier discussed the alternative position of the tower and the reasons for not approving the departure from the building lines to accommodate the tower as proposed by the applicant.

RESOLUTION

- A. The application for removal of restrictive title condition D3 (b) of Title Deed T3881/1967 on erf 2050, Malmesbury in terms of Section 70 of Swartland Municipality: By-law on Municipal Land Use Planning (PG 7741 of 3 March 2017) be approved;

The approval mentioned above is subject to the following conditions:

- (a) The applicant/owner applies to the Deeds Office to amend the title deed in order to indicate the removal of the restrictive conditions. The following minimum information must be provided to the Deeds Office in order to consider the application, namely:
- Copy of the approval by Swartland Municipality;
 - Original title deed, and
 - Copy of the notice which was placed by Swartland Municipality in the Provincial Gazette;
- (b) A copy of the amended title deed must be provided to Swartland Municipality for record purposes, prior to final consideration of building plans;

- B. The application for a departure on Erf 2050, Malmesbury in terms of Section 70 of the Swartland Municipality: By-law on Municipal Land Use Planning (PG 7741 of 3 March 2017) be approved subject to the conditions below:

- C. The approvals in paragraphs A & B above are subject to the following conditions:

C1 Town Planning/ Building Control

- (a) The departure entails a departure of the 6 m height restriction to accommodate a transmission tower with a maximum height of 20 m;
- (b) The transmission tower be erected in the form of a tree which fits in with the natural vegetation of the surrounding area;
- (c) Building plans be submitted to the Snr Manager: Building Environment for consideration and approval;
- (d) Application for the erection of advertising signs for the service providers must be made to the Snr Manager: Building Environment for consideration and approval;
- (e) Should it be proven that there are negative health effects from base stations (in accordance with specific guidelines), and after independent testing, this base station falls outside of those guidelines, the applicant will need to ensure compliance or if not possible, the tower must be decommissioned;

- D. The application for a departure on Erf 2050, Malmesbury in terms of Section 70 of the Swartland Municipality: By-law on Municipal Land Use Planning (PG 7741 of 3 March 2017) in order to depart from the 5 m side building lines to 1,5 m and 3 m respectively not be approved, for the following reasons:

- (a) There is not enough motivation provided for the proposed development to depart from the building lines. Sufficient space is available at the back of the existing building to accommodate the proposal without obstructing traffic flow / existing space used for on-site parking;

E. GENERAL

- (a) 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 the approval expiring;

6.3(E)/...

- (b) The applicant/objector is informed of the right to appeal against the decision of the Municipal Planning Tribunal, in terms of section 89(2) of the By-Law;
- (c) 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;

F. The approvals in paragraphs A and B are supported for the following reasons:

- (a) The proposed transmission tower is a primary right under Community Zone 2;
- (b) The application is regarded as being consistent with the SDF;
- (c) No proof can be provided that surrounding property values will be affected negatively;
- (d) The proposed transmission tower provides the broader community of Malmesbury with better access to the telecommunication networks;
- (e) The transmission tower is proposed on the property where it will have the least visual impact on the surrounding area. The tower is also proposed as a monopole tower, disguised as a tree, in an effort to make it less visually intrusive;
- (f) The visual impact of a 25 m high tower is regarded as severe and unnecessary. The tower is therefore restricted to 20 m being similar to that of what was considered and approved in the residential area;
- (g) The transmission tower is not proven to pose a health risk as scientifically motivated by international and national research concluding that the impact on human or animal health is insignificant.

6.4 PROPOSED SUBDIVISION OF AND SERVITUDE REGISTRATION ON ERF 1353, RIEBEEK KASTEEL (15/3/6-11, 15/3/8-11) (WARD 12)

An application is made for the subdivision of Erf 1353, Riebeek Kasteel into four portions.

Ms A de Jager, as author, explained the existing and newly proposed servitudes in order to access the affected properties.

RESOLUTION

A. The application for the subdivision of Erf 1353, Riebeek Kasteel, 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 conditions that:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) Erf 1353 (8 310 m² in extent) be subdivided into a Remainder (3 280 m² in extent), Portion A (1 650 m² in extent), Portion B (1 663 m² in extent), Portion C (1 717 m² in extent) as presented in this application;
- (b) A 5 m wide right-of-way servitude be registered over Portion A, in favour of Portion B, as presented in the application on subdivision plan RK/9089/AC/NJdK;
- (c) A 4 m wide servitude, that widens to 6,5 m and ends in a turning circle with 7,2 radius, be registered in favour of the Remainder and Portion C, over Erf 1489 and Erf 2026, as presented in the application on subdivision plan RK/9089/AC/NJdK;
- (d) The Swartland Municipality will take no responsibility for the ownership or maintenance of any of the right-of-way servitudes over the existing and newly created erven;
- (e) The owner/develop ensures that a formal and binding agreement be reached and implemented between the current and future land users of the applicable right-of-way servitudes from Walter Street, for the maintenance of said servitude before clearance for transfer of any new erven be given;
- (f) The legal certificate which authorises transfer of the subdivided portion in terms of Section 38 of By-law will not be issued unless all the relevant conditions have been complied with;

A2/...

A2 WATER

- (a) Each subdivided portion be provided with a separate connection. This condition has to be complied with before clearance can be given to newly created portions;

A3 SEWERAGE

- (a) Each subdivided portion be provided with a separate sewerage connection. This condition is applicable at subdivision stage;

A4 ROADS

- (a) The right-of-way servitudes, as proposed in drawing RK/9089/AC/NJdK of the application, be accepted and implemented;

A5 CAPITAL CONTRIBUTIONS

- (a) The owner/developer is responsible for the capital contribution of R10 890,50 for the bulk supply of regional water, per newly created erf. The capital contribution is payable to Swartland Municipality at clearance stage. The amount is valid for the financial year of 2018/2019 and may be revised thereafter (vote number: 9/249-176-9210);
- (b) The fixed capital contribution of R19 008,35 be made to the municipality towards water distribution, per newly created erf, at clearance stage. The amount is valid for the financial year of 2018/2019 and may be revised thereafter (vote number 9/249-174-9210);
- (c) The fixed capital contribution of R9 111,45 be made towards sewerage at clearance stage, per newly created erf. The amount is valid for the financial year of 2018/2019 and may be revised thereafter (vote number: 9/240-184-9210);
- (d) The fixed capital contribution of R9 487,50 be made towards waste water treatment works, per newly created erf, at clearance stage. This amount is valid for the financial year of 2018/2019 and may be revised thereafter (vote number: 9/240-184-9210);
- (e) The fixed capital contribution towards roads be made to the municipality to the amount of R8 974,60 at clearance stage, per newly created erf. The amount is valid for the financial year of 2018/2019 and may be revised thereafter (vote number: 9/247-144-9210);
- (f) The fixed capital contribution towards stormwater be made to the municipality to the amount of R4 516,05 at clearance stage, per newly created erf. The amount is valid for the financial year of 2018/2019 and may be revised thereafter (vote number: 9/248-194-9210);
- (g) Council's resolution dated May 2018 makes provision for a 40% rebate applicable on the capital contributions to Swartland Municipality. The rebate is valid for the 2018/2019 financial year and may be revised thereafter. The rebate is not applicable to point 5(a);

B. GENERAL

- (a) Any existing services which connect the remainder and subdivided portion be moved or disconnected to ensure that each erf's pipe work is situated on the relocated erven;
- (b) Should the extension of any exiting services be deemed necessary to provide the subdivided portion with services connections, it will be for the cost of the applicant/owner/developer;
- (c) The approval is valid for a period of 5 years in terms of section 76(2)(w) of the By-Law. All conditions of approval must be complied with within the 5 year period and failing to do so will result in this approval expiring;
- (d) The applicant/objector be informed of the right to appeal against this decision of the Municipal Planning Tribunal, in terms of section 89(2) of the By-Law;
- (e) 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.

6.4/...

- C. The application is supported for the following reasons:
- (a) The application is in compliance with the character and erf size for the specific portion of Riebeek Kasteel, as determined by the SDF;
 - (b) This application is seen as densification which is supported by the SDF and PSDF;
 - (c) The application complies with section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA;
 - (d) The proposed subdivision will not negatively affect the character of the neighbourhood, supporting the semi-rural character of the area;
 - (e) There is sufficient services capacity to accommodate the newly created erven;
 - (f) The amended right-of-way servitude to Erf 1353 and Portion A is of sufficient capacity to accommodate the increase in traffic load over the servitude;
 - (g) The privacy of surrounding property owners will not be negatively affected, as the developable area of all the proposed portions will remain extensive;
 - (h) All development parameters of the By-Law will be adhered to.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**