



**MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD IN THE MALMESBURY BANQUET HALL, MALMESBURY ON WEDNESDAY, 17 NOVEMBER 2021 AT 12:00**

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**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:

Ms C Havenga  
Mr C Rabie

Other officials:

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

**1. OPENING**

The chairperson opened the meeting and welcomed members.

**2. APOLOGY**

No apology was received.

**3. DECLARATION OF INTEREST**

**RESOLVED** that cognisance is taken that no declarations of interest were received.

**4. MINUTES**

**4.1 MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON 13 OCTOBER 2021**

**RESOLVED**

(proposed by Mr C Rabie, seconded by Ms M S Terblanche)

That the minutes of a Municipal Planning Tribunal Meeting held on 13 October 2021 are approved and signed by the chairperson.

**5. MATTERS ARISING FROM MINUTES**

**5.1 MINUTES OF MUNICIPAL PLANNING TRIBUNAL HELD ON 13 OCTOBER 2021**

None.

**6. MATTERS FOR CONSIDERATION**

6.1/...

## 6.1 PROPOSED SUBDIVISION OF ERF 2131, YZERFONTEIN (15/3/6-14) (WARD 5)

An application was received for the subdivision of Erf 2131, Yzerfontein into a remainder ( $\pm 3609\text{m}^2$  in extent) and portion A ( $\pm 3139\text{m}^2$  in extent).

Mr H Olivier, as author, stated that a similar application was approved in November 2012 but the five (5) year approval lapsed due to the new owners not acting on the subdivision. However, the new owners wishes to make a similar application for subdivision.

Mr Olivier confirmed that it is important to establish that, although the conveyancer failed to include the servitude on the title deeds of the subject as well as affected properties, both the remainder as well as portion A have access in order to consider the subdivision.

### RESOLUTION

A. The application for subdivision of Erf 2131, Yzerfontein, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2021), be approved subject to the following conditions that:

#### **A1 TOWN PLANNING AND BUILDING CONTROL**

- (a) Erf 2131 be subdivided into a remainder ( $\pm 3609\text{ m}^2$  in extent) and portion A ( $\pm 3139\text{ m}^2$  in extent), as presented in the application;
- (b) A servitude right of way be registered in favour of portion A in order for it to be accessed from the public road, R315;
- (c) A servitude right of way be registered against portion A in favour of the remainder as well as Erf 2132 in order to ensure access to the neighbouring properties;
- (d) The development on portion A as well as the remainder of Erf 2131 be restricted to the area demarcated as a,b,c,d,e,and f on the approved subdivision plan;

#### **A2 WATER**

- (a) Portion A be provided with a separate water connection and is applicable at building plan stage;

#### **A3 SEWERAGE**

- (a) Portion A be provided with a conservancy tank with a minimum capacity of 8000 litres. The suction point be placed to be accessible to the service truck. The condition is applicable at building plan stage;

#### **A4 DEVELOPMENT CHARGES**

- (a) The owner/developer makes a development charge for the regional bulk supply of water at R10 890,50. The development contribution is payable to Swartland Municipality at clearance stage. The amount is payable to vote number 9/249-176-9210 and is valid for the financial year of 2021/2022 and may be revised thereafter;
- (b) A fixed development charge towards water be made to the Municipality to the amount of R5 402,70 at clearance stage. The amount is payable to vote number 9/249-174-9210 and is valid for the financial year of 2021/2022 and may be revised thereafter;
- (c) A the fixed development charge towards sewerage be made to the Municipality to the amount of R6 080,05 at clearance stage. The amount is payable to vote number 9/240-184-9210 and is valid for the financial year of 2021/2022 and may be revised thereafter;
- (d) A fixed development charge towards waste water treatment be made to the Municipality to the amount of R8 970,00 at clearance stage. The amount is payable to vote number 9/240-183-9210 and is valid for the financial year of 2021/2022 and may be revised thereafter;
- (e) A fixed development charge towards roads be made to the Municipality to the amount of R11 500,00 at clearance stage. The amount is payable to vote number 9/247-188-9210 and is valid for the financial year of 2021/2022 and may be revised thereafter;
- (f)/...

6.1/A4...

- (f) A fixed development charge towards stormwater be made to the Municipality to the amount of R 4 560,90 at clearance stage. The amount is payable to vote number 9/247-144-9210 and is valid for the financial year of 2021/2022 and may be revised thereafter;
- (g) A fixed development charge towards electricity be made to the Municipality to the amount of R 10 419,00 at clearance stage. The amount is payable to vote number 9/253-164-9210 and is valid for the financial year of 2021/2022 and may be revised thereafter;
- (h) Council's resolution dated May 2021 makes provision for a 40% rebate applicable on the development charges of Swartland Municipality. Condition A4(a) is excluded from the rebate. The rebate is valid for the 2021/2022 financial year and may be revised thereafter;

**A5 ELECTRICITY**

- (a) Each subdivided portion be provided with a separate electrical connection for the costs of the owner/developer;
- (b) The relocation of any electrical cables, currently over the relevant subdivided portion, be for the costs of the owner/developer;
- (c) Any electrical inter-connection between the remainder and portion 1 be isolated and fully removed;
- (d) The electricity be connected to the existing low tension network;
- (e) Additional to the abovementioned, the owner/developer is responsible for the electrical connections to the subdivided portion;

**B. GENERAL**

- (a) If the extension of existing services are deemed necessary in order to provide the subdivided portion with services connections, the expense is for the account of the owner/developer;
- (b) The Department Electrical Engineering Services of the Municipality be contacted for a quotation with reference to condition A5 above;
- (c) 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 be complied with within the 5 year period and that failing to do so results in the lapsing of the approval;
- (d) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;
- (e) The applicant/objectors be notified of the outcome and their right to appeal in terms of Chapter VII, Section 89 of the By-law;
- (f) The legal certificate which authorises transfer of the subdivided portion in terms of Section 38 of the By-Law will not be issued unless all the relevant conditions have been complied with;

**C. The application is supported for the following reasons:**

- (a) The application is in compliance with the minimum erf size as determined by the SDF;
- (b) The 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 area;
- (e) Surrounding properties consist of similar development potential as Erf 2131;
- (f) There is sufficient services capacity to accommodate the newly created erf;
- (g) All development parameters of the By-Law will be adhered to;
- (h) Effective utilization of land and existing infrastructure;
- (i) Access to the newly created portion can be established through an agreement with affected property owners.

**6.2 PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND DEPARTURE ON ERF 28, YZERFONTEIN (15/3/4-14; 15/3/5-14) (WARD 5)**

Ms A de Jager gave background to the application received for the departure on and removal of restrictive conditions registered against Erf 28, Yzerfontein.

6.2/...

Ms de Jager mentioned that during the evaluation of the application and objections received, it was realised that additional information was needed from the applicant. Supplementary evidence prior to the approval may be obtained in accordance with Section 62(1)(c) of the By-Law. Ms de Jager referred to the report for illustrations regarding the illegal and proposed building work and how it affects the rights of the owner of Erf 29, Yzerfontein.

A discussion followed on the requirements regarding the height of a wall or fence situated on a street boundary that is regulated by the Swartland Municipality: By-Law relating to Boundary Walls and Fences (PG 7638 dated 24 June 2016).

## **RESOLUTION**

- A. The application for departure on Erf 28, Yzerfontein, be not approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), in order to encroach on the southern street building line;
- B. The application for the removal of restrictive conditions registered against Erf 28, Yzerfontein, be not approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020);
- C. Non-approvals/refusals A. and B. above are motivated as follows:

### **C1 TOWN PLANNING AND BUILDING CONTROL**

- (a) The development proposal contradicts the principles of LUPA and SPLUMA and therefore cannot be supported;
- (b) The departure from the 4 m street building line impacts negatively on the view from Erf 29, Yzerfontein. A view is not a right, unless the owner that obscures the view, departs from the prescribed development parameters. As the proposal is to depart from the building line and in doing so the view from Erf 29 is obstructed, the rights of the property owner of Erf 29 are negatively affected and the application cannot be approved;
- (c) The Section 12.2.1(e) of the By-Law restricts the structures and circumstances under which building line departure may be considered. The proposed application is in contradiction with the section and is therefore refused;
- (d) The proposed removal of the Title Deed conditions negatively impacts on the rights enjoyed by Erf 29 and thus cannot be motivated or supported;
- (e) The construction of the screen walls over the street building line initially did not take place and were marked as omitted from the approved building plan after construction. Once the screen walls were built, however, the owner/developer went beyond that which was approved and opened the application up to renewed scrutiny. It is therefore recommended that the owner/developer not only demolishes the lattice roof, but also that the screen wall be lowered to a maximum height of 2.1 m, measured from the natural ground level to the highest point of the column top, consistent with the By-Law;
- (f) The boundary wall be demolished to a height that complies with the Swartland Municipality: By-Law relating to Boundary Walls and Fences (PG 7638 dated 24 June 2016);
- (g) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;

### **D. GENERAL**

- (a) The applicant/objectors be notified of the outcome and their right to appeal in terms of Chapter VII, Section 89 of the By-law;
- E. The reasons for the refusal of the application are as follows:
  - (a) The development proposal contradicts the principles of LUPA and SPLUMA and therefore cannot be supported;
  - (b)/...

6.2/E...

- (b) The departure from the 4 m street building line impacts negatively on the view from Erf 29, Yzerfontein. A view is not a right, unless the owner that obscures the view, departs from the prescribed development parameters. As the proposal is to depart from the building line and in doing so the view from Erf 29 is obstructed, the rights of the property owner of Erf 29 are negatively affected and the application cannot be approved;
- (c) The Section 12.2.1(e) of the By-Law restricts the structures and circumstances under which building line departure may be considered. The proposed application is in contradiction with the section and is therefore refused;
- (d) The proposed removal of the Title Deed conditions negatively impact on the rights enjoyed by Erf 29 and thus cannot be motivated or supported;
- (e) The construction of the screen walls over the street building line initially did not take place and were marked as omitted from the approved building plan after construction. Once the screen walls were built, however, the owner/developer went beyond that which was approved and opened the application up to renewed scrutiny. It is therefore recommended that the owner/developer not only demolish the lattice roof, but also that the screen wall be lowered to a maximum height of 2.1 m, consistent with the By-Law and the Title Deed.

### **6.3 PROPOSED CONSENT USE ON ERF 1746, YZERFONTEIN (15/3/10-14) (WARD 5)**

The chairperson requested the author, Mr A J Burger, to table the item. Mr Burger confirmed that the application is for a consent use on Erf 1746, Yzerfontein in order to establish a double dwelling on the property.

Mr Burger stated that the proposed application supports the principle of densification within existing urban areas and many examples of double dwellings already exist in Yzerfontein.

#### **RESOLUTION**

- A. The application for consent use on Erf 1746, Yzerfontein, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), be approved, subject to the conditions that:
  - A1 TOWN PLANNING AND BUILDING CONTROL**
    - (a) The consent use authorises a double dwelling, as presented in the application;
    - (b) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;
  - A2 WATER**
    - (a) The property be provided with a single water connection and that no additional connections be provided;
  - A3 SEWERAGE**
    - (a) The double dwelling be provided with a conservancy tank with the minimum capacity of 8 000 litre, to be installed on the property at a point that is accessible to the municipal vacuum truck, to the satisfaction of the Director: Civil Engineering Services;
  - A4 DEVELOPMENT CHARGES**
    - (a) The development charge towards the supply of regional bulk water amounts to R5 445,25 and is for the account of the owner/developer at building plan stage. The amount is due to the Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA: 9/249-176-9210);
    - (b) The development charge towards bulk water reticulation amounts to R4 502,25 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/249-174-9210);
    - (c) The development charge towards waste water treatment amounts to R8 280,00, and is for the account of the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/240-183-9210);

6.3/A4...

- (d) The development charge towards sewerage amounts to R5 612,00 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/240-184-9210);
- (e) The development charge towards streets amounts to R11 500,00 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter. (mSCOA 9/249-188-9210);
- (f) The development charge towards storm water amounts to R3 192,40 and is payable by the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/248-144-9210);
- (g) The development charge towards electricity amounts to R10 419,00 and is payable by the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/253-164-9210);
- (h) The Council resolution of May 2021 makes provision for a 40% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2021/2022 and may be revised thereafter. The discount is not applicable to A4(a).

**B. GENERAL**

- (a) The approval is, in terms of section 76(2)(w) of the By-Law valid for 5 years. All conditions of approval be met before the double dwelling comes into operation and the occupancy certificate be issued, after which the 5 year period will no longer be applicable;
- (b) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;
- (c) The applicant/objectors be notified of the outcome and their right to appeal in terms of Chapter VII, Section 89 of the By-law;

**C. The applications be supported for the following reasons:**

- (a) The application is in compliance with the planning principles of LUPA and SPLUMA;
- (b) The application is consistent with local, regional and provincial spatial planning policy;
- (c) The development proposal complies with all applicable zoning parameters of the Residential zone 1 zoning;
- (d) Erf 1746 does not have any physical restrictions which may have a negative impact on the application;
- (e) The proposed double dwelling will complement and not have a negative impact on the character of the surrounding residential area;
- (f) The scale of the proposed double dwelling is less than the existing development potential of the property;
- (g) The development proposal supports the optimal utilisation of the property;
- (h) The proposed land use is considered as a desirable activity within a residential neighbourhood, as it will accommodate residential activities compatible with that of the existing area;
- (i) The double dwelling may support the tourism industry in Yzerfontein, as well as the local economy;
- (j) The double dwelling will provide in a need for a larger variety of housing opportunities to the wider population;
- (k) Sufficient services capacity exists to accommodate the proposed double dwelling.

**6.4 PROPOSED CONSENT USE ON ERF 833, YZERFONTEIN (15/3/10-14) (WARD 5)**

Mr H Olivier, as author, tabled the item which entails an application for consent use on Erf 833, Yzerfontein to establish a double dwelling on the property.

Resolution/...

**RESOLUTION**

- A. The application for consent use on Erf 833, Yzerfontein, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), be approved, subject to the conditions that:

**A1 TOWN PLANNING AND BUILDING CONTROL**

- (a) The consent use authorises a double dwelling house, as presented in the application;
- (b) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;
- (c) Access to the property be restricted to at least 5m from the splay in order to ensure safe vehicle movement;

**A2 WATER**

- (a) A single water connection be provided and that no additional connections be provided;

**A3 SEWERAGE**

- (a) The property be provided with a conservancy tank of minimum 8 000 litre capacity and that the tank be accessible to the municipal service truck via the street;

**A4 DEVELOPMENT CHARGES**

- (a) The development charge towards the supply of regional bulk water amounts to R5 445,25 and is for the account of the owner/developer at building plan stage. The amount is due to the Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA: 9/249-176-9210);
- (b) The development charge towards bulk water reticulation amounts to R4 502,25 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/249-174-9210);
- (c) The development charge towards waste water treatment amounts to R8 280,00, and is for the account of the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/240-183-9210);
- (d) The development charge towards sewerage amounts to R5 612,00 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/240-184-9210);
- (e) The development charge towards streets amounts to R11 500,00 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter. (mSCOA 9/249-188-9210);
- (f) The development charge towards storm water amounts to R3 192,40 and is payable by the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/248-144-9210);
- (g) The development charge towards electricity amounts to R10 419,00 and is payable by the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/253-164-9210);
- (h) The Council resolution of May 2021 makes provision for a 40% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2021/2022 and may be revised thereafter. The discount is not applicable to A4(a).

**B. 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 be met with before the double dwelling comes into operation and the occupancy certificate be issued after which the 5 years period will no longer be applicable;

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- (b) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;
- (c) The applicant/objectors be notified of the outcome and their right to appeal in terms of Chapter VII, Section 89 of the By-Law;

C. The application be supported for the following reasons:

- (a) The development proposal is consistent with the parameters of the applicable development management scheme;
- (b) The proposed double dwelling is a residential use and is therefore consistent with the proposals of the SDF;
- (c) A double dwelling is accommodated as a consent use under Residential Zone 1 of the By-Law;
- (d) The development proposal supports the optimal utilisation of the property;
- (e) The double dwelling may support the tourism industry in Yzerfontein, as well as the local economy;
- (f) The double dwelling will provide in a need for a larger variety of housing opportunities to the wider population;
- (g) The development proposal will not negatively impact on the character of the surrounding neighbourhood or the larger Yzerfontein.

**(SIGNED) J J SCHOLTZ  
CHAIRPERSON**