



MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON WEDNESDAY, 6 DECEMBER 2017 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:

Sr Manager: Building Environment, Mr A M Zaayman (advisor)
Manager: Secretariat and Records, Ms N Brand (secretariat)
Director: Development Services, Mr J T Steenkamp
Town and Regional Planner, Ms A de Jager

1. OPENING

The chairperson opened the meeting and welcomed all members.

2. ABSENCE OF LEAVE

The committee is complete.

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 8 NOVEMBER 2017

RESOLVED

That the minutes of a Municipal Planning Tribunal Meeting held on 8 November 2017 are approved and signed by the chairperson.

5. MATTERS ARISING FROM THE MINUTES OF 8 NOVEMBER 2017

None

6. MATTERS FOR CONSIDERATION

6.1 PROPOSED DEPARTURE ON ERF 4132, MOORREESBURG (15/3/4-9) (WARD 1)

Ms A de Jager, on behalf of the author, Mr H Olivier, tabled the item on the proposed departure on erf 4132, Moorreesburg in order to depart from the 5 m street building line (northern and eastern boundaries) to 0 m respectively in order to authorise the position of the existing transmission tower.

6.1/...

Ms de Jager confirmed that the building plan was approved for the construction of the transmission tower, but with further inspection it was found that the location of the tower was altered and not in accordance with the building plan.

A discussion followed on means to curb the increasing unauthorised building works experienced in the municipal area. It is proposed that the imposition of a fine for unauthorised building work by means of the implementation of a tariff be investigated. The Senior Manager: Built Environment, Mr A Zaayman, is requested to consult Stellenbosch Municipality in this regard, as the Council already approved a tariff for implementation with effect from the new financial year, 1 July 2018.

RESOLVED

A The application for the departure on erf 4132, Moorreesburg be approved in terms of section 70 of Swartland Municipality: By-law on Municipal Land Use Planning (PG 7741 of 3 March 2017), subject to the following conditions that:

A1 TOWN PLANNING/ BUILDING CONTROL

- (a) The 5 m street building lines (northern and eastern boundaries) are departed to 0 m respectively in order to authorise the position of the existing transmission tower
- (b) Building plans must be submitted to the Director: Development Services for consideration and approval;
- (c) Application for the erection of advertising signs for the service providers must be made to the Director: Development Services for consideration and approval;
- (d) The applicant/objector must be notified of their right to appeal in terms of Chapter VII, section 89 of the Swartland Municipality: By-law on Municipal Land Use Planning (PG 7741 of 3 March 2017);

A2 REFUSE REMOVAL

- (a) The basic refuse removal tariff is levied for the built premise as well as for the business/the tower in this case.
- (b) Refuse be put in refuse bags on the nearest municipal sidewalk on the morning of removal;

B The application is supported for the following reasons:

- (a) The proposed placement of the transmission tower ensures that the existing activities on the property are not affected;
- (b) The impact on the surrounding properties will be minimal as the tower itself complies with the building lines and that it is only the supporting infrastructure (containers) that departs from the building lines.

6.2 PROPOSED CONSENT USE ON PORTION 5 OF FARM DOORNEKRAAL NO 830, DIVISION MALMESBURY (15/3/10-15) (WARD 7)

Ms A de Jager tabled the item in the absence of the author, Mr A J Burger, and confirmed that this land use application was referred back by the Municipal Planning Tribunal in order to obtain the comment from the Department of Agriculture on the application for the operation of a sand mine.

Ms de Jager mentioned that the comments received from the said Department are not considered to be negative, as it also contains solutions and mitigation measures which is confirmed in the environmental management plan, e.g. the installing of surface drainage and contour banks and the safely disperse of the accumulated runoff.

The applicant was requested to amend the land use application to 4,9 ha, in stead of 9,9 ha, in order to align the land use application with the mining permit and environmental approval which is only for 4,9 ha, including the stockpiling area.

Resolved/...

RESOLVED

- A The application for a consent use on portion 5 of farm Doornekraal no. 830, Division Malmesbury, be approved in terms of section 60 of Swartland Municipality: By-law on Municipal Land Use Planning (PG 7420 of 3 July 2015), subject to the following conditions that:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent use authorised a mining activity and stockpiling restricted to 4,9 ha as presented in the application;
- (b) The applicant is requested to formally survey the portion of land to be mined by a registered land surveyor, and the Municipality be provided with the approved Surveyor General diagrams;
- (c) The mining of the 4,9 ha, as well as rehabilitation take place in 1 ha phases for monitoring purposes;
- (d) The applicant is requested to grant permission that the mine be monitored from time to time, e.g. by means of the municipal drone;
- (e) The mining activity is limited to the extraction of sand;
- (f) Rehabilitation of the site to be completed in accordance with the EMP following the termination of mining activities;
- (g) Sufficient and acceptable lavatories to be provided on site to the satisfaction of the Division of Environmental Health of the West Coast District Municipality;
- (h) Drinking water to be accessible and available on site and must conform with SABS 241-1984 standards;
- (i) SAHRA and Heritage Western Cape must be notified immediately and activities ceased, should any human remains be found during the mining process;
- (j) In the event of human remains being uncovered, it may solely be removed by an archaeologist, and the removal will be for the cost of the owner/developer;
- (k) No vehicles may be serviced on site;
- (l) All oil/diesel spills be cleaned up using the necessary precautions and procedures to the satisfaction of the Department of Environmental Affairs and Development Planning;
- (m) Protective measures must be taken should the mine pose a risk to human health as determined by the Division of Environmental Health of the West Coast District Municipality;
- (n) The health requirements as set from time to time by Department of Health, to be met to the satisfaction of the said Department;
- (o) The applicant/developer must comply with the conditions of the Environmental Authorisation of the Department of Mineral Resources dated 6 July 2017 with reference number WC30/5/1/3/2/10115MP;
- (p) The applicant/developer has to comply with the conditions of the mining permit issued by the Department of Mineral Resources;
- (q) The current damage to border fences must be restored;
- (r) This approval is in terms of section 66(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 that failing to do so will result in this approval expiring;
- (s) The applicant/objectors be notified of their right to appeal in terms of Chapter VII, section 79 of the Swartland Municipality: By-law on Municipal Land Use Planning (PG 7420 of 3 July 2015);

A2 WATER

- (a) No municipal drinking water will be provided;

A3 SEWERAGE

- (a) Sewerage services can only be provided for household sewerage by means of a vacuum truck;

A4 REFUSE REMOVAL

- (a) Prepaid vouchers must be submitted to the landfill if any of the landfills in the municipal area are to be used. These coupons are available at any municipal office in the municipal area;

A5 GENERAL

- (a) It should be noted that this 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, amongst others, Section 53 of Western Cape Land Use Planning Act, No 3 of 2014 (LUPA), as required by provincial, state, parastatal and other statutory bodies;
- (b) Cognisance be taken of comments, approvals and conditions issued by the following authorities. The monitoring and enforcement of all conditions imposed remain the responsibility of the competent authority:
- Telkom, dated 6 March 2017, reference number WWIP_WMY+0558_17;
 - Western Cape Department: Transport and Public Works, dated 20 January 2017, reference number 16/9/6/1-26/115 (Job 24524)
 - Western Cape Department: Agriculture, dated 20 November 2017, reference number 20/9/2/2/5/099;

B That the proposed application is supported for the following reasons:

- (a) No physical restrictions on the property exists that will have a negative impact on this application and all possible impacts are mitigated by the EA and EMP;
- (b) The proposed application is consistent with the Provincial Spatial Development Framework and Municipal Spatial Development Framework;
- (c) The temporary nature of the proposed mining activity, as described by the applicant, a concurrent mining and rehabilitation process which will be implemented, the proposed application will not have a substantial impact on the character of the surrounding area;
- (d) The sustainable mining of sand for the construction industry is an important economic sector in the West Coast contributing 7.5% to the District GDP;
- (e) The proposed small scale mining operation will also benefit the greater region due to the proximity of the applicant's property to the Cape Metropole (i.e. Paarl, Stellenbosch etc.) and surrounding towns;
- (f) The farm is rich in sand and is not of significant agricultural importance;
- (g) The mitigation measures implemented results in that the proposed mining activity will not have an impact on the well-being, health or safety of the surrounding land owners.

6.3 PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS, REZONING AND DEPARTURE ON ERF 1581, MALMESBURY (15/3/3-8, 15/3/4-8, 15/3/5-9) (WARD 10)

Ms A de Jager, as author of the item, tabled the proposed removal of restrictive conditions, rezoning and departure on erf 1581, Malmesbury.

Although the public interest in this application is relatively large, the application has been considered against all spatial principles consistent with the spatial development proposals of the SDF.

After a discussion on the large number of objections received, Mr Rabie confirmed that one of the principles of SPLUMA is that development must follow planning. The SDF is the policy and planning document of the Municipality and the Municipal Planning Tribunal can not be guided by the amount of objections received.

With the public participation process followed in the approval of the SDF, the opportunity should have been used to object against the proposed land uses in the specific area.

RESOLVED

- A The application for the removal of restrictive conditions from Deed of Transfer T11862/11 of Erf 1581, Malmesbury, be approved in terms of section 70 of the Swartland Municipality: By-law on Land Use Planning (PG 7741 of 3 March 2017), subject to the conditions that:

A1/...

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The following conditions be removed from Deed of Transfer T11862/11:
“C. (a) Hierdie erf mag nie onderverdeel word nie;
(b) Hierdie erf mag slegs vir bewoningsdoeleindes gebruik word;
(c) Net een woning, tesame met die nodige buitegeboue, mag op hierdie erf opgerig word;
(d) Op nie meer as helfte van die oppervlakte van hierdie erf gebou mag word nie.
(e) Geen gebou of struktuur of enige gedeelte daarvan, behalwe grensmure en heinings mag nader as 4,72 meter van die straatlyn wat 'n grens van hierdie erf uitmaak, opgerig word nie, ook nie binne 3,15 meter van die agtergrens of 1,57 meter van die sygrens van die aangrensende erf nie, met dien verstande dat 'n buitegebou met die toestemming van die plaaslike owerheid op die voorgeskrewe agterruimte langs die agtergrens opgerig mag word, mits sodanige buitegebou nie 'n hoogte van 3,05 meter te bowe gaan nie, watter hoogte gemeet moet word van die vloer tot die ankerplaat, en mits geen gedeelte daarvan vir bewoningsdoeleindes (sic) deur mense aangewend word nie;”
- (b) The applicant/owner must apply to the Deeds Office to amend the title deed in order to indicate the removal of the restrictive condition;
- (c) 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;
- (d) 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 the rezoning of Erf 1581, Malmesbury be approved in terms of section 70 of the Swartland Municipality: By-law on Land Use Planning (PG 7741 of 3 March 2017) from Residential Zone 1 to Business Zone 1 subject to the conditions that:

B1 TOWN PLANNING AND BUILDING CONTROL

- (a) This approval authorises the establishment of an automobile dealership on the property, as presented in the application, as well as any low-impact primary use described by the By-Law within Business Zone 1;
- (b) The access to the proposed development be widened to at least 6 m, in order to allow for separate entrance and exit points to the property;
- (c) The eastern boundary wall adjacent to Voortrekker Road be allowed a minimum height of 1m from natural ground level;
- (d) A red line (no stopping) be painted along the boundary of Voortrekker Road to prevent parking;
- (e) All trees and hedges be retained and maintained on the property as is possible and structurally permissible;
- (f) At least 19 on-site parking bays be provided, as proposed by the application and that at least 16 parking bays remain clear for use solely by employees and visitors;
- (g) All parking bays be provided with a permanent, dust free surface, be it tar, concrete or paving or any other material previously approved by Swartland Municipality, and the parking bays must be clearly delineated;
- (h) Application for advertising signs be made to the Director: Development Services for the consideration and approval;
- (i) Building plans be submitted to the Director: Development Services for consideration and approval;
- (j) This 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;
- (k) 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;

B2 WATER

- (a) The erf be provided with a single water connection;

B3 SEWERAGE

- (a) The existing sewer connection be utilised;

B4 REFUSE REMOVAL

- (a) The basic refuse removal tariff will be levied and in the case of businesses the tariff will be amended in accordance with the amount of refuse generated;
- (b) Refuse be placed in refuse bags on the nearest municipal street on the morning of refuse removal;

B5 STREETS AND STORM WATER

- (a) Storm water must be channelled underground to the nearest municipal collection point, without causing flooding;
- (b) No additional access points will be allowed from Main Road 174 (Voortrekker Road);

- C The street building line departure of Erf 1581, Malmesbury, be approved in terms of section 70 of the Swartland Municipality: By-law on Land Use Planning (PG 7741 of 3 March 2017), subject to the condition that:

C1 TOWN PLANNING AND BUILDING CONTROL

- (a) The 5 m building line along the eastern property boundary be removed to 0 m;

C2 GENERAL

- (a) Should it be deemed necessary by the Municipality that any services be upgraded, in order to provide the development with services, any costs incurred will be for the responsibility of the owner/developer;

- D The application is supported for the following reasons:

- (a) The application is consistent with the spatial development proposals of the SDF;
- (b) The development proposal is consistent with uses supported along activity axes, in order to alleviate pressure from the expanding CD;
- (c) Similar developments have been approved along Voortrekker Road, south of the application property. It is prudent to channel development along this route, rather than ad hoc development infiltrating into residential neighbourhoods;
- (d) This application is seen as the optimal utilisation of a brown fields site, a concept which is supported by the SDF and PSDF;
- (e) The application complies with section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA;
- (f) The public interest component of the application is consequently argued and addressed, as required in terms of section 42)(1)(c)(i) SPLUMA, as follows:
- (i) It is clear that the proposed development is consistent with the development principles, norms and standards of LUPA, SPLUMA, the SDF and other legislation and policies applicable to Swartland land use applications;
- (ii) The risks associated with the application, as were clear from the public objections, are considered to be conjecture. Any and all traffic to and from the premises will remain subject to applicable traffic legislation, just as the current traffic in Bergzicht Street and Voortrekker Road are subject to the same;
- (iii) The application property is situated at the top of Bergzicht Street and bordered on only one boundary by a residential property which pertains over the same development potential as Erf 1581. Bergzicht Street in fact represents a physical and spatial divide between the development property and the surrounding properties. Furthermore, the proposed business will operate during normal business hours, and should not cause any unduly disturbances. The impact of the development on the existing surrounding land uses is thus considered moderate to minimal;

6.3(D)/...

- (iv) The proposed development is neither prejudicial to the interests of the community, nor the applicant. The SDF promotes potential business development along Voortrekker Road. This enables individuals, like the applicant, to develop a property to its full potential, along an activity corridor, and to benefit from the exposure of the property. However, the surrounding community is also protected, as the properties for potential business development are assigned specifically, directed along a specific route and grouped with other future developments of the same nature. Therefore the character of the existing neighbourhood is in fact protected, as this focused development ensures the preservation of the residential character, rather than a slow, ad hoc infiltration of the neighbourhood with businesses and other uses;
- (v) The long term gains of the development proposal far outweigh the possible short term impact of the application. It is inevitable that the character of Voortrekker Road is going to change over time. The road is an important axis and the CBD is under pressure to expand. The properties along this road are thus ideally positioned for future business development. The development proposal is consequently consistent with the long term spatial planning of the SDF and the applicant is well within his rights to apply for the proposed land use. As mentioned before, the SDF endeavours to preserve the character of the existing neighbourhood, while providing development opportunities in a spatially responsible and orderly fashion;
- (g) The proposal will focus the expansion of the CBD and business developments, so that the character of the rest of Bergzicht, as a residential neighbourhood, can be preserved;
- (h) Due to the saturation level of the CBD, it is necessary to expand the corridor;
- (i) Other properties along Voortrekker Road possess similar development potential as Erf 1581;
- (j) A red line be painted along the boundary of the property in Voortrekker Road to prevent parking;
- (k) There is sufficient services capacity to accommodate the new development.
- (l) Traffic volumes, accessibility to the neighbourhood and rights of surrounding property owners will not be negatively impacted upon by the development proposal;
- (m) The optimal utilisation of the property for business purposes will cause better maintenance of the site than is currently the case. This may in turn enhance property values, rather than have a detrimental effect on the neighbourhood.

The chairperson thanked the external members for their input during the year, as well as the value added to operations of the committee through their unique expertise. A word of thanks is also addressed to the internal members for their contributions.

The chairperson concluded the meeting with blessings for the Festive Season.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**