

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

10.

**A PORTION OF REMAINDER ERF 249 HERMANUS (UNUSED PASSAGE),
ADJACENT TO ERF 341 HERMANUS (5 ROCKLANDS ROAD): LEASE OF
MUNICIPAL PROPERTY TO JC DAVIS**

7/2/3/1

A Le Roux

Manager: Property Administration

29 November 2021

(028) 316 5623

1. Executive Summary

To obtain approval to enter into a lease agreement with JC Davis, hereinafter referred to as “the Applicant”, in respect of municipal property being a portion of Remainder Erf 249 Hermanus (±180m² in extent) (unused passage) situated between Westcliff and Rocklands Road, hereinafter referred to as “the Property”, for a period of 9 (NINE) years and 11 (ELEVEN) months for gardening and boundary wall purposes. The locality map is attached hereto as “Annexure A”.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning;
Property Administration

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Administration of Immovable Property Policy of the Overstrand Municipality (2015)
- Municipal Asset Transfer Regulations (R. 878 of 2008)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Applicant is the owner of Erf 341 Hermanus, adjacent to a portion of Remainder Erf 249 Hermanus and applied to lease the Property for a period

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

of 9 (NINE) years and 11 (ELEVEN) months for gardening purposes and to build a boundary wall.

The Applicant explained that when he purchased Erf 341 Hermanus from the previous owner, he was unaware that a portion of the garden was encroaching on the Property as the previous owner incorporated the Property into Erf 341 Hermanus.

The passage between Erf 341 and Erf 343 Hermanus forms part of Remainder Erf 249 Hermanus and is zoned Transport Zone 2: Road and Parking. There is no evidence that this passage is used by the general public since it is overgrown with bushes and trees. Furthermore, it seems that the passage has for a long time been used as a garden that forms part of the garden of Erf 341 and for this reason the Applicant wants to lease the Property to retain the garden and to build a new boundary wall.

Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”

The Applicant completed the formal application form and paid the application fee.

Paragraph 17: “Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

- 17.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 18 below; or**
- 17.2 a direct lease”.**

Paragraph 18: “A competitive process must at all times be followed in circumstances where:

- 18.1 the lease is for a long term with an income value in excess of R10 million;**
- 18.2 the lease is for a formal business premises with a market related rental;**
- 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or**
- 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community”.**

As the Property is adjoining the property of the Applicant and it is small area which will not separately be of any practical use to anyone else, who do not own adjoining property, for gardening purposes, it is therefore recommended that the Property be leased directly to the Applicant without following a competitive process.

The owner of Erf 343 Hermanus, adjacent to the eastern side of the Property, confirmed in writing that there is no objection to the lease of the Property to the Applicant.

Paragraph 20.1: “The Municipality may grant a long term lease of municipal immovable property with an income value of less than R10 million only after:

- a) The Accounting Officer has approved the lease in principle;**
- b) In the case of a direct lease, the proposed lease was advertised in terms of paragraph 10.1 and 10.2 above to invite the local community and other interested parties to submit comments or representations; and**
- c) The Executive Mayor, as delegated authority, has approved that the right may be granted.”**

The Accounting Officer (Municipal Manager) approved in principle the lease of the Property to the Applicant on condition that the public participation process is followed and further subject to the approval from the Executive Mayor.

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

The proposed lease was advertised in The Village News on 10 September 2021 for a 30 (THIRTY) day comment/objection period.

The Executive Mayor's approval for the long term lease is hereby sought.

Paragraph 24: “The fair market value for the alienation of, the rental for the leasing or compensation payable for a servitude over municipal immovable property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the purchaser (in the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude). ”.

Boland Valuers on 16 July 2021 determined the market related monthly rental at an amount of R2.19/m² (TWO RAND AND NINETEEN CENTS PER SQUARE METRE) (VAT Excluded) per month. The valuation was done taking into consideration the size, shape, locality, zoning and proposed use of the Property. As the Property is approximately 180m² in extent the total rent will be approximately R394.20 (THREE HUNDRED AND NINETY FOUR RAND AND TWENTY CENTS) (VAT excluded) per month.

Paragraph 36: “All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.”

The Applicant will pay all costs relating to the advertisement and valuation. No survey was done and therefore no costs were incurred in this regard.

Paragraph 47: “Subject to paragraph 46 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.”

The Property will be inspected by the Property Administration Department at least once a year.

It is further confirmed that the other Conditions of Lease as stipulated in paragraph 36 – 50 of the said policy will be included in the lease agreement.

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

B. Advertisement/Notification

An advertisement for the lease of a portion of Remainder Erf 249 Hermanus, $\pm 180\text{m}^2$ in extent, was published in The Village News on 10 September 2021 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

Considering the above discussion, it is recommended that the lease of the Property to the Applicant be approved for a period of 9 (NINE) years and 11 (ELEVEN) months at a rental amount of R2.19 /m² (TWO RAND AND NINETEEN CENTS PER SQUARE METRE) (VAT Excluded) per month.

7. Financial Implications

The Municipality stands to gain rental in the amount of R2.19/m² (TWO RAND AND NINETEEN CENTS PER SQUARE METRE) (VAT Excluded) per month, such rental to escalate every year on the 1st of July in accordance with the consumer price index (all items).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure & Assets, Hermanus – J Vorster 028 313 8046

As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection.

10. Annexures

Annexure A: Locality Plan

RECOMMENDATION:

1. that the lease of municipal property, being a portion of Remainder Erf 249 Hermanus ($\pm 180\text{m}^2$ in extent), to JC Davis for gardening and boundary wall purposes at the rental amount of R2.19/m² (TWO RAND AND NINETEEN CENTS PER SQUARE METRE) (VAT Excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months in terms of the Administration of Immoveable Property Policy of the Overstrand Municipality, **be approved**; and

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

2. that the rental amount mentioned in 1 above escalate every year on the 1st of July in accordance with the consumer price index (all items), the next escalation to be on 1 July 2022.

RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION :	26 MARCH 2022
TARGET DATE TO INFORM APPLICANT :	12 MARCH 2022
TARGET DATE TO INFORM OBJECTOR :	N/A

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

10.

**A PORTION OF REMAINDER ERF 249 HERMANUS (UNUSED PASSAGE),
ADJACENT TO ERF 341 HERMANUS (5 ROCKLANDS ROAD): LEASE OF
MUNICIPAL PROPERTY TO JC DAVIS**

7/2/3/1

A Le Roux

Manager: Property Administration

29 November 2021

(028) 316 5623

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
2 FEBRUARY 2022, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL :

W MURTZ

TARGET DATE FOR IMPLEMENTATION :

26 MARCH 2022

TARGET DATE TO INFORM APPLICANT :

12 MARCH 2022

TARGET DATE TO INFORM OBJECTOR :

N/A

