

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
17 November 2020
(Also the agenda for the Mayoral Committee Meeting: 25 November 2020)**

2.

ERF 2857 (A PORTION OF ERF 2825) SANDBAAI (SITUATED IN MAIN ROAD, SANDBAAI): RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO APOSTOLIC FAITH MISSION OF S.A, HERMANUS CONGREGATION FOR PARKING AND RECREATIONAL PURPOSES

7/2/3/1

A Le Roux

Manager: Property Administration

11 September 2020

(028) 316 - 5623

1. Executive Summary

To obtain approval to enter into a further lease agreement with the Apostolic Faith Mission of S.A, Hermanus Congregation (hereinafter referred to as the "Applicant") for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of municipal property, being Erf 2857 (a portion of Erf 2825) Sandbaai (3,280m² in extent) situated in the Main Road, Sandbaai, with the entrance from Long Street (hereinafter referred to as the "Land"), for parking and recreational purposes. See the locality plan attached hereto marked Annexure "A".

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Creation and maintenance of a safe and healthy environment
Promotion of tourism, economic and social development

4. Delegated Authority

Executive Mayor

5. Legal Requirements

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

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Applicant is the owner of Erf 2856 Sandbaai and applied for the lease the Land for parking purposes while they were busy with the building of the church building. They later motivated that they still require the additional parking to accommodate the overflow parking.

The Applicant has been using the Land since 20 September 2012 for parking purposes. The last agreement was for a period of 3 (THREE) years, which commenced on 1 May 2017 and expired on 30 April 2020.

The Applicant applied to renew the lease agreement for a further 9 (NINE) years and 11 (ELEVEN) months. The Applicant amended the application and requested the purpose of lease to include the additional use for recreational purposes. The Applicant's vision is to provide a recreational area to cater to the needs of pre-teens, teenagers and young adults. Presently the teens meet at least once a week to participate in physical activities and is usually to play volleyball at the beach as there is no current facility available to them in the Sandbaai area. This is not always convenient due to transport issues and space availability at the beach and there are also safety concerns. The Applicant intends on building a children's play area on their property, being Erf 2856 Sandbaai, which will extend onto the Land by means of a volleyball court. No permanent structures will be built on the Land. Due to the growth of the community, the Applicant needs 20 (TWENTY) additional parking spaces, of which 8 (EIGHT) have already been built. The Applicant also wishes to fence in the Land for security purposes. The application will not give the Applicant more rights as they are complying with the parking requirements for the use of Erf 2856 Sandbaai. This is merely to make provision or overflow parking and for recreational purposes.

Even though the process for renewal was commenced with timeously, the Applicant wanted to amend their original purpose of lease to include the volleyball court, which caused a delay in the renewal process. The amended application led to the request from the Town Planning department for additional information regarding the recreational purposes which caused another delay in waiting to receive the requested information from the Applicant. The process was further delayed due to negotiations with Province regarding the purchase of the adjoining Erf 2825 Sandbaai.

The Finance Department was requested to continue to levy the rental as the Applicant is still in possession of the property.

A lease agreement has been sent for signature thereof (for administrative and audit purposes) with special conditions included in the agreement stipulating

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that the lease agreement is subject to the Executive Mayor's approval (as delegated authority) allowing the Municipality to enter into the long term agreement.

The Land has been used by the Applicant for 8 years without complaints from the public. The municipal account is up to date.

The Applicant delivers a service to the community by caring for the members of the community and reaching out to the community and providing alternative activities to the younger generation in a safe and caring environment.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy will 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.”

As the application for renewal was received before the expiry of the last agreement there is no need for a formal application form to be completed and no application fee is payable.

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:

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

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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 Applicant is a well-established non-profit organization who delivers a service to the community of Sandbaai and surrounding areas and due to the fact that their account is up to date and no complaints have been received during their lease period, it is recommended that the Land, which will not be used for business purposes, be leased directly to the Applicant without following a competitive process.

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 further lease of the Land to the Applicant, subject to a public participation process being followed and further subject to the approval from the Executive Mayor.

The proposed lease was advertised in The Village News on 16 September 2020 for a 30 (THIRTY) day comment/objection period.

Paragraph 26: *“In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases and encroachments, the approved amount will be used for purposes of determining the rental amount.”*

The tariff for lease of Municipal land to registered Social Care Institutions/Organisations/NPO's/PBO's/Sport facilities is R147.83 (ONE

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HUNDRED AND FORTY SEVEN RAND AND EIGHTY THREE CENTS) (VAT excluded) per month for the period from 1 May 2020 to 30 June 2020 and R154.78 (ONE HUNDRED AND FIFTY FOUR RAND AND SEVENTY EIGHT CENTS) (VAT excluded) per month as of from 1 July 2020 for the 2020/2021 financial year.

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 be liable for the payment of all costs relating to the renewal of the lease agreement which in this case so is only the advertisement costs.

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 with the Applicant.

B: Advertisement/Notification

An advertisement for the lease of the Land was placed in The Village News on 16 September 2020 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

With reference to the above discussion it is recommended that the lease of the Land to the Applicant be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 May 2020.

It is further recommended that the tariff for non-profit organizations, being a rental amount of R147.83 (ONE HUNDRED AND FORTY SEVEN RAND AND EIGHTY THREE CENTS) (VAT excluded) per month for the period from 1 May 2020 to 30 June 2020 and R154.78 (ONE HUNDRED AND FIFTY FOUR RAND AND SEVENTY EIGHT CENTS) (VAT excluded) per month as of from 1 July 2020 for the 2020/2021 financial year, be levied.

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7. Financial Implications

The Municipality stands to gain rental in the amount of R147.83 (ONE HUNDRED AND FORTY SEVEN RAND AND EIGHTY THREE CENTS) (VAT excluded) per month for the period from 1 May 2020 to 30 June 2020 and R154.78 (ONE HUNDRED AND FIFTY FOUR RAND AND SEVENTY EIGHT CENTS) (VAT excluded) per month as of from 1 July 2020 for the 2020/2021 financial year where after the rental amount will escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2021. All expenses pertaining to the proposed lease will be borne by the Applicant.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Town Planner: Mr S van der Merwe – (028) 313 8900

“The renewal of the lease agreement is supported, however:

- * *No plans are provided of the type of "recreational facilities" that are envisaged since "recreational facilities" is a consent use under the zoning status of the property. It is therefore suggested that plans indicating the recreation facility uses/structures relating thereto, as well as the parking layout be provided to this office for scrutiny purposes. Should it then be deemed necessary, the applicant must submit the necessary application for consent use for "recreational facilities" at its own cost.*
- * *The area should be landscaped, the parking area permanently demarcated and maintained.*
- * *No other uses, contrary to the primary rights allowed without Municipal approval."*

Plans were requested from the Applicant as requested above and the following comments were received thereafter from the Town Planner: Mr H Boshoff who dealt with the application further:

“The volleyball court is supported under "Additional Use" as set out in the Zoning Scheme, subject to the following (consent use thus not applicable):

- * *The Church must ensure that noise related to the additional use is kept to acceptable levels at all times nor may the functions generate prolonged disturbances of any kind.*
- * *The activity be restricted to the layout plan submitted.*

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- * *The erf be landscaped and the parking area be permanently demarcated and maintained.*
- * *No other uses contrary to the primary uses are allowed without Municipal approval.”*

Comment from Property Administration: These conditions are included in the lease agreement.

Senior Manager: Expenditure and Assets: Mr J Vorster - (028) 313 8046

“As this is an income generating proposal involving an institution who delivers a service to the community of Sandbaai, with no intention to dispose of the asset(s), there is no objection to the report.”

10. Annexures

Annexure A: Locality Map

RECOMMENDATION:

1. that the further lease of municipal property, being Erf 2857 (a portion of Erf 2825) Sandbaai, (3,280m² in extent), to the Apostolic Faith Mission of S.A, Hermanus Congregation, for parking and recreational purposes for a period of 9 (NINE) years and 11 (ELEVEN) months as from 18 September 2020 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
2. that the rental be determined at R147.83 (ONE HUNDRED AND FORTY SEVEN RAND AND EIGHTY THREE CENTS) (VAT excluded) per month for the period from 1 May 2020 to 30 June 2020 and R154.78 (ONE HUNDRED AND FIFTY FOUR RAND AND SEVENTY EIGHT CENTS) (VAT excluded) per month as of from 1 July 2020 for the 2020/2021 financial year, as determined in the tariffs stipulated in the Annual Budget as approved by Council; and
3. that the rental amount mentioned in 2 above escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2021.

RESPONSIBLE OFFICIAL:

N LIEBENBERG

TARGET DATE FOR IMPLEMENTATION:

16 DECEMBER 2020

TARGET DATE TO INFORM APPLICANT:

9 DECEMBER 2020

TARGET DATE TO INFORM OBJECTOR:

N/A

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A Le Roux

Manager: Property Administration

11 September 2020

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THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 17 NOVEMBER 2020, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION

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N LIEBENBERG

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16 DECEMBER 2020

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N/A

ANNEXURE A

