

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
20 September 2016
(Also the agenda for the Mayoral Committee Meeting : 27 September 2016)**

**6.
HERMANUS, A PORTION OF ERF 1291: LEASE OF MUNICIPAL PROPERTY TO
GLENFRUIN MEADOWS HOMEOWNERS' ASSOCIATION**

7/2/3/1

M Erasmus

(028) 316-3724

Hermanus Administration

4 August 2016

1. Executive Summary

To obtain approval to enter into a further lease agreement with Glenfruin Meadows Homeowners Association, hereinafter referred to as "Glenfruin", in respect of municipal property, being a portion of Erf 1291 Hermanus ($\pm 1,22$ hectare in extent), for the management of the existing Equestrian Centre.

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)

6. Background/Discussion/Evaluation/Conclusion

Background

Glenfruin has been leasing the subject portion of Erf 1291 Hermanus from the Municipality since 1996 for the purpose of an Equestrian Centre. The most recent agreement expired on 30 April 2016.

The locality and layout of the proposed lease area is indicated on a locality plan attached per "Annexure A".

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Discussion

Glenfruin applied to lease the subject portion of the property for a further period of 9 (NINE) years and 11 (ELEVEN) months for the purpose of managing the existing Equestrian Centre.

Horse riding lessons are offered by qualified instructors to both social and competing riders. Physically and mentally handicapped children from Camphill School also make frequent use of the centre as a form of relaxation and therapy. "Anima Therapy Centre" also makes use of the Centre for similar purposes. The Municipality gave permission in 1997 for the sub-lease of the property for the purpose of the management of the Equestrian Centre.

In terms of the Administration of Immovable Property Policy the Municipality may grant a long term lease if the Accounting Officer has approved the lease in principle, a public participation process is followed and Executive Mayor's (as delegated authority) approval is gained in terms of the above policy.

The Accounting Officer approved in principle on 19 February 2016 the lease of the property to Glenfruin subject thereto that the required processes are followed. As the site is not classified as a business site and no other applications for the specific site were received, it can be leased directly to Glenfruin without following a competitive process. This is also further amplified through the fact that the specific area is landlocked due to the only access to the said portion of the property being through Glenfruin's property.

A valuation was done on 10 March 2016 and it was determined that the market related rental for the said portion of property is R3,780.00 (THREE THOUSAND SEVEN HUNDRED AND EIGHTY RAND ALONE) (VAT excluded) per month for the subject portion of the property.

Glenfruin's municipal account is up to date and no complaints regarding the use of the property by Glenfruin have been received during their previous periods of lease.

Glenfruin applied for the renewal before the expiry date of the previous lease agreement. The necessary processes were followed and after the valuation was done Glenfruin had queries regarding the market related rental amount received which had to be attended to first. Glenfruin then had to revert to their committee to discuss the proposed new lease agreement and obtain the necessary consent to proceed with the application before the Municipality could continue with the advertising and compilation of a report for final approval of the said lease. As the Municipality is required to have written agreements for all municipal immovable properties occupied and as the lease agreement have expired on 30 April 2016 a subsequent lease agreement was forwarded to them for signature. This agreement has been made subject to

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the Executive Mayor's approval of the long term lease in terms of the said Policy. In the instance where such an approval is not granted, the agreement allows or the cancellation thereof.

The lease agreement as forwarded to Glenfruin, makes provision for the levying of a rental amount of R3,780.00 (THREE THOUSAND SEVEN HUNDRED AND EIGHTY RAND ALONE) (VAT excluded). The lease amount was thus escalated with the commencement of the new lease agreement which is also seen as the annual escalation.

Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

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".**

and

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 site is not classified as a business site and no other applications for the specific site were received, it can be leased directly to Glenfruin without following a competitive process. This is also further amplified through the fact that the specific area is landlocked due to the only access to the said portion of the property being through Glenfruin's property. Since there is no other approved access to the said portion of the property it would not be appropriate for any other person/organisation

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to lease the said property. It will therefore not serve a useful purpose and be a wasteful expenditure to follow a competitive process for the awarding of the lease of the said property.

Paragraph 20.1: “The Municipality may grant a long term lease of municipal immovable property with a value 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 municipal council has approved that the right may be granted.”**

The Accounting Officer approved in principle on 19 February 2016 the lease of the subject portion of Erf 1291 Hermanus to Glenfruin subject thereto that a public participation process be followed. The proposed lease was advertised in The Hermanus News on 9 August 2016.

Paragraph 24: “The fair market value for the alienation of, the rental amount 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 determined the market related rental for the mentioned portion of Erf 1291 Sandbaai on 10 March 2016 at an amount of R3,780.00 (THREE THOUSAND SEVEN HUNDRED AND EIGHTY RAND ALONE) (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.”

Glenfruin will pay all costs relating to the application. In this case so far it entails the costs involved in obtaining the valuation and the advertising costs. It can be confirmed that the valuation and advertisement costs have already been paid by Glenfruin.

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Paragraph 40: “Rental, except where it is decided otherwise by the Municipality shall escalate annually by a percentage fixed in accordance with the prevailing consumer price index (all items).”

A clause to this effect will be inserted in the lease agreement.

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 a portion of Erf 1291 Hermanus, ±1,22 hectare in extent, was placed in The Hermanus News on 9 August 2016 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 agreement with Glenfruin be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 May 2016 at a total rental amount of R3,780.00 (THREE THOUSAND SEVEN HUNDRED AND EIGHTY RAND ALONE) (VAT excluded) per month.

As the lease amount was increased from R2,011.19 (TWO THOUSAND AND ELEVEN RAND AND NINETEEN CENTS) (VAT excluded) to R3,780.00 (THREE THOUSAND SEVEN HUNDRED AND EIGHTY RAND ALONE) (VAT excluded) with the conclusion of the said agreement and as the agreement commenced only 2 months before the usual escalation month it is proposed that the first escalation on the said lease amount be on 1 July 2017.

7. Financial Implications

The Municipality stands to gain a rental in the amount of R3,780.00 (THREE THOUSAND SEVEN HUNDRED AND EIGHTY RAND ALONE) (VAT excluded) per month for the period of 1 May 2016 to 30 June 2017 where after the lease amount will escalate every year on the 1st of July in

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accordance with the prevailing consumer price index (all items). All expenses pertaining to the proposed lease will be borne by Glenfruin.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

Consideration should be given to whether or not the proposed leasing of the asset would constitute a commercial lease in the true sense of the word. If so, the property must be reclassified as Investment Property and be disclosed in the Fixed Asset Register and Annual Financial Statements in accordance with GRAP 16.

If, however, the intention of this rental agreement is to provide an enhanced community service, the property must be classified as PPE and be disclosed in the Fixed Asset Register and Annual Financial Statements in accordance with GRAP 17.

Property Administration's reply to the abovementioned comment:

The property is currently classified as Investment Property in the Fixed Asset Register and will remain under the said classification.

10. Annexures

Annexure A: Locality Plan

RECOMMENDATION:

1. that the lease of Municipal Property, being a portion of Erf 1291 Hermanus ($\pm 1,22$ hectare in extent) to Glenfruin Meadows Homeowners Association for the purpose of managing an equestrian centre at the rental amount of R3,780.00 (THREE THOUSAND SEVEN HUNDRED AND EIGHTY RAND ALONE) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months as from 1 May 2016 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**; and
2. that the rental amount mentioned in 1 above escalate every year on the 1st of July by a percentage fixed in accordance with the prevailing consumer price index (all items) with the first escalation on 1 July 2017.

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RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	31 OCTOBER 2016
TARGET DATE TO INFORM APPLICANT :	14 OCTOBER 2016
TARGET DATE TO INFORM OBJECTOR :	N/A

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M Erasmus

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Hermanus Administration

4 August 2016

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
26 SEPTEMBER 2016, WHICH COMMITTEE SUPPORTED THE
RECOMMENDATION**

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

31 OCTOBER 2016

TARGET DATE TO INFORM APPLICANT :

14 OCTOBER 2016

TARGET DATE TO INFORM OBJECTOR :

N/A

