7.

RECISSION OF COUNCIL RESOLUTION DATED 24 MAY 1995 FOR THE AUTOMATIC RENEWAL FOR PERIODS OF SIX MONTHS - LEASES FOR SEMI-PERMANENT STANDS ON A PORTION OF ERF 207 GANSBAAI (GANSBAAI CARAVAN PARK)

A Le Roux **Manager: Property Administration**
3 January 2023 **(028) 316 - 5623**

1. Executive Summary

To obtain approval for the rescission of Council resolution dated 24 May 1995 in respect of the automatic renewal for periods of 6 (SIX) months of leases for semi-permanent stands on a portion of Erf 207 Gansbaai (Gansbaai Caravan Park). 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 Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

- Local Government: Municipal Financial Management Act (Act 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008) ("MATR")
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion/Evaluation

Gansbaai Caravan Park, situated on a portion of Erf 207 Gansbaai has 59 (FIFTY-NINE) stands of which 14 (FOURTEEN) are semi-permanent stands with structures on them. Lease agreements for these semi-permanent stands were entered into during and from 1992 (to give effect to a decision that was taken on 22 October 1992), with most of the agreements containing a renewal clause which right had to be exercised by the lessee before expiry of the lease. The initial lease agreements were entered into before the Municipal

Finance Management Act and the Municipal Asset Transfer Regulations and most probably under the relevant Ordinance. Council, in May 1995, approved that the said lease agreements be automatically renewed for periods of 6 (SIX) months as long as the lessee's municipal account is not in arrears. The lease agreements were not amended to reflect the decision.

The remaining temporary stands at the Gansbaai caravan park are managed and administered by the Area Manager: Gansbaai with the help of a Resort Manager who was awarded the tender for the position and also resides on the property.

COUNCIL RESOLUTION AND STATUS

On 24 May 1995 Council resolved as follows:

"Gansbaai Woonwapark – Verlenging van Kontrak – Semi-permanente Persele:

dat alle huurooreenkomste ten opsigte van semi-permanente persele outomaties vir period van 6 maande hernieu word."

Translated it was approved that all lease agreements in respect of the semi-permanent stands be renewed automatically for 6-month periods.

The lease agreements were however not amended accordingly to provide for this and only letters were sent informing the lessees of the decision. With our investigation it seems as if the 14 (FOURTEEN) structures are more permanent in nature, and it further seems as if 8 (EIGHT) of these structures might be permanently occupied. The purpose of the leases was always to be used on a semi-permanent basis (holiday) and they were only permitted to occupy the premises with caravan/tents (similar to what Onrus Caravan Park does). However, during the years formal structures (i.e. houses) were erected (for which there are approved building plans) on the stands and people started occupying the stands permanently (primary residence). This, on its own, is contradictory to the zoning of the property. Structures were also sold and requests were made for new lease agreements, triggering the request to our Legal Department to intervene and assist. All submissions for building plans have been stopped.

It has also come to the attention of the Property Administration Department that structures were sold without even complying with the conditions of the lease agreements that were entered into.

There is a tariff approved by Council for the leasing of the semi-permanent structures in the Caravan Park. It currently indicates as follows:

Tariff Code	*Detail*	*2021/2022*		*2020/2021*	
		Exclude VAT	*Include VAT 15%*	*Exclude VAT*	*Include VAT 15%*
R 60	***GANSBAAAI CARAVAN PARK***				
R60J	***Annual Rental***				
R60J1	*Rental per annum*	*8 526,96*	*9 806,00*	*8 199,13*	*9 429,00*

The above rental is, according to our knowledge, levied on the accounts.

LEGISLATION AND POLICY

Legislation changed since the original approval and lease agreements from 1992, hence we cannot just enter into lease agreements anymore as formal processes must be followed. We can also not approve any lease agreement for permanent residency within the Caravan Park due to the zoning thereof. There might also be concerns regarding Health & Safety as well as a fire risk. Furthermore, the Municipality cannot enter into lease agreements with a condition allowing for an automatic renewal as this will have the effect that it will be agreements for an indefinite period.

Any lease agreement entered into by the Property Administration Department is compiled in terms of either the Administration of Immovable Property Policy or the Municipal Residence Policy. Neither of the said policies makes specific provision for the allocation of the semi-permanent stands to the lessees nor for the type of lease agreement with the terms and conditions as was entered into previously. However, it can still be attended to under the said Administration of Immovable Property Policy subject thereto that a process is followed. Any allocation must also be in line with the Municipal Asset Transfer Regulations and Municipal Finance Management Act.

The above concern was raised, and a legal opinion was requested from Fairbridges Wertheim Becker Attorneys on the following aspects:

1. Whether the various lease agreements are still valid?
2. How the municipality should deal with semi-permanent stands, differentiating between the original lease agreements/lessees and those who “bought” structures from the original lessee?
3. How the municipality must deal with those who are permanently occupying the stands?

LEGAL OPINION

The main statements/arguments from the legal opinion are as follows:

"*The 1995 resolution obviously only referred to the leases that were in operation at the time, namely from 1992 to 24 May 1995.*

Written lease agreements and tacit and/or oral lease agreements are both recognized as valid in terms of our law. Those lessees that have written lease agreement are obviously bound by the terms thereof. If those lease agreements lapsed or if they never had a lease agreement, before the coming into effect of the Municipal Asset Transfer Regulations ("MATR") on 28 August 2008 and the municipality's Administration of Immovable Property Policy ("AoIP") they would occupy the premises in terms of a tacit and/or oral lease agreement. After MATR and AoIP came into effect only written leases, signed by both parties, are permitted as per Regulation 45(1) and (2) of the MATR and S37 of the AoIP which written lease must contain certain provisions and persons who occupied after 28 August 2008 cannot rely on oral/tacit agreements.

The 1992 lease agreements:

The 1992 lease agreements, provided that the tenant had to renew the lease a month before its expiration and the municipality had to consent to such renewal. If they did not do so (which is the case), the lease would lapse and if they remained on the property their leases would become oral or tacit month to month leases, on the same terms and conditions of the written lease, save for the period of the lease.

We then have the 1995 Council resolution which purports to automatically renew the 1992, 6-month leases, for a further 6 (SIX) month period. The reasonable interpretation of the wording of that resolution would be that that applied only for a further one 6-month period. They used the plural 6 month "periods" in the resolution due to the fact that they were automatically renewing many leases. If this is the correct interpretation, then the leases would also have lapsed and become tacit and/or oral month to month leases.

The first step would be to rescind the resolution taken and then give them 6 (SIX) months' notice that the Municipality does not intend to renew and intend to cancel, and they should vacate. Both the decision to rescind the resolution, the termination and the notice to vacate would have to be done on reasonable grounds and the following reasons would form part of that decisions:

1. *The resolution itself contradicts the terms of the lease. The resolution authorizes an automatic renewal when the lease provides for one months' notice to be given before the end of the 6-month period that they wish to renew and the municipality must consent; and*

2. *The resolution could be interpreted (wrongly in our view) to allow automatic renewals in perpetuity. However, there is no such thing as a lease in perpetuity in terms of our law, all such leases can be cancelled on notice; and*

3. *Effectively with the leases rolling over these become long term leases for which there should be a notarial lease; and*

4. *Permanent residence is contrary to the lease, the Council resolution and the zoning; and*

5. *Long term leases or the automatic rolling over of these leases on a month-to-month basis and the nominal rental charged are in contravention of the current legislation which governs the municipality, namely the Local Government: Municipal Finance Management Act ("MFMA") and the Municipal Asset Transfer Regulations ("MATR"). In terms of MFMA and MATR the municipality is required, where it is to dispose of any rights or burden its property to do so in terms of an open tender process and for market value, unless it falls within one of the exceptions, which these leases do not.*

Overstrand Municipality could rely on a material breach of the lease, namely that they were not allowed to permanently reside at the property in terms of the lease, zoning and rules. This would allow you to cancel due to breach.

Leases entered into after the 1995 resolution

In respect of the written lease agreements entered into after 1995 they contain a similar provision that the lessee must exercise the option to renew the lease a month before the end of the six-month period and the municipality must consent to such renewal and has the right to refuse same. As we have advised that in our view the 1995 resolution does not apply to them, they would not have been renewed for a further six-month period in terms of that resolution. Accordingly, if they didn't renew as required a month before the end of the first 6-month period and if the Overstrand Municipality did not consent to same (as is the case), they would be on month-to-month leases on the same terms and conditions, save for the period.

Overstrand Municipality would be entitled to terminate them on notice to the lessees and to give them one months' notice of the cancellation thereof. Again, given the length of their occupation, plans have been approved and as many of them were given indigent grants, we suggest the Overstrand Municipality advise them that notwithstanding that they are only in law entitled to one months' notice, the Overstrand Municipality would give them six months' notice of such cancellation.

Should those permanently occupying not voluntarily vacate upon cancellation of the lease, the Overstrand Municipality would have to follow the prescripts of the provisions of the Prevention of the Illegal Eviction and Unlawful Occupation of Land Act No 19 of 1998 ("Pie Act") as the property is occupied as their "home".”

See Legal opinion attached marked “Annexure B”.

Conclusion

Taking the above information and the legal opinion into consideration the following steps are proposed:

1. Rescind the 1995 resolution due to reasons mentioned above.

2. Terminate the leases on notice alleging:

    2.1 Breach of leases, where there is permanent occupation or were there are arrears; and/ or

    2.2 Giving six months' notice to the permanent occupiers in the alternative to termination for breach and six months' notice to the others due to non-compliance with the current legislation. The notices will need to be carefully worded to deal with the different type of lease per unit, some entered into between 1992-1995 and others later, some oral and some written and would need to set out the reasonable grounds on which the lease is being cancelled and why no renewals are being granted or

    2.3 If they are in unlawful occupation, having taken occupation without a written lease after 2008, giving them notice to vacate.

3. Follow the processes set out in the Administration of Immovable Property Policy either by way of competitive process in terms of the policy or deviation if they are semi-permanent occupiers with structures which comply with the zoning and lease terms and enter into new leases for a market related rental and on a semi-permanent basis, with the conditions prescribed by the MATR and AoIP. This process will be investigated to determine the best way forward.

4. It follows therefore that whether a tenant argues that they were ceded or assigned the lease agreement or whether they simple occupy and were allowed to do so and pay rental and thus have an oral and tacit lease agreement the same processes will apply, save for those who claim oral/tacit lease after 2008.

5. The lease itself is silent on whether it can be ceded save for the provision in clause 11.4 where those with reinforced side tents can dispose of them provided that they consult with the site manager. In the letters we have seen the site manager had advised that they can only do so if they enter into new lease. This should no longer be permitted without an open tender process being followed and market related rental charged.

6. If they fail to vacate after the leases are validly terminated eviction proceedings will need to be brought. For those who reside there semi-permanently the normal common law eviction process would be followed. For those who occupy the units permanently, the prescripts of the

provisions of the Prevention of the Illegal Eviction and Unlawful Occupation of Land Act No 19 of 1998 ("PIE Act") would need to be followed.

7. No doubt the lessees will want to seek compensation or damages for the improvements they made, in accordance with approved plans. If the municipality does wish to retain them, there is a risk of a claim for improvement or enrichment. The municipality could argue that:

7.1 the terms of the lease and Council resolutions after that, limited the improvements that they could make; and

7.2 although they passed the plans, they erected it at their own risk, given that they knew that they were only lessees and had a lease which was valid until it lapsed, or notice was given; and

7.3 if the facts support it, that the building plans, which allowed for more than the normal additions permitted in terms of the lease and zoning, should not have been passed as they did not comply with all applicable laws in terms of Section 7 of the National Building and Regulation and Building Standards Act ("NBR"); and

7.4 the improvements were not necessary or essential, for example, if do not intend to keep same, as you want to run the property as a caravan park where only caravans and certain limited improvements are permitted; and

7.5 there was no enrichment on the part of the municipality; and

7.6 they have not really suffered a loss in that they had the benefit of the occupation for a minimum rental, which is currently R9,429.00 (incl VAT), for years; and

7.7 for those after the AoIP as approved, they become the property of the Municipality unless the municipality agree that they can remove same (S49 of the AoIP).

7. Financial Implications

Should the lessees not voluntary vacate the stands after notice is given to this effect the Municipality will have to bear the costs of an eviction process.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Locality Map
Annexure B: Legal opinion

RECOMMENDATION TO THE COUNCIL:

1. that the whole of Council's resolution dated 24 May 1995 in respect of the automatic renewal for periods of six months of leases for semi-permanent stands on a portion of Erf 207 Gansbaai (Gansbaai Caravan Park), be rescinded, on the reasons discussed in this report; and

2. that the recommendations as contained in the legal opinion of Fairbridges Wertheim Becker Attorneys as per "Annexure B" be implemented.

RESPONSIBLE OFFICIAL: **A LE ROUX**

TARGET DATE FOR IMPLEMENTATION: **28 APRIL 2023**

TARGET DATE TO INFORM APPLICANT: **N/A**

TARGET DATE TO INFORM OBJECTOR: **N/A**

ANNEXURE A

ANNEXURE B
1/7

FAIRBRIDGES
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22nd Floor, Portside Building
5 Buitengracht Street, Cape Town, 8001
Tel: +27 21 405 7300

Our ref: DO/AA/OVE4/0187
Your ref:
Date: 11 November 2022

Email: deirdre.o@fwblaw.co.za
Direct Line: 021 405 7397
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Attention: Andre Olivier
OVERSTRAND MUNICIPALITY
Email: aolivier@overstrand.gov.za

VIA EMAIL

Dear Andre

RE: GANSBAAI CARAVAN PARK – LEGAL OPINION

We are briefed to provide a legal opinion on the following aspects:

1. Whether the various lease agreements are still valid?

2. How the municipality should deal with semi-permanent stands, differentiating between the original lease agreements/ lessees and those who "bought" structures from the original lessee? .

3. How the municipality must deal with those who are permanently occupying the stands?

BACKGROUND AND INFORMATION

The property

The property in question is Erf 207, Gansbaai, known as Gansbaai Caravan Park ("the Park"). Overstrand Municipality ("OM") is the registered owner thereof. It has 59 stands, 14 of which have been leased at one time or another by OM to various tenants.

Zoning

The current zoning is resort zone in terms of the OM's Land Use Scheme, 2020 (Scheme), which permits the following primary land use rights within the Resort Zone: Conservation use, holiday accommodation, private open space, private road and tourist accommodation.

The relevant accommodation types permitted in terms of the zoning (unless otherwise limited or approved) are defined in terms of the Scheme as follows:

Holiday accommodation means "a harmoniously designed and built development used for holiday and recreational purposes, whether in private or public ownership, which: (i) consists of a single enterprise in which accommodation is supplied on a temporary basis and or by means of time sharing only; (ii) may include the provision of a camping site, mobile home park and dwelling

units; (iii) may also accommodate a restaurant and/or shop; indoor and outdoor recreation facilities for the use of paying lodgers and occupants of the establishment but excludes a hotel or conference centre."

Tourist accommodation means "the letting of rooms or individual unit(s) (including a dwelling house/unit) on a temporary basis to transient guests where a daily or weekly tariff is applicable and includes a guest house, backpackers' establishment, camp sites, and associated amenities, provided that the use complies with the requirements of any other relevant legislation".

Land use rights and historic use

There are 59 stands at the property, 14 of which are semi-permanent with structures that have been constructed, mostly with approved plans, on those stands and which were leased to various tenants. The current rental is R 9429 incl. vat.

Written leases for stands 1,2, 4- 6, 9-10, 12-14 were entered into in 1992 ("the 1992 lease agreements")

On 24 May 1995 the municipality resolved to renew the lease agreements in respect of semi-permanent units automatically for periods of six months at a time. The 1995 resolution obviously only referred to the leases that were in operation at the time, namely from 1992 to 24 May 1995.

The resolution reads as follows:

"12.2.1 Gansbaai Woonwapark – Verlenging van Kontrak – Semi-permanente Persele:

Bylae 12.2.1

AANBEVELING: dat alle huurooreenkomste ten opsigte van semi-permanente persele outomaties vir periodes van 6 mannder hernu word.

Bekragtig.

12.2.2 Tak Germeenskapsdienste – Omsenbrief C/47/94 – Verslag insake die Rekenpligtigheid van en Openbare Verslagdoening deur Plaaslike Owerhede:

1. Dat 'n ouditkomitee aangewys word met die uitsondering van interne en eksterne ouditeure.

2. Dat Rdl J J Groenewald aangewys word as lid van die outditkomitee.

Bekragtig.

Subsequently, leases were entered into for units 3, 7, 8 and 11 in 2006, 2004, 2002 and 2002 respectively.

The leases are essentially identical and have the following important terms and conditions:

1. The lessee leases from the lessor, Overstrand Municipality, who hired, a stand at the Park to occupy same on a semi-permanent basis; and

2. They were in terms of annexure A of the lease agreement at paragraph 2, only entitled to make the following improvements relevant to this matter (there were a few added in subsequent Council resolutions too):

   2.1. To have one roadworthy caravan and/or tents,
   2.2. A storage box; and
   2.3. A water tap, a wash basin and outdoor shower subject to compliance with some conditions; and
   2.4. A reinforced side tent according to the specifications to be obtained from the Park manager and an approved plan be obtained from the building control officer; and
   2.5. A fence,; and
   2.6. A standard braai place; and
   2.7. A private bathroom in accordance with the plan and specifications approved by the OM.

3. The premises with the reinforced side tent could be disposed of, in consultation with the site manager.

4. The lease agreement is subject to the rules issued from time to time and the tariffs issued from time to time.

5. Each lease was for an initial period of six months with the right to give notice, five months before the end of that period, that they wanted an extension of a further six months. As mentioned above in 1995 the municipality resolved to automatically renew the leases on a six-monthly basis. This is applicable to the 1992 leases.

We are instructed that some lessees may have sold or donated their structures and handed over their leases to third parties, who do not have written leases with OM. Some may believe that they have taken over the lease. Some have requested new leases from the municipality which requests have been refused.

We are further instructed that Units 1, 4, 5, 6, 9, 10 and 12 are occupied by third parties or family members and not the lessees. Unit 2 may have the son of the lessee living there.

ARE THE LEASE AGREEMENTS VALID?

Written lease agreements and tacit and/or oral lease agreements are both recognized as valid in terms of our law. Those lessees that have written lease agreement are obviously bound by the terms thereof. If those lease agreements lapsed or if they never had a lease agreement, before the coming into effect of the MATR on 28 August 2008 and your Administration of Immovable Property Policy ("AoIP"), current approved version in 2015, previously 2009, they would occupy the premises in terms of a tacit and/or oral lease agreement. After MATR and AoIP came into effect only written leases, signed by both parties, are permitted as per Regulation 45(1) and (2) of the

MATR and S37 of the AoIP which written lease must contain certain provisions and persons who occupied after 28 August 2008 cannot rely on oral/ tacit agreements.

The 1992 lease agreements:

The 1992 lease agreements, provided that the tenant had to renew the lease a month before its expiration and the municipality had to consent to such renewal. If they did not do so (which we are instructed is the case) , the lease would lapse and if they remained on the property their leases would become oral or tacit month to month leases, on the same terms and conditions of the written lease, save for the period of the lease.

We then have the 1995 Council resolution which purports to automatically renew the 1992, 6 month leases, for a further 6 month period. The reasonable interpretation of the wording of that resolution would be that that applied only for a further one 6 month period. They used the plural 6 month "periods" in the resolution due to the fact that they were automatically renewing many leases. If this is the correct interpretation, then the leases would also have lapsed and become tacit and/or oral month to month leases.

The lessees will also argue that the 1995 resolution amended that lease agreement and that there was an automatic renewal of the leases every six-months. This logic is flawed as the OM could not have intended to give leases in perpetuity. Had they wanted to do so OM can argue they would have said so. Certainly, those with written lease agreements before 24 May 1995 may argue that they can rely on that resolution and their lease agreements would be valid until terminated. The same can be said for any oral or tacit lease agreements during that same period 1992 to 1995.

In order to avoid any such arguments, the first step would be to rescind the resolution taken and then give them six months' notice that you do not intend to renew and that you intend to cancel, and they should vacate. Both the decision to rescind the resolution, the termination and the notice to vacate would have to be done on reasonable grounds and the following reasons would form part of that decisions:

1. The resolution itself contradicts the terms of the lease. The resolution authorizes an automatic renewal when the lease provides for one months' notice to be given before the end of the 6 month period that they wish to renew and the municipality must consent; and

2. The resolution could be interpreted (wrongly in our view) to allow automatic renewals in perpetuity. However, there is no such thing as a lease in perpetuity in terms of our law, all such leases can be cancelled on notice; and

3. Effectively with the leases rolling over these become long term leases for which there should be a notarial lease; and

4. Permanent residence is contrary to the lease, the Council resolution and the zoning; and

5. Long term leases or the automatic rolling over of these leases on a month to month basis and the nominal rental charged are in contravention of the current legislation which governs the municipality, namely the Local Government: Municipal Finance Management Act ("MFMA") and the Municipal Asset Transfer Regulations ("MATR") and the AoIP. In terms of MFMA and MATR the municipality is required, where it is to dispose of any rights to use or control the property for a long term or an indefinite or undefined period to do so in terms Chapters 2 and 3 of MATR and Counsel has advised that this entails an open tender process and disposal for market value, unless it falls within one of the exceptions, which long term leases do not.

6. Oral or tacit lease are no longer permitted after the promulgation of the MATR and the AoIP. Regulation 45(1) the MATR and section 37 of the AoIP. state that all rights to use municipal land must be in terms of a written lease and contain certain terms. Section 38 of the AoIP states that lessees cannot sublet, cede or assign leases without the Municipality's consent. No such consent has been given, unless a new lease agreement was entered into with the new lessee.

Although we are instructed that none of the lessees extended their lease formally, OM would be well advised should they wish to terminate the leases on notice, to give all the 1992 lessees 6 months' written notice of termination of the lease agreements and that they are to vacate the property. This would also be prudent as most of them have resided at the property for a considerable period.

Even if the leases are month to month leases the same advice is given.

OM could rely on a material breach of the lease, namely that they were not allowed to permanently reside at the property in terms of the lease, zoning and rules. This would allow you to cancel due to breach. Similarly, if anyone is in arrear, OM could also cancel for breach of the lease. No doubt they will argue that you expressly or tacitly agreed to the permanent residence, as OM know about it for some time and did nothing, approved extensive plans for building and in some instances granted them indigent relief, which is only granted for someone's residence, we presume, not for a holiday home.

Accordingly, we advise that the lease whether written or oral/tacit, should be terminated for breach, alternatively on 6 months' notice.

Leases entered into after the 1995 resolution and before the promulgation of the MATR and AoIP

In respect of the written lease agreements entered into after 1995 (see the 2002, 2004 and 2006 leases) they contain a similar provision that the lessee must exercise the option to renew the lease a month before the end of the six-month period and the municipality must consent to such renewal and has the right to refuse same. As we have advised that in our view the 1995 resolution does not apply to them, they would not have been renewed for a further six-month period in terms of that resolution. Accordingly, if they didn't renew as required a month before the end of the first 6 month period and if the OM did not consent to same, they would be on month to month leases on the same terms and conditions, save for the period.

OM would be entitled to terminate them on notice to the lessees and to give them one months' notice of the cancellation thereof. Again given the length of their occupation and fact that they have been allowed to reside there, plans have been approved and as many of them were given indigent grants, we suggest you advise them that notwithstanding that they are only in law entitled to one months' notice, you would give them six months' notice of such cancellation.

Oral/tacit leases after the promulgation of the MATR and AoIP

Anyone who only occupied or "took over" the lease after 22 August 2008 would not be able to claim an oral/tacit lease as the MATR at Regulation 45(1) and AoIP at Section 37 (1) and (2) thereof stipulates that all rights to use municipal land must be in writing and stipulates what the terms the lease must contain. They would therefore be in unlawful occupation and they can be given notice to vacate, failing which they will be evicted. They may claim that the Municipality has accepted

payments from them but this can be explained if the accounts were in the original lessees name or that it was accepted as damages suffered or enrichment.

THE WAY FORWARD FOR THE MUNICIPALITY TO DEAL WITH THE SEMI PERMANENT STANDS AND DIFFERENTIATING BETWEEN THE ORIGINAL LEASE AGREEMENTS AND THOSE WHO BROUGHT THE STRUCTURES FROM THE ORIGINAL LESSEES

It is our view that the Municipality should terminate all 14 of the semi-permanent oral or tacit leases for units 1-14. This is so in respect of the 8 who reside there permanently, as this is in breach of the lease and zoning and contrary to the MATR and MFMA. In respect of the remaining 6 who may not reside there permanently, the leases should also be cancelled at such long term leases are not permitted without following the processes in terms of the MATR and MFMA and you own AoIP.

Accordingly, we advise that the way forward would be as follows:

1. Rescind the 1995 resolution, clearly setting out the reasons for doing so.

2. Terminate the leases on notice alleging:

   2.1 Breach of leases, where there is permanent occupation or were there are arrears; and/ or

   2.2 Giving six months' notice to the permanent occupiers in the alternative to termination for breach and six months' notice to the others due to non-compliance with the current legislation. The notices will need to be carefully worded to deal with the different type of lease per unit, some entered into between 1992-1995 and others later, some oral and some written and would need to set out the reasonable grounds on which the lease is being cancelled and why no renewals are being granted or

   2.3 If they are in unlawful occupation, having taken occupation without a written lease after 2008, giving them notice to vacate.

3. Follow the processes set out in the AoIP either by way of competitive process in terms of your policy or deviation if they are semi-permanent occupiers with structures which comply with the zoning and lease terms and enter into new leases for a market related rental and on a semi-permanent basis, with the conditions prescribed by the MATR and your AoIP.

4. It follows therefore that whether a tenant argues that they were ceded or assigned the lease agreement or whether they simple occupy and were allowed to do so and pay rental and thus have an oral and tacit lease agreement the same processes will apply, save for those who claim oral/tacit lease after 2008. .

5. The lease itself is silent on whether it can be ceded save for the provision is clause 11.4 where those with reinforced side tents can dispose of them provided that they consult with the site manager. In the letters we have seen the site manager had advised that they can only do so if they enter into new lease. This should no longer be permitted without the proper processes, as described above, being followed..

6. If they fail to vacate after the leases are validly terminated eviction proceedings will need to brought. For those who reside there semi-permanently the normal common law eviction process would be followed. For those who occupy the units permanently, the prescripts of the

provisions of the Prevention of the Illegal Eviction and Unlawful Occupation of Land Act No 19 of 1998 ("PIE Act") would need to be followed.

7. No doubt the lessees will want to seek compensation or damages for the improvements they made, in accordance with approved plans. If the municipality does wish to retain them, there is a risk of a claim for improvement or enrichment. The municipality could argue that:

   7.1 the terms of the lease and Council resolutions after that, limited the improvements that they could make; and

   7.2 although they passed the plans, they erected it at their own risk, given that they knew that they were only lessees and had a lease which was valid until it lapsed or notice was given; and

   7.3 If the facts support it, that the building plans, which allowed for more than the normal additions permitted in terms of the lease and zoning, should not have been passed as they did not comply with all applicable laws in terms of Section 7 of the National Building and Regulation and Building Standards Act ("NBR"); and

   7.4 The improvements were not necessary or essential, for example, if do not intend to keep same, as you want to run the property as a caravan park where only caravans and certain limited improvements are permitted; and

   7.5 There was no enrichment on the part of the municipality; and

   7.6 They have not really suffered a loss in that they had the benefit of the occupation for a minimum rental, which is currently R 9429 incl vat, for years.

   7.7 For those after the AoIP was approved, they become the property of the Municipality unless you agree that they can remove same (S49 of the AoIP).

WHAT MUST THE MUNICIPALITY DO WITH THOSE WHO ARE PERMANENTLY OCCUPYING THE STAND

1. Should those permanently occupying not voluntarily vacate upon cancellation of the lease, you would have to follow the prescripts of the provisions of the Prevention of the Illegal Eviction and Unlawful Occupation of Land Act No 19 of 1998 ("Pie Act") as the property is occupied as their "home".
2. As you know the PIE Act has mandatory provisions to be followed. In the case of a municipality an assessment has to be done whether they would be genuinely homeless, if evicted and if so, emergency accommodation would have to be offered to them.

Yours faithfully

DEIRDRE OLIVIER
Director