

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

4.2

**ERF 6187, 12 HARBOUR ROAD, KLEINMOND, OVERSTRAND MUNICIPAL AREA :
PROPOSED CONSENT USE : WC NIEMAND ON BEHALF OF GJ VAN EEDEN**

6187 KKM (3363)

H van der Stoep

6 April 2017

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

Applications have been received on 8 July 2016 from WC Niemand on behalf of GJ van Eeden on Erf 6187, Kleinmond for a consent use in terms of Section 16(2)(o) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 in order to operate a place of entertainment (five (5) slot machines) on the property concerned.

A Locality Plan of the property concerned is attached as Annexure A. The proposed Site Development Plan is attached as Annexure B, while the Motivation Report from the applicant in support of the proposal is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The erf measures 2008m² in extent and is held under Title Deed T8433/1989. The erf is located in the residential area of Kleinmond.

4. SUMMARY OF APPLICANT'S MOTIVATION

An application has been received for the consent use for a place of entertainment to accommodate five (5) limited gambling machines. The gambling machines will be accommodated in an existing restaurant and the footprint of the building will not extend.

The law is very strict in as far that no persons under the age of eighteen (18) may be allowed to gamble. The area allocated for the gambling machines will be located towards the back of the restaurant and will not be visible from the street.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	9 September 2016	14 October 2016
Ward councillor	Yes	9 September 2016	14 October 2016
Total comments	THREE (3)		
Was public participation undertaken in accordance with section 45- 49 of			Yes

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the Proposed Draft By-law on Municipal Land Use Planning?	
Was the application processed correctly (if no, elaborate below):	Yes
Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	Yes

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments	Recommendation
Engineering Services	20/02/2017	See Annexure F.	Positive
Ward Committee	29/12/2016	<i>“Dat bogenoemde aansoek nie goedgekeur word nie omdat die bedryf van so ‘n dobbel aktiwiteit nie bevorderlik is vir die karakter van die hawe area nie. In die lig van die sosio ekonomiese omstandighede, is dit ook nie bevorderlik vir die lae inkomste groepe in die gemeenskap nie.”</i>	Negative
District Health	21/09/2016	No objection. The gaming area to have sufficient ventilation.	Positive
Building Control	16/09/2016	Supported subject to compliance with SANS 10400. Plan to be submitted to ensure compliance.	Positive
Senior Manager : Kleinmond Admin	16/09/2016	Support application.	Positive
Fire Department	13/10/2016	No objection provided that the premises are in compliance with National Fire Protection Regulations SANS 10400T:2011 and the Community Safety By-law P.N. 6454 of 2007.	Positive
Waste Management	12/09/2016	No objection.	Positive

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Three (3) objections were received namely Dr. GR Pienaar, Kleinmond Ratepayers Association and C de Haas.

The objections can be summarized as follows:

Dr RG Pienaar

The owners surrounding the Harbour Development is extremely positive and proud of the development. Visitors expressed their satisfaction of the development. The proposed application will be to the detriment of the Harbour Development, since gambling does and can attract unsavoury elements to the area. The area is family orientated and the facility will be for adults only and thus detract from the family environment.

Kleinmond Ratepayers Association

The proposed development will have a socio-economic impact on the poorer community and will be to the detriment of the general character of the harbour.

C de Haas

The applicant does not abide by the Non-smoking Laws. The present live entertainment is on the veranda, which is outdoors and is noisy. The friendly visitor ambiance of the area will be negatively affected by the proposed development. Gambling has a negative influence on the social values and a negative financial impact, especially the lower income groups who cannot afford any diminishing of income. The possible increase in security risk is due to cash on the property. The on-street parking that is not available to the business. The proposed land use will have a detrimental effect on the character of the Harbour Development.

Other objections relate to a personal level and will not be discussed. The applicant's attorney did address the points and the objector did apologise for comments made on a personal level, which had no substance.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

The applicant responded as follows:

The proposed land use is not inconsistent with the Spatial Development Framework or the Integrated Development Framework and the application must be evaluated considering all facts. Although the objector does not subscribe to gambling, personal likes and dislikes cannot be considered in the deciding criteria. There is no factual basis that the proposed facility will be to the detriment of the area. It is a well-known fact that the majority of people frequenting such a facility cannot be described as repulsive characters and that it is not unusual for highly educated and well behaved persons to regularly make use of gambling facilities.

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The Harbour Development has an existing gambling venue at Gringo's Restaurant and the proposed application is no different. The existing application site already had gambling machines when the applicant purchased the property and the activity is not new. The rights were obtained in 2007 by means of a departure that has subsequently lapsed.

The applicant did indicate that he had to pay for parking before commencement. A total of nine (9) parking bays were provided as per the 2003 plan. When the Harbour Development took place it led to a reduction in parking bays. The rights as approved in 2003 did indicate nine (9) parking bays on Harbour Street, but with the redevelopment of the Harbour Precinct, only three (3) bays were retained and the applicant did provide three (3) parking bays in Luckhoff Street. The Harbour Precinct has two (2) public parking areas that are being used by the different businesses as part of the development.

The proposed activity was approved during 2007 as part of the building and parking was allocated accordingly. The applicant cannot be held responsible for non-compliance of parking due to the redevelopment of the Harbour Precinct.

9. MUNICIPAL ASSESSMENT OF COMMENTS

Town Planner's comment on objections received:

The objection relating to the negative impact that the five (5) slot machines will have has not been proven. A similar activity is presently operating in the harbour itself at Gringo's Restaurant, and no objection has been received regarding the negative impact it has on the area.

The assumption that gambling is only practised by the lower income groups and or people that does not know how to behave is presumptuous and without substance.

The parking was sufficient until the redevelopment of the Harbour Precinct, which all the owners of the area was part of and parking is not allocated to a specific business, but work on a first come first serve basis. The on-street parking is on municipal land and is to the benefit of all concerned.

Internal Departments:

No objection has been received by the internal departments. Negative comments were received from the Ward Committee, and is discussed above.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

10.1 Background

N/A

10.2 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

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The application is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

Not applicable.

Spatial sustainability

The application is to make the subject property more compact still within the character of the area. The proposed use is located within an existing building.

Efficiency

The building is used as such and thus makes optimal use of the development parameters as defined in the Overstrand Zoning Scheme

Spatial Resilience

The application is in line with policies and caters for maximum use of the property. The application will enable the applicant to optimise his assets should it be necessary due to economic and or financial reasons.

Good administration

Procedure was followed and full public participation was applicable.

10.3 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)

Same.

10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable policies

Same.

10.5 (In)consistency with guidelines prepared by the Provincial Minister

N/A

10.6 Impact on Municipal engineering services

N/A

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10.7 Outcomes of investigations/applications i.t.o other legislation

N/A

10.8 Existing and proposed zoning comparisons and considerations

The structure remains residential as per the zoning. The proposed use can be accommodated under the business parameters.

10.9 THE DESIRABILITY OF THE PROPOSAL

The application for a Place of Entertainment to accommodate five (5) slot machines has been evaluated and approved as a departure during 2007. Due to the change of ownership and lapsing of the departure, the applicant had to apply for a consent use in terms of the Overstrand Zoning Scheme. The land use is thus not new to the area or the erf. The proposed use will be located within an approved existing building and the footprint of the building will not be extended.

The five (5) slot machines will be located in the place of seating tables and thus will have no influence on the parking arrangements. It should be made clear that the application for a Place of Entertainment is evaluated only in the context of five (5) slot machines and no other entertainment as per the definition. No other activity as per definition of a Place of Entertainment was requested during this application.

The parking for the building and the zoning was approved during 2003. This application does not extend the footprint of the building and thus has no influence on the parking requirements. The objector's view that her parking are in jeopardy is incorrect. The parking for all the businesses was approved either on the erven concerned or on-street parking. It was never allocated for singular use by the various businesses. The parking was and is public parking and not allocated for a specific business.

The assumption of the type of person utilizing gambling machines and the influence on people with specific reference to the lower income groups are presumptuous and not relevant in this regard. There is an existing similar facility in the Harbour Precinct and none of the objections were verified or proven. There is also no proof of complaints of the objectors against the slot machines in the harbour at Gringo's Restaurant.

The application was approved as a departure during 2007. The application is located in an existing building that has an approved building plan, and the application site had sufficient parking, but with the subsequent redevelopment of the harbour, the parking was redesigned. The latter was catered for in the general parking areas provided for in the Harbour Precinct.

There is no reason or proof that the five (5) gambling machines will have a detrimental impact on the area or neighbouring erven.

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11. RECOMMENDATION

1. that the application for a consent on Erf 6187, Kleinmond in terms of Section 16(2)(o) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 for a Place of Entertainment for five (5) slot machines, **be approved**, subject to the following conditions:
 - (a) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (b) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
 - (c) that this approval is restricted to only five (5) slot machines;
 - (d) that building plans reflecting the approval be submitted to the Building Control Department for approval and that all conditions of the Building – and the Fire Department and the Overstrand Zoning Scheme;
 - (e) should the footprint of the building be extended at any stage, the applicant will have provide parking according to the Overstrand Zoning Scheme, and
 - (f) that all the conditions in the Services Report (attached as Annexure F), be complied with.

2. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditions of approval.

12. REASONS FOR RECOMMENDATION

- ❖ The application has followed due procedure.
- ❖ Three (3) objections have been received.
- ❖ None of the internal departments have any objection.
- ❖ None of the municipal services will be needed.
- ❖ It is in line with policy documents.
- ❖ The application was approved in 2007 by means of a departure.
- ❖ The objections were not substantiated with any proof with regard to the activity.

13. Annexures

- Annexure A: Locality Plan
- Annexure B: Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Objections received
- Annexure E: Applicant's response to objections received
- Annexure F: Services Report

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SIGNATURES

AUTHOR:

Author name:

HANNEEN VAN DER STOEP

Author signature:

Date:

REGISTERED PLANNER

Registered planner name :

SCHALK VAN DER MERWE

SACPLAN registration number:

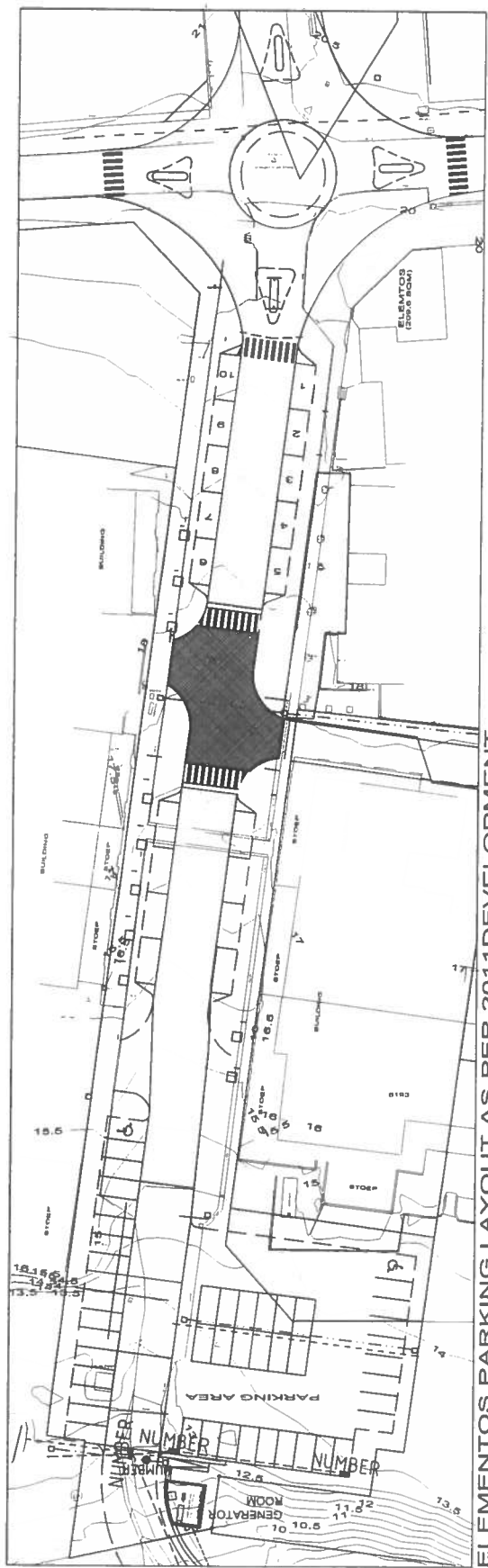
A/1850/2014

Registered planner signature :

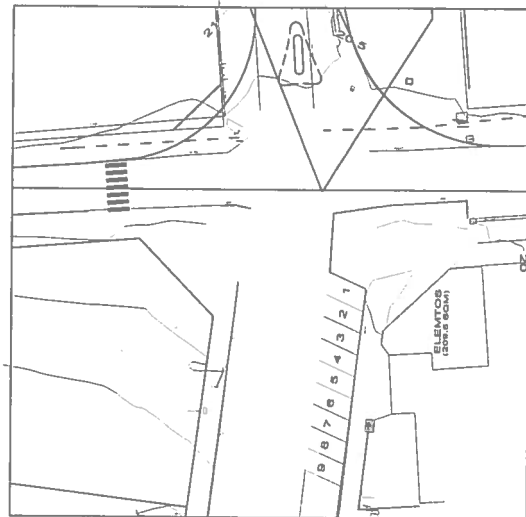
Date:



LOCALITY PLAN
ERF 6187
KLEINMOND

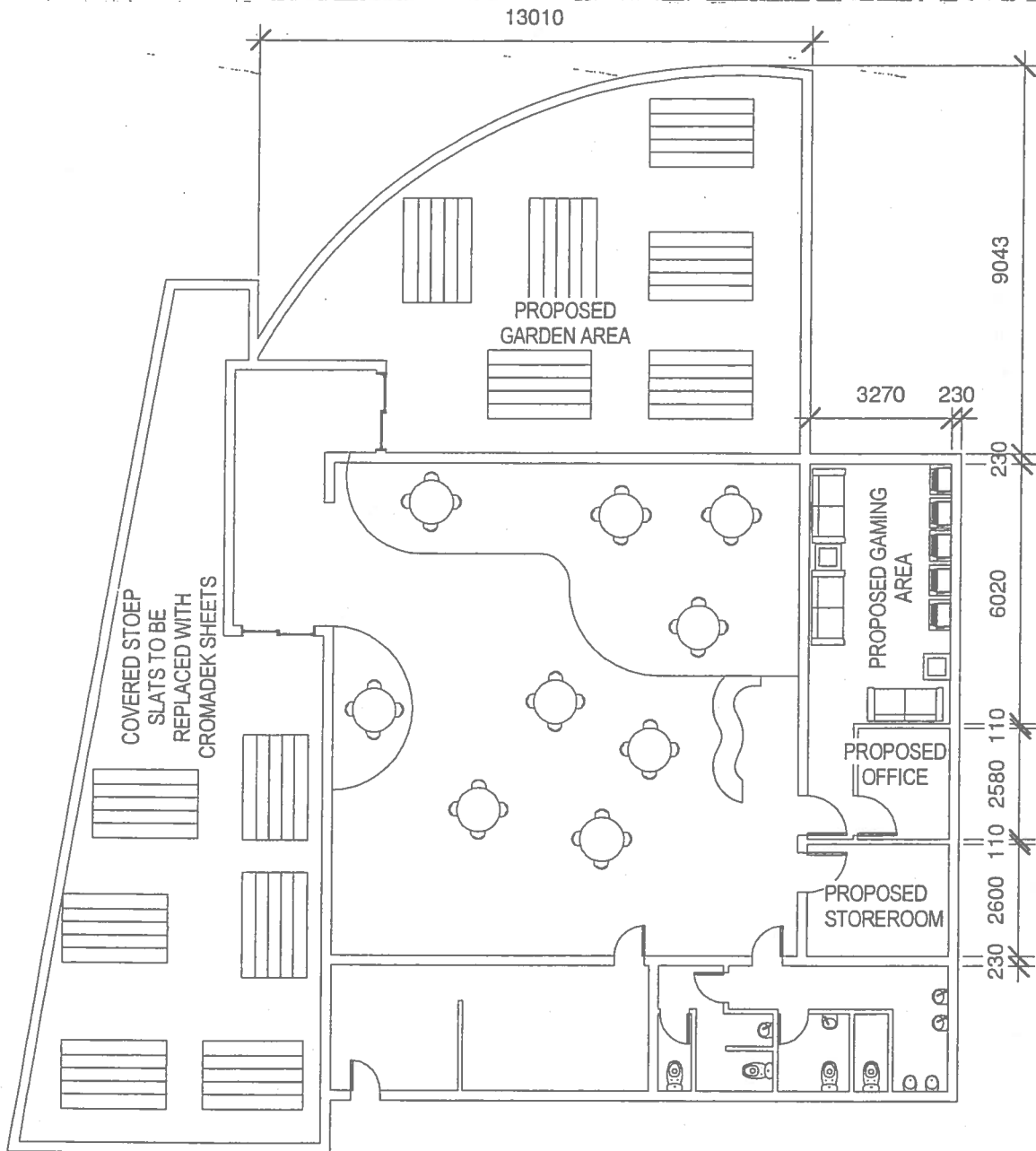


ELEMENTOS PARKING LAYOUT AS PER 2011 DEVELOPMENT



ELEMENTOS PARKING LAYOUT (2003) AS PER APPROVED 2003 PLAN

ELEMENTO'S 209.6sqm
 PARKINGS NEEDED 8.34
 PARKINGS AVAILABLE 10
 PARKING 2.5X5.5



Vergunningsaansoek op erf 6187, Kleinmond

Haweweg 12

Kleinmond (Vermaaklikheidslisensie)

Eienaar: G.J. Van Eeden

Harbour Corner (PTY) LTD Restaurant

W.C. Niemand



Bogenoemde bedryf tans 'n Restaurant vanaf erf 6187.

Die maatskappy het aansoek gedoen vir 'n LGM Dobbelsensie (Limited Gambling Machines) Maksimum (5) Vyf Dobbelmasjiene per perseel. Om die masjiene te bedryf benodig ons 'n Vermaaklikheidslisensie.

Indien die Dobbelsensie goedgekeur word, is daar streng wetgewing wat toegepas word.

Die dobbelarea is nie sigbaar van buite die gebou en word in 'n spesiale vertrek aan die agterkant gehuisves.

Geen onder 18 jariges word hier toegelaat nie.

Parkering is ook voldoende in Haweweg en Luckhoff Straat.

U goedgunstige oorweging word waardeur.

W.C. Niemand

5 Augustus 2016

FILE NO:	EL 6187 km
SCAN NO:	
COLLABORATOR NO:	925345



Loretta Gillion - Kommentaar op kennisgewing ontvang met Lêerverwysing 6187 KKM (3363)

From: "giep1" <giep1.gp@gmail.com>
To: <alida@overstrand.gov.za>
Date: 10/10/2016 09:05 PM
Subject: Kommentaar op kennisgewing ontvang met Lêerverwysing 6187 KKM (3363)
Cc: <loretta@overstrand.gov.za>

Departement Stadsbeplanning
 Overstrand Munisipaliteit

TP - A Theart
 (H v/d Stoep)



Geagte Me. H van der Stoep,

Geliewe kennis te neem en om beswaar aanteteken deur Kleinmond Harbour Estate die eienaar van erf 3605 kleinmond teen die aansoek om vermaaklikheid [5 dobbelmasjiene] te bedryf op Erf 6187 in haweweg Kleinmond. Wel om die volgende redes.

Hierdie aansoek het direk betrekking op die eienaars v/d naasliggende erf 3605 namens wie ek hierdie skrywe rig.

Ons as lede van Kleinmond gemeenskap is trots op die nuwe hawe ontwikkeling v/d afgelope paar jaar en die positiewe ervaring wat toeriste beleef en uitspreek na 'n besoek aan hierdie sakegebied is bevestigend van die sukses daarvan.

Die tyd en noukeurige beplanning wat daaraan spandeer is met die vooruitsigte van sinvolle benutting van sekerlik die beste ontwikkeling in Kleinmond word nou bedreig deur die teenwoordigheid van 'n dobbelperseel.

Hierdie aangename en rustige omgewing met sy voortreflike ontwikkeling sal totaal ongedaan gemaak word deur die neerslagtige atmosfeer en stigma van 'n dobbelhuis en die ongure karakters wat dit sal lok.

Die blote gedagte aan 'n dobbelplek met slegs volwasse vermaak druis lynreg in teen die gees van hierdie gesinsvriendelike area wat juis ouers met hul kinders tydens vakansies wil verwelkom.

Kleinmond mag nie toelaat dat hierdie gebied besoedel word deur slegs volwasse vermaak met bedenklike sosio-maatskaplike gevolge vir die plaaslike gemeenskap nie. Die Hawegebied word hierdeur in die voet geskied wat die hele ontwikkeling betref wat in 'n slegte lig gestel sal word. Dit gaan nie net oor ons die onmiddellike bure nie maar wel oor

al die sakemanne wat hierdie deel van Kleinmond ter harte neem.

Dit is die rede waarom meeste dobbelplekke buite dorpe gelêe is

Die hele hawe ontwikkeling mag nie gekelder word vir die twyfelagtige voordeel van een nie

Daarom maak die eienaars van Erf 3605 ten sterkste beswaar teen toekenning van vermaaklikheids gebruik in hierdie geval.

Die uwe
 Dr GR Pienaar
 Posbus 113
 Wellington
 7654
 Tel 021-8731057
 Sel: 0837022172
 e-pos: giep1.gp@gmail.com

FILE NO: EL 6187-KM
SCAN NO: 19
COLLABORATOR NO: 945731

TP 10 OCT 2016



**KLEINMOND BELASTINGBETALERSVERENIGING
KLEINMOND RATEPAYERS ASSOCIATION**

Posbus 134, Kleinmond, 7195.

Voorsitter: Jan-Willem van Staden. 028 271 4281 / 082 887 6466

Vonkpos: staden@kingsley.co.za

Sekretaris: Jannie Viljoen. 028 271 5958 / 084 589 7444

Vonkpos: jannie100@gmail.com

VOORKEUR KORRESPONDENSIE WYSE is 'n Skrywe na BEIDE bostaande Epos-adresse.

2016-10-10

DIE MUNISIPALE BESTUURDER
OVERSTRAND MUNISIPALITEIT
PATERSON STRAAT 16
HERMANUS

Geagte Mnr/Me

ERF 6187: HAWEWEG 12, KLEINMOND, OVERSTRAND MUNISIPALE AREA. VOORGESTELDE
VERGUNNINGSGEBRUIK. WC NIEMAND (nms G.J. VAN EEDEN)

Die Kleinmond Belastingbetalers Vereniging staan die toekenning van dobbel lisensies teen op grond van die volgende redes.

1. Dit is ons oortuiging dat die moontlike besoekers en gebruikers van die dobbel masjiene nie bevorderlik is vir die algemene karakter van die Hawegebied nie.
2. Ons is verder bekommerd oor die sosio-ekonomiese impak wat dobbel op die armer gedeeltes van ons gemeenskap mag hê.

Ons vertrou dat daar ernstige oorweging aan ons besware geskenk sal word.

Die uwe,

J. H. Viljoen

Sekretaris namens

Jan-Willem van Staden (Voorsitter)

VOORKEUR KORRESPONDENSIE WYSE is 'n Skrywe na BEIDE bostaande Epos-adresse.



TP - A Theart
(Huid Stoep)

FILE NO: EL 6187 - km
SCAN NO: 21
COLLABORATOR NO: 945736

VOORKEUR KORRESPONDENSIE WYSE in 'n skrywe (PDF-Lêer) na BEIDE
staden@kingsley.co.za en jannie100@gmail.com

TP

10 OCT 2016

12 OCT 2016

TP- A Theart
(Huld Steep)

Loretta Gillion - ERf 6187 Consent use Commet

From: "Potters Gallery" <gallery@hand-made.za>
To: <loretta@overstrand.gov.za>
Date: 11/10/2016 03:08 PM
Subject: ERf 6187 Consent use Commet

FILE NO:	EL6187
SCAN NO:	
COLLABORATOR NO:	946 253

OVERSTRAND MUNISIPALITEIT
12 OCT 2016
Km
OVERSTRAND MUNISIPALITEIT

Dear Sir/ Madam

AS neighbour of the premises and business in question, the following are my comments:

1. The following goes to Mr Niemand as applicant to obtain a consent use for a place of entertainment.
 - o Despite the law against smoking in public places, i.e. restaurants, places of entertainment, and such, the owner of the business next door is not abiding by the non-smoking laws.
 - o It has come to my attention that the owner, Mike Niemand is very strongly suspected of buying illegally poached seafood from the local poachers and smugglers to sell in his restaurant.
 - o Mr Niemand has got a track record of non-law-abiding activities, that is open public record.
 - o Although I currently have good relations with Mr Niemand as business neighbour, we have had conflict in the past with regards to live entertainment he has provided on his veranda. The result was several complaints from my clientele on the day, and official complaints from my tenants with small businesses also neighbouring the premises in question. They could not on that occasion have any normal conversations with their clientele and this had a very negative impact on all of us in the vicinity for that day. I laid a written complaint with him and he has subsequently informed me of the occasions of live entertainment he provided. At the time he did not yet have all his licences and so forth in place, and was quick to apologise.
 - o Mr Niemand is also strongly suspected of having, in the premises in question, operated gambling machines before starting this application process, therefore, on a illegal basis.

TO CONCLUDE POINT 1: All of the above leaves me really concerned whether this new consent use should be considered for approval, as in my opinion Mr Niemand has not proved himself a law abiding citizen.

2. Secondly, the business environment in Harbour Rd is based on visitor friendly entities. This includes retail, and restaurants, galleries, and tourist attractions, including the old harbour, seaside and fynbos. Within this visitor friendly environment, the local population and tourists alike, enjoy family activities, shopping and eating opportunities. It is my opinion that this visitor friendly ambience and attractiveness will be negatively influenced by having a gambling facility as well. It is not child friendly either.
3. Thirdly, gambling has a strongly negative impact on social values and financial impact on especially the lower income groups, and in the population of Kleinmond, the further diminishing of the income structures of families cannot be allowed, as the community is struggling as it is. The premises in question, is so much closer, and therefore so much

TP 11 OCT 2016

more accessible than any other current legal gambling facilities in Kleinmond. As employer of several people, I am concerned on a personal level for the temptation that will be part and parcel of the opening of a gambling facility next door to me, and the ready cash in hand that my employees will have every pay date. They all have families to take care of, and this could lead to disempowerment of valuable citizens in the area of business here in the street.

4. Fourthly, I am specifically also concerned about an increased security risk that inevitably goes along with readily available cash at a gambling facility. As it is, security in our area is progressively going backward, and all possible additional risks should be avoided. Already there has been increased crime at the business premises of Harbour Rd, including hold-ups for cash, theft from shelves, and more.
5. Despite my telephonic objection to the allocation of parking spots in front of my business to the application in question, I do not accept the explanation given. All applications for building, consent use, new plans, licences and more has to be accompanied by parking plans. I cannot understand how parking can be reallocated / re-aligned / reapplied to different applicants to their own requirements. I have heard of an all-inclusive development concept plan in place, that must allow for business growth in all of our municipal area without taking rights away from one to give to another. It is not acceptable that parking in this application is simply drawn onto a map and so accepted as a fact by the authority that previously had another plan in place.
6. As the longest standing business Owner and Premises owner and rate payer in Harbour Rd, I feel that the money, time, energy and vision invested in building this street as destination in the Kleinmond town, and the greater Overstrand Municipal area, has proved to be valuable in developing our town as tourist destination, and built over many years on the goodwill and loyalty of a large client base that includes visitors from all over South Africa, as well as the world. I question the wisdom in allowing the character of the street, and up to the bigger picture of our municipality, to be changed by adding a gambling facility here in this position in our town.

I trust that the above comments will be taken into consideration in assessing this consent use application. Please acknowledge receipt of this comment.

Regards
Corinne de Haas

028 271 4213

gallery@hand-made.co.za

hand-made.co.za

facebook.com/PottersGallery





ANNEXURE D 5/5
Overberg Potteries cc

CK91/017296/23

14 Harbour Rd. Kleinmond

P O Box 227 Kleinmond 7195

T: 028 271 4213

gallery@hand-made.co.za

www.hand-made.co.za

7.11.16

Dear Ms. H. van der Stoep
Overstrand Munisipaliteit

TP - A Theart
(H vld Stoep)



Re: Call for comments on Conccent Use application: EC Niemand Erf 6187.

1. The above matter refers; as do:
 - 1.1. The Notice in regards the above, dated 09 September 2016, and
 - 1.2. The email sent to Overstrand Municipality, from C. de Haas, on 11 October 2016, in regards to the aforesaid notice, and
 - 1.3. The letter addressed to C. de Haas from Bosman Smit Pretorius (Incorporated), dated 27 October 2017. Attached Hereto.
2. We confirm herewith, that the correspondence sent to Overstrand Municipality - whilst penned by the author hereof, C. De Haas - was written on behalf of the above Closed Corporation. Further, we confirm that C. De Haas has been mandated by said Corporation to deal with this matter, and to represent said Company herein.
3. The contents of the abovementioned letter to the Company, sent from BSP, on behalf of Mr. M. Niemand, have been noted, and we place on record that we reserve all rights herein; such as, and without limitation to, the right to not respond thereto exhaustively / comment in full thereon at this time; whilst reserving the right to do so, at a later stage, in the appropriate forum, and in the appropriate manner; as and when necessary. Therefore, any response given by the company, or any representative thereof, in the content or context of this letter, shall have been given on a "WITHOUT PREJUDICE" basis.
4. Certain of the points raised in the aforesaid letter from BSP, however, require a response. Thus, with specific reference to the points numbered 1 and 2 in the said letter, and the point numbered 1 in our email of 11 October 2016, our instructions are to provide the following reserved response:
 - 4.1. Firstly: The whole of point 1 of the Company's email of 11 October 2016, and any statement made therein, is herewith categorically withdrawn.
 - 4.2. Secondly: We apologise to Mr. M. Niemand and / or to any of the parties to this application, for any of the statement(s), or part(s) thereof, made in said Point 1 of our company's email of 11/10/16; insofar as said point, statement(s), or part(s) thereof, may have been unsubstantiated or untrue.
 - 4.3. Thirdly: We further apologise to the Town Planner of the Overstrand Municipality, for any inconvenience or wrongful impression as may have been created by the statement(s) in the said point 1 of our email of 11/10/16, and hold that said point 1 should be removed from considerations herein, and disregarded in toto; whilst we maintain that the rest of our email on stated date remains as part of our company's input and / or objections herein.
5. Lastly, we trust that the above shall suffice, in terms of the request for an apology herein, by Mr. H.J. Smit of BSP, as said apologies have been presented in the same forum in which our original statements were made.

Regards
Corinne de Haas

FILE NO: EL 6187 - Km
SCAN NO:
COLLABORATOR NO: 968 500

TP
7 NOV 2016

9 NOV 2016

DHM

ANNEXURE 1/4
(H Jld Stoep)du plessis • hofmeyr • malan
land law specialists

14 November 2016

The Director: Infrastructure & Planning
Overstrand Municipality
loretta@overstrand.gov.za

FILE NO:	EL 6187-Km
SCAN NO:	14
COLLABORATOR NO:	970518

Dear Sir

**ERF 6187, 12 HARBOUR ROAD, KLEINMOND: PROPOSED CONSENT USE: W C NIEMAND
(obo GJ VAN EEDEN)**

1. Your letter dated 18 October 2016 to Mr W C Niemand has been handed to us to prepare and submit an appropriate response on the applicant's behalf to the letters of objection received from Dr Pienaar, Ms C De Haas and the Kleinmond Ratepayers' Association.
2. In terms of our understanding the objectors are basically saying the following:
 - 2.1. The proposed land use will entirely destroy the pleasant, peaceful and visitor friendly ambience and attractiveness of the harbour environment. It will be replaced by a depressing atmosphere and stigma of a gambling house.
 - 2.2. The facility will attract repulsive characters, will change the character of the street by adding a gambling facility, will not promote the general character of the harbour area and will pose an increased security risk that inevitably goes along with readily available cash at the gambling facility.
 - 2.3. Gambling has a strongly negative impact on social values and financial positions especially for the lower income groups. Kleinmond may not allow a family friendly area to be polluted by "adult only entertainment" with doubtful social-economic impacts for the local community, which activity will only benefit the applicant.
3. In addition Ms Haas on behalf of Overberg Potteries CC (The Potter's Gallery) made a number of slanderous statements concerning Mr Niemand (which she subsequently withdrew in writing). She persisted with her objection against the reallocation of parking spots in front of her business to the applicant.

TP

14 NOV 2016

DU PLESSIS HOFMEYR MALAN INC (Registration Number: 2011/134862/21)

ATTORNEYS • CONVEYANCERS • NOTARIES

DIRECTORS: JP du Plessis B Juris LLB (UNISA), BPhil & MPhil Sustainability (US) •

CJ Hofmeyr BA LLB (US), LLM (HU-Berlin), LLM Public Law (UCT) • N Malan BA Industrial Psych (US), LLB (UNISA)

Unit No. 12, Paardevlei Specialist Medical Centre, Gardner Williams Avenue, De Beers Precinct, Somerset West, 7130 • PO BOX 70, Somerset Mall, 7137 • Tel: 021 851 0359 • Fax: 021 851 4852

15 NOV 2016

Response

4. Any entity like the municipality exercising public power is confined to exercising only such powers as are lawfully conferred upon it – this is the principle of legality.^[1] In other words the power given to approve or refuse an application for consent use may only be used for the purposes given and not for any other purpose whatsoever. We submit that the application must be decided in a manner that takes proper account of the jurisdictional requirements set out in section 66 of the Municipal Planning By-Law.

5. As the proposed land use is not inconsistent with the provisions of the municipal Integrated Development Plan and Municipal Spatial Development Framework, we say that the Municipality is required to decide, upon a proper consideration of all relevant factors, whether the proposed utilisation of the property lacks desirability or not. If it does not lack desirability, the application should be approved.

6. The objectors statements concerning the impact that the proposed land use will have on the character of the area are not supported by any facts, are totally exaggerated, have no merit and are, at best, highly speculative.
 - 6.1. Although the writer personally does not subscribe to gambling, **personal "likes" and "dislikes" cannot be elevated to the status of deciding criteria.** Fact of the matter is that, if properly licensed and conducted in terms of the applicable legislation, gambling is lawful and permissible in our country, whether we like it or not.

 - 6.2. It is necessary to note (if we leave aside for the moment the objection of Ms Haas to the alleged re-allocation of parking bays, with which we will deal further below) that it has not been suggested that the proposed land use will have any impact on existing rights concerned.
 - 6.2.1. There is indeed no factual basis for suggesting that the proposed facility will impact on existing rights or that it will materially interfere with the ordinary convenience, comfort and so forth of others.

 - 6.2.2. We say that the proposed land use will not *unreasonably* intrude on the ordinary amenities or existing property rights of other land owners.

¹ See Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council 1999 (1) SA 374 (CC) at 399 para 56; Pharmaceutical Manufacturers Association of SA: In re Ex Parte President of the Republic of South Africa 2000 (2) SA 674 (CC) at 699 para 50; and Qualidental Laboratories v Heritage Western Cape [2007] SCA 170 at para 9.

- 6.2.3. As it cannot be said that the proposed land use will constitute a serious impediment to the ordinary and reasonable enjoyment of property rights of others, the objectors will therefore not be required to tolerate interference with their comfort of existence.
- 6.3. It is a known fact that the majority of people frequenting a facility such as that being proposed cannot be described as *repulsive characters* and that it is not unusual for highly educated and well-behaved persons to regularly make use of gambling facilities for their own amusement, without impacting on the rights of others.
- 6.4. We say that the majority of visitors to the harbour area will probably not even be aware of or take note of the fact that such a facility exists. In short, the alleged negative impact that the proposed land use will have on the existing character of the area exists only in the mind of the objectors and not in reality. It is not a ground for refusing the application at hand.
7. We need to point out that in terms of our instruction there is an existing "casino" in the harbour area (i.e. Grinag's Waterfront on Erf 8651). Furthermore that when the applicant acquired the property to which the current application relates, gambling facilities existed on it for a considerable period of time. In other words the applicant is not attempting to introduce something new to the area.
8. We now turn to consider the concerns expressed regarding the alleged re-allocation of parking bays.
- 8.1. In terms of our instructions the Municipality required our client to pay for the provision of parking bays many years ago before our client was permitted to commence with business in the area. Nine parking bays were provided at the time as per the 2003 approved plan.
- 8.2. When the harbour area was redeveloped it resulted in a reduction of the number of available parking bays (which our client funded) to three parking bays.
- 8.3. Based on the existing and proposed land use, 8.34 parking bays are required, whilst 10 are available. Our client has complied with its obligations in terms of the number of parking bays to be provided and has shown that the parking bays available are adequate to comply with current requirements.

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9. In the circumstances we respectfully suggest that there are no grounds on which the application for consent use may be refused, request that the objections be dismissed and that the application be approved.
10. With reference to paragraph 6 of your letter under reply we have arranged with the applicant to have the required plans drawn and for same to be submitted to you, accompanied by the required information relating to GLA, without delay.
11. Please confirm when the matter is likely to serve before the municipal decision-maker.

Yours faithfully.

DU PLESSIS HOFMEYR MALAN INC.



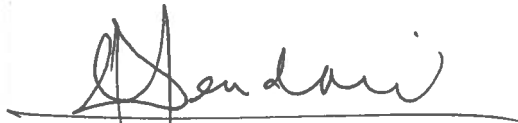
Per:
J P DU PLESSIS

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR CONSENT USE: ERF 6187, KLEINMOND (3363)**

Stormwater (SW) : In order
Electricity : In order
Water : In order
Sewer : In order
Roads and traffic : In order

Conditions:

1. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
2. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the developer's cost;
3. that stormwater be allowed to discharge through Erf 6187, Kleinmond, unobstructed;
4. that no on-street parking be allowed.



**DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES**

20 / 2 / 2017
DATE