

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
5 April 2023
(Also the agenda for the Mayoral Committee Meeting : 24 April 2023)**

7.

A PORTION OF REMAINDER ERF 243 HERMANUS SITUATED IN SCHULPHOEK ROAD (ROAD RESERVE): RENEWAL OF LEASE TO RAPIVEST 10 (PTY) LTD T/A HERMANUS TOYOTA

**R Marinus
3 March 2023**

Acting Manager: Property Administration

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1. Executive Summary

To obtain approval to enter into a further lease agreement with Rapivest 10 (Pty) Ltd t/a Hermanus Toyota, hereafter referred to as "Hermanus Toyota", in respect of municipal property, being a portion of Remainder Erf 243 Hermanus ($\pm 560\text{m}^2$ in extent), situated in Schulphoek Road (road remainder), hereafter referred to as "the Property", for a period of 12 (TWELVE) months for the purpose of displaying and parking of vehicles. The locality map is attached hereto as "Annexure A".

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning;
Property Administration

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Executive Mayor

5. Legal Requirements

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

6. Background/Discussion/Evaluation/Conclusion

Background/ Discussion

Hermanus Toyota has been using the Property for the past 4 (FOUR) years as from 1 January 2019 for the parking and displaying of vehicles for sale and have applied for a further lease agreement of 12 (TWELVE) months.

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The Administration of Immovable Property Policy defines a long-term lease as a lease for a period longer than 3 (THREE) years. Although Hermanus Toyota applied for a renewal period of 12 (TWELVE) months, the process for a long-term lease needs to be followed as the total lease period will exceed 3 (THREE) years. The further lease agreement can thus not be dealt with as a short-term lease considering the previous lease period. In terms of the said 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 the Executive Mayor's (as delegated authority) approval is gained in terms of the above policy.

Hermanus Toyota's municipal account is paid up to date. The Town Planning Department's comments were requested before the previous agreement was entered into and the area for the parking of the vehicles applies to all requirements which were set out. The agreement makes provision therefore that a 1,5-metre area measured from the tarred surface of the road from Schulphoek Road must be free of obstruction at all times to allow for the free movement of pedestrians. The agreement further makes provision therefore that a 10-metre area measured from the tarred surface of the road at the circle must be free of obstruction at all times. Hermanus Toyota has during the lease period adhered to these requirements.

The last lease agreement was for a period of 12 (TWELVE) months, which expired on 31 December 2022. Hermanus Toyota applied for the renewal in time and the renewal process was also commenced with by the Property Administration Department in time. Unfortunately, due to a delay on Hermanus Toyota's side the lease agreement could not be entered into before the expiration of the previous agreement. The Property Administration Department struggled to reach the person responsible for dealing with the application and also waited long periods for confirmation of the lease period and renewal of the lease agreement. As Hermanus Toyota is still in occupation of the Property the lease amount is still levied monthly on their municipal account and paid by Hermanus Toyota. Should the renewal of the lease agreement be approved the renewal date will be backdated to commence the day after expiry of the previous agreement.

No complaints have been received from the community regarding the use of the Property by Hermanus Toyota.

Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

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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 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”.**

The site is opposite Hermanus Toyota and the adjoining property is the Mount Pleasant residential area and the Property forms part of a road reserve and therefore the Property will not be of any practical use to anyone else. The site is not classified as a business site and no trading is allowed on the Property. It is therefore recommended that it be leased directly to Hermanus Toyota without following a competitive process.

Although the proposed lease is for a long-term period the rental that will be received will not be in excess of R10 million. The current rental is set

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at a tariff for the lease of municipal property for the display of vehicles, being R6.35/m² (SIX RAND AND THIRTY FIVE CENTS PER SQUARE METRE) (VAT Excluded) per month. The lease area is ±560m² in extent which equals to a total rental of R3,556.00 (THREE THOUSAND FIVE HUNDRED AND FIFTY SIX RAND) (VAT excluded) per month, which rental will escalate annually in terms of the approved tariff in the financial budget of the Municipality.

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.”**

Paragraph 22: “The in principle approval of the Accounting Officer must be obtained with any request for the renewal of the lease agreement.”

Hermanus Toyota applied for the renewal of the lease agreement which was approved in principle by the Municipal Manager on 20 December 2022 for a period of 12 (TWELVE) months, subject to a public participation process being followed and further subject to the approval by the Executive Mayor as delegated authority of the long-term lease.

The Executive Mayor’s approval is hereby sought, and the proposed lease was advertised in The Hermanus Times on 8 February 2023 for a 30 (THIRTY) day comment/objection period. No objections have been received.

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 property for parking of vehicles is R6.35/m² (SIX RAND AND THIRTY FIVE CENTS PER SQUARE METRE) (VAT excluded) per month for the 2022/2023 financial year. The area is ±560m² in extent which equals to an amount of R3,556.00 (THREE THOUSAND FIVE HUNDRED AND FIFTY SIX RAND) (VAT excluded) per month.

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The agreement will stipulate that the rental amount will escalate annually in accordance with the tariff as approved in the Annual Budget.

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.”*

Hermanus Toyota will be liable for the payment of all costs relating to the renewal of the lease agreement which in this case so far 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.

B. Advertisement/Notification

An advertisement for the lease of a portion of the Remainder Erf 243 Hermanus was published in The Hermanus Times on 8 February 2023 for a 30 (THIRTY) day objection/comment period. No objection/comment was received.

Conclusion

With reference to the above discussion, it is recommended that the lease of a portion of Remainder Erf 243 Hermanus to Rapivest 10 (Pty) Ltd t/a Hermanus Toyota be approved for a further period of 12 (TWELVE) months from 1 January 2023 at a rental amount of R3,556.00 (THREE THOUSAND FIVE HUNDRED AND FIFTY SIX RAND) (VAT excluded) per month for the 2022/2023 financial year.

7. Financial Implications

The Municipality stands to gain rental in the amount of R3,556.00 (THREE THOUSAND FIVE HUNDRED AND FIFTY SIX RAND) (VAT excluded) per month from 1 January 2023 where after the rental amount will escalate



