

**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:
