

Memorandum 14-061 Assignment of Happy Face Lease, Lot 32 Homer Spit Amended

Memorandum ID: 14-061

Memorandum Status: Backup

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TO: Lease Committee

FROM: Walt Wrede

DATE: March 14, 2014

SUBJECT: Assignment of Happy Face Lease / Lot 32 Homer Spit Amended

Background

The Happy Face Restaurant /Sportsman's Marine Supply has been for sale for several years. The City took a look at purchasing the building and remodeling it for the new Port and Harbor Building. The owners have been in contact with the City several times over the past few years about a possible purchase. They have also contacted the City to gauge the City willingness to approve an assignment of the lease and to better understand the mechanics of doing that. The owners of the Happy Face have now reached an agreement with a prospective buyer. The buyer has requested an assignment of the lease and an extension of the term in order to complete the deal and obtain financing. The new owner is Yong Kim dba Lee and Kim LLC.

The lease policies address lease assignments in Chapter 13.3 and Chapter 14. The City has determined that the lease is assignable, that the current owner is in good standing, and that the owner has requested an assignment in writing; all of which is required by the Lease Policies. Chapter 13.3 provides that the assignee shall submit a new lease application form complete with all attachments and proposals following the process described for lease applications, and submit it along with any applicable fees to the Lease Committee for review.

A Lease Application / Assignment Form has been submitted and found to be complete and responsive. Andrea Browning worked closely with the Applicant and her agent to make sure all relevant information was submitted. Andrea, the City Manager, and the Port and Harbor Director had a pre-application meeting with the applicant on March 6, as provided in Chapter 5.1 B. Chapter 5 of the Lease Policies contains the lease application process. A checklist of the required information was prepared by Andrea Browning and is attached for your information.

Analysis

Chapter 6 of the Lease Policies contains the proposal evaluation criteria. These criteria are mostly applicable to new leases but some have relevance to the assignment of a lease containing an existing business. Following is a discussion of relevant criteria:

The proposed use is consistent with neighboring uses and the zoning code. The new owners will continue the existing use and expand it into new areas. The allowed uses proposed for the lease include restaurant, grocery and sporting goods store, gift shop, public shower and laundry facility, room rentals and overnight accommodations. Several relatively minor zoning violations are being addressed by the current owner prior to the sale.

Capital Investment: Purchasing the existing building and business represents a substantial investment. The new owners also plan to remodel the first floor store, add a gift shop, and construct a public laundry and shower facility.

Experience: The new owner has a tremendous amount of experience managing restaurant facilities of this type. Her resume is attached. We believe she has the background and experience to make this venture a success.

Finances: The new owner has demonstrated to the City's satisfaction that she has the financial resources and backing to operate this business and follow-through with her commitments under the lease.

Rent: The applicant has agreed to pay market rent as determined by an appraisal and to all of the terms and conditions in the standard land lease.

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Employment and Revenue: The applicant proposes to increase employment over the current business by several employees. The sale to a private sector investor insures that an upgraded building remains on the tax rolls and that viable business activities there continue to generate sales taxes. The applicant discussed a marketing plan to bring more tourists to Homer from Korea.

The current Happy Face Lease expires on December 31, 2014. If this lease expired, the City would own the building and the current owners would get nothing for their investment. The City has no use for the facility and does not want to be in the business of leasing commercial buildings. If the City owned the building it would likely attempt to lease both the land and the building and the outcome would be uncertain, to say the least. The timing of this sale could not be better. The assignment of this lease is in the City's interest because it keeps the building on the tax rolls and encourages the continuation of a business there that generates jobs, revenue, and a valuable service to residents and visitors alike.

Section 14.4 of the Lease Policies provides that " if the lessee intends to assign the lease as part of a sale of the business located on the lease lot, the person who intends to purchase the business may apply to extend the lease term to allow the continuation of the business and secure financing for the purchase." The new owners have applied for financing through a Small Business Administration loan. Financing is contingent upon the lease term being extended.

We have concluded that the experience of the new owner, her financial capacity to operate the business, and the significant investment proposed, justifies a new, extended term of twenty years and two five year options. The City and the new owner have agreed to move the assignment to a new standard lease because the existing one is old and outdated.

RECOMMENDATION: Approve the assignment of the lease on Lot 32, Homer Spit Amended, to Yong Kim dba Lee and Kim LLC, with the term to be twenty years and two five-year options, and rent at market rates determined by audit.

Related Resolutions **Memorandum - Related Resolutions:** [Resolution 14-044 Assignment of the Happy Face Lease, Lot 32, Homer Spit Amended to Lee and Kim LLC](#)

Source URL (retrieved on 2014-12-19 06:11):

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