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Title: Consideration of Options for Lease of Coast Guard Auxiliary Building by the Hernando Beach Marine Group

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2/28/2023	1	Board of County Commissioners	adopted	Pass

TITLE

Consideration of Options for Lease of Coast Guard Auxiliary Building by the Hernando Beach Marine Group

BRIEF OVERVIEW

Currently, Hernando County has a lease agreement with the Hernando Beach Marine Group, Inc., for property located at 4340 Calienta Street in Hernando Beach, which lease is set to expire on July 27, 2030.

On November 29, 2022, background information on the lease was requested to understand how lease could be modified. The history of the lease agreement with the Hernando Beach Marine Group, Inc., is as follows:

On July 27, 1977, a lease agreement was entered into between the West Hernando County Water and Sewer District (the predecessor in interest to the Hernando County Water and Sewer District, which will be referred to as the "County") and Hernando Beach Flotilla - 8, Inc. (the former name of Hernando Beach Marine Group, Inc., which will be referred to as "HBMG"). The agreement was a 20-year lease of vacant land with a yearly rent of \$0, which was only to be used as a "civic building."

On November 1, 1979, a lease modification was entered into between the County and HBMG. The lease modification extended the original term to a 40-year lease term that would have expired on July 27, 2017.

On March 1, 1982, a new lease was entered into between the County and HBMG that replaced, in full, any prior lease between the parties. The lease kept the original expiration date of July 27, 2017, and had the following provisions: (1) \$1.00 per year rent; (2) HBMG pays all taxes, assessments, or other public charges on the property and the rent paid; and (3) HBMG was required to have

“comprehensive public liability insurance covering the premises and its appurtenances in the amount of \$100,000 for bodily injury of any one person, \$100,000 for bodily injury in one occurrence and property damage insurance in the amount of \$25,000. Such insurance shall specifically insure Lessee against all liability imposed by law and shall insure both [the County] and [HBMG].” This is the operative base lease that the parties are bound by presently.

On November 1, 1999, a lease amendment was entered into between the County and Hernando Beach Marine Safety Support Group, Inc. (a second former name of HBMG). The lease amendment extended the term of the lease until July 27, 2030, and kept all other lease provisions from the 1982 lease the same.

On October 21, 2008, a lease amendment was entered into whereby the County authorized HBMG to sublease space on the cell phone tower on the property in exchange for payment to the County of 50% of the payments received by HBMG for any such sublease, with such payment to be made to the County within ten days of receipt of each payment by HBMG. This lease amendment kept all other provisions in the 1982 lease the same.

On or around January 2012, a memorandum of a lease agreement for the cell phone tower at the property was recorded in the Official Records of Hernando County, Florida.

The property appraiser and County building permit records for the property show that a building permit for a tower antenna addition by Metro PCS was finalized on or around August 17, 2012. Metro PCS is now owned by T-Mobile. T-Mobile has since applied for a subsequent tower antenna building permit on or around February of 2016.

On or around November 2012, a memorandum of a lease agreement with Verizon Wireless was recorded in the Official Records of Hernando County, Florida. The property appraiser and County building permit records for the property show that a building permit for a tower antenna addition by Verizon Wireless was finalized on or around January 18, 2013, and modified on or around December of 2017.

On February 13, 2017, HBMG alleges that there was a meeting between some combination of the following: Jon Jouben, Randy Griffiths, Christi Charlow, Wayne Dukes, Brian Malmberg, William Ferreira, George Saponari, and Michael Bollinger. At this meeting, HBMG alleges that the County agreed to transfer ownership of the Coast Guard Auxiliary Building to the Hernando Beach Marine Group, Inc., and allow them to keep the full income from the cell phone tower subleases in exchange for the Hernando Beach Marine Group, Inc., paying the property taxes and flood insurance on the property.

On the consent agenda for the February 14, 2017, Hernando County Board of County Commissioners' Regular Meeting, Resolution Number 2017-33 was passed. Resolution 2017-33 authorized an intragovernmental property transfer of the Coast Guard Auxiliary Building property from the Hernando County Water and Sewer District to the Hernando County Board of County Commissioners. The reason for this intragovernmental transfer from the Hernando County Water and Sewer District's enterprise fund to the Hernando County general fund was so that insurance money could be released to perform repairs on the property from hurricane damage.

The deed that accomplished the intragovernmental transfer in February of 2017, was only for a transfer of property from the Hernando County Water and Sewer District to Hernando County. This

deed does not transfer any property rights to HBMG. Further, there is no written agreement in existence for the sale of any property from the County to HBMG.

Mr. Ferreira stopped by the County Attorney's Office in the afternoon on March 3, 2017, to meet with Mr. Jouben, but Mr. Jouben was unavailable. Mr. Jouben indicated to Mr. Ferreira in an email on March 6, 2017, that his understanding from a prior meeting between them was that HBMG would be seeking to purchase the title to the land underlying the Coast Guard Auxiliary Building and parking lot. Mr. Jouben further stated that it was his understanding that Mr. Ferreira wanted to ask Mr. Jouben what Hernando County department to contact to begin that purchase process.

No further action was taken by the Hernando Beach Marine Group, Inc. to purchase the property, but they stopped making payments to Hernando County for the cell phone tower subleases on or around March 4, 2017.

On or around December 2019, County staff discovered that HBMG failed to pay past due cell phone tower sublease payments and that the property taxes were delinquent.

The property appraiser and building permit records for the property show that a building permit for a tower antenna addition by AT&T was finalized on or around February 17, 2021.

A notice to cure the breach of the lease agreement between the parties was sent to HBMG on March 17, 2022. Prior to this notice, the parties engaged in negotiations to try and amend the lease, but those negotiations failed. After multiple extensions of the cure period for the breach, the Hernando Beach Marine Group, Inc., cured all breaches of the lease agreement by paying the property taxes and past due money along with the interest on both amounts as required by the lease agreement. However, HBMG made these payments under protest, and is still posturing to file a lawsuit against the County to recover those amounts they believe they are not obligated to pay.

From the memoranda of leases, building permits, and notices of commencement publicly recorded related to the property, it is believed that there are three separate cell phone antennae on the cell phone tower, one for T-Mobile, one for Verizon, and one for AT&T.

Despite being requested multiple times, HBMG has not provided copies to the County of the sublease agreement for each cell phone antenna. The 2008 lease amendment requires HBMG to pay the County half of the payments it receives for leasing space on the cell phone tower, and for each payment to be made within 10 days of HBMG's receipt of the same. Because the HBMG failed to provide the County with copies of the subleases, it is unknown what the payment amount should be for each antenna and when each payment is required to be paid pursuant to the lease.

HBMG has provided the declarations page for their insurance policy on the property; however, such insurance information for the property is incomplete. Because HBMG failed to provide the County with the certificate of insurance for the property, it is unclear whether HBMG is in compliance with the insurance requirements of the lease agreement.

Additionally, the HBMG has not paid rent for the cell phone antennae on the property for the months of January or February. As of February 1, HBMG is delinquent in \$1,500.00 of those payments. However, without copies of the sublease agreements it is unclear whether that is the correct amount due to the County

HBMG is seeking to amend the current lease agreement. To amend or modify the lease agreement in any way, Florida Statutes and the County Code require that the property be declared surplus and that the rent be, at a minimum, the fair market rental value for the property. However, one party cannot compel the other to enter into a new lease or a lease modification, so negotiations of the specific terms would ultimately need to occur but could easily result in an impasse.

In general, there are three potential options to resolve the issues outlined above:

1. Enter into a release and covenant not to sue with HBMG in exchange for the County making a one-time payment for maintenance on the Coast Guard Auxiliary Building, which would not create any future obligation for the County to perform continuing maintenance on the building. Simultaneously with the release and covenant not to sue, the parties would also negotiate a new lease agreement for the property; however, this would require the County to declare the property as surplus pursuant to Section 2-173 of the Hernando County Code and the rent negotiated in that modification must be for the fair market rental value of the property pursuant to Section 125.35, Florida Statutes and Sections 2-176 and 2-177 of the Hernando County Code.
2. Enter into a release and covenant not to sue with HBMG in exchange for the County making a one-time payment for maintenance on the Coast Guard Auxiliary Building, which would not create any future obligation for the County to perform continuing maintenance on the building. With this release and covenant not to sue, the parties would agree that the current lease continues until its natural expiration in 2030.
3. Do not enter into a release and covenant not to sue and do not modify the lease agreement, allowing the current lease to continue until its natural expiration in 2030.

FINANCIAL IMPACT

To be determined.

LEGAL NOTE

The Board is authorized to act on this matter pursuant to Chapter 125, Florida Statutes. Any renegotiation of the lease agreement's terms would require that the leased property be first declared as surplus property pursuant to Chapter 2, Article VII, Division 2 of the Hernando County Code of Ordinances.

Section 2-173 of the Hernando County Code requires the property to be declared as surplus before the lease agreement can be modified or amended in any way. Pursuant to Section 2-172 of the Hernando County Code, any offer to amend or modify the lease may be treated by the County as a request to declare the property as surplus.

Once the property is declared surplus, the lease amendment or modification itself would have to result in the property being leased for the fair market rental value, which is required by Section 125.35, Florida Statutes and Section 2-177 of the Hernando County Code.

RECOMMENDATION

It is recommended that the Board provide consensus on whether to follow the statutory and local Code requirements for the leasing of real property and to begin that process with the Hernando

County Real Property Supervisor for the property located at 4340 Calienta Street (Property Key Number 1758850).