



# REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70431533
CASE OFFICER	Mark Cotton
CASE OFFICER PHONE NO	021 684 4343
DISTRICT	Cape Flats
REPORT DATE	06 May 2019

ITEM NO **MPTSW56/05/19**

**WARD 42: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 205 SHERWOOD PARK AT 46 FIFTH AVENUE, SHERWOOD PARK.**

## 1. EXECUTIVE SUMMARY

Property description	Erf 205, Sherwood Park
Property address	46 Fifth Avenue, Sherwood Park
Site extent	496m <sup>2</sup>
Current zoning	Single Residential 1
Current land use	Dwelling house & unauthorised early childhood development centre (ECD)
Overlay zone applicable	No
Submission date	27 <sup>th</sup> March 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes, operation of an early childhood development centre (ECD) from a portion of the property.
Has owner applied for the determination of an administrative penalty?	Yes
Has the City Manager applied to the MPT for an order that a person who is contravening the MPBL must pay an administrative penalty in an amount determined by the MPT?	No
Has the City issued a demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	No
Has the City served a notice on the owner or other person in respect of the unlawful land use or building work which required the owner or other person to apply for the determination of an administrative penalty?	No

## 2. DECISION AUTHORITY

262

For decision by the Municipal Planning Tribunal.

## 3. BACKGROUND / SITE HISTORY

Erf 205 Sherwood Park at 46 Fifth Avenue, Sherwood Park ("the property") is zoned Single Residential 1 (SR1). The property currently houses a main dwelling and an ECD centre, operating illegally, from a portion of the main dwelling. The use of a portion of the main dwelling (rear portion) for the operation of an ECD centre is in contravention of the Development Management Scheme.

## 4. SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation is attached as Annexure C and may be summarised as follows:

- The need for an ECD facility in the area was realized through the owners' personal experience in finding a suitable facility in the area.
- The decision to start the centre from the subject premises was met with a positive response from the residents in the area and the facility grew from strength to strength.
- The ECD centre has been operating since January 2010

## 5. ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorized use is in contravention of the Development Management Scheme.
- 5.2 In terms of section 129(7)(b) of the By-Law, an administrative penalty for the land use contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.
- 5.3 Administrative Penalty: Calculation for unauthorised land use

$$\frac{\text{Total Municipal Value of property}}{\text{Total area of property (m}^2\text{)}} \times \text{Total Unlawful Area (m}^2\text{)} = R$$

Total Municipal Value of property	=	R590 000
Total area of property (m <sup>2</sup> )	=	496m <sup>2</sup>
Value per m <sup>2</sup>	=	R1 189
Total Unlawful Area	=	57m <sup>2</sup>
Total Value of Unlawful Area	=	R67 773

An amount which is not more than 100% of **R67 773** may be imposed as an administrative penalty.

- 5.4** The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by section 129(8) of the By-Law:

**The nature, duration, gravity and extent of the contravention**

**Nature:** a portion of the existing dwelling measuring 57m<sup>2</sup> in extent is being used for a ECD centre. The ECD centre is in contravention of the Development Management Scheme.

**Duration:** The ECD centre has been in operation unlawfully for a duration of approximately 9 years. This is considered to be long term duration.

**Gravity:** the gravity is considered to be serious as a result of the ECD centre operating unlawfully. This may mean that the ECD centre does not comply with the standards required by the City to make sure that children and staff are safe at all times.

**Extent:** The total extent of the contravention is 57m<sup>2</sup> which is considered to be medium in extent.

**a) The conduct of the person involved in the contravention**

The operator immediately submitted an application for the administrative penalty after being informed to do so during a consultation with Municipal Officials at the local District Office.

**b) Whether the unlawful conduct was stopped**

The unauthorized ECD center is fully operational.

**c) Whether a person involved in the contravention has previously contravened this By-Law or any other planning law**

As far as can be ascertained, the current owner has not previously contravened this By-Law or any other planning law.

- 5.5** Having considered the factors mentioned above, this department recommends that an administrative penalty of **R500.00** be imposed.

**6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarised as follows:

- 6.1** The ECD is operating without approval from a portion of the property.
- 6.2** The duration is considered to be long as it has been operating for the past 10 years.
- 6.3** The extent of the contravention is medium.
- 6.4** The gravity of the contravention is considered to be serious.

- 6.5 As far as can be ascertained the owner of the property has not previously contravened the Municipal Planning By-Law or any other planning law, has shown great willingness to render the facility authorized and has responded promptly to requests from officials in this regard.

## 7. RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R500.00** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 205 Sherwood Park at 46 Fifth Avenue, Sherwood Park

## ANNEXURES

Annexure A	Regional Locality Plan
Annexure A1	Locality Plan
Annexure B	Site layout plan showing contravention
Annexure C	Applicant's motivation



### For Section Head : Land Use Management

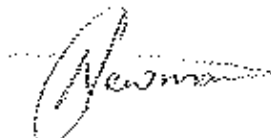
Name Mark Collison

Tel no 021 684 4343

Date 07 May 2019

Comment

None



### District Manager

Name C Newman

Tel no 021 684 4310

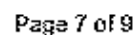
Date 06 May 2019

Comment



## ANNEXURE A1: LOCALITY PLAN

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE : A1	
<b>Overview</b> 		<b>EA 305</b> Alignment: GERRWOOD PARK Ward: 43	
		District: CAPE FLATS Suburb: MANNEBERG S&B Council Subward: 14	
		Notices Served <input checked="" type="checkbox"/>	Support Received <input checked="" type="checkbox"/>
		Petition Signatory <input checked="" type="checkbox"/>	Objections Received <input checked="" type="checkbox"/>
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Date: 08 May 2019			
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24 October 2018

**TO WHOM IT MAY CONCERN**

Dear Sir/Madam

Application for Administration penalty

When my mother lost her job as a Grade R Educator it was extremely difficult to place children in a day-care facility as the few facilities in my area were filled to capacity.

Me and mother immediately recognised the need for another facility and I subsequently opened a centre at her house. I was amazed at the amount of parents still searching for a safe environment for their children. Because we offered excellent care and a parent friendly atmosphere, the centre grew from strength to strength each year.

The daily programme and the curriculum we offer have enabled the children to develop holistically and the evidence thereof is clearly visible in the work they do. Our staff is fully qualified in NCF and CAPS. Our parents are extremely pleased with the centre and the progress of their children.

I have liaised with the Health Department and the Department of Social Development and they are aware of our situation and will support this application as they are familiar with the quality of the service we render to the community.

Our ward 42 AGM meetings have been recently held at my ECD centre and Mr. Sonwabo Nxumza, and he is aware of the struggles we face.

The centre provides employment for me, my mother and two teachers. ± 65% of the children are in a lift club and therefore enabled employment for a man who was once unemployed.



We accommodate 32 children.

Toddlers/ Pre- Grade R 22 -age 3 and 4 (10 boys & 12 girls)

Grade R 10 -age 5 and 6 (5 boys & 5 girls)

We have three parking bays available and 2 cars can easily park in our driveway with no obstruction to neighbours and quite a few (about 35%) of the children reside within walking distance and does not require transport at all.

I trust that our centre meets with your requirements and that you will consider our application.

Thanking you in anticipation

\_\_\_\_\_  
Kulsum Thomas  
Principal