



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

647

REPORT TO MUNICIPAL PLANNING TRIBUNAL

ITEM NO

MPTSW22/01/20

CASE ID	70479496
CASE OFFICER	P. EVARD
CASE OFFICER PHONE NO	021 444 7721
DISTRICT	SOUTHERN
REPORT DATE	2020-01-13

WARD 64: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): REMAINDER ERF 9151 FISH HOEK, 148 KOMMETJIE MAIN ROAD

1 EXECUTIVE SUMMARY

Property description	Remainder Erf 9151 Fish Hoek
Property address	148 Kommetjie Main Road
Site extent	812m ²
Current zoning	Single Residential Zone 1
Current land use	Dwelling house and outbuildings
Overlay zone applicable	None
Submission date	2019-10-21
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Unauthorised building work in the form of a new garage and verandah.
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?	The applicant states that the building inspector issued a verbal instruction to cease building work. There is no record of a notice being served.

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal (MPT).

3 BACKGROUND / SITE HISTORY

- 3.1 Building plans for the garage were submitted on 2017-07-03 but not cleared due to, inter alia, non-compliance with the setback requirements in terms of the Development Management Scheme (DMS). The amendments were not attended to and the application cancelled.
- 3.2 An administrative penalty application was submitted on 2017-09-15 for the unauthorized garage however the application was considered incomplete and the application closed / refused as the applicant did not timeously provide the required additional information.
- 3.3 A further building plan was then submitted on 2019-08-26 for the garage, a carport and verandah. However, the application was not cleared due to departures required and the need for an administrative penalty application for the unauthorized building work in contravention of the MPBL.
- 3.4 A land use application for the departures has not yet been submitted for consideration.
- 3.5 It must be noted that the elevation titles on the Site Development Plan attached as Annexure B are incorrect (ie they refer to the incorrect directions).

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The single garage was built and the braai stoep covered before the building plans were approved.
- The contravention has been in existence for the past 2 years.
- No person's safety or neighbour's health were put at risk.
- The single garage and roofed area of the stoep are hardly visible from the streets.
- The total extent of the contravention equates to $\pm 67\text{m}^2$ which is less than 9% of the total property size.
- The owners admit wrongdoing.
- At the time of work stoppage by the building inspector the garage was 95% complete and remains as such.
- The owner has no previous cases of contraventions of the MPBL.
- The previous temporary garage had become dilapidated and was removed and replaced with a more formal garage.
- A draughtsman was initially consulted in January 2017 and the intension was to observe the building approval process.

5 ASSESSMENT OF APPLICATION

- 5.1 The administrative penalty is required for the unlawful building work. The garage contravenes the 5m street setback and the verandah contravenes the 3.5m street setback in terms of Item 22 of the DMS. The verandah also contravenes the 5m setback applicable in terms of Item 121(2) of the DMS

relating to a designated metropolitan road (Kommetjie Main Road). A small portion of the verandah is located outside the street setbacks and, although unauthorized, is not in contravention of the MPBL. Note that although the building work contravenes the title deed condition relating to a 3.15m street setback, as this is a private condition, the contravention thereof is not a contravention of the MPBL.

- 5.2 In terms of section 129(7)(a) of the By-Law, an administrative penalty for a building work contravention may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out.

- 5.3 Calculation for unauthorised building work:

The applicant has valued the unauthorized building work, as listed in the motivation attached as Annexure C, as R87475.00 being R73 475.00 for the garage and R14 000.00 for the verandah. However, according to the table of building costs in the Standard Operating Procedure for Administrative Penalties the work calculated is as follows:

Garage: $30.6\text{m}^2 \times \text{R}7060.00 = \text{R}216\,036.00$

Verandah: $\pm 38\text{m}^2 \times \text{R}1020.00 = \text{R}38\,760.00$

(Note that a small portion of the verandah is located outside the street setbacks and, although unauthorized, is not in contravention of the MPBL.)

Total= R254 796.00

- 5.4 An amount which is not more than 100% of R254 796.00 may be imposed as an administrative penalty.

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

a) The nature, duration, gravity and extent of the contravention

Nature - The nature of the contravention relates to the garage and verandah which are located within the street setbacks.

Duration - According to the applicant, the unauthorized building work has been in existence for the past 2 years. The duration of the contravention is thus moderate.

Gravity - The gravity of the contravention is relatively low in this context given that the garage is within a cul-de-sac and the verandah is minor in nature and will not impact on surrounding neighbours. The heights of the buildings are modest. The row of trees along Kommetjie Main Road significantly reduce the visual impact of the buildings on the streetscape. The gravity is further reduced by the fact that much of the unauthorized garage is located below natural ground level.

Extent - At 30.6m^2 for the garage and $\pm 38\text{m}^2$ for the verandah, the extent of the contravention is relatively large.

b) The conduct of the person involved in the contravention

It appears that the applicant was aware of the building plan and land use application process applicable prior to commencing building work however chose to not follow due process. The conduct of the owner cannot be condoned.

c) Whether the unlawful conduct was stopped

According to the owner building work ceased when instructed to by the building inspector and the garage is not entirely complete. The structures are however existing.

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

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

- 5.6 In view of the abovementioned considerations and that administrative penalties are, in part at least, meant to serve as a deterrent, this Department recommends that an administrative penalty of R5 000.00 be imposed.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The garage and verandah contravene the street setbacks prescribed in Items 22 and 121 of the Development Management Scheme.
- 6.2 The duration of the contravention is moderate.
- 6.3 The extent of the contravention is relatively large.
- 6.4 The gravity of the contravention is relatively low in this context.
- 6.5 It would appear that the owner was aware of the need for a Council process, but chose to not follow due process in obtaining the required land use and building plan approval prior to construction. The conduct of the owner cannot be condoned.
- 6.6 As far as can be ascertained, the owner of the property has not previously contravened this By-law or any other planning law.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) An administrative penalty in the amount of **R5 000.00** be determined in terms of Section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Remainder Erf 9151 Fish Hoek regarding the unauthorised garage and verandah as shown on the plan drawn by Precision Plans, Revision 1, Sheets 1 and 2, dated 2018-11-07.

ANNEXURES

Annexure A	Locality map
Annexure B	Site Development Plan
Annexure C	Applicant's motivation
Annexure D	Title deed




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Section Head : Land Use Management

Name P Hoffa
Tel no 021 444 7724
Date 2020-01-13

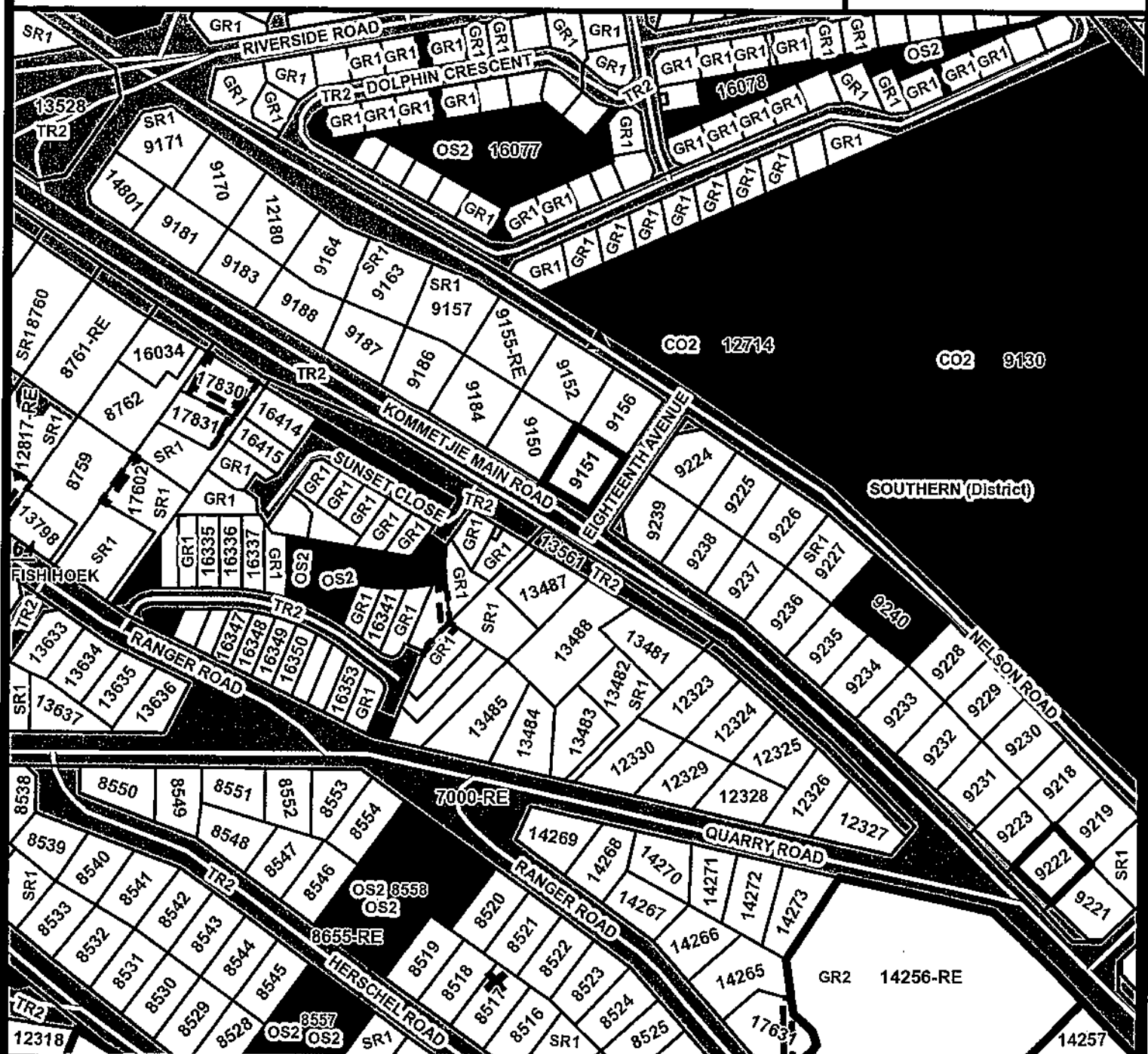
Comment



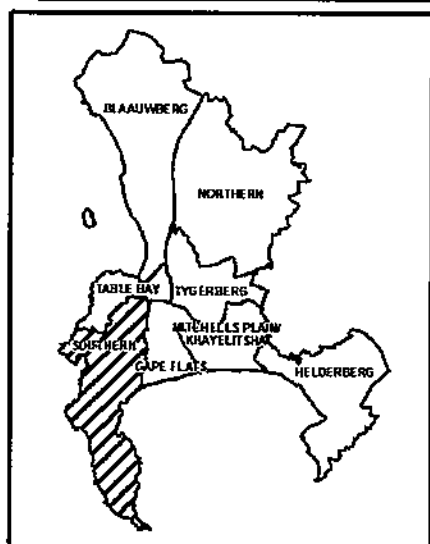
District Manager

Name U Gonsalves
Tel no 021 444 7720
Date 2020-01-13

Comment



Overview



Erf: 9151

Allotment: FISH HOEK

Ward: 64

District: SOUTHERN

Suburb: FISH HOEK

Sub Council: Subcouncil 19



1:2 665

Notices Served



Support
Received



Petition
Signatory



Objections
Received



Generated by:

Date: 10 January 2020

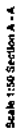
File Reference:



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

Order	Date Ordered 1/20/00 Quantity ordered 1,000 Balance 1,500	2 2
Balance		



655

148 Kommetjie Road
Fish Hoek

To the Municipal Planning Tribunal

15 November 2019

Application for Administrative Penalty: Erf 9151 Fish Hoek

Case no: 70479496

Commencement of Building of Single Garage and Enclosed Stoep Area, without prior approval (Erf 9151 - 148 Kommetjie rd Fish Hoek)

Motivation:

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

1. The Nature:

A single garage was built and braai stoep area covered before the building plans were approved.

2. Duration:

The contravention in existence for the past 2 years.

3. Gravity:

During this time no person's safety or neighbour's health was put at risk.

The single garage is hardly visible from the street and adds to the value and safety after 2 theft/burglary cases at our address. The roof area of the stoep is also only partly visible from both roads (Kommetjie and 18th ave). All three neighbours agree with the building/construction work and no objections received up to date. (all prepared to sign their approval). It also causes no interference or obstruction of pedestrian and traffic visibility issues.

4. Extent:

The total extent of the contravention equates to approximately 67 mr² which is less than 9 percent of the total property size of 815 mr². This is also in line with the city's new approved by-law allowing a third dwelling/building on a single-residential property with approved building plans. It is also in line with the neighbour's double garage built on the boundary line which created somewhat of a precedence years ago.

Conduct of the person involved in the contravention:

We as owners admit wrongdoing in not having approved building plans before building/construction work started and giving our full co-operation to have the contravention sorted out. At the time of work stoppage by the inspector the garage was 95 percent complete and remains as such. Originally the draughtsman was instructed to draw up the plans and to submit them but unfortunately construction started prior to this. The draughtsman was also instructed to please complete and submit the building plans asap. All the plans and required

documentation, up to this stage, have so far been submitted pending the outcome of the administrative penalty issue. We also have no previous cases of any contraventions of the city's municipal building or any other by-laws

.

Whether the unlawful conduct has been stopped:

All building work was stopped immediately after being instructed so by the building inspector.

Whether a person involved in the contravention has previously contravened this by-law or previous planning law:

Not one of the 3 co-owners have any previous building law transgressions.

15 November 2019

Case ID: 70358180

Erf no 9151. Address 148 Kommetjie rd Fish Hoek

Plan reference No:2020/S/1, 2020/S/2, 2020/S/3 and 2020/S/4

Commencement of Building of Single Garage and adjacent Braai/Stoop Area Roof

Background

An existing temporary "garage" structure (built in the late 1960's by a family member) had Due to its age become dilapidated and an "eyesore". Consequently the time had come for it to be removed and replaced with a more formal garage. Accordingly, Mr Hannes de Wet(draughtsman) was initially consulted in late January 2017 to draught a plan, thereby signalling our intention to observe the building approval process.

Unfortunately at the time some crime incidents were experienced (gate motor and bicycle stolen) and it was decided to commence the building of the garage (mid April) as the existing structure had already been removed and we felt exposed to further incidents due to lack of storage space for equipment and tools. At this stage Mr De Wet had drafted an initial plan but it had not yet been submitted for approval.

Building Work Ceased

The 1st week of May the building Inspector Mr Abrahams visited the premises. As the draft plan had not yet been submitted for approval we were verbally instructed to cease building works, pending plan submission as soon as possible and final approval. Accordingly the current garage is still incomplete.

Drafting and Submission of Plans

There were some further delays in the final submission of the plans by Mr de Wet due to certain revisions and the request for him to incorporate a double carport in the original plan.

We were informed by Mr de Wet that according to the Town Planner Mr Euvrad we will first be liable for an admin penalty fee for building without prior approval.

Mr de Wet also informed us later on that he is no longer able to draw up plans and also to submit them for approval as it takes up too much of his time. This also caused a further delay.

We were given the name of Marlene Stanley recently to assist us now in finally submitting the required building plans for the garage and adjoining roof.

Points to Consider in Determining the Admin Penalty Fee:

My mom Mrs Hermine Snyders is 88 years old (co-owner) and this whole experience is affecting her health and she wishes we could solve this problem as soon as possible - she also feels very

guilty and would like to know asap what the admin fine will be so she can pay it from her pension money/savings.

It was never our intention to build without any prior approval but happened through a series of circumstances (theft and break ins on property etc.). We were also told and guided by several people "as long as your plans are drawn up and or submitted you can start building").

The stoep/braai roof was put up much later on after a severe storm tore our canvas roof we had on previously - the sides are open with see-through canvas drops. Part of the material like the wood and roof sheets was given to me by one of my clients neighbours who was renovating at the time and some bought via gumtree.

The garage and enclosed stoep area greatly contributes to safety and adds to the value of the property too. (have had no more theft/burglary cases since the building)

The property has been in the Snyders/Van Druten families since the early 1950's and we have seen a lot of building and developments around us since then - one which was of our direct neighbours (previous owners) across us in 18th ave also having a garage (double with a 1 bedroom and toilet/shower) built on the boundary line and as such we thought we should also be able or be allowed to build a single garage direct opposite the neighbours one. (in fact we thought a precedent has been set for properties in our area by the building of a double garage on the boundary line)

We are in very good standing with all our immediate neighbours and everyone voiced their approval and indicated that what was built was a big improvement.

Lastly we also have no previous building transgressions, prior to this one, at this address.

We trust that the above meets your understanding and approval.

Adrian Snyders
Judy Snyders
Hermine Snyders

148 Kommetjie rd
Fish Hoek

Costing of building project: (15 April 2017)**Single garage:**

Labour:	R 24572
Material:	R 40600
Sales hire:	R 1515
Garage door:	R 2600
Plans: Hannes Precision Plans	R 2630
Rubble removal:	R 1500
Sub-total	R 73475

Stoep:

Material:	R 9000
Braai: (including labour)	R 5000
Sub-total	R 14000
Total	R 73475
	R 14000
	R 87475

Footnote:

Due to the fact that the building took place 2 years ago, the above costing is to the best of my knowledge as some invoices either lost or misplaced. Some material like the polycarb roof sheets and some beams bought via gumtree as new from end of building projects.

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GARAGE PROJECT : 168 Kowwajit Job FISH HOLE		Quantity	Actual/Estimate	Comments	Refund JP
LABOUR					
Charles - Builder			24,572		
Digging foundation			1,000		
Feeding concrete (in foundation)			1,500		
Boxing building			2,000		
Compacting & slab			1,300		
Brick work			7,000		
Plastering			5,952	21.6(9x2.4)x80/43.2(18x2.4)x80/9.6(6x2.4)	
Roofing (beams, sheathing, waterproofing, gutters etc)			4,000	14.5(14.4)x2.4(14.4)x2.4	
Screeding			1,610	27.14m ² REQ per sq. M	
Arnold - Electrician			2,000		
Install power plug & fluorescent light			2,000	Estimate	
MATERIAL					
Builders Warehouse			18,000		
Master Bricks	3500		6,100		
Cement	30		2,100		
Brickforce	5		194		
Damp Course	150x40x175		72		
Wire mesh	6x2.4		396		
Malmesbury bullocks sand	5		2,318		
Stone	3		1,445		
Pallets deposit			1,120	Refund to be obtained on returning pallets	
Delivery charge			900		
Pensioners discount - JP			1,177		
Additional Materials					
Builders Warehouse			2,618		
Hurricane Clips	1 packet		1,000	Estimate	
Nails	4 inch - 1 packet				
Cement nails	1 packet				
Plaster sand	4 cu metres		1,339	Refund JP	1,339
Damp course (exchange)	225x40x175		52	Refund JP	52
Plastic (black)	9m x 3m		247	Refund JP	247
Misc Hardware					
Batons	2.7m x 6		4,100		
Lintels, cement (x10) etc			130	Refund JP	130
Strapping			1,675		
Cement & Nail Wire			350		
			1,825		
Other					
Sales here plus petrol (R50)			1515		
Scaffolding			615	Compactor & Mixer - Refund JP	665
Scaffolding			160		
Scaffolding			300		
Garage Door					
Door			2,600		
Door			2,300		
Door installation			300	Estimate	
Side door/window					
Door			3,565		
Door			1,500	Advise to get quotes	
Door frame			628	Refund JP	628
Window			1,439	Refund JP	1,439
Roofing					
IBR Sheets & flashing & screws			12,954		
Flashing - L shaped			2,187	Refund JP	7,187
Beams	22		4,017	Refund JP	4,017
Waterproofing					
Gutters			1,000	Estimate	
Downpipe					
Pipe holder					
Facia Board			750	Refund JP	750
Other					
Plan - Harnes			5,880		
Plan - Harnes			2,630		
Plan - Harnes					
Reuben - removal of existing garage & timber			1,790		
Removal of rubbish			1,500		
JP Petrol etc					425
			77,824		17,000

1400

$$79224 - 17000 = 62224$$

Stoep Cover Roof Project – 148 Kommetjie Road Fish Hoek

Cost

Polycarb roof sheets incl. rooftop screws etc:

R3 500

Labour(Installation of roof sheets):

R2 000

Roof beam installation:

FREE (brother in law)

Hangers and nails:

R700

Total:**R6 200**

11

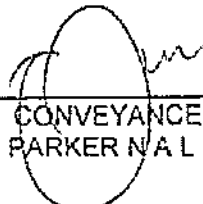
STBB SMITH TABATA BUCHANAN BOYES
26 First Avenue
Fish Hoek
7975

Prepared by me

662

FEE

R. 340,00


CONVEYANCER
PARKER NALD

T48669/08

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

ELÉNE GROENEWALD

appeared before me, REGISTRAR OF DEEDS at Cape Town, the said appearer
being duly authorised thereto by a Power of Attorney which said Power of Attorney
was signed at Fish Hoek on 19 March 2008 granted to him by

CHARLENE SHIRLEY VAN DRUTEN
Identity Number 400320 0037 08 3
Unmarried

FOR FURTHER ENDORSEMENTS SEE
VIR VERDERE ENDOSSEMENTE SIE.

Pg 5



And the appearer declared that his said principal had, on 15 November 2007, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

1. **ADRIAAN JAKOBUS SNYDERS**
Identity Number 660505 5216 08 9
Married out of community of property
2. **JUDY SNYDERS**
Identity Number 730804 0050 08 0
Married out of community of property
3. **HERMINE MARTHIE SNYDERS**
Identity Number 310411 0071 08 8
Unmarried

their Heirs, Executors, Administrators or Assigns, In full and free property

ONE HALF (1/2) SHARE OF REMAINDER ERF 9151 FISH HOEK
IN THE CITY OF CAPE TOWN
CAPE DIVISION, WESTERN CAPE PROVINCE;

IN EXTENT 812 (EIGHT HUNDRED AND TWELVE) SQUARE METRES

FIRST TRANSFERRED by Deed of Transfer No. T20119 dated 21st
November 1951 with Diagram No. ~~6595/50~~, relating thereto and HELD BY
Deed of Transfer No. T74865/2007. 6595/1950

- A. SUBJECT to the conditions referred to in Certificate of Registered Title No. 5147 dated 5th June 1918 and to the conditions contained in Annexure "X" to Deed of Transfer No. 4015 dated 28th May 1923, reading as follows:

- (a) Each Purchaser or his successor in title of a lot in the Visch Hoek Estate (present and future) shall be entitled to an equal share in the water and water rights of the Estate including that derived from the source known as the "Klein Rivier" more fully set out in the Deed of Servitude entered into on the 8th June 1901 between G C van Blerk and Hester Sophia de Kock, and registered in the Office of the Registrar of Deeds at Cape Town, on the 26th June 1901 (with Transfer No. 9186, 1st November 1897), but not including the Schilpads Vlei and Kloof water or any water arising or found on any land that may be sold by the Estate at any time situate within the area shown on the General Plan No. V27 and V27A filed in the Office of the Surveyor General at Cape Town. The rights hereby granted shall in no way interfere with the right to water conferred on Nieltje Johanna de Villiers and Jacoba Petronella de Villiers under the Will and Codicils of the late Hester Sophia de Villiers, in respect of the properties described therein as "Good Hope" and Bellview".
- (b) The Transferor Estate shall bring the water derived from the said source known as the "Klein Rivier" by means of a pipe line to a properly constructed reservoir on Lot 1639 for the use and benefit of Lot holders subject to the diversion of the quantity for the owners of the said properties "Good Hope" and Bellview" in terms of the Will and Codicils above referred to.

- (c) No responsibility for maintenance of the pipe line or reservoir shall rest on the said Estate after the construction of the reservoir which shall be constructed on the aforesaid lot according to the design and under the supervision of Mr Thomas Stewart, C.E., in such place and manner as to render the water readily accessible to Lot holders.
- (d) Lot holders shall be entitled through a Committee or Association of their number to access to and along the pipe line, reservoir and intake dam for the purpose of maintenance, and repairs should they or any of them at any time desire to effect such - no obligation to do so, being, however, cast upon them.
- (e) Purchasers shall be obliged to set back any building or buildings to a line of building frontage which shall be not less than 3,15 metres from the boundary line between the road and the property in each Street, so as to form a forecourt or garden in front of any building, provided, that within such forecourt the Purchaser may, if he so desires, erect or construct a stoep, verandah or balcony.
- (f)
- (g) No erection of wood or iron shall be permitted without the special written sanction of the Executors of Local Governing Body, and then only subject to such conditions as may be imposed by the Executors or Local Governing Body.
- (g) The passages designed as such on the aforesaid General Plans marked V27 and V27A shall be common to the Owners of Lots adjacent to and abutting upon them, and may be closed with the mutual consent of the owners of abutting lots, with the exception of
 - (1) Passages which extend from one road to another road
 - (2) The passage between Lots 1645 and 1647, and
 - (3) Right of way laid down on the Sale Plan along the Southern Boundary of reserves numbered 1653, 1660, 1662. All passages shall be kept in good order at the joint expense of the Owners of the abutting Lots (each contributing or paying an equal share) and may be used for underground drainage. The right of way may also be used for underground drainage.
- (i) No noisome or injurious or objectionable trade or business of any kind shall be carried on or conducted on any part of the said Lot or Lots.
- (j) That the purchaser of each Lot shall be obliged to allow the drainage and sewerage of any other Lot or Lots to be conveyed over such Lot is deemed necessary by the Local Governing Body at any time and in such manner and in such position as may from time to time be reasonably required by the Local Governing Body at any time.
- (k) The lots number 2 to 13, 100 to 107, 110 to 116, 1604 to 1637, 1884 to 1921, 2156 to 2188 shall be subject to the special condition that they shall not be utilised for other than residential purposes.
- (l) Wherever the term Purchaser is used, in these conditions, it shall be deemed to include future Owners.

WHEREFORE the said Appearer, renouncing all right and title which the said

CHARLENE SHIRLEY VAN DRUTEN, Widow

heretofore had to the premises, did in consequence also acknowledge her to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

1. ADRIAAN JAKOBUS SNYDERS, Married as aforesaid
2. JUDY SNYDERS, Married as aforesaid
3. HERMINE MARTHIE SNYDERS, Married as aforesaid

their Heirs, Executors, Administrators or Assigns, now are and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R499 000,00 (FOUR HUNDRED AND NINETY NINE THOUSAND RAND).

IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at Cape Town on

2008

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[Signature]

q.q.

In my presence

[Signature]

REGISTRAR OF DEEDS