



## REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70454979				
CASE OFFICER	A. ESAU				
CASE OFFICER PHONE NO	021 444 4627				
DISTRICT	HELDERBERG				
REPORT DATE	JUNE 2019				
INTERVIEW REQUESTED	APPLICANT	YES		NO	X
	OBJECTOR(S)				X

### ITEM NO **MPTSE26/06 /19**

#### APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 15484, 2 PAREL VALLEI HEIGHTS, HELDERANT, SOMERSET WEST

#### 1 EXECUTIVE SUMMARY

Property description	Erf 15484, Somerset West
Property address	2 Parel Vallei Heights
Site extent	1208.21m <sup>2</sup>
Current zoning	Single Residential 1 : (SR1)
Current land use	Residential
Overlay zone applicable	None

Submission date	29 April 2019
Subject to PHRA / SAHRA	n/a
Any unauthorised land use / building work?	Yes, retaining wall encroaching the 3m common building lines adjacent to erf 18477.
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?	Yes, the Building inspector served the applicant with a notice for unauthorised building work on 21 January 2019 for the unlawful retaining wall constructed. On 29 April 2019, the applicant submitted the Administrative penalty application for assessment and decision.
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## 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

## 3 BACKGROUND / SITE HISTORY

The subject property is located at 2 Parel Vallei Heights, Somerset West. The property falls within a residential development, namely Parel Vallei Heights consisting of 14 residential units. (See Annexure A). The property is currently zoned Single Residential 1, measuring 1208.21m<sup>2</sup> in extent.

The property is located in the vicinity of properties all comprising of a similar zoning of free standing single residential dwelling, including a number of group housing developments.

The applicant purchased the vacant parcel of land with the intention of constructing his own residential dwelling. During construction phase, the condition of the erf relating to the slope/gradient became a challenge and required a number of retaining walls to be constructed in order to erect the boundary walls and create development platforms. The retaining wall constructed on the southernmost boundary which also abuts erf 7081 encroaches the 3m common building line. This construction was done without the necessary town planning approval.

It is to be noted that the Home Owners Association has not endorsed the building plans as there is a dispute relating to the construction and extent of the unlawful retaining wall. A formal notice has been served to the applicant by the City's Building Inspector to obtain approval for the unlawful building work pertaining to the retaining wall constructed.

The regularisation of the unlawful structure (retaining wall) will be dealt with under delegated authority, once the determination of the administrative penalty has been concluded.

## 4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation is attached and may be summarized as follows:

- The retaining walls were required to do proper landscaping and adequate support for the boundary walls;
- The walls are not considered major, however, an engineer was appointed for advice and designs;
- Necessary measures were taken to ensure the walls were inspected and constructed according to the advice of the professional and proper drainage was done

## 5 ASSESSMENT OF APPLICATION

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5.1 The unauthorized building work is in contravention of the Development Management Scheme.

- l. Contravention of the 3m common building line adjacent to erf 7081 to 0m to accommodate the unlawful retaining wall

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.

### **Administrative Penalty: Calculation**

5.2.1 Unauthorised building work

Value of building cost (retaining wall) : R1 970

Area of contravention (length in meters) : 3m

Calculation : 3m x R1 970

**Total Cost** : R5 910

5.3 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**

The structure in question is a retaining wall which encroaches the prescribed common building line according to the DMS, therefore a permanent departure is needed. There is no evidence to suggest that the unlawful structure poses any safety and health hazards.

The unlawful structure can be considered minor in extent in terms of size and use as it is 3m in length and approximately 1.3m in height. It is a common structure associated with residential dwellings that is characterized by a fairly steep gradient.

#### **b) The conduct of the person involved in the contravention**

The motivation provided clearly indicates that the owner is responsible for the unlawful construction of the retaining wall.

#### **c) Whether the unlawful conduct was stopped**

Yes, the retaining wall has been constructed.

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

There is no evidence that the owner previously contravened the Municipal Planning By-Law, However, the owner was served a notice by the Building Inspector for unlawfully erecting the retaining wall.

- 5.4 In view of the aforementioned considerations in terms of section 129(8) and the recent amendments to section 129 this department recommends that an amount of **R1000** administrative penalty be applicable.

## 6 REASONS FOR DECISION

Reasons for the recommended decision may be summarized as follows:

- The current owner is responsible for the unauthorized building work.
- The owner has taken the necessary steps to regularize the unauthorized building work after he was served a notice for the unlawful retaining structure.
- The extent of the unlawful work is minimal in extent and the gravity of the contravention can be considered as minimal.
- The applicant did not take into consideration the concerns raised by the Home Owners Association and proceeded to construct the retaining wall.

## 7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R1000** for the unauthorized building work (retaining wall) be determined in terms of section 98 (b) of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 15484, 2 Parel Valle Heights, Somerset West, Plan Number 05/2019 – Dated February 2019.

8. ANNEXURES

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Annexure A Locality Plan  
Annexure B Building Plan  
Annexure C Applicant's Motivation  
Annexure D Notice Served : 21 January 2019

*Mans*

**Section Head : Land Use  
Management**

Comment

Name Jeanine Williams  
Tel no 021 444 4623  
Date 7 June 2019.

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*[Signature]*

**District Manager**

Name DAAN VISSER  
Tel no 021 444 4618  
Date 6/7/2019.

Comment

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## Overview

Erf: 15484

District: HELDERBERG

Allotment: SOMERSET WEST

Suburb: HELDERRANT

Ward: 84

Sub Council: Subcouncil 24



1:1 247

Notices Served

Support  
ReceivedPetition  
SignatoryObjections  
Received

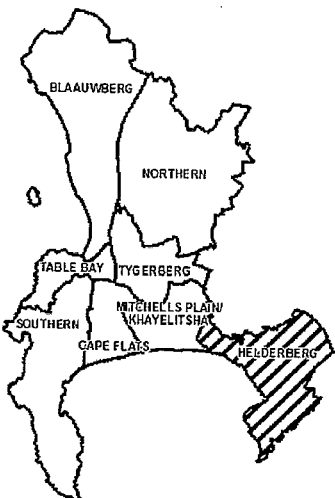
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Date:

06 June 2019

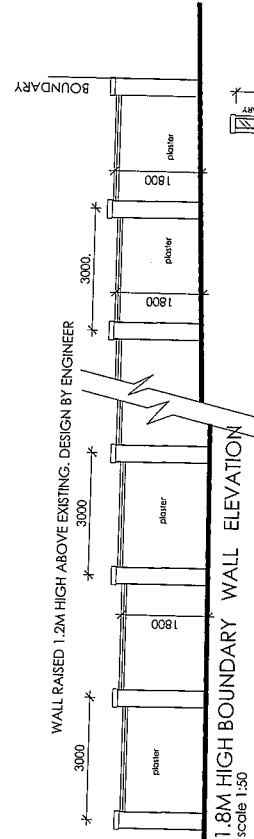
CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

Makisa progress nesisibho. Together

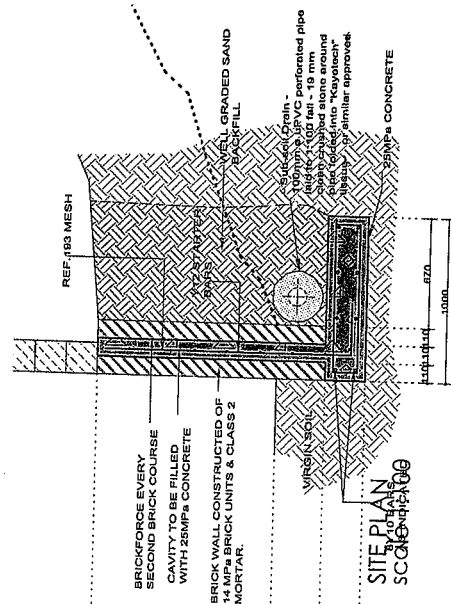


**GENERAL NOTES:**

- \* All building work and drainage to be in strict accordance with SANS 10400 requirements.
- \* All dimensions and levels to be checked on site before commencement of works.
- \* Overall dimensions to take precedence.



SECTION THRU  
BOUNDARY WALL  
Scale 1:50



## ENGINEER DETAIL THROUGH BOUNDARY WALL

**To whom it may concern: Case ID 70451079**

With letter I would like to motivate the reasons why it was necessary for us to use some retaining structures and walls on our newly build Home.

We had quite a slope on the property and as we progressed with the building process it became more and more evident that to do proper boundary walls and landscaped gardens, we would have to incorporate some retaining walls.

They would not be major walls, but we asked our appointed engineers to give his advice and typical design for such walls.

All the works on the various garden retainers and some boundary walls was strictly done in accordance with the guidance of our appointed engineer and inspected and approved accordingly.

Proper subsoil drains was also put in place by my approved plumber, as per and according to engineers details.

We are applying for a permanent departure for internal retaining walls over the building lines  
Hope this letter finds you well.

Kind regards



**Junita Kruger**  
Clinical Product Classification Specialist  
MEDICLINIC INTERNATIONAL

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City of Cape Town  
Helderberg Administration  
Somerset West

**TO WHOM IT MAY CONCERN : CASE ID – 70454979** - Admin penalty application

This motivation letter serves to confirm the amendment requested on 25<sup>th</sup> April 2019 and the following is as per amendment letter

- 1) The nature of the contravention is a retaining wall 1.2m – 1.3m high over the internal building line. 3m in length
- 2) The extent of the contravention retaining walls 3m long over the 3m rear building line.
- 3) The duration is 2 months
- 4) The person involved is the owner who is also the contractor.
- 5) The contravention was stopped 2 months ago.
- 6) The owner/contractor has no previous contraventions of this by law.

Regards



Junifa Kruger



Enquiries: S.Peters

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Tel: 021 444 4637/ 084 222 1425

Reference: 70442009

PERSON/REGISTERED OWNER OF PROPERTY	Junita Kruger		
ADDRESS	147 Parel Valley Street Somerset West 7130		
ID NO/REG NR	7305130068089	DATE	21 January 2019

## NOTICE TO OBTAIN WRITTEN APPROVAL FOR THE UNAUTHORISED BUILDING WORK

An inspection conducted on 21 January 2019 revealed that you are in the process / have erected a building on Erf No. 15484 at 147 PAREL VALLEI, 2 ROAD HELDERRANT. The work being retainer wall on southern erf boundary in the area of the City of Cape Town (being the local authority in question) which is in contravention of Section 4(1) read with Section 4(4) of the National Building Regulations and Building Standards Act No 103 of 1977 (the Act), as no prior written approval for the erection of such building has been obtained from the said local authority.

In terms of Section 4(1) of the Act, no person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this said Act.

In terms of Section 4(4) of the Act, any person erecting any building in contravention of the provisions of Section 4(1) shall be guilty of an offence.

Acting under delegated powers, I hereby order you in terms of Regulation A25 (10) of the National Building Regulations promulgated under Section 17(1) of the said Act, to obtain written approval for the said unauthorised building work, **by submitting and having building plans approved within 60 days** from the date the recipient signed for this notice.

FAILURE TO COMPLY WITH THIS NOTICE CONSTITUTES A CRIMINAL OFFENCE IN TERMS OF REGULATION A25(11) OF THE NATIONAL BUILDING REGULATIONS. The City of Cape Town may, without further notice, institute legal proceedings against you.

The submission of building plans in compliance with this notice does not place any obligation on the City of Cape Town to approve such building plans for the building work set out above. Should written approval not be granted, you will be required to either rectify or demolish the abovementioned unauthorised building work.

SIGNED: (Delegated Official)			ADDRESS (Where served)	147 PAREL VALLEY ROAD
SERVED:	DATE	22.01.2019	TIME:	
SERVER:	NAME	S. PETERS	SIGN	
RECIPIENT:	NAME	G. Kruger	SIGN	