



REPORT TO: **MUNICIPAL PLANNING TRIBUNAL**

ITEM NO **MPTNE08/09/19**

WARD 105: APPLICATION FOR PERMANENT DEPARTURES IN RESPECT OF PORTION 15 OF FARM 725, 66 LUCULLUS ROAD, PAARL FARMS

Case ID	70449414	
Case Officer	Roedolf Snyman	
Case Officer phone number	021 444 1046	
District	Northern	
Ward	105	
Ward Councillor	Cllr R. Beneke	
Report date	22 August 2019	
Interview requested	<i>To be completed by MPT support office</i>	
	Applicant	
	Objector(s)	

1. EXECUTIVE SUMMARY

Property description	Portion 15 of Farm 725, Paarl Farms				
Property address	66 Lucullus Road, Paarl Farms (north of Joostenberg Vlakte)				
Application components / description	Permanent Departures in terms of Section 42(b) of the MPBL: <ul style="list-style-type: none">To relax the common building line (adjacent to Farms 725/13 & 725/9) from 15.0m to 0.0m (north) and 7.2m (east) respectively, to accommodate <u>an existing carport</u>.To relax the common building line (adjacent to Farm 725/13) from 15.0m to 11.0m to accommodate an existing storage shed for the storage of Agricultural vehicles.				
Site extent	40 690m ²				
Current zoning	Agricultural Zoning (AG)				
Current land use	Residential				
Overlay zone applicable	None				
PHRA or SAHRA heritage	None				
Public participation outcome summary	An objection was lodged by the Joostenberg Vlakte Community Forum.				
Recommended decision					
Approval	✓	Refusal		Approval in part & Refusal in part	

2. BACKGROUND FACTS

- The previous owners, Shamrock Trust, decided to sell the property after the passing of the primary resident of the property;
- Prior to selling the property to Botha Lloyd Properties CC in May 2019, an administrative penalty amount of R13 500 was paid by the previous owners for several unauthorised structures on the property, relating to a previous unlawful transport business;
- The current owner now attempts to legalise the unlawful structures via the proposed permanent departure application and subsequent (future) building plan application;
- It is currently proposed to use existing structures in line with the permitted uses of the Agricultural zone.

3. SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation may be summarized as follows (see **Annexure C**):

- Previous trustee/occupant passed away, hence the property had to be sold;
- Current owner wishes to regularise unlawful structures, in line with the zoning of the property;
- The area is earmarked for Agricultural Areas of Significant Value, as per the Norther District Plan;
- Over the years, small-scale livestock farming and rural living took place;
- 15m building lines apply given the size of the property;
- The proposed structures on the property entails the following:
 - proposed, braai room, tv room, gym, family room, hobby room, scullery etc.
 - the following uses/extensions are proposed, as per the site layout plan:

(A) Main House	611.51 m ²
(B) Labourers Cottage	42.8 m ²
(C) & (D) Garages	98 m ²
(E) Second Dwelling	120 m ²
(G) Shed (Agric Equipment)	26.3 m ²
(H) Storage	376.3 m ²
(I) Storage (Agric Vehicles)	427 m ²
(J) Carport	172.64m ²
TOTAL FLOOR AREA	1345 m²

- Proposed storage areas include the storage of animal feed, horse tack, feeding systems, agricultural machinery/vehicles, tool and mechanical equipment for the repairing of vehicles/machinery, pesticides for vegetation and livestock;
- Only the proposed carport and Storage Building I (storage of agricultural vehicles/machinery) encroaches the 15.0m common building line;
- Negligible impact is envisaged as a result of the above structures, given no complaints were raised within the 15 years of existence;
- No additional traffic impact is envisaged;
- The buildings have been clustered to the north-eastern corner of the property, leaving adequate space for farming;
- No restrictive title deed conditions exist.

4. PUBLIC PARTICIPATION

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		Applicable	Dates / Comments
Advertising	Notice in the media (s81)	x	
	Notice to a person (s82)	✓	Closing date: 27 May 2019
	Notice to Community organization (s83)	✓	Closing date: 27 May 2019
	Notice to Ward Councillor (s83)	✓	Closing date: 27 May 2019
	Notice of no objection (s84)	x	
	Notice to Provincial Government (s86)	x	
	Notice to an Organ of State (s87)	x	
	Public meeting	x	
	On-site display	x	
Outcome	Objections	✓	1 objection was lodged on 27 May 2019 by the Joostenberg Vlakte Community Forum (JVCF).
	Objection petition	x	
	Support / No objection	x	
	Comments	x	
	Ward Councillor response	x	No response received from the Ward Cllr within the prescribed time period.

4.1. Summary of objections / comments/ support received

The objection received may be summarised as follows (see **Annexure D**):

- One cannot ignore the previous industrial operation (truck business);
- Zoning rights cannot be ignored;
- Agricultural/Rural zonings should be respected;
- Due to the position of the warehouses (screened from street), the JVCF were not aware of the contravention;
- Estate agents have in the past marketed the area for commercial/industrial;
- It is stated in the administrative penalty report that there is little to no agricultural activity on the property. The current application and uses are bending the truth;
- Illegal businesses in the area continue as normal, despite previous complaints.

4.2 Summary of applicant's response to public participation

The applicant's response to objections received (see **Annexure E**) may be summarised as follows:

- Previous owner admitted guilt by paying an administrative penalty;
- Previous unlawful truck business has also ceased;
- The current application illustrates the current uses on the property, after the unlawful truck business has ceased;

- The City's Land Use Enforcement Department is investigating all land use complaints.

5. BACKGROUND TO PROPOSAL

5.1. Description of the area / surrounding land uses

In terms of the Northern District Plan, the area is earmarked as 'agricultural areas of significant value' ("these areas have significant value given their existing or potential emerging use").

5.2. Property description

The subject property has an extent of 40 690 m² and contains a dwelling house and several outbuildings. As per the applicant's motivation, these outbuildings will be used as agricultural buildings (storage of animal feed, horse tack, feeding systems, agricultural machinery/vehicles, tool and mechanical equipment for the repairing of vehicles/machinery, pesticides for vegetation and livestock).

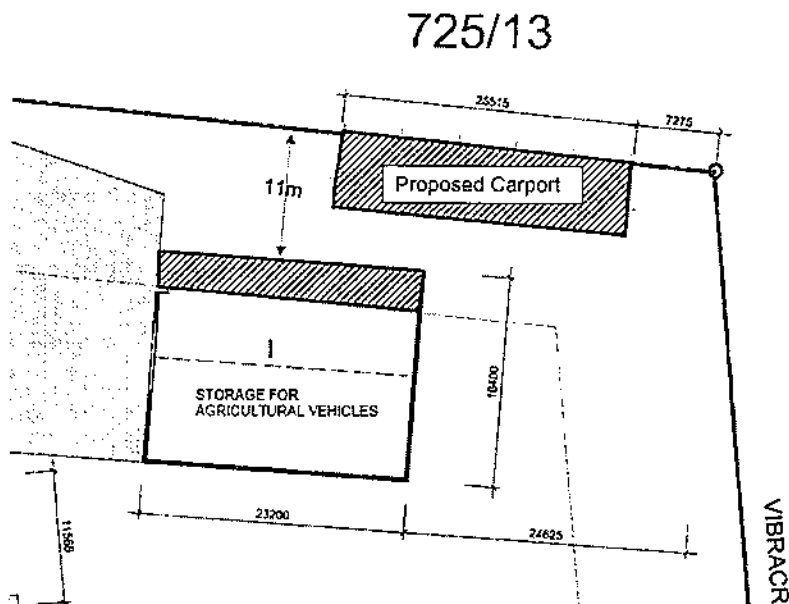
The buildings have all been clustered to the north-eastern corner of the property, leaving adequate available space for farming;

5.3. Proposed development / land use

The proposed permanent departure application includes the following:

- Relaxation of the common building line (adjacent to Farm 725/13) from 15.0m to 11.0m to accommodate an existing storage shed for the storage of Agricultural vehicles;
- Relaxation of the common building line (adjacent to Farms 725/13 & 725/9) from 15.0m to 0.0m (north) and 7.2m (east) respectively, to accommodate an existing carport.

as illustrated in the figure below (departures have been hatched):



6. PROPOSAL ASSESSMENT

6.1.1 Consideration of criteria in terms of Section 99(1)

Although application was made by a previous owner, the latest owner is still regarded as the applicant in terms of the Bylaw, being the successor in title:

41 Continuation of application by new owner

If land that is the subject of an application in terms of this By-Law is transferred to a new owner, the new owner may continue with the application as the successor-in-title to the previous owner and the new owner will be regarded the applicant for the purposes of this By-Law.

The Department is further satisfied that the decision making criteria in Section 99(1) has been complied with, and no basis for refusal exists.

6.1.2 Consideration of criteria in terms of Section 99(2) & (3)

In terms Section 99(2) of the Municipal Planning Bylaw, the decision maker must consider the all relevant considerations when deciding to approve or refuse the application. Further, the considerations in terms of Section 99(3) of the Bylaw must be considered to determine the desirability of the application.

These considerations are discussed below:

(a) Impact on existing rights, including impact on safety, health and wellbeing

The Joostenberg Vlake Community Forum is more concerned about the unlawful business operations that continue to operate in the area, and also the possibility that the proposed structures might not be used for agriculture activities. The JVCF has been in contact with the City's Enforcement Department in many occasions before, who has been investigating the reported unlawful uses in the area.

The proposed building line encroachments/structures aren't visible from the abutting street, due to it being screened behind existing structures, trees and being set back at least 180m away from the street boundary. It also does not impact on any neighbours, due to excessive open spaces between the proposed structures and structures on adjoining farms. The openness of the carport, also mitigates any potential visual impact. No objections were lodged from any abutting property owner.

Although farming activities on the site might be limited to non-existent, adequate space on the property exists to accommodate viable farming activities on the property. The proposed agricultural buildings will complement such farming activities, hence supported.

(b) Compatibility with surrounding uses

The proposed structures, intended to be used as agricultural buildings, are compatible with similar structures/uses in the area.

6.1.4 **Conclusion**

This office is satisfied that the decision making criteria in Sections 99(1), (2) and (3) have been complied with, **hence supported**.

7. **REASONS FOR DECISION**

7.1. Reasons for the recommended decision for **approval** relating to the permanent departures may be summarised as follows:

- 7.1.1 The proposed building line encroachments/structures aren't visible from the abutting street, due to it being screened behind existing structures, trees and being set back at least 180m away from the street boundary;
- 7.1.2 It also does not impact on any neighbours, due to excessive open spaces between the proposed structures and structures on adjoining farms. The openness of the carport, also mitigates any potential visual impact. No objections were lodged from any abutting property owner;
- 7.1.3 The proposed structures, intended to be used as agricultural buildings, are compatible with similar structures/uses in the area.

8. **RECOMMENDATION**

In view of the above, it is recommended that:

- 8.1. The application for **Permanent Departure** to permit the relaxation of the following building lines in respect of Portion 15 of Farm 725, Paarl Farms:
 - Relaxation of the common building line (adjacent to Farm 725/13) from 15.0m to 11.0m to accommodate an existing storage shed for the storage of Agricultural vehicles;
 - Relaxation of the common building line (adjacent to Farms 725/13 & 725/9) from 15.0m to 0.0m (north) and 7.2m (east) respectively, to accommodate an existing carport.

be approved in terms of Section 98 (b) of the Municipal Planning By-law, 2015 in accordance with building plan no 17 084 001 – 17 084 004, attached as **Annexure B**.

ANNEXURES

Annexure A	Locality Map
Annexure B	Proposed building plan
Annexure C	Applicant's motivation
Annexure D	Copy of objection
Annexure E	Applicant's response to objection

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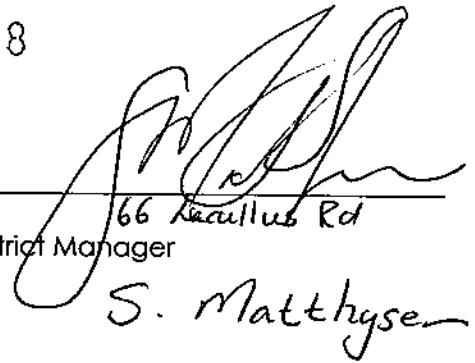
Section Head

Name: Sean van Rensburg

Tel no: 021 444 1044

Date: 22-8-2019

District Manager


66 Kacullus Rd
S. Matthysen

021 444 1061

23 August 2019

Annexure

A

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

ANNEXURE :



Overview

Erf: 725-15

District: NORTHERN

Allotment: PAARL FARMS

Suburb: PAARL FARMS

Ward: 105

Sub Council: Subcouncil 7



1:12 798

Notices Served



Support
Received



Petition
Signatory



Objections
Received



Generated by:

Date: Thursday, 22 August 2019

File Reference:



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

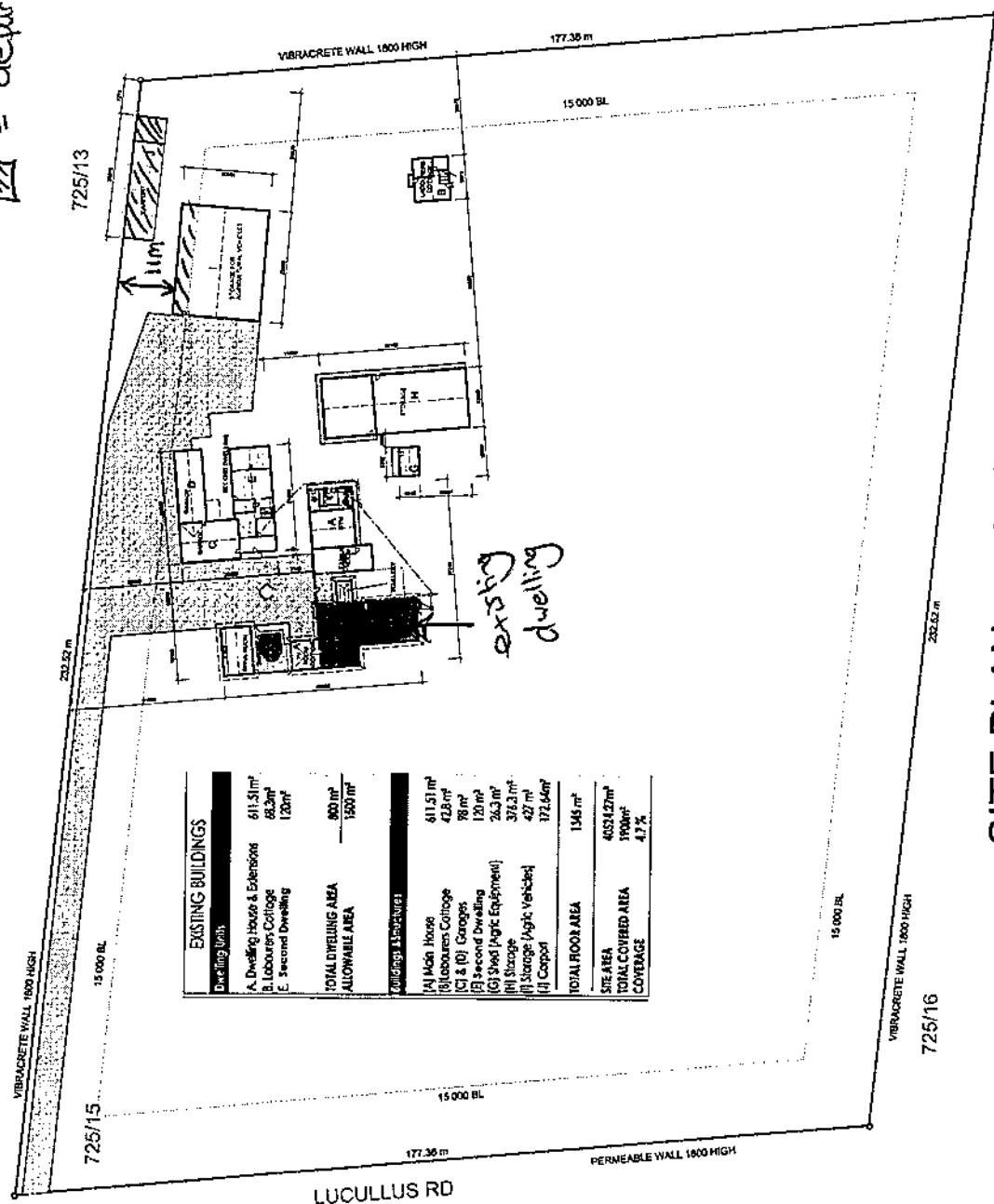
Making progress possible. Together.

Annexure

B

departures

402

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SITE PLAN scale 1:500


725/16

ama
architecture
Alison Forsythe (416) 575-0233

PROPOSED ADDITIONS
HOUSE BRANDT
ERF: P25415
1008 TENBERG AVE

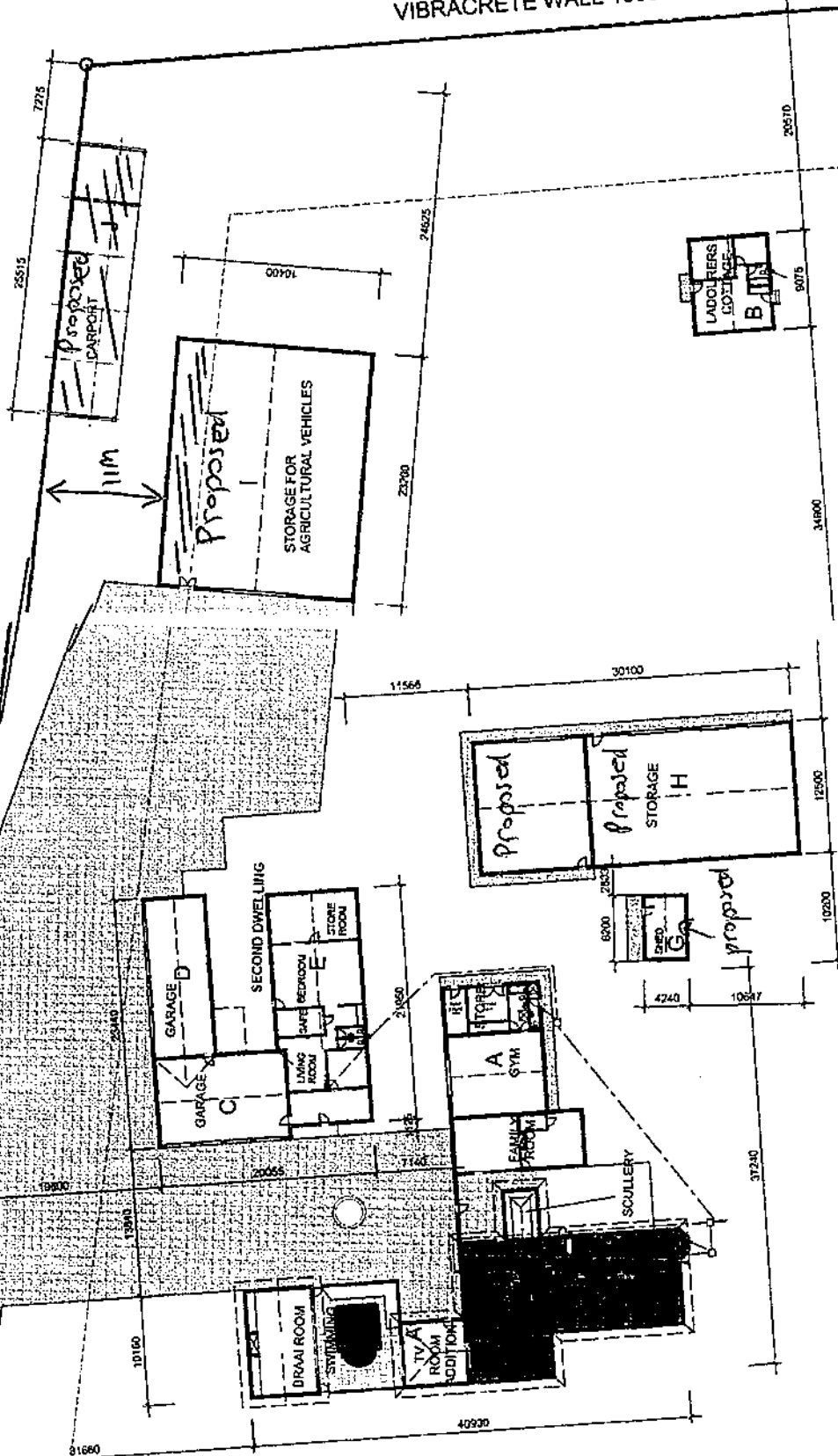
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725/13

 = departure

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VIBRACRETE WALL 1800 HIGH



PROPOSED ADDITIONS
HOUSE BRANDT
JOOSTENBERGLANKE

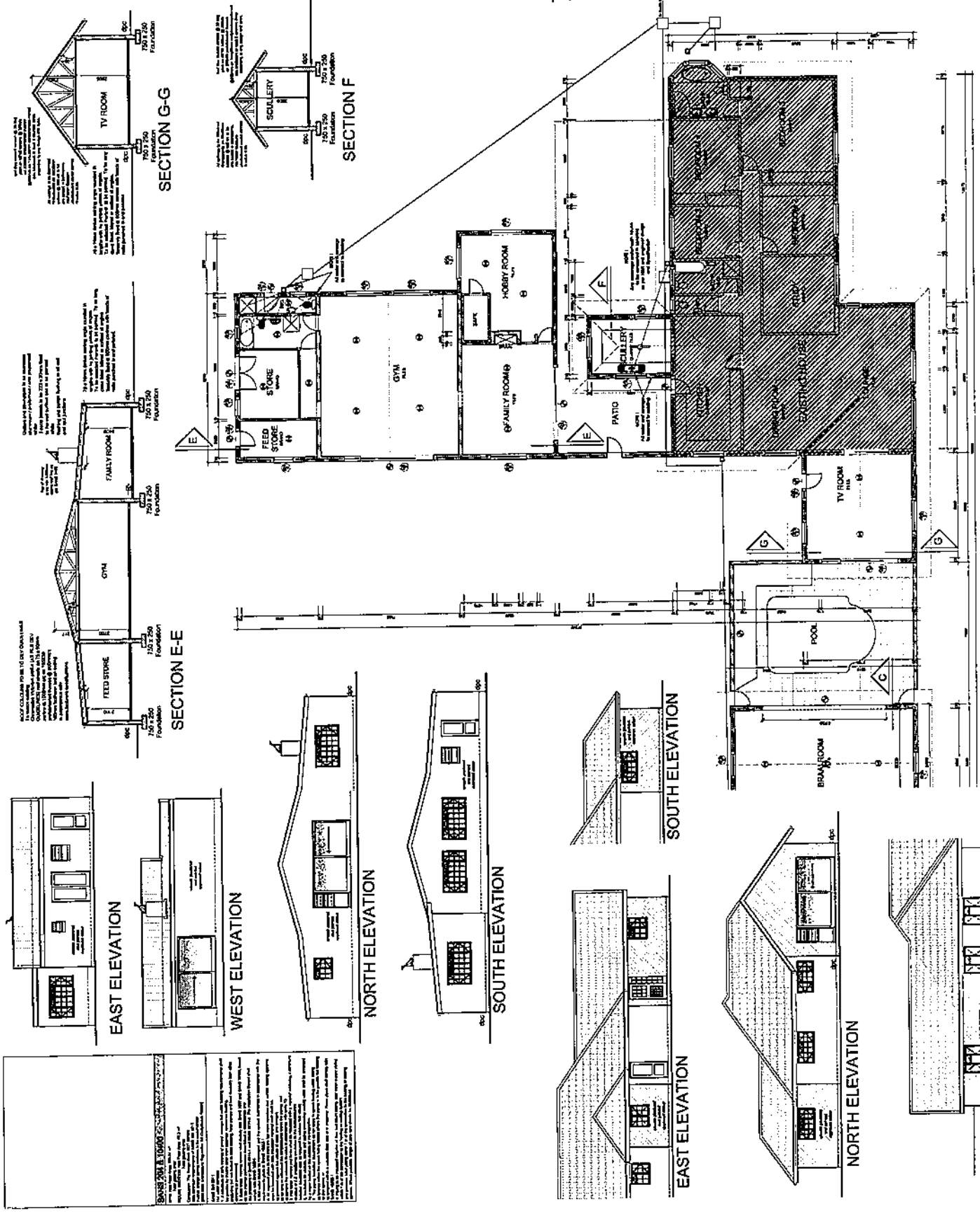
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SECTION G-G

SECTION F

SECTION E-E

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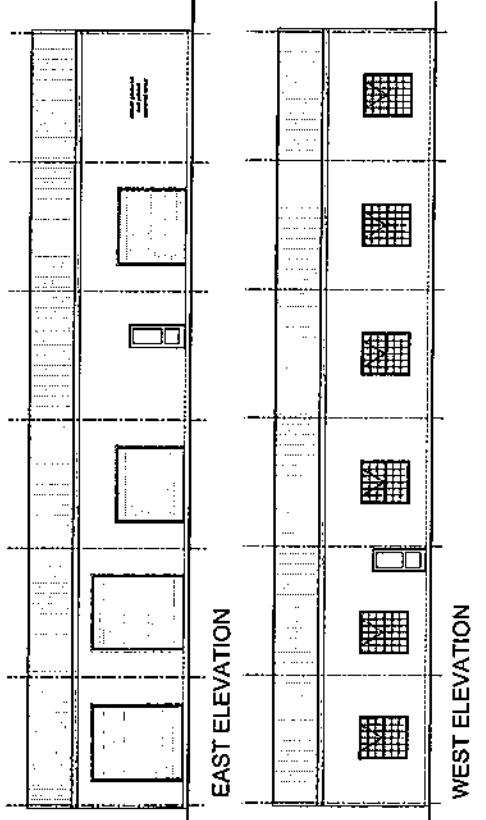
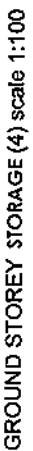
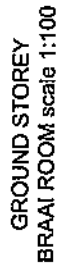
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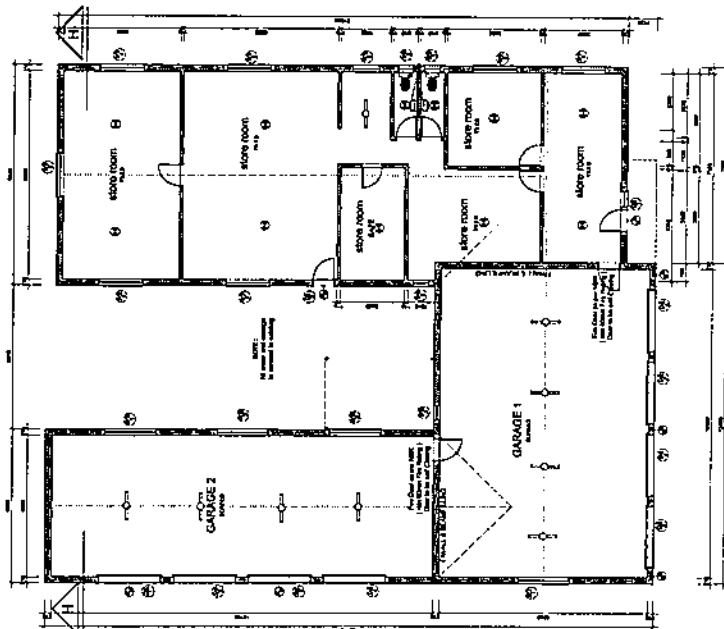
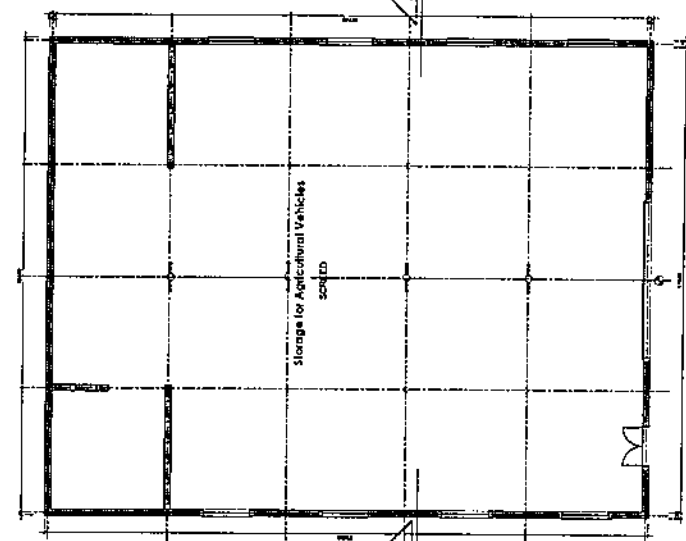
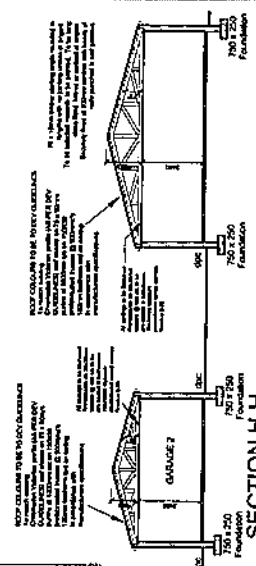
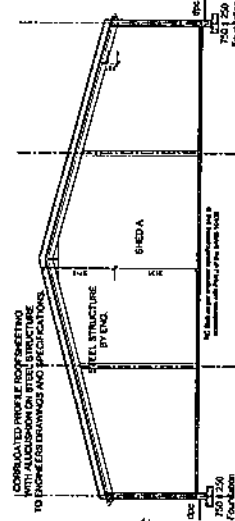
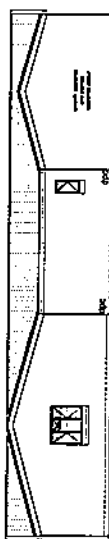
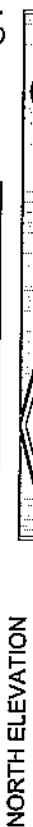
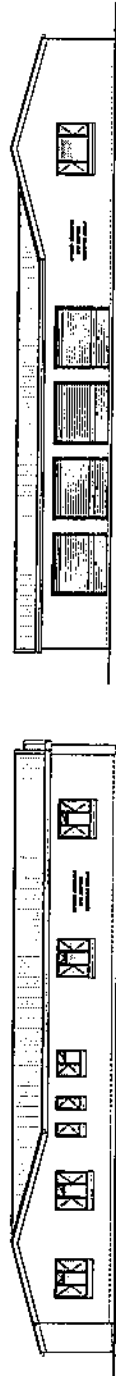
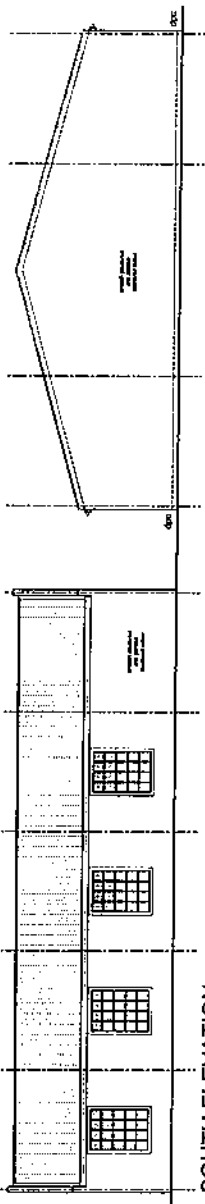
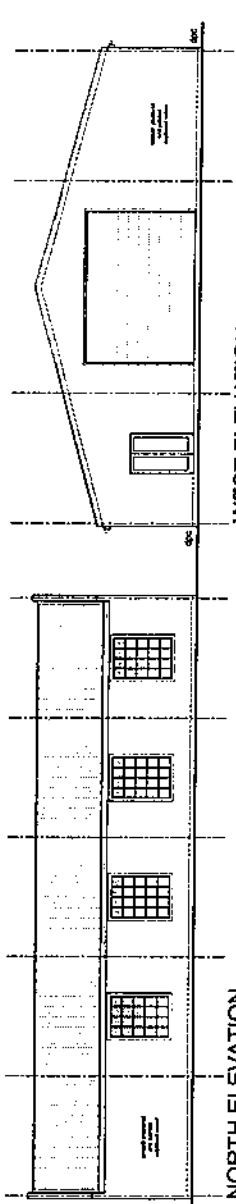
WEST ELEVATION

NORTH ELEVATION

SOUTH ELEVATION

EAST ELEVATION

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Annexure

C



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DENNIS MOSS PARTNERSHIP

INTERDISCIPLINARY SUSTAINABILITY CONSULTANTS

Architects • Urban & Regional Planners • Landscape Architects
Environmental Planners • Urban DesignersOur Ref: C4240
Date: 14 March 2019The Municipal Manager
The Director: Development Management
City of Cape Town: Northern District
KRAAIFONTEIN 7570

(Attention: Sandy Daniels)

APPLICATION FOR A PERMANENT DEPARTURE TO RELAX COMMON BUILDING LINES: PORTION 15 OF THE FARM JOOSTENBERGS VLAKTE NO. 725, DIVISION PAARL, CITY OF CAPE TOWN

1. INTRODUCTION AND BACKGROUND

This office has been appointed by the Shamrock Trust, owners of the above-mentioned property, to prepare and submit an application for a permanent departure to relax a common building line on Portion 15 of the Farm Joostenbergsvlakte No. 725, Division Paarl. The application is effectively intended to rectify a known contravention and to allow for existing buildings on site to be brought in line with the applicable zoning.

This application follows on a decision taken by the trustees of the Shamrock Trust to sell the property after the passing of one of the trustees and primary resident on the property.

However, for the sale of the property to be cleared at the City, the owner had to show compliance with the applicable zoning and approved plans of all buildings on the property have had to be submitted.

The remaining trustees are therefore now in the process of rectifying all discrepancies relating to the land use and built structures.

2. LOCATION AND CONTEXT

The property is situated within the northern planning district and forms part of Sub-District 3: Lucullus Rd / Maroela Rd / Northern Growth Corridor. The property is situated amongst the Joostenbergsvlakte smallholdings, which is located immediately north of the N1 and east of the Malmesbury railway line. In accordance with the Northern District Spatial Plan, the property is designated as conventional urban development. In terms of the draft Cape Town Municipal Spatial Development Framework, the property is located in an *Incremental Growth Area*.



Agricultural areas
of significant
value.

17 Market St • P.O. Box 371 • Stellenbosch 7599 • SOUTH AFRICA
Tel: +27 (0)21 887 0124 • Fax: +27 (0)21 886 5393 • email: info@dmp.co.za • website: www.dmp.co.za

Dennis Moss Planners & Architects (Pty) Ltd. Reg. No. 2003/007711/07

Directors: DF Moss, URP (SA) BA M (URP) M SAPI • GC de Klerk, URP (SA) B Econ M (URP) M SAPI • M Le Roux-Claes, Pr Arch, BAS, B Arch (UCT), MArch, CIA
SVJ vd Merwe, Pr Sci Nat, NHD (Nature Conservation) SACNASP • JMH Lackay, Pr S Arch, T MArch • PJ Hermann, Pr Arch, B Arch (URP) MArch, CIA
Associate Landscape Architect: WJ Tjensens, Ing (NED) FILASA

The property displays characteristics of a semi-agricultural land unit and has been used for small-scale livestock farming and rural living purposes over the years. The property is surrounded by small holdings which is similar in size to the subject property. Many of the surrounding properties display land uses which are synonymous with light industrial and rural areas.

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Access to the property is provided off Lucullus road (M167) which connects to the N1 approximately 1.7km to the south.

2.1 SITE DETAIL

The property is referred to in the title deed as:

- Portion 15 (a portion of Portion 6) of the Farm Joostenbergs Vlake No. 725, Division Paarl

The total extent of the property is 4,0694 hectares and the property is held by Title Deed No. T73210/1990. In terms of the latter title deed, there are no restrictions which might prevent the proposed departure application (refer to the Title Deed attached under Annexure 2).

The property is zoned as Agricultural Zone in accordance with the City of Cape Town Development Management Scheme. In this regard, the zoning parameters which apply to Agricultural Zone are as follows:

- Building line < 20 ha: 15.0m (Street and Common)
- Dwelling Unit Floor Space 1 500 m²
- Street Setback n/a

2.2 EXISTING BUILDINGS

A total of 7 buildings are present on the property. These buildings are grouped in the north-eastern corner of the property and include the main residential dwelling, several storage buildings, garages, and a laborers' cottage. These buildings were all associated with the land uses practiced on site throughout the years. Some of the buildings on the property have been in existence for over 30 years whilst others were more recently constructed.

The former owner of the property farmed livestock and all the existing storage buildings on the property were associated with this agricultural activity. These buildings include the following and are depicted on the drawings included under Annexure 5:

- The **main residential dwelling**, the most recent amendments of which included a braai room, TV room, gym, family room, hobby room, scullery and bathroom.
- The **labourers cottage** on the property is currently unoccupied, however, the owner would prefer to retain the cottage for future use.
- A second labourers cottage was also present on site but has since been demolished due to the building's ragged condition.
- **Shed A** represents a typical storage building for animal feed, horse tack and feeding systems.
- **Shed B** represents a store for agricultural machinery.
- The **garage/store building** is mainly used for the storage of tools and mechanical equipment for the repairing of vehicles/machinery.
- The **garden shed** serves the purpose of a pesticide store for both vegetation and livestock.
- The **lean-to shed** situated on the northern boundary of the property is a typical open roof structure that provides for the covered parking of vehicles.

The area calculations of the respective buildings are illustrated on the Site and Departure Plan (Drawing No. PL001 and the individual building plans included under Annexure 5).

3. APPLICATION DETAILS

3.1 DEPARTURES

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Application is herewith made in terms of Section 42(b) of the City of Cape Town Municipal Planning By-Law of 2015, for the following permanent departures:

- a) To relax the common building line (adjacent to Farm Nos. 725/13 & 725/9) from 15.0m to 0.0m (north) and from 15.0m to ~~5.0m~~ 7.2m (east), respectively, to allow for an existing open lean-to structure.
- b) To relax the common (northern) building line (adjacent to Farm No. 725/13) from 15.0m to 11.0m to allow for an existing storage shed.

The proposed departures are illustrated by Drawing No. PL001 of 22 March 2018 included under Annexure 5.

4. CONCLUSION

In conclusion, the following motivating factors should be considered during the adjudication of the application:

- a) The owners have recognised and accepted that certain building work may have been undertaken unlawfully over the years and aim to rectify such contraventions by submitting this and other applications.
- b) The application essentially entails the relaxation of common building lines for two buildings that has been erected over said building lines. It is contended that the impact of these buildings are negligible from a planning point of view as the buildings have been in existence for close to 15 years during which time no objection has been filed with the City.
- c) The approval of the application will not bring about the generation of additional traffic or result in the ability of neighbouring properties to be enjoyed by their owners.
- d) The existing buildings on site had been grouped in a relatively tight cluster in the north-eastern portion of the property, thereby allowing a large, uninterrupted agricultural portion to be farmed.
- e) The title deed does not include any restrictions which might prevent the proposed application items.

We trust that you find the above and attached in order

Kind Regards



JACQUES VOLSCHENK
DENNIS MOSS PARTNERSHIP

Annexure

D



10 May 2019

The District Manager
CITY OF CAPE TOWN
Development Management

Dear Members of the Municipal Tribunal

**APPLICATION FOR PERMANENT DEPARTURE TO RELAX COMMON BUILDING LINES:
PORTION 15 OF THE FARM JOOSTENBERGVLAKE NO 725, DIVISION PAARL, CITY OF
CAPE TOWN.**
APPLICATION NUMBER: 70449141

I would like to give you some history of Joostenbergvlakte (JBV) and of the Joostenbergvlakte Community Forum (JCF).

We were promised by the CoCT to be protected, before we became aware of the Urban Edge, etc. We were told that Joostenbergvlakte shall be the "Green Lung" and "Gateway to Cape Town." In 2013 the residents of JBV were formally invited by CoCT via means of a letter in our mailboxes to attend a meeting in the Kraaifontein Townhall. My daughter and I went to the meeting and were amongst the first to arrive.

About 30 chairs were put out but more than 300 residents arrived. It was the first and last CoCT meeting we were ever formally invited to. (CoCT Officials did not take down any Minutes either). We heard about developments we didn't know existed. We learned that SANRAL owned the wetlands on the Northern side along the N1. ASLA owned land in Somerset West which was occupied by squatters. Apparently SANRAL was not interested in the wetlands as they could not build a carriageway which connect the N1 to Durbanville. SANRAL and ASLA swapped lands. Therefor it was apparently decided that Lucullus Road will be a 4-lane dual carriageway. Since then our nightmares started and continued. That night residents were up in arms and the Joostenbergvlakte Community Forum was born.

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The JCF EXCO consists of normal residents. I have a B.Ed Degree at Stellenbosch University. The Vice-Chairman is a Manager at Peninsula Beverages. Our Secretary owns a transport company. Her husband – our Treasurer – owns cross-border truck companies in SA and Namibia. Our Spokesperson is a world famous “horse whisperer” who trains horses and work with equine behaviour problems. Approximately 60% of JBV residents are horse owners/breeders. JBV is the largest equestrian community left in the Western Cape after all the others were expelled by CoCT to make space for development. Where is it going to end?

We love our lifestyle that was promised to us. The residents invested millions of Rands into properties in JBV. Most of us reside here for more than 30 years. Some for as long as 50 years. JBV is our life. We trusted the Authorities and what they have promised us. We knew absolutely nothing of Spatial Planning, Urban Edge, Zoning, Consent use, etc.

The JCF represents more than 300 residents and we are literally fighting for our lives. The moment we receive “Reports for Administrative Penalties” and “Applications for Permanent Departure”, we can only tackle it with our passion for JBV and the trust that you will be able to “read between the lines” of our frustration. We will stop for nothing and will fight to protect our neighbourhood with its dirt roads, no streetlighting, no pavements or Municipal services against money-thirst politicians and developers. We want to see our children playing in the roads again, horses trotting along, the elderly going for walks again. Most definitely NOT trucks!!! (We do have a weight restriction signs at all three entrances to JBV which states no vehicle above 5 Tons).

We thank the Tribunal and its Members from the bottom of our hearts for the biased manor in which you have handled prior JBV cases. Thank you for your respect with regards to the Rural and Agricultural Laws and By-Laws, and that you have our interests at heart with the same passion as we do.

66 LUCULLUS STREET / PORTION 15 OF FARM 725 (Agricultural zoned)

As I was reading through the Application for Permanent Departure (C4240), I could not help but be reminded of the previous hearing of this property. (Item no MPTNE27/03/19).

The primary resident passed away. In order to sell the property, the illegal buildings on the property have to be corrected because the building plans are incomplete. An administrative penalty needed to be paid. Our secretary, Susan Rheeder, attended the Tribunal meeting on 12 March 2019.

What cannot be ignored, is that a full-scale business was run from this property. The offices and workshops were used for industrial purposes. On Google Earth one can clearly see the trucks and scrap during past years.

Refer to Page 10 (1204) – “no enforcement was taken by the City.”

Because of the physical location of these warehouses, nor the residents or the JCF was aware of this violation as one cannot see anything from street level. There is a large dam next to the fence which obscure a large part of the property from Lucullus Street.

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Refer to Page 9 (1203) – “little to no agricultural activity is currently on site”

It is of utmost importance for the JCF, that the correct message is sent out. Zoning Laws and By-Laws have not been respected in this case. It seems as if property owners can get away with almost anything.

The Current Case:**APPLICATION FOR PERMANENT DEPARTURE TO RELAX COMMON BUILDING LINES.****Page 1, Point 2 – Location and Context**

Phrases like “Northern Planning Districts,” “Northern Growth Corridor,” are used. Also “Northern District Plan,” “Urban Development” and “Incremental Growth Area.” We have invited the Planning Officials at Kraaifontein Municipality to come and explain this to the residents of JBV, but they were not interested.

We as residents do know that Joostenbergvlakte is still zoned Rural/Agricultural. We expect CoCT to also respect our current zoning.

“Surrounding properties display land uses which are synonymous with Light Industrial and Rural Areas.”

For the past couple of years we had rogue Estate Agents in the area, advertising and selling properties in Lucullus Road and the rest of JBV as “Light Commercial,” “to be zoned as Commercial along Lucullus Road,” “ample parking for trucks,” “warehouses for transport companies,” etc.

We reported them to the Estate Agents Board, but they do not seem to be interested. They do not reply on our official complaints either.

Below is proof that almost all the illegal businesses in Lucullus are targeted by the JCF. These cases are in the hands of Land Use Inspectors and/or are handled by Western Cape Inspectors.

Presently:

1. Portion 16 of Farm 725 / 58 Lucullus Road (Maas Transport Bpk.)

We suspect that their Departure Application was heard by the General Appeals Tribunal. The JCF and residents submitted objections, but it was nevertheless approved. We are waiting for the Application for Permanent Departure to enable us to object again.

2. **Portion 17 of Farm 725 / 50 Lucullus Road (E & E Buhr Trust)**

The JCF submitted a Land Use Complaint Form, because the farmer runs a truck stop on this property. Giovanni Transport operates 24/7 from this property and obviously pay a monthly rent to the owner. Their vehicles come and go during night time.

Mr Buhr also allows companies to drop truckloads of building rubble on his dam wall to raise it. The dam is situated right behind properties on the Northern side of Suikerbekkie West Street. The residents are complaining because they are unsure of the manner in which the dam walls are raised, especially with the coming rain season. These dam walls are situated less than 80 meters away from residences.

The farmer uses the water from this dam to irrigate his vegetable crops. You will notice the dam on the map. Ms Fundiswa Zingitwa-Lwana, (Administrator Investigator of Environmental Law Enforcement) and Ms Hadjira Peck investigated the area and are currently busy with this concern.

3. **Portion 19 of Farm 725 / 53 Lucullus Road (Environmental Drilling Remediation Services (Pty) Ltd trading as Round One Drilling Services. Mr Derek Whitfield)**

They were drilling boreholes on the property and transporting truckloads of water from Joostenbergvlakte to a farm in Brackenfell and other unknown places. The owner appeared in Blue Downs Court, after the JCF and a neighbour completed Land Use Complaint Forms and handed the case over to Land Use Inspectors. The owner paid an amount of R5 000.00 "Admittance of Guilt." There is still machinery and trucks on the property. The containers were removed.

4. **Portion 390 of Farm 728 / 39 Lucullus Road (IP's Transport. Mr Pedro la Grange)**

This business has been operating from this premises since 2005. The residents, neighbours and JCF completed Land Use Complaints Forms. Mr La Grange paid an amount of R5 000 "Admittance of Guilt" after appearing in the Blue Downs Court. The case went to the Municipal Tribunal where he was fined R21 000 Administrative Penalty. He still did not settle the fine and according to CoCT, they have added it to his monthly rates account. He still operates as normal and service his trucks during weekends on his property. Nothing has changed. It seems as if the Law is only on the side of the offender.

5. **Portion 451 of Farm 728 / 39 Anderson North Road (Deceased owner: Elisabeth Petermann – Usufruct by Mr Kobus Retief) Entrance on Lucullus Road.**

Mss Fundiswa Zingitwa-Lwana and Hadjira Peck have investigated this property. The resident, Mr Kobus Retief, has usu-fruct of this property after the rightfull owner passed away on 10 March 2014. He advertised the property to be leased to earn an income. He gave the tenant permission to dump building rubble on the property apparently to level the soil for vehicles to park as he wants to start a nursery.

The JCF, concerned neighbours and residents completed Land Use Complaints Forms. Mr Retief was telephonically warned by myself that he is not allowed by Rural Zoning to damage the surface of the property. Mr Retief carried on with the dumping the same day after the visit of Mss Zingitwa-Lwana and Peck.

("Usu-fruct" - the right to enjoy the use and advantages of another's property short of the destruction or waste of its substance)

I have included the above properties as proof to you that all the properties on Lucullus Road are in the process (or have already been dealt with) the Authorities available to us. The JCF together with the residents want to protect JBV and keep it zoned Rural/Agricultural.

Page 2 Point 2.1 - Site detail

Kindly refer to the attached map to understand this completely.

This property is zoned Agricultural. On the Eastern side of this property (direction Paarl), is the largest Guava farm in South Africa. It is seen as "HIGH AGRICULTURAL IMPORTANCE" by the CoCT.

Bakoorjakkalsdraai Farm is another working farm. Close by is Mr Gert Cloete's vineyard – also still a productive farm.

These properties, including Joostenbergvlakte should be protected at all cost.

Page 2 Point 2.2 - Existing buildings

It is stated that the previous owner of above-mentioned property farmed livestock. All the existing storage buildings on the property were associated with this agricultural activity.

Shed A is described as a typical storage building for animal feed, horse tack and feeding systems.

Shed B is described as a store for agricultural machinery.

The garage/ store was used for the storage of tools and mechanical equipment for the repairing of vehicles/ machinery.

The garden shed's purpose was to keep pesticides for vegetation and livestock.

If you compare these uses to the uses described in the previous Municipal Tribunal re the Administrative Penalty, it is most definitely a serious contradiction.

It is known from the previous Municipal Tribunal, that these stores were used to service vehicles and trucks. We feel this is confusing and bending the truth. Page 9 of 12 (1203) clearly states that there is no, or little Agricultural activity on this site.

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P 4 Point 4 - Conclusion

- b) *I have explained why there were no complaints. There were and is still no visual access from the street. A site meeting will proof my point.***

I have included some of the cases in Lucullus Road which the JCF is currently busy with. Some of them had been dealt with, but still continue because of no policing and no effective application of the Law.

- c) *..."approval of the application will not bring about the generation of additional traffic..."***

Why would the approval of the application not lead to additional traffic? If the new owners treat the property as an Agricultural property, there will/can be no problems?

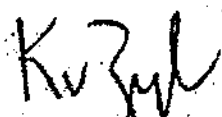
- d) *....."thereby allowing a large, uninterrupted agricultural portion to be farmed."***

Again, if the new owner uses this property for Agricultural purposes, these existing buildings will be used for Agriculture. Then, it is obvious that the new owner will respect the zoning and use the land accordingly. Otherwise he will receive a Land Use Complaint.

With all this said and done, there is still a big elephant in the room. Despite the fact, that all these cases are listened to, discussed and then sentenced, lead to NOTHING. All these illegal businesses continue as normal. This whole system is a total waste of taxpayers' money unless business owners are told to CEASE all operations from their premises immediately. All the hard work, from the Land-use Inspectorate to the Blue Downs Court and Tribunal is in vain if these actions are not stopped in its steps. As mentioned previously, it seems if the Law only applies to the offenders.

We do attend the Tribunal sessions and appreciate the work you put into it. We also trust and believe that the Tribunal can support us with our last request.

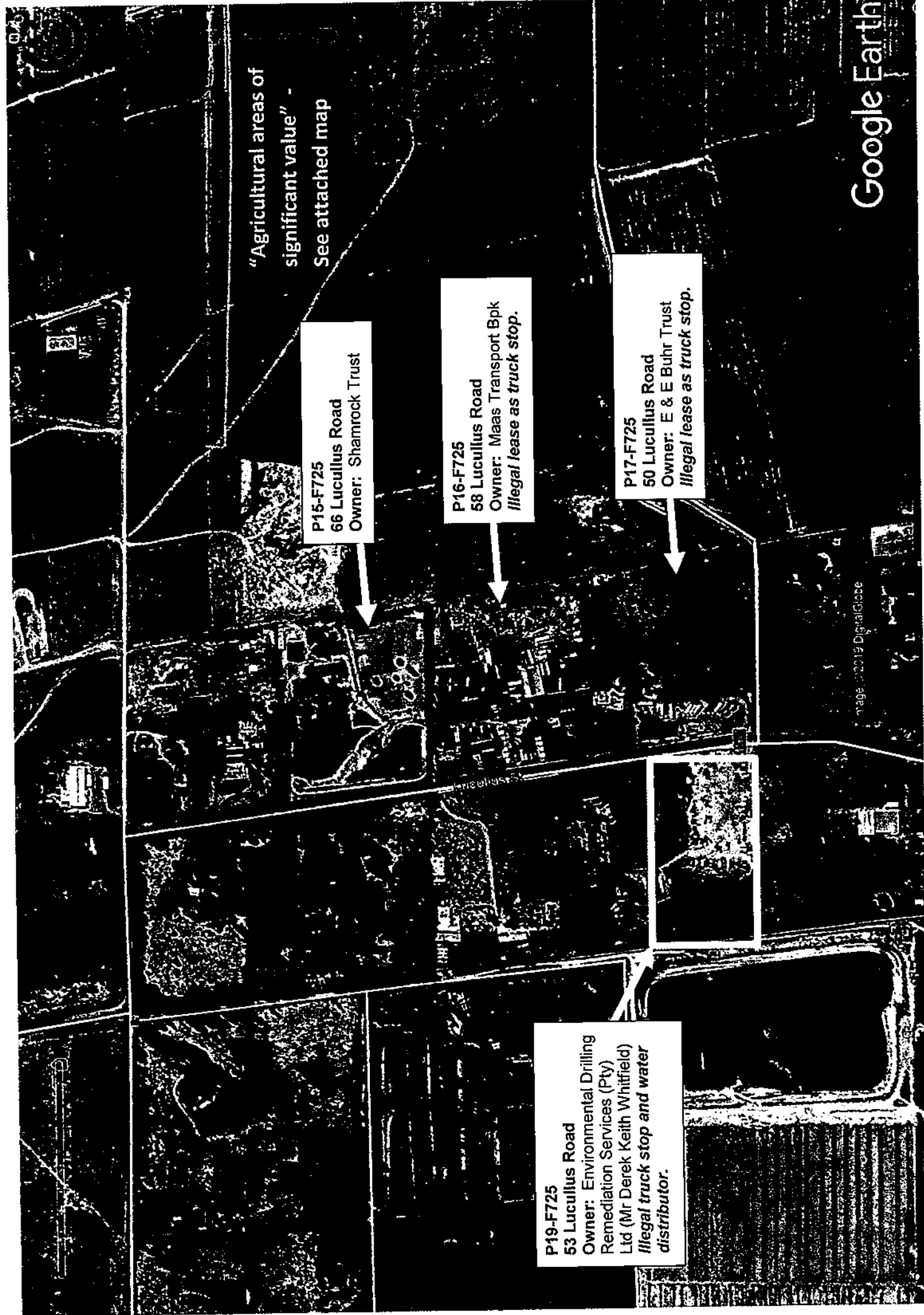
With warm Vlake greetings



**KARIN VAN ZYL
CHAIRPERSON**

**JOOSTENBERGVLAKE COMMUNITY FORUM
EXECUTIVE COMMITTEE**

T 083 948 2757



"Agricultural areas of
significant value" -
See attached map

P15-F725
66 Lucullus Road
Owner: Shamrock Trust

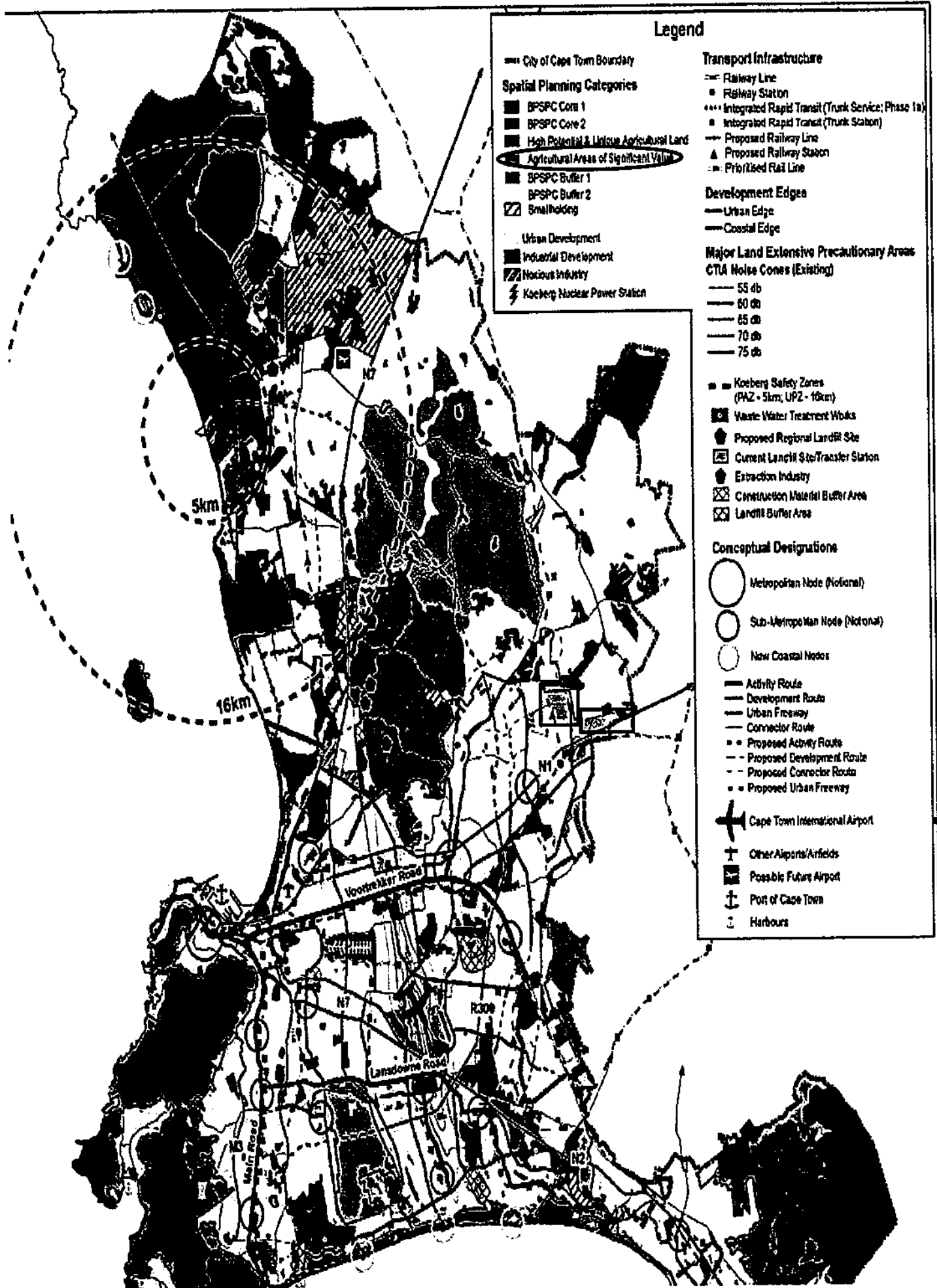
P16-F725
58 Lucullus Road
Owner: Maas Transport Bpk
Illegal lease as truck stop.

P17-F725
50 Lucullus Road
Owner: E & E Buhr Trust
Illegal lease as truck stop.

P19-F725
53 Lucullus Road
Owner: Environmental Drilling
Remediation Services (Pty)
Ltd (Mr Derek Keith Whitfield)
*Illegal truck stop and water
distributor.*

Image © 2019 DigitalGlobe

Google Earth



Annexure

E



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DENNIS MOSS PARTNERSHIP

INTERDISCIPLINARY SUSTAINABILITY CONSULTANTS

Architects • Urban & Regional Planners • Landscape Architects
Environmental Planners • Urban DesignersOur Ref: C4240
Date: 20 June 2019The Municipal Manager
The Director: Planning and Economic Development
Stellenbosch Municipality
PO Box 17
STELLENBOSCH 7599**APPLICATION FOR PERMANENT DEPARTURE: PORTION 15 OF FARM NO. 725, LUCULLUS ROAD, PAARL FARMS**

The above-mentioned application on Portion 15 of the Farm No. 725, Joostenbergvlakte refers.

The commenting period for said application yielded only a single response, namely from the Joostenbergvlakte Community Forum.

The objections/comments of the respondent and the response to its comments are listed in the table below:

	OBJECTION / COMMENT	APPLICANT'S RESPONSE
1.1	<p><u>66 LUCULLUS STREET / PORTION 15 OF FARM 725 (Agricultural zoned)</u></p> <p><i>'What cannot be ignored, is that a full-scale business was run from this property. The offices and workshops were used for industrial purposes. On Google Earth one can clearly see the trucks and scrap during the past years.'</i></p>	<p>The comment/objection from the respondent is not disputed but refers to the previous activities which had taken place on the property.</p> <p>In this regard reference is specifically made to the Administrative Penalty Application (Case ID: 70427150), whereby the owner admits to the previous unlawful use on the property. Furthermore, the owner had already paid the administrative penalty fee and ceased all non-conforming uses on the property.</p>

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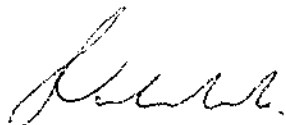
Dennis Moss Planners & Architects (Pty) Ltd. Reg. No. 2003/007711/07

Directors: D.F. Moss, UPP (SA) SA 31 (URP) M.SAPI • G.C. du Plessis, UPP (SA) B Econ M (URP) M.SAPI • M. Le Roux-Cloete, Pl Arch, BAS, B Arch (UCD), MArch, CIA • J.M. Lötters, Pl S Arch, TMArch
Associates: W.J. J. Jansz, Ing (IIEB) FLAGA (Landscape Architect) • S.W. van Marrewijk, Pl Scientist, PhD (Nature Conservation) SACNASP

1.2	<p><u>Refer to Page 10 (1204) – ‘no enforcement was taken by the city’.</u></p> <p><i>‘Because of the physical location of the warehouses, nor the residents or the JCF was aware of this violation as one cannot see anything from street level. There is a large dam next to the fence which obscure a large part of the property from Lucullus Street.’</i></p>	<p>422 Refer to the response under #1.1 above.</p> <p>In addition, and notwithstanding the physical layout of the property, when the City of Cape Town became aware of the non-conforming use, it instructed the owner to apply for the required land use planning permissions as well as an administrative penalty.</p> <p>This comment/objection by the respondent is therefore irrelevant.</p>
1.3	<p><u>Refer to Page 9 (1203) – ‘little to no agricultural activity is currently on site’.</u></p> <p><i>‘It is utmost importance for the JCF, that the correct message is sent out. Zoning Laws and By-Laws have not been respected in this case. It seems as if property owners can get away with almost anything’.</i></p>	<p>The City of Cape Town acted in the strongest possible manner and imposed a hefty fine on the former owner. The latter fine was duly paid.</p> <p>In addition, the former owner was also instructed to submit the required land use planning applications to the City in order for any land use transgressions to be legalized. This process is currently ongoing. Furthermore, the former owner has also undertook to submit building plans for any structure that does not have an approved building plan.</p> <p>The new owner of the property has been informed of his use rights in terms of the applicable zoning.</p>
1.4	<p><u>The Current Case</u> <u>APPLICATION FOR PERMANENT DEPARTURE TO RALAX COMMON BUILDING LIES</u> <u>Page 1, Point 2 – Location and Context</u> <i>‘Phrases like “Northern Planning Districts,” “Northern Growth Corridor,” are used. Also “Northern District Plan,” “Urban Development” and “Incremental Growth Area”. We have invited the Planning Officials at Kraaifontein Municipality to come and explain this to the residents of JBV, but they were not interested.</i></p>	<p>This comment is directed to the City of Cape Town. The respondent cannot answer on the City’s behalf. The comment is therefore irrelevant to the current land use planning application.</p>
1.5	<p><u>“Surrounding Properties display land uses which are synonymous with Light Industrial and Rural Areas.”</u></p> <p><i>‘For the past couple of years we had rogue Estate Agents in the area, advertising and selling properties in Lucullus Road and the rest of JBV as ‘Light Commercial,’ ‘to be zoned as Commercial along Lucullus Road,’ ‘ample parking for trucks,’ ‘warehouses for transport companies,’ etc.</i></p>	<p>As pointed out by the respondent, this matter is already being investigated by the City’s and the Department of Environmental Affairs and Development Planning’s land use inspectors. Each case is, and should, be dealt with on its own merits.</p> <p>In the case relating to the subject property, the former owner has admitted his wrongdoing and has done everything that was required of him to ensure the continued use of the property in line with the applicable zoning.</p>

1.6	<p><u>Page 2 Point 2.2 – Existing Buildings</u></p> <p><i>If you compare these uses to the uses described in the previous Municipal Tribunal re the Administrative Penalty, it is most definitely a serious contradiction.</i></p> <p><i>It is known from the previous Municipal Tribunal, that these stores were used to service vehicles and trucks. We feel this is confusing and bending the truth. Page 9 of 12 (1203) clearly states that there is no, or little Agricultural activity on this site.</i></p>	<p>It was the purpose of the application for an Administrative Penalty to describe the non-conforming uses that were undertaken on the property at the time. Based on these uses (which was verified by the City during a site visit), a penalty was issued by the City and subsequently paid by the former owner.</p> <p>All unlawful activities have since been stopped.</p> <p>The current departure application, in turn, lists the present uses on the property after all unlawful activities have ceased.</p>
1.7	<p><u>P4 Point 4 – Conclusion</u></p> <p><i>With all this said and done, there is still a big elephant in the room. Despite the fact that all these cases are listened to, discussed and then sentenced, lead to NOTHING. All these illegal businesses continue as normal. This whole system is a total waste of taxpayers' money unless business owners are told to cease all operations from their premises immediately. All the hard work, from the Land use Inspectorate to the Blue Downs Court and Tribunal is in vain if these actions are not stopped in its steps. As mentioned previously, it seems if the Law only applies to the offenders.</i></p>	<p>The action taken by the City of Cape Town against the former owner of the property shows that the system does, in fact, work.</p> <p>Either way, the comment by the respondent is aimed more towards the City of Cape Town and law enforcement agencies, in general, than it is to the applicant.</p>

Kind regards



JL VOLSCHENK
DENNIS MOSS PARTNERSHIP