



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70586014				
CASE OFFICER	AGINGCANA				
CASE OFFICER PHONE NO	021 444 1062				
DISTRICT	NORTHERN				
REPORT DATE	April 2022				
INTERVIEW REQUESTED	APPLICANT	YES		NO	X
	OBJECTOR(S)				X

ITEM NO MPTNE11/05/2022

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 911, 2 CULEMBORG CLOSE, STELLENBERG

1 EXECUTIVE SUMMARY

Property description	Erf 911, Eversdale
Property address	2 Culemborg Close, Stellenberg
Site extent	1246 m ²
Current zoning	Single Residential 1
Current land use	Dwelling house and institution
Overlay zone applicable	None
Submission date	18/02/2022
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	An unauthorised institution (welfare facility for the old age) is currently operating from the subject 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	Yes, 26/02/2022

For decision by the Municipal Planning Tribunal

The subject property namely (Erf 911) is located at the corner of Culemborg Close and Mountain View Crescent. The subject property is zoned Single Residential 1 in terms of the Development Management Scheme (DMS) and measures approximately 1246 m² in extent (**see Annexure A**). The existing main dwelling house is currently being used as an institution (welfare facility for the old age).

On 26/02/2022 a notice of compliance was served to the respective owner's in relation to the unauthorised welfare facility for the old age (**see Annexure D**). The area is characterised by Single Residential property of even larger than 1000m² in extent, to the northeast of the subject property is a large open space property zoned Open Space 2 in terms of the DMS.

The applicant has subsequently submitted an administrative penalty application for the unauthorised land use activity. Once the Municipal Planning Tribunal (MPT) has granted the approval of the administrative penalty, a consent use application will be processed in order to rectify the unauthorised land use activity operating from the premises.



4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The proposal is for a home care facility for the aged.
- The functionality of the proposal is the provision of homecare for elderly persons who are unable to leave their homes.
- There are 12 elderly people residing on the premises and 15 staff members who work different shifts.
- The facility has been operating for approximately 1 year.

5 ASSESSMENT OF APPLICATION

5.1 As indicated above, the unauthorised use is in contravention of item 21(c) 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.

5.2.1 Unauthorised land use

$$\frac{\text{Total Municipal Value of property (R2,680,000)}}{\text{Total area of property (1246m}^2\text{)}} \times \text{Total Unlawful Area (445m}^2\text{)} = \text{R957,142,00}$$

An amount which is not more than 100% of **R957.142,00** may be imposed as an administrative penalty.

1% of total value	2% of total value	5% of total value	10% of total value	20% of total value
R 9571,42	R 19142.84	R 47857.10	R 95714.20	R191428.40

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**

Nature – The DMS allows the use as a consent so use and can be considered in the area where the subject property is located. The land use contravention is for using main dwelling of the subject property measuring 445m² in extent for an institution (welfare facility for the old age), without obtaining a land use approval, prior to commencement.

Duration – The unauthorised activity has been operating for 1 year and is considered excessive.

Gravity - Considering the duration of the welfare facility for the old age should the consent use application be submitted by the applicant, conditions of approval may be imposed in order to mitigate any potential negative impacts posed (e.g. potential noise, traffic, and parking and safety impacts). Furthermore, standard health and fire safety related conditions may also be imposed in relation to the approval of a consent use application given the servility of the proposal.

Extent – The welfare facility for the aged occupies 445m² of the total area of the activity including parking. This equates to the activity occupying approximately 36% of the total extent of the subject property, which is considered excessive.

b) The conduct of the person involved in the contravention

The owner submitted the administrative penalty application once advised of the contravention by an appointed consultant. It must also be noted that a formal complaint was lodged with the City. This is an indication that the use is disturbing to neighbours.

c) Whether the unlawful conduct was stopped

The unlawful conduct has not ceased, hence the reason for the proposed application in terms of section 129 of the By-Law.

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

There is no record of the owner contravening this By-law or any other planning law in the past.

- 5.4 In view of the aforementioned consideration in term of section 129(8) this department recommends that a **R29 000** (3% rounded-up) administrative penalty be charged for the unauthorised land use.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The applicant has taken the necessary steps to regularise the unauthorised activity.
- 6.2 The applicant has not stopped the illegal activity since becoming aware of its unauthorised nature.
- 6.3 The duration of the unauthorised use has been for a period of 1 year and is regarded as excessive.
- 6.4 The nature of the contravention is compatible with and relates to a residential environment.
- 6.5 The gravity is not considered serious, as the proposed use is low key in a residential context.
- 6.6 The extent of the unauthorised use is considered significant since the entire property is being utilised.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) An administrative penalty in the amount of **R29000** for the unauthorised land use (welfare facility for the old age) be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 911, 2 Culemborg Close, Stellenberg in accordance with plan no 2021/165 REV A.

ANNEXURES

Annexure A	Locality Plan
Annexure B	Plan of contravention
Annexure C	Applicant's motivation
Annexure D	Letter of Compliant

It is confirmed that this report has been checked and considered for POPIA compliance.



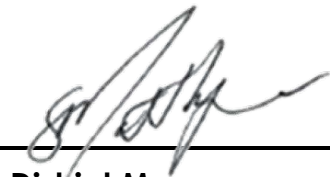
Section Head : Land Use Management

Name S VAN RENSBURG

Tel no 021 444 1044

Date 2022-4-13

Comment



District Manager

Name S M Matthysen

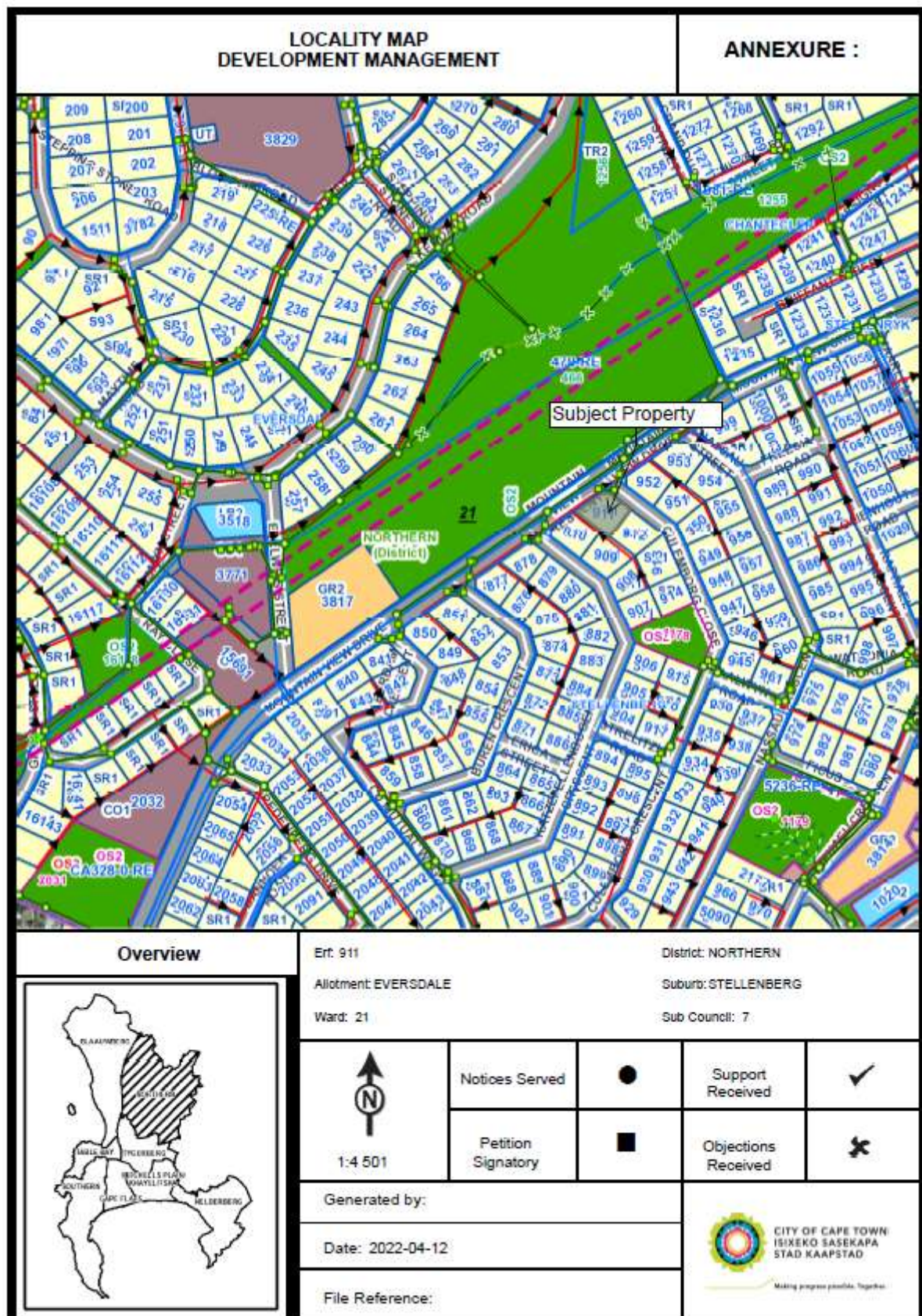
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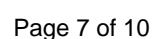
Date 19 April 2022

Comment

The signatures above represents support for report content and confirms POPIA compliance.

Annexure A: Locality Plan





Annexure C: Applicant's motivation

10 01 2022

To: The City of Cape Town
Land Use Management Department

Kimo & Maria Leuvennink
ERF 911
2 Culemborg Crescent
Stellenberg, Belleville

Re: Application for Council to determine the admin penalty on Erf 911 in terms of Section 42(r) of the City of Cape Town Bylaw.

This application serves to rectify the contravention of Land Use without having obtained council approval in terms of Section 130 (1.4)

- Nature of contravention: Conducting a Home Care facility for the aged (Institution) on the existing SR 1 property without Land Use approval. The functionality is the provision of homecare for stay in elderly people. Providing daily care in the form of meals, comfort, clean clothing, a bedroom, interaction with other stay-in elderly people, supervised administration of medication etc.
 - There are 12 stay-in residents
 - There are 15 staff who work different shifts (which includes the manager and medical sister)
- Duration of contravention: Approximately 1 years.
- Gravity of the contravention: Conducting a business on the premises without Land Use approval
- Extent of the contravention: Utilising the SR 1 dwelling as a business
- The conduct of the person/s involved in the contravention: The business was initiated without apply for council approval by purchaser. (Ownership of this property will be subject to obtaining Land Use approval)
- Any previous contraventions: The purchaser has not been involved in any previous contravention of the By-Law or planning law

Regards

ACusens

For
Kimo & Maria Leuvennink

Annexure D: Letter of Compliant



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

DEVELOPMENT MANAGEMENT

Natalie Molife
Land Use Inspector

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C: 062 356 0215

E: Natalie.Molife@capetown.gov.za

LENF006

26 February 2021

CRIMINAL PROSECUTION ROUTE

Dear Sir/Madam

COMPLAINT NO 70531150: USE OF ERF 911 STELLENBERG

Your complaint received on 14 December 2020 refers.

Officials have investigated your complaint and found that the abovementioned property is being used for the purposes of No Access. This use constitutes a contravention of **(the development management scheme, which constitutes schedule 3 of the City of Cape Town Municipal Planning By-law, 2015 ("the By-Law"))**.

The owners **and** operators have been instructed to cease the unlawful use within 60 days.

Please note the following.

1. If the owners/operators do not cease, the City may institute criminal prosecution, High Court action, withdraw the approval or issue a directive.
2. Whilst the owner/operators may apply for the appropriate land use rights and pay an administrative penalty, they must still cease the unlawful use within the period set out in the notice.
3. In most cases, criminal prosecution will be the preferred method of instituting legal proceedings. It takes several months to obtain a criminal conviction.
4. You may be required to give evidence at the hearing of this matter.

You will be advised of the outcome of the legal proceedings in due course.

YOURS FAITHFULLY

Natalie Molife
DEVELOPMENT MANAGEMENT

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Brighton Road, Kraaifontein, 7570
www.capetown.gov.za