

Blouberg Municipality



P.O. Box 1593
SENWABARWANA 0790
Tel: No.: 015 505 7100
Fax: No.: 015 505 0568 /

0296

E-mail:
blou@bloubergmunicipality.gov.za

ENQ: MESO KC
TEL: 015 505 7166

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NDILONI ENERGY
PO BOX 11742
VORNA VALLEY
MIDRAND
1686

Dear Sir/Madam

TRIBUNAL DECISION: APPLICATION FOR SIMULTANEOUS SUBDIVISION AND REZONING OF LAND FROM "AGRICULTURAL" TO "BUSINESS 1" ON PART OF PORTION 1 OF THE FARM KROMHOEK 438 MS, SUBMITTED IN TERMS OF SECTION 66 AND 71 OF THE BLOUBERG SPATIAL PLANNING AND LAND USE MANAGEMENT BY LAW 2017, READ TOGETHER WITH BLOUBERG LAND USE SCHEME 2022.

1. INTRODUCTION

An application was lodged by Ndiloni Energy for the rezoning and simultaneous subdivision for the purpose of a shopping center, offices and filling station on part of portion 1 of the farm Kromhoek 438 MS submitted in terms of Section 66 and 71 of the Blouberg Spatial Planning and Land Use Management By-Law, 2017 read together with Blouberg Land Use Management Scheme 2006.

Objections were received from Mr. Riaan Beukes from Mahlogonolo Consulting T/A Riaan Beukes Town and Regional Planners representing Elegance Filling Station and Advocate MS Sebola representing Devrede Kromhoek Filling Station CC.

2. BRIEF OVERVIEW OF THE HEARING SESSION

2.1. Points in Limine:

No points in Limine raised.

2.2. Technicality and merits of the application

The following were critical issues raised by the objectors:

Objector 1:

Mr. Riaan Beukes from Mahlogonolo Consulting T/A Riaan Beukes Town and Regional Planners representing Elegance Filling Station has presented the following points as part of his objection:

- That the application was wrongly lodged since it was lodged in terms of Section 66 of Blouberg Municipality Spatial Planning and Land Use Management By-Law, 2017 (rezoning) rather than the Section 81 of the same by law on high impact in the communal land.
- The objector doubted the legitimacy of the company that conducted feasibility studies.
- The objector indicated that the information on the feasibility report and market studies is outdated.
- The objector indicated that the proposed filling station will not be feasible on that area since it is close to an existing filling station which is within 2.5km radius.
- The objector submitted supplementary documents i.e traffic counts and Special power of attorney which were given exhibit numbers.

Objector 2:

Advocate MS Sebola Attorneys representing Devrede Kromhoek Filling Station CC has presented the following points as part of his objections:

- The objection is for the proposed filling station only not the shopping center and offices
- The public participation process was not done correctly since objection period ending date was falling on a weekend:
- Land allocation process was not done correctly by the traditional leadership since they did not follow right processes, and they are using powers for public gain.
- The proposed application is not clear on the promotion of local economic development.
- The proposed filling station will negatively affect the existing filling station.
- The process of acquiring retail and site license was not followed according to the regulations.

The applicant:

Applicant has made a presentation of the application as follows:

- The application seeks to obtain the rights for a shopping center, offices and filling station on 18,4350 hectares of land.

- The application has been lodged in terms of Blouberg Municipality Spatial Planning and Land Use Management By-Law, 2017, and all the other registrations and policies were taken into consideration
- All the feasibility studies were conducted accordingly.
- Public participation was conducted as per By -laws.
- Community resolution was conducted in terms of the IPILRA (Interim Protection of Informal Land Rights Act 31 of 1996) with the assistance from the Officials from the DRDLR (Department of Agriculture, Rural Development and Land Reform)
- If ever she is allowed to amend the application, she can do that in terms of the provisions of the by-law allowing amendment of the application prior approval
- The applicant acknowledges that there is floodline in the vicinity which only affect the entrance side of the property, and all mitigating factors will be implemented so that floodline doesn't affect the development.
- The applicant indicated that they want all the uses as proposed in the application.
- She doesn't agree with all the objections raised.

3. RESOLUTIONS

The Municipal Planning Tribunal has taken a decision to consider some of the objections from the objectors.

- 3.1. The application was correctly lodged since the land use scheme is a wall to wall hence it allows for the rezoning in a communal land.
- 3.2. Public participation was conducted accordingly.
- 3.3. The retail and site license approval will be done after the land use rights are granted with the relevant authority.
- 3.4. The application will be partially approved in terms of Section 114 of the Blouberg Municipality Spatial Planning and Land Use Management By Law, 2017.
- 3.5. That only shopping center and offices will be allowed.
- 3.6. That the proposed filling station is found not feasible since there is an existing station on the closer proximity and furthermore, the feasibility study doesn't provide enough evidence on the market analysis.
- 3.7. That only 5 hectares of the land will be granted the rights for offices and Shopping center and the remainder will remain Agriculture (13,4350 hectares).
- 3.8. In case the owner will need land rights on the remaining portion, a new land use application will have to be lodged and be assessed on its own merits.

4. DECISION

You are informed that the Blouberg Municipal Planning Tribunal has in terms of Section 40 (7) of the Spatial Planning and Land Use Management Act No 16 of 2013 resolved as follows:

That the application for the rezoning and simultaneous subdivision for the purpose of a shopping center, offices and filling station on Portion 1 of the farm Kromhoek 438 MS submitted in terms of Section 66 and Section 71 of the Blouberg Spatial Planning and Land Use Management By-Law, 2017 for the amendment of Blouberg Land Use Management Scheme, 2022 is **PARTIALLY APPROVED** subjected to the following conditions:

4.1 That the application is partially approved in terms of Section 114 (a) of the Blouberg Spatial Planning and Land Use By-Law, 2017 subject to the following conditions:

- That only 5 hectares of the land will be granted the rights for offices and Shopping center and the remainder will remain Agriculture (13,4350 hectares).
- That the proposed rights for a fillings station be disapproved due its feasibility.

4.2. That land release process be followed in consultation with the Department of Rural and Land reform, prior to the proclamation of the rights.

4.3. That a simultaneous application for subdivision is approved and subdivision diagrams be submitted to the Surveyor General's for approval and subsequently to the Register of Deeds for registration purposes, within a period of three (3) years from date of this approval.

4.4. A Proof of registration must be submitted to the Blouberg Municipality. Failure which shall cause this approval to lapse. Should you need extension of time for registration, please apply for extension with the Municipality and provide reasons for the request to extend the time for registration.

That the following are the details of the proposed subdivision:

- Proposes portion of Portion 1 of the farm Kromhoek 438 MS is 5 hectares in extent
- The proposed remainder of portion 1 of the farm Kromhoek 438 MS is 13,4350 hectares.

4.5. That the zoning of the proposed subdivided portion shall change from Agricultural to Business 1 for development of a shopping complex and Office Park.

4.6. That the extent of the proposed development is restricted to the following development controls in line with the Blouberg Land Use Management Scheme, 2022:

ZONING	BUSINESS 1
Land use activity	Shopping complex and Office Park
Coverage	70%
Height	3 storey
Maximum FAR	3
Building lines	Street=5m (as per RAL specifications); rear = 2m and sides = 2m
Parking	4 parking per 100m ² Gross Leasable Floor Area for Shopping Center and 3 parking spaces per 100m ² Gross Leasable Floor Area for offices

- 4.7. That a detailed Site Development Plan (SDP) in line with the approved rights, designed by suitably qualified professional be submitted to the satisfaction of the municipality, within 3 months from the date of this letter and before any building plans could be approved.
- 4.8. That the plans for all new structures and all future buildings be submitted in terms of the National Building Regulation and Standard Act, 1997 (Act 103 of 1977) and Blouberg Land Use Scheme, 2022 be submitted to the municipality for approval prior to any building commencement
- 4.9. That the access of the proposed development be to the satisfaction of the relevant road authority and Blouberg Local Municipality.
- 4.10. That the applicant submits the approvals from Road Agency Limpopo (RAL) before proclaiming the rights.
- 4.11. That the on-site parking and loading requirements in terms of Chapter 6 of Blouberg Land Use Management Scheme, 2022 shall be adhered to the satisfaction of the Municipality
- 4.12. That a wall, fence or landscaping must be erected or provided on the road boundary of the piece of land concerned between such points of access and exit, to the satisfaction of the Municipality in respect of its height and aesthetic appearance.
- 4.13. That this approval should not be viewed as provision of water, sewer and electricity. Separate application should be made to the relevant authority and be approved prior to any infrastructure provision (if any).
- 4.14. That the applicant is responsible for providing an alternative method of services (sewer and water) which must still be consistent with all health regulations and environmental legislation and such alternatives must be submitted to the municipality by way of a full report with designs for discussion and approval
- 4.15. That all recommendations from the specialists' reports such as geotechnical investigations, engineering services, flood line reports, traffic and environmental impact assessments shall be adhered to at all times.

- 4.16. That mitigating factors regarding the delineated floodline be implemented so that floodline doesn't affect the development.
- 4.17. That an Engineering Services Level Agreement between the Developer and the Municipality be signed where all conditions with regards to Roads and storm water services are addressed.
- 4.18. That an Engineering Services Level Agreement between the Developer and the Capricorn District Municipality regarding water and sanitation provision be entered into.
- 4.19. That the comments from the external and internal departments and stakeholders be adhered to.
- 4.20. That a consent from the Department of Mineral and Energy be submitted to the municipality before proclamation.
- 4.21. That an approval for access to the D1589 must be obtained from RAL. RAL must approve the access road and pavement design to the development
- 4.22. That this approval for Shopping Complex and Office Park is valid for 5 years from the date of approval of the rights, failure to adhere to the condition will automatically lead to the lapsing of the rights.
- 4.23. That the applicant is allowed to apply for extension of time before the rights lapses as above.
- 4.24. That the land claim process be finalized with the consulted personnel and the claimants of the said portion before commencement of the development.
- 4.25. That the applicant and objector have the rights to appeal to this decision within 21 days after receiving the decision with the relevant authority.
- 4.26. That failure to comply with any of the conditions mentioned above, the applicant shall be liable for any damages or defects that may arise
- 4.27. That all conditions laid down by Blouberg Municipality must be complied with.



CHAIRPERSON: TT MUDZIELWANA
BLOUBERG MUNICIPAL PLANNING TRIBUNAL