28.7.97

Planning permission
civil

IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 651 OF 1996

IN THE MATTER OF THE DEVELOPMENT AND PLANNING LAW (1995 REVISION)

AND IN THE MATTER OF AN APPEAL under Section 43(4) of the said Law from a decision of the Planning Appeals Tribunals, dated the 5th of November, 1996, overruling the decision of the Central Planning Authority requiring the provision of a 9 foot right of way from the public road to the sea across part of the property situated at West Bay North East, Block 8A, Parcel 3 in a hotel and tourist-related Zone pursuant to Regulation 29 of the Development and planning Regulations (1995 Revision)

BETWEEN:	THE CENTRAL PLANNING AUTHORITY	APPELLANTS
AND:	THE PLANNING APPEALS TRIBUNALS	RESPONDENT

For the appellants: Mrs. J. Banks, Crown Counsel
For the respondent: Mr. Michael Alberga

BEFORE DOUGLAS, J.

REASONS FOR JUDGMENT

This is an application on behalf of the Central Planning Authority (CPA) against the decision of the Planning Appeals Tribunals

(Tribunal) which overruled the decision of the Central Planning Authority requiring the provision of a nine foot public right of way from the public road to the sea over part of a property situated in a hotel and tourist-related zone.

After hearing submissions by counsel for both parties I made an order upholding the decision of the tribunal, and as requested by counsel for the appellants, I am now giving my written reasons for judgment.

By this appeal the CPA sought an order that the said decision of the Tribunal be set aside and the requirement imposed pursuant to Regulation 29 of the Development and Planning Regulations for the provision of a nine (9) foot public right of way from the public road to the sea over part of the property situated at West Bay North East, Block 8A Parcel 3 in a hotel and tourist-related zone be reinstated with respect to the permission granted for a subdivision of the said property.

The facts of this matter have not been disputed and are as follows.

On 26th April 1996 the owners of the parcel of land applied to CPA under the Development and Planning (Amendment) Law, (Law 10 of 1977) for permission to partition into two lots the said parcel of land situated in a hotel and tourist-related zone with a shoreline of 360 feet. The application was made as, and in the form required by Regulation 21 (c) with plan attached. I have perused the plan but have been unable to identify on it any application of the land use within

the subdivision as required by Regulation 21 (5) d. However the final paragraph of the application itself reads:

> "Please note that it is the intention of the contracted purchasers to apply for permission to construct a single, private, family dwelling on each of the sub-divided parcels."

The Authority in dealing with the application must have considered this sufficient to fulfill its requirements. By indicating the nature of the intended development the applicants gave notice to the Authority that the subdivision was of such a nature that it would outwith the ambit of Regulation 29.

On 22nd May 1997 the Authority granted planning permission requiring the provision of a public right of way. Paragraph 3 (b) is as follows:

> "The application was considered by the CPA on 22nd May 1996 (CPA)/19/96 item 5.2) where it was resolved to grant planning permission subject to the following:
>
> Pursuant to Regulation 29 of the Development and planning Regulations (1995 Revision), the applicant shall register a 9 foot (9") minimum public right-of-way to the sea along the west side of parcel "A"s property boundary."

On 2nd July 1996 the owners appealed the CPA's decision and on 5th

November 1996 the Tribunal heard the said appeal and overruled the decision. I have before me the Tribunal's reason for decision which is as follows:

> "PURSUANT to the Development and Planning Law (Revised) Appeals Rules the reasons for the decision of the Tribunal in the aforesaid matter are as follows:
>
> 1. The Tribunal were of the opinion that the decision of the Central Planning Authority has no power to require a right-of-way to the sea in the case of a development for private single dwelling units."

It is this decision of the CPA which has now been appealed pursuant to Section 43 (4) of the Law (supra) which allows an appeal from the Tribunal to the Grand Court.

I now come to the grounds of appeal. It must be noted that they are couched in the terms required by Section 43(1) of the Law for an appeal against a decision of the Authority, and, although not stated, presumably against that of the Tribunal.

Three grounds were submitted but only the first two were argued at this hearing. The thrust of both these grounds were directed at the Authority's interpretation of Regulation 29, in particular, the manner in which the passage "in a development other than private single

dwelling units" should be construed in the context of the owner's application.

Ground one has two parts. Ground two is basically a repetition of ground 1.2. Nothwithstanding these separate grounds, they all must stand or fall on the determination of the true intent of the legislature.

The two grounds of appeal which were argued are as follows:

Ground 1 - The decision was erroneous in law.

1.1 The Planning Appeals Tribunal erred in its interpretation of Regulation 29 of the Development and Planning Regulations (1995 Revision) which clearly states that "In hotel and tourist-related zones, the Authority, when granting planning permission in relation to land which has a shoreline of two hundred feet or more **in a development other than private single dwelling units, shall require** the owner to set aside and dedicate to the public a right of way of not less than six feet in width from the public road to the sea. Such right of way may be within the area set aside for setbacks under these regulations."

1.2 The Planning Appeals Tribunal erred in failing to fully consider the definitions of "development" and "subdivision" and to take into account the fact that an application for a subdivision is for a development other than private single

dwelling units and that the intended purpose of the subdivision is irrelevant for the application of the provisions of Regulation 29 of the Development and Planning Regulations.

Ground 2 - The decision was unreasonable.

2.1 The Planning Appeals Tribunal failed to place sufficient weight upon the definitions of "development" and "subdivision" and to take into account the fact that an application for a subdivision and an application for a private single dwelling unit are two completely separate applications for two different types of development.

The gravamen of this appeal is directed at the issue of interpretation. Ground 1.1 recites the provision of Regulation 29 and accuses the Tribunal of erring in its interpretation of that Regulation, particularly of the interpretation and weight to be placed on the words "Development" and "Subdivision" in the context of the application. A number of authorities were cited in an effort to urge the court to arrive at the proper interpretation. of the law.

No one can deny that it is the function of the judiciary to interpret the written law, and to place on each a correct and exact interpretation. There are undoubtedly, instances where this duty becomes more onerous than others as not every law is clear, uniform and precise, hence the intent can be obfuscated by the very words designed to provide a clear and unambiguous interpretation. In this

matter the first ground of appeal reveals the difficulty encountered by the appellant in construing the expression "in a development other than private single dwelling units" as contained in the Regulation.

In this regard we are fortunate to have the benefit of Section 10 (2) of the Development and Planning Law, an interpretation clause and which must have been intended by the legislature to be taken into account in construing Regulation 29 (see **Dilworth and others v. The Commissioner for Land and Income Tax** (1899) AC 99 P.C. at (105).

The section leaves us in no doubt as to the definition of the expression "development" in the context of the Development Law and Regulations.

Section 10 (2) is as follows:

> "In this Law, except where the context otherwise requires, the expression "development" means the carrying out of building, engineering or other operations in, on, over or under any land, the making of any material change in the use of any building or other land, or the subdivision of any land."

In applying the provision of the above section to the Regulation we see that the expression "development" is interchangeable with "subdivision". Accordingly, in construing Regulation 29 in the context of the owner's application, the word "subdivision" must be substituted for "development". The Regulation would then read:

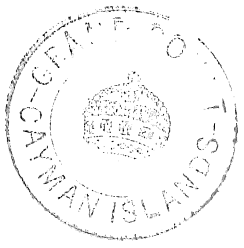
> "In hotel and tourist-related zones, the Authority, when granting planning permission in relation to land which has shoreline of two hundred feet or more in a subdivision other than one for private single dwelling units, shall require the owner to set aside and dedicate to the public a right of way of not less than six feet in width from the public road to the sea. Such right of way may be within the area and set aside the setbacks under these Regulations.

This, no doubt, is the manner in which the regulation was construed by the Tribunal in arriving at its decision. Any other interpretation would have been erroneous. It follows therefore, that for me to deal with the other grounds would be otiose.

I find this appeal to be totally without merit. The tribunal's interpretation of the expression "development" was in accordance with the definition as provided by Section 10 (2) (supra).

Accordingly it was dismissed.

Costs to the respondent to be agreed or taxed.



Kipling Douglas
Judge of the Grand Court

28th July 1997