

IN THE GRAND COURT OF THE CAYMAN ISLANDS

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 Tribunal,
dated the 5th of November, 1996 and communicated
in writing by letter dated 26th 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)



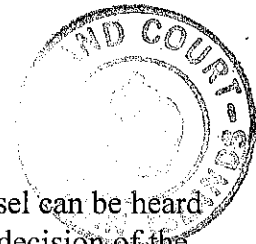
BETWEEN: THE CENTRAL PLANNING AUTHORITY APPELLANT

AND: THE PLANNING APPEALS TRIBUNAL RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that the Grand Court will be moved as soon as Counsel can be heard on behalf of the Central Planning Authority in this appeal against the decision of the Planning Appeals Tribunal of the 5th November, 1996, communicated in writing to the Appellant by copy of a letter dated 26th November, 1996 addressed to Mr Barry Yetton, c/o Myers and Alberga, P.O. Box 472, George Town, Grand Cayman, which overruled the decision of the Central Planning Authority requiring, pursuant to Regulation 29 of the Development and Planning Regulations, 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, which was the subject of the application for a subdivision on which the decision of the Central Planning Authority was based;

For an order that the said decision of the Planning Appeals Tribunal be set aside and that 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.

AND TAKE NOTICE that the Grounds of Appeal are as follows:

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." (emphasis supplied)

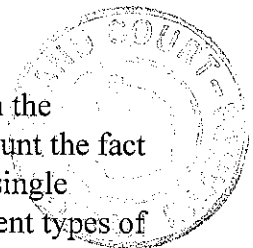
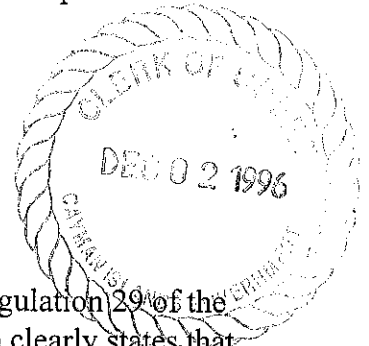
1.2 The Planning Appeals Tribunal erred in failing to fully consider the definitions of "development" and "subdivision" and to take into account the fact that an application for a subdivision is for a development other than private single dwelling units and that the intended purpose of the subdivision is irrelevant for the application of the provisions of Regulation 29 of the Development and Planning Regulations.

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.

3. The decision was contrary to the rules of natural justice.

3.1 The Planning Appeals Tribunal acted in breach of natural justice in that justice was not manifestly seen to be done because it did not take the opportunity to consider carefully the submissions on the point of law in issue and effectively showed a closed mind to the position of the Central Planning Authority by providing a verbal ruling on the point of law and by declining to hear submissions on the second ground of the appeal prior to communicating its decision in writing under the hand of the Chairman as required by Rule 7(6) of the Development and Planning Law, (Revised) Appeals Rules.



AND TAKE NOTICE that the Appellant relies on the provisions of Order 55 Rule 1 (3) of the Grand Court Rules which allows reference to the Development and Planning Law Appeals Rules which requires pursuant to Rule 9 the Chairman of the Tribunal to file in the office of the Clerk of the Court not later than sixty days from the date of the service of the Notice of Appeal :

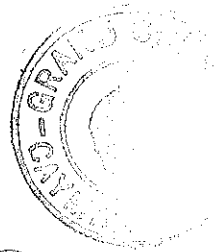
- (a) a statement of reasons for its decision which is to be served on the appellant and on the Executive Secretary; and
- (b) the record of the proceedings of the Tribunal kept under Rule 7(5), and all exhibits and documents which were before or were presented to the Tribunal. (For the purposes of this particular appeal, the record should include a note of the verbal ruling made by the Tribunal on the date of the hearing).

AND FURTHER TAKE NOTICE that the Appellant reserves its right to amend the grounds of appeal without leave by supplementary notice filed and served on the parties entitled to be served subsequent to the filing of the statement of reasons for the decision and not less than 7 days before the day appointed for the hearing of the appeal.

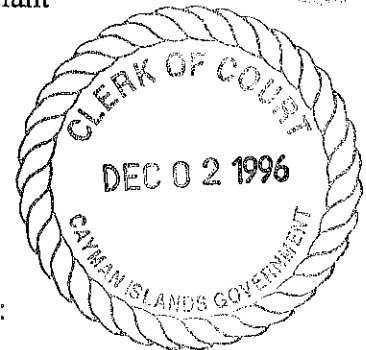
Dated the 2nd day of December, 1996



Crown Counsel
on behalf of the Appellant



TO: The Clerk of the Grand Court
AND TO: The Chairman of the Appeals Tribunal,
Mr W.S. Walker, c/o W.S. Walker & Co
AND TO: The Permanent Secretary for the Ministry
of Education, Aviation and Planning
AND TO: Other persons appearing before the Tribunal namely:
Barry Yetton c/o Myers & Alberga
Henry Smith c/o Maples & Calder
Rebecca Stellar c/o Maples & Calder



THIS NOTICE OF APPEAL is filed by the Legal Department for and on behalf of the Appellant whose address for service and correspondence is c/o the Legal Department, Tower Building (4th Floor), North Church Street, George Town, Grand Cayman