

**IN THE PLANNING APPEALS TRIBUNAL (CAYMAN BRAC &  
LITTLE CAYMAN)**

**HOLDEN AT CAYMAN BRAC**

**IN THE MATTER OF THE DEVELOPMENT AND PLANNING LAW**

**IN THE MATTER OF AN APPLICATION BY MR. & MRS. RONALD KYNES**

**IN THE MATTER OF AN APPLICATION FOR A HOUSE ON BLOCK 105 A  
PARCEL 59(cbf08-0048)**

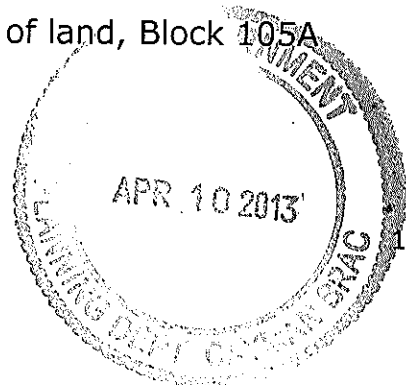
<b>BETWEEN</b>	<b>MR. &amp; MRS. RONALD KYNES</b>	<b>APPELLANTS</b>
<b>AND</b>	<b>THE DEVELOPMENT CONTROL BOARD</b>	<b>RESPONDENT</b>

*The Appellant Ronald Kynes appearing in person  
Ms. Anne-Marie Rambarran, instructed by the Offices of the Solicitor  
General appearing for The Respondent*



**REASONS FOR DECISION**

The Appellants are the registered proprietors of land registered at Block 105A Parcel 59. The purchase was registered on 5<sup>th</sup> March 2008. In June 2008 the Appellants sought permission to construct a house on the said land. According to the Appellants, it was at this stage that they were advised that the said parcel of land was designated Land for Public Purposes (LPP). This designation was made when the original parcel of land, Block 105A Parcel 1, was subdivided in November 1996.



There is no dispute that the Appellants were invited attend and address the Development and Control Board (DCB) on the matter. It is also not disputed that eventually, by letter dated 8<sup>th</sup> January 2009, the DCB advised the Appellants it had resolved to refuse to grant planning permission for their application on the basis that the said parcel of land was designated Land for Public Purposes (LPP). The appeal is against the decision of the DCB.

On the 21<sup>st</sup> day of January 2013, the Appeals Tribunal heard submissions in this matter. After retiring to determine the matter, it denied the appeal. These are the reasons for that decision.

### **The Law**

At the time that the Appellants filed their appeal, the relevant law was Section 49 of the Development and Planning Law (2008 Revision). This states:

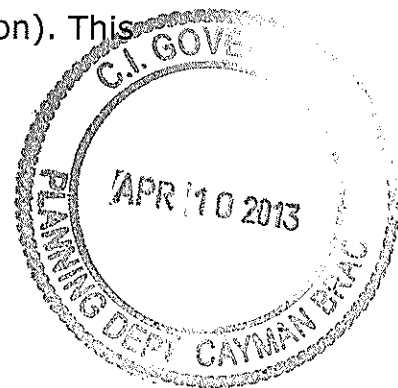
"49(1) Any person-

*(a) has applied for permission to develop land; or*

*(b) is an owner of full legal capacity who –*

*(i) resides within a radius of one thousand, five hundred feet of the boundaries of the land to which the application relates; or*

*(ii) resides elsewhere and owns any building or land (including a strata lot) within a radius of one thousand, five hundred feet of the boundaries of the land to which the application relates,*



*and who is aggrieved by a decision of the Board may, within fourteen days after receipt of notification of such decision (or within such longer period as the Appeals Tribunal may in any particular case allow for good cause), appeal by way of rehearing to the Tribunal against such decision.*

*(2) Section 48(2), (4), (5), (6) and (7) shall apply to appeals under this section as if references in that section to "the Tribunal" were references to the Appeals Tribunal.*

*(3) The Chairman of the Appeals Tribunal shall not have an original vote but in the event of the other members of the Tribunal being equally divided he shall have a casting vote."*

At the time of the hearing of the appeal, the relevant law was section 49(1) of the Development and Planning Law (2011 Revision) which provides:

*"49(1) Any person who is aggrieved by a decision of the Authority in respect of an application for planning permission, may, within fourteen days of notification or publication of that decision, whichever occurs the sooner, or within such longer period as the Appeals Tribunal may in any particular case allow for good cause, appeal against that decision to the Appeals Tribunal on the ground that it is –*

*(a) erroneous in law;*

*(b) unreasonable;*

*(c) contrary to the principles of natural justice; or*

*(d) at variance with any development plan having effect in relation thereto,*

*but not otherwise; and such appeal shall be heard by the Tribunal ..... and determined based on the record of the of the hearing to which it relates in accordance with any rules made hereunder."*

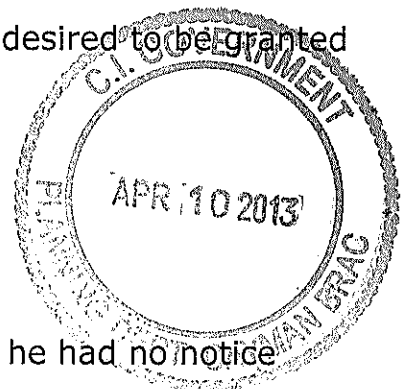
It was the submission of Counsel for the DCB that despite the change in the law, based on case law, the principles which the Tribunal had to consider in making a determination were the same in both instances.

Mr. Kynes, speaking on behalf of both Appellants and hereinafter referred to as "the Appellant" did not set out his grounds of appeal based on the law. However there were certain issues which he raised and desired to be granted due consideration.

*Lack of Knowledge and Due Diligence*

It was submitted by the Appellant that from the outset, he had no notice that the property he sought to purchase was designated Land for Public Purposes (LPP). He claimed that the Register at the Lands Office did not contain any note of such a designation. It only contained the designation "Private and Absolute".

According to the Appellant, prior to purchase, he went to the Planning Office

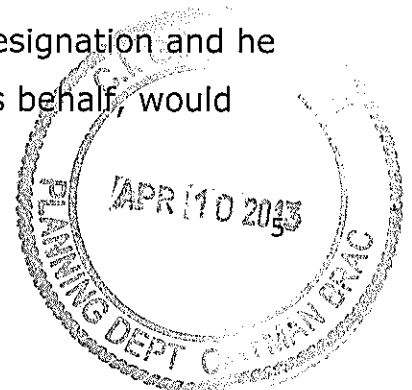


and spoke to a named officer there and asked if he would be able to build on the land. He claimed that the officer told him that he could; as long as he met his setbacks and as long as the Development and Control Board (DCB) approved the application. While it understood, from comments by Crown Counsel that the officer disputed the accuracy of this conversation, the Tribunal was not in a position to adjudicate and make a finding of fact on the matter.

In response to the contention on behalf of the DCB that prospective purchasers are required to carry out due diligence, the Appellant submitted that there was nothing further he could reasonably have been expected to do.

In his written submission, the Appellant referred to instances where planning approval had been granted, in error, on other parcels of land that had been LPP designated. He made the point that if staff members at the DCB had had difficulty determining that a parcel had LPP status, then an ordinary buyer could not be expected to do so.

The Appellant also presented evidence that some years prior to his purchase of the said parcel, a law firm had put it up for sale by public auction. He used this example to conclude that a law firm would not have taken such a step if it was aware that the land had been LPP designated. It was his assumption that the law firm was not aware of the land's designation and he concluded that even due diligence done by a law firm on his behalf, would



not have yielded the requisite information. This example, based as it is on assumption, is too theoretical.

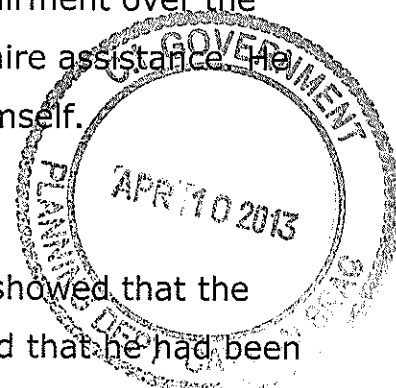
### Delay

The appellant provided a detailed history of all the steps that he had taken and everything which had occurred prior to the matter coming on for hearing before the Tribunal. It had taken a total of five years. He expressed his frustration with the process and stated that his health had deteriorated during this time.

### Ancillary Issues

The Appellant complained that it had been his intention to build a house on the land. He stated that he had had a prospective buyer for the house as well as all the materials needed to build the house. He stated that this plan had gone awry due to all the circumstances and as a result he had lost a substantial piece of income. Further, given his health impairment over the years, in order to build the house now, he would have to hire assistance. He stated that previously he could have built the house by himself.

The Appellant complained that all things, taken together, showed that the DCB had acted unreasonably in refusing his application and that he had been treated unfairly. He requested that the Tribunal reverse the decision of the DCB, lift the LPP designation and that this be done without reference to any of the adjacent property owners. This reference to the property owners was due to a policy indicated by a former Director of Planning in a memorandum.



The policy was that where it was sought to remove the LPP designation, all adjacent property owners in any subdivision were to be notified and the majority should consent. The DCB had heard from objectors during the original application and representation was made on behalf of objectors at hearing of the Appeal.

*Response by the Development and Control Board (DCB)*

It was the DCB's contention that the Appellant failed to adduce any sufficient or valid grounds of appeal in relation to the DCB's decision.

On behalf of the DCB, Crown Counsel submitted that the LPP designation for the relevant subdivision had been lawfully put in place. That being done, the DCB was required to take it into consideration. It was argued that the DCB acted lawfully when it refused to grant planning permission for a house on the said parcel.

Crown Counsel reiterated that there was a dispute concerning what the Planning Officer allegedly told the Appellant about the land. It was submitted that even if there had been an error in communication, this was not something that an individual could seek to rely on, as a prospective purchaser. This was because an individual could not argue that he had a legitimate expectation concerning something that was unlawful.

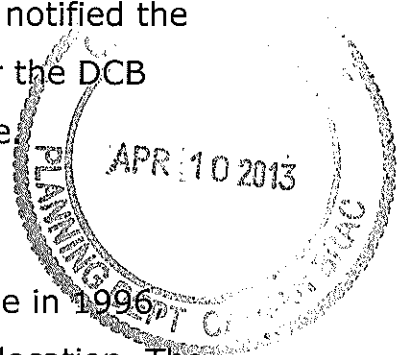


It was submitted by Crown Counsel that the Appellants failed to carry out due diligence. Citing the principle *caveat emptor - let the buyer beware*, Counsel argued that a purchaser had the burden of reasonably examining property before purchase and taking responsibility for its condition.

Crown Counsel submitted that the Appellants made no formal enquiries in writing in relation to the land at the Department of Planning. Had an attorney been retained by the Appellants, that person would have conducted the relevant searches and given advice. A purchaser had a duty to conduct the relevant searches of the land register as well as the plans at the Lands and Survey Department. Had this been done, the Appellants, as prospective purchasers would have had notice of the subdivision. The previous owner who had in fact applied for the subdivision was aware that the relevant parcel of land had been designated LPP.

The Land Register which was perused by the Appellants was endorsed "See Survey Plan FR 50/499". It was argued that this should have notified the Appellants to make further searches of the plans. Counsel for the DCB concluded that the Appellants failed to carry out due diligence.

It was also argued that the LPP designation having been made in 1996, persons would have purchased adjacent lots based on that allocation. The value of the adjacent lots would have been enhanced by this designation. These property owners would have had a legitimate expectation that the LPP designation would remain in place. Consequently if the DCB had granted the application made by the Appellant and consequently lifted the designation





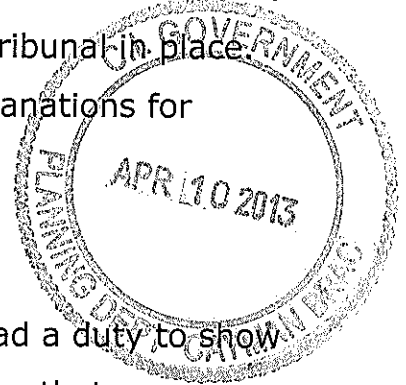
where there was objection by the other property owners, it would have opened itself up to lawsuits. It was submitted that the DCB made no error in law in refusing the Appellant's application.

The Crown submitted that the Appellant should have entered into the type of purchase contract with the vendor that provided remedies for any misrepresentation.

The appeal record showed that a part of the five year delay that the Appellant complained of, was occasioned because the DCB consulted several Government departments and agencies. It was argued that the DCB had a legal duty to engage in these consultations and by doing so, it acted to discharge its duty.

Additionally, the relevant Ministry had to deal with a backlog of appeals with dates being set in order of priority. Further, nothing could be done about the fact that for a long time, there was no appointed Appeals Tribunal in place. As such, while there was delay, there were reasonable explanations for same.

It was submitted on behalf of the DCB that the Appellant had a duty to show that the decision of the DCB was unreasonable. For example, that some relevant factor was not considered or that an irrelevant factor was considered. Overwhelming proof had to be provided that the decision that



was made was so unreasonable that no reasonable Authority could have come to it. It was submitted that the Appellant had failed to do this.

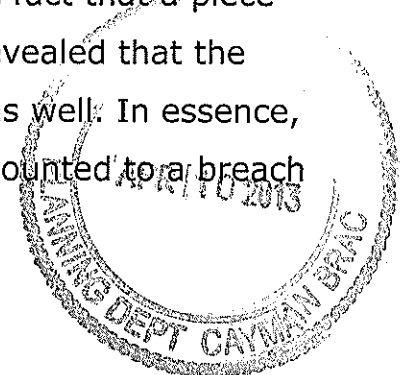
### **Decision**

The Appellants would have been best served if they had had legal representation to put forward their appeal within the context of the law. The Tribunal had to extract the salient issues from the written and verbal submissions.

The Tribunal was satisfied that the Appellants had been unaware that the land that they purchased had been designated LPP. This lay at the heart of their claim.

The Tribunal was of the view that it was unfortunate that a perusal of the Land Register did not immediately alert lay persons to the fact that a piece of land had LPP designation. Items in the appeal record revealed that the system has caused problems for government employees as well. In essence, the issue was whether all these factors taken together amounted to a breach of natural justice for the Appellants.

The Tribunal had to examine whether the decision of the DCB was wrong in law, unreasonable or contrary to the principles of natural justice. The burden lay with the Appellants to prove that the decision made by the DCB was



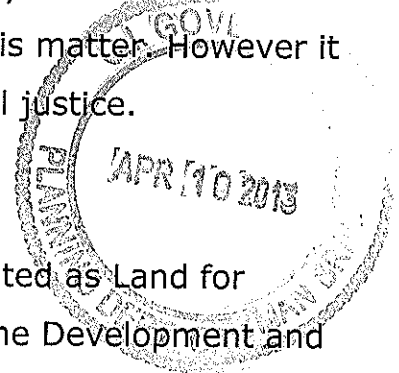
unlawful and/or unreasonable. The Tribunal was of the view that they did not discharge this burden.

The Appellants' ignorance of the law did not automatically lead to the remedies sought by them. They were fully within their rights to enter into a contract for the purchase of land without the use of an attorney-at-law. However had they sought the services of an attorney with experience in Conveyancing, much of their later problems could have been avoided.

An attorney-at-law would have drafted a purchase agreement between the vendor and the Appellants as purchasers which would have ensured that there were penalties should any misrepresentation or fraud take place. Further, the lawyer would have had the responsibility of ensuring that all relevant searches and checks were undertaken prior to the sale being completed. If this was done and there were repercussions to the purchasers, the lawyer would have faced legal liability. As such from the outset, the Appellants would have had access to legal remedies.

The Tribunal also considered it unfortunate that so many factors in the hearing and appeals process contributed to delays in this matter. However it did not take the view that this led to a breach of natural justice.

The crux of the matter was that this parcel was designated as Land for Public Purposes (LPP). Once it was aware of that fact, the Development and Control Board (DCB) could not arbitrarily ignore it. The DCB acted correctly



in seeking the position of adjacent property owners in order to determine whether or not there were any objections. The DCB also had to consider its own legal liability to property owners who had made purchases based on the LPP designation, should it choose to lift it.

The Tribunal found that the DCB acted lawfully and was not in error. The decision of the DCB was not unreasonable and the board did not act in bad faith. Further there was no breach of natural justice occasioned to the Appellants in either the actions of the DCB or the decision that it made.

As a result of the foregoing it was the unanimous decision of the Tribunal to confirm the DCB's decision and deny the appeal.



**Nova Hall**

**Chairman**

**29<sup>th</sup> March 2013.**

