BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 1019/15

In the matter of:

HEIRS GANGA & SEEBARUTH CHANDRAWTEE & SOOKRAZ

Appellants

v.

MUNICIPAL COUNCIL OF VACOAS-PHOENIX

Respondent

DETERMINATION

The decision under appeal is that of the Respondent for having, on the 15th October 2015, refused to grant a Building and Land Use Permit for the subdivision of a plot of land of the extent of 2425.35 square metres into five lots for residential purposes in the region of Solferino, Vacoas. The ground of refusal is that the site is found 'outside defined settlement boundary at a distance of approximately 400 metres with no basic infrastructure including tarred access'.

The Appellants have appealed on the following grounds:

1. The land is unoccupied since the death of the parents of the Appellants.
2. The plot of land on the other side is at a distance of less than 100 metres from the main road (i.e. Solferino - Beau Songe road).
3. The Appellants wish to be allocated a plot of land for each heir so that they can occupy and clean the land.

The statement of defence of the Respondent supports the grounds of refusal which are that the subject site is at a distance of approximately 400 metres outside settlement boundary as per the Outline Planning Scheme for Vacoas-Phoenix and policy USD 4 of the Scheme sets out a 'general presumption against proposals for development' in such regions. The policy lists out some exceptions where consideration can be given, for which the subject site does not qualify.

At the hearing, the representative of the Appellants placed much emphasis on the fact that the subject site is an inherited property and there is a dire need to proceed with the 'liquidation' of the 'succession' so that each heir can benefit from his/her share of the property and enjoy same.

The application submitted at the level of the Council is for a Building and Land Use Permit for the subdivision of a plot of land for residential purposes. The location of the land at a distance of approximately 400 metres outside settlement boundary and with no basic infrastructure, including a tarred road, is the basis for the Respondent's decision to refuse the application.

The Appellant placed no evidence before the Tribunal to show that any of the exceptions contained in policy UDS4 could apply in his case. He maintained that the new motorway (Beaux Songes –Flic en Flac Road) is at a distance of twenty metres from the subject property. But no amenity whatsoever was available (e.g. water, electricity, tarred road) to the land.

We have given due consideration to the plea of the Appellant regarding the need to find the means to proceed with a sharing of the succession of their late parents. We are indeed sympathetic to this cause. However, the Respondent has to act within the parameters of the law, and, in this case, the planning instruments that govern the granting of permits, the Outline Planning Scheme which is, 'par excellence', the governing instrument. The rationale for the policies contained therein is multi- fold. In the present case the distance from the settlement boundary is the decisive one.

The Respondent has the duty to ensure that the granting of a BLUP should commensurate with other pointers of development, namely road access, availability of water and electrical connections. The proximity of the new road to Beaux Songes as highlighted by the representative of the Appellant does not ensure that such other facilities would be available.

The representative of the Appellants has raised that that the decision amounts to a breach of their constitutional right to enjoy their property. We do not subscribe to this view. The decision of the Respondent does not amount to a deprivation of their property. The planning instruments have been relied upon by the Respondent to set the rule on the use that the owners can make of their land. The refusal is in relation to a division for residential purpose, given the location of the said land. It is open to the Appellants to consider other permissible developments in that area.

It is also important to emphasize that the application for BLUP (subject matter of the present appeal) is not in any way a mechanism to cause a subdivision among heirs. Decisions as to how to sub-divide properties for succession, or to remain in an

'indivision' for that matter, is beyond the scope of planning instruments and the jurisdiction of this Tribunal.

We therefore find no basis to interfere with the decision of the Respondent to refuse to grant the BLUP in this matter. The appeal is accordingly set aside.

Determination delivered by:

Mrs. Vedalini Bhadain, Chairperson

Mr. Pravin K. Manna, Assessor

Mr. Luis M. Cheong Wai Yin, Assessor

Date: 16th January 2018