**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

**Cause No. : ELAT 831/15**

**In the matter of:**

**MR. RAMANAND PYDIAH**

**Appellant**

**v.**

**DISTRICT COUNCIL OF SAVANNE**

**Respondent**

## DETERMINATION

The appeal is against the decision of the Respondent for refusing to approve an application for construction of ground and first floors for residential purposes at Bel Air, St. Felix, Surinam. The sole ground of refusal, as contained in a letter dated 8 January 2015, is that 'the site is located outside settlement boundary (80 metres) without any basic infrastructure'.

The Appellant, who was inops consilii, appealed on two grounds, firstly, that he had already obtained water supply, and secondly, that there was a high voltage electric line that passes over his property.

In his statement of case, the Appellant elaborated on his family background and how he purchased a plot of land of 1 arpent 25 perches at Bel Air St. Felix with a view to erect his own house. He stopped cane cultivation on that particular plot since 2004 (as contained in a letter dated 18 June 2014 from the Sugar Insurance Fund Board, Annex 4 to his statement of case). He was also granted an exemption from application for a Land conversion permit in respect of his plot (with conditions) from the Ministry of Agro-Industry and Food Security on 2 October 2015 (Annex 5 to the statement of case).

As regards the amenities available on the land, the Appellant produced copies of receipts for payments made to the Central Water Authority and Central Electricity Board (Annexes 7 and 8) for the purpose of the application for a BLUP. The processing fee for this application was paid (Annex 9). As per his statement of case, the officers of the

CWA had visited his plot and upon their recommendations, he caused the digging and pipe laying on his plot for the provision of water, as shown by Annexes 11, 12 and 13 to his statement of case. He was requested to effect a payment for the connection and he paid for same. Copy of the receipt of payment is at Annex 14 of the Statement of case. Since then, the connection has already been done by the CWA. The Appellant stated in his statement of case that officers of the CEB inspected his plot and had indicated that there was no difficulty for the CEB to provide electricity to his plot in future.

At the hearing, the Appellant reiterated the contents of his statement of case and added that there has been a recent development with the announced project of the construction of a smart city at St Felix. This development will have an impact on the zoning of the whole area, including his plot, so much so that this will have a bearing on the settlement boundary. He added that an EIA licence has been granted to St Felix for the development of a residence in close proximity to his property.

In its Statement of defence, the Respondent relied on Policy SD4 of the Outline Planning Scheme to support its decision and moved that the appeal be set aside. In submission however, counsel for the Respondent referred lengthily to Policy SD3 of the Outline Planning Scheme to support its decision.

**Policy SD 3** of the Outline Planning Scheme concerns Development on the Edge of Settlement Boundaries and provides that

" *There should be a general presumption in favour of development on the edge of but outside defined settlement boundaries providing that such development proposals are aimed at :*

- *Consolidating gaps in an otherwise built up area; or*
- *Rounding off an existing built-up area.....*
- *Infilling (of development) where no strategic gap between settlements is proposed; or*
- *Providing industrial uses which may not be appropriate within settlement boundaries*
- *And*
- *Are capable of ready connection to existing utility supplies and transport networks or can be connected without unacceptable public expense.*

**Policy SD 4** of the Outline Planning Scheme relates to 'Development on Land Outside Settlement Boundaries' and provides that "*There should be a general presumption against proposals for development outside settlement boundaries unless the proposal*:

- *Has been shown to have followed the sequential approach to the release of sites identified in SD 1, SD 2 and SD 3 and there are no suitable sites within or on the edge of settlement boundaries.....; or*
- *Is for the re-use or refurbishment of existing buildings set in their own grounds; or*
- *Is considered a bad neighbor development as defined in Policy ID 4; or*
- *In cases of national interest ....;*
- ***and***
- *Is capable of ready connection to existing utility supplies and transport networks or can be connected without unacceptable public expenses' , .....'or where the proposal is from a small owner seeking residential property for themselves or their close kin and can be considered as a hardship case, provided that in the opinion of the relevant authorities such release would not encourage large scale removal of land from agriculture...'*

It is the Appellant's stand that there has been a drastic change in the planning scenery of that part of the island over the recent part. On one hand, there has been the building of a tarred road near his property. This was in the context of the tourism development in that region, with the implanting hotels which led to an upliftment of the southern coastal road. On the other hand there have been major developments undertaken by St. Felix in the area, especially La Residence de St Felix. The Appellant's major point is the announced Smart City. The proposed morcellement as shown on Annex 1 is along the same line as propounded by the Appellant. The Appellant produced a CD rom showing these development proposals. True it is that the plan and CD-rom have not been produced by the Ministry of Environment, the relevant authority for the granting of an EIA for the said project, nor by the promoter or his expert who drew up the plan. However, we take into account that that this Tribunal is empowered to conduct its case with as little formality and technicality as possible by virtue of section 5(3)(b) of the ELUAT Act 2012. As such we have given the Appellant the latitude to present his case to the best of his abilities being given that he is inops consilii. He attempted to place before the Tribunal all information that he had been able to obtain which would be relevant to his proposed development. We have taken care not to rely solely on his word as regards the development that is taking place in that part of the island. This is why we expect the Respondent to enlighten this Tribunal on the above issues, being the sole authority that has the power to grants permits for land use. We note that there was no reference whatsoever made by the Respondent as regards these developments. It came out in the cross examination of the representative of the Respondent that it had been communicated with a proposal for a Smart City from the Board of Investment and there had been a site visit attended by the Respondent together with other ministries in relation to this proposed development in that area. The witness could not confirm if there had been any follow up of the said proposal.

We are alive to the fact that the Respondent is bound by the guidelines and policies as referred to above when considering building permit applications. On the other hand, the Respondent, being the authority that has a mandate as to planning within its jurisdiction, has to be alive to recent developments. It is necessary that applications be assessed with a different approach, taking into account those recent developments.

We have taken note of the evidence that the Appellant does not qualify for a consideration under the 'hardship exception'. The mere fact that such exception exists is reason enough to note that there are avenues for a different approach to the 'tick box' procedure as regards the criteria laid down in the Outline Planning Scheme. This is by no means a suggestion that a floodgate can be open to departures from the norms contained therein. This only means that the Respondent has to keep an open eye to the developments on the ground, namely the presence of new roads and hotels which would have an impact on the area in close proximity to those hotels. We take the view that the Respondent, being the relevant authority, ought to have enlightened the Tribunal on the existence of any such new development that may call for a broader perspective in assessing the application of the Appellant. As it is, the Appellant has established that there has been provision for infrastructure, namely water supply and possibility of electrical supply (the evidence of the Appellant on the availability of electrical connection has been unrebutted). The Appellant has also agreed to have the road to his land tarred on his own initiative and cost. These arrangements meet the criteria laid down in policy SD 3 related to 'Development on the edge of Settlement Boundaries'.

On this score, the representative of the Respondent has not provided the explanations that were sought by the Tribunal as to why consideration was not given to policy SD 3 in relation to the development on the edge of settlement boundary and the governing provisions for such development. He contented himself by saying that the site was seventy metres outside settlement boundary (while on the refusal letter it is stated that it was eighty metres outside this boundary). Yet, the provision of this policy relating to 'consideration under hardship case' had been relied upon by the Respondent. In relation to policy SD 3, what amounts to the concept of 'edge of settlement boundary'? How close to the edge should the proposal be to trigger the use of policy SD 3? We are left in the dark as to these very relevant considerations.

We take the view that the Respondent ought to have had regard to the reality on the ground, namely the state of development and projects that are intended to be implemented in the area before applying a planning policy (an 'in concreto' approach). The representative of the Respondent admitted that he did not know where the land in respect of which the application subject matter of the appeal is located. This speaks at length on the assessment made by the Respondent of the Appellant's application.

We find it appropriate to refer the Appellant's application back to the Respondent for a re-assessment and invite the Respondent to take its decision in the light of the observations made above.

Delivered by:

**Mrs. V. Bhadain, Chairperson** .....

**Mrs. B Kaniah, Assessor** .....

**Mr. M. A. Busawon, Assessor** .....

**Date:** 10th July 2017

Environment and Land Use Appeal Tribunal