

2008 Bermuda Development Plan Draft

why it's important for the General Public to be aware

Facts:

- Current Development Plan was prepared in 1992
- The 'current' Plan came into effect in 1994.
- The Planning Act 1974 requires the preparation of a Development Plan and a review of this Plan every five years.
- Therefore, under the Act the Bermuda Plan should have been reviewed in 1999 and such a review is now 9 years overdue.
- Planning Act is the permanent statute legislation that regulates not only the physical development of the island, but also the processes and mechanisms through which this is achieved such as by means of physical development plans, development control enforcement and building regulations
- The 1992 Plan is based on data compiled in the late '80s and very early '90s
- If a development plan is out of date, the rules to govern development are more open to influences and compromise (such as the use of NGOs) than it would be if there was a solid development plan
- Despite how rigorous the current 1992 Development Plan is, without having transparency on whether regulation is being followed, the advice (or spirit) of the Plan is not put into practice, even though the process might be valid, or maybe SDOs (Special Development Orders) are valid.
- According to architects the Planning process was once concluded in about eight weeks. Today initial applications aren't completed before 12 or 16 weeks and building control submissions take a further ten to 12 weeks.
- There's a development boom and yet there's a handful of people dealing with hundreds of applications in the Planning Department – they are understaffed and do not have the depth of experience (such as a qualified urban planner) to provide the necessary interpretation of situations to ensure the right precedent is set.
- Lack of prosecution (or enforcement) encourages illegal development due to the incentive of considerable financial benefits. The Ministry must be enabled to apply significant fines and penalties that would introduce a fear of prosecution to serve as an effective deterrent. Any penalty has to exceed the maximum profit to be gained from an infraction
- The present inability to effectively enforce legislation means that it actually makes financial good judgment to break the law. Retroactive developments and in many cases the resulting destruction of protected areas, is used as a way to nullify conservation areas and facilitate future development contrary to the Development Plan
- A Special Development Order (SDO) is a planning approval that is granted by the Minister of the Environment instead of the Development Applications Board. The approval can be for in principle or for final approval.
- The biggest differentiating factor of an SDO is that the public process that is set up under the Planning Act is circumvented. Sometimes the right to object is removed all together, and the right of appeal is always taken away from the public.
- The planning process is intended to ensure that the use and development of all land in Bermuda complies with the zoning. Therefore, it has generally been accepted that SDO's are typically only used when a matter is proposed that the zoning did not envision or cannot permit, and where the development is of national significance and importance.
- What has been happening lately is that developers are seeking SDO's instead of complying with the zoning at all, and/or the development regulations that control use, density, height, site coverage. Often, the SDO's are being granted without the requisite studies typically

required before development is approved, such as Traffic Impact Studies or Environmental Impact Statement.

- They are basically being used to “end run” the planning process to give developers a guaranteed approval for development that will not be held up in the typical public process.

Criticism

- Bermuda National Trust in a 2006 review of the legislation is its lack of teeth in the area of enforcement. The weakness means that environmental violations are largely unchecked because the Ministry simply doesn't have the power.
- However there are many who say the greater demon is the antiquated legislation that governs the Department's operation, the 1992 Bermuda Development Plan
- This is inconsistent with standard practice in advanced democracies that have respect for and an understanding of the import of good planning and the benefits it brings to the community.
- In Bermuda it is especially important to maintain relevant legislation with regard to Development for significant Projects where there is input from overseas parties who may be unfamiliar with the needs of the local infrastructure.
- With an out of date Plan, the question which begs to be asked is what relevant guidelines will be employed to ensure New Developments (already built since 1999, currently being built or scheduled to be built) is developed in a sustainable manner.
- Equally ill equipped, many feel, is the 2001 City of Hamilton Plan, which also falls under the Act