

CAYMAN ISLANDS



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THE DEVELOPMENT AND PLANNING (AMENDMENT) LAW, 2010

(LAW 30 OF 2010)

THE DEVELOPMENT AND PLANNING (AMENDMENT) LAW, 2010

ARRANGEMENT OF SECTIONS

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CAYMAN ISLANDS

Law 30 of 2010.

I Assent

Donovan Ebanks

Acting Governor.

28th July, 2010

A LAW TO AMEND THE DEVELOPMENT AND PLANNING LAW (2008 REVISION) TO FORMALLY ESTABLISH THE DEPARTMENT OF PLANNING; TO ESTABLISH A STABLE AND ADEQUATE SOURCE OF FUNDING FOR AFFORDABLE HOUSING; TO MAKE FURTHER PROVISION IN RESPECT OF APPEALS AGAINST DECISIONS OF THE CENTRAL PLANNING AUTHORITY AND THE DEVELOPMENT CONTROL BOARD; AND TO MAKE PROVISION FOR INCIDENTAL AND CONNECTED MATTERS

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Development and Planning (Amendment) Law, 2010. Short title

2. The Development and Planning Law (2008 Revision), in this Law referred to as the “principal Law”, is amended in section 2 as follows - Amendment of section 2 of the Development and Planning Law (2008 Revision) - definitions

(a) in subsection (1) by inserting, in the appropriate alphabetical sequence, the following definitions -

“ “ancillary building” means a garage or other building or structure on a lot or parcel subordinate to and not forming an integral part of the main or principal building but pertaining to the use of the main building;

“days” means working days;

“operations” includes -

- (a) building operations;
- (b) excavating land; and
- (c) any other activity connected to the use of land;

“planned area development” means a master planned development approved by the Authority pursuant to regulations made under this Law;” and

(b) by inserting after subsection (1) the following subsection -

“ (1a) For the purposes of this Law -

- (a) carrying out development without the grant of permission required in that behalf under Part III; or
- (b) failing to comply with any condition or limitation subject to which such permission has been granted,

constitutes a breach of planning control.”.

Insertion of section 3A -
continuation of Planning
Department

3. The principal Law is amended by inserting after section 3 the following section -

“Continuation of
Planning
Department

3A. There shall continue to be established a department of Government called the Department of Planning which shall be maintained by such monies as shall be paid out of the general revenue of the Islands.”.

Repeal and substitution
of section 4 -
appointment of staff

4. The principal Law is amended by repealing section 4 and substituting the following section -

“Appointment of
staff

4A. (1) The Governor shall appoint a Director of Planning and such other officers as appear necessary for the proper exercise of the functions of the Authority; and the Director and officers shall be employed in the Department of Planning and shall be responsible for the administration of the Authority and the Board, including preparing their agendas and minutes, and communicating and implementing their decisions.

(2) It is the duty of the Director to attend all meetings of the Authority and to make to the Authority and the Board such recommendations as may appear to him to be necessary

for the implementation of this Law.”.

5. The principal Law is amended in section 6(2) by inserting after paragraph (d) the following paragraph - Amendment of section 6
- applications to carry
out major developments

“(da)planned area developments;”.

6. The principal Law is amended by inserting after section 8 the following section - Insertion of section 8A -
immunity

“Immunity 8A. The Authority, the Board, the Department of Planning, the Director or an employee of the Department of Planning shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective duties or functions under this Law unless it is shown that the act or omission was in bad faith.”.

7. The principal Law is amended in section 13 as follows - Amendment of section
13 - provisions for
development

- (a) in subsection (1) by inserting after the words “this Law” the words “or any regulations made under this Law”;
- (b) by repealing subsection (2);
- (c) in subsection (3), in the definition of “development” by deleting all of the words appearing before paragraph (b) and substituting the following words -

“ “development” means the carrying out of building, engineering or other operations in, on, over or under any land, the making of any material change in the use of any building or other land, or the subdivision of any land, except that the following types of developments shall not require planning permission but shall be subject to all other provisions of the Law and any regulations made under the Law, including the Building Code Regulations, namely -

- (a) the carrying out of works for the maintenance, improvement or other alteration of any detached house if the works -
 - (i) affect only the interior of the house or do not materially affect the external appearance of the house; and
 - (ii) do not constitute or contribute to a material change in the use of the house;

- (aa) the carrying out of works for the maintenance, improvement or other alteration of any building (other than a detached house) if the works -
 - (i) affect only the interior of the building or do not materially affect the external appearance of the building;
 - (ii) do not constitute or contribute to a material change in the use of the building; and
 - (iii) do not contravene any other Law, regulation or code;
- (d) in subsection (6) by deleting the word “Permission” and substituting the words “Subject to any regulations made under this Law with regard to planned area developments, permission”; and
- (e) by repealing subsection (7) and substituting the following subsection -

“(7) Subject to subsection (6) and to any regulations made under this Law with regard to planned area developments, permission to develop land, the primary purpose of which is for residential use, for any other purpose than such use shall not be granted unless the Authority is satisfied that -

 - (a) the applicant has published adequate notice of his application for such permission in four consecutive issues of a public newspaper circulating in the Islands; and
 - (b) consent to the granting of such approval has been given by a majority of all owners of full legal capacity who -
 - (i) for the time being reside within a radius of one thousand feet of the boundaries of the land to which the application relates; or
 - (ii) reside elsewhere and own any building or land (including a strata lot) within a radius of one thousand feet of the boundaries of the land to which the application relates;

but where a development involves any operation which by itself would not conform to the primary use of residential land, that operation shall be deemed to not change the primary use of that land if the development to which such operation relates conforms to such primary use.”.

8. The principal Law is amended in section 15 as follows -
- Amendment of section
15 - application for
planning permission
- (a) in subsection (1) by inserting after the word “land” the words “or permission for a planned area development”; and
 - (b) by repealing subsections (3) and (4) and substituting the following subsections -
 - “ (3) Subject to any specific provision made therein by the Authority, permission granted by the Authority remains effective for five years from the date of its promulgation but where permission is granted for a planned area development or where any part of the approved development is commenced within such time as provided or imposed thereunder, such approval shall vest in perpetuity and enure for the benefit of the land in accordance with section 16(4), unless revoked or modified in accordance with section 17.
 - (4) Notice of an application for planning permission having been made to the Authority (other than an application for permission having relation to a detached house, semi-detached house, duplex or any temporary development) shall be served in accordance with any regulations made under this Law, and the Authority shall not consider any application in the absence of evidence of service or publication, as the case may be, of such notice and unless twenty-one days have elapsed since the service or publication, as the case may be, of the last of such required notice.”.
9. The principal Law is amended by repealing section 27.
- Repeal of section 27 -
maintenance of waste
land, etc.
10. The principal Law is amended by inserting after Part III the following Part -
- Insertion of Part IIIA-
Land Adversely
Affecting Amenity of
Neighbourhood
- “PART IIIA - Land Adversely Affecting Amenity of Neighbourhood**
- Power to require proper maintenance of land
- 29A.(1) If it appears to the Authority that the amenity of an area is adversely affected or seriously injured by reason of the ruinous, dilapidated or other condition of any building, or by the condition of land due to the deposit of refuse, spoil or derelict vehicles or the occupation of land or a road for purposes of the repair of vehicles, it may serve a notice under this section on -
- (a) the owner or occupier of the land or building; or

(b) the person responsible for causing the condition of the land or building.

(2) The notice shall require such steps for remedying the condition of the land or building as may be specified in the notice to be taken within such period as may be so specified.

(3) Subject to the following provisions of this Part, the notice shall take effect at the end of such period as may be specified in the notice.

Penalty for non-compliance with notice under section 29A

29B. (1) The provisions of this section shall have effect where a notice has been served under section 29A.

(2) If any owner or occupier of the land or building on whom the notice was served fails to take steps required by the notice within the period specified in it for compliance with it, he is guilty of an offence and liable on summary conviction to a fine of -

- (a) five thousand dollars per day from the date that the notice takes effect in accordance with section 29A(3) in relation to land or a building in a zone other than a Hotel/Tourism zone as defined in the Development and Planning Regulations (2006 Revision); or
- (b) twenty-five thousand dollars per day from the date that the notice takes effect in accordance with section 29A(3) in relation to land or a building in a Hotel/Tourism zone as so defined,

and, in default of the payment of the fine, to imprisonment for a term of six months.

(3) Where proceedings have been brought under subsection (2) against a person as the owner of the land or building and he has, at some time before the end of the compliance period, ceased to be the owner of the land or building, if he -

- (a) duly lays information to that effect; and
- (b) gives the prosecution not less than three

clear days' notice of his intention,

he shall be entitled to have the person who then became the owner of the land or building brought before the court in the proceedings.

(4) Where proceedings have been brought under subsection (2) against a person as the occupier of the land or building and he has, at some time before the end of the compliance period, ceased to be the occupier of the land or building, if he -

- (a) duly lays information to that effect; and
- (b) gives the prosecution not less than three clear days' notice of his intention,

he shall be entitled to have brought before the court in the proceedings the person who then became the occupier of the land or building or, if nobody then became the occupier, the person who is the owner at the date of the notice.

(5) Where in such proceedings -

- (a) it has been proved that any steps required by the notice under section 29A have not been taken within the compliance period; and
- (b) the original defendant proves that the failure to take those steps was attributable, in whole or in part, to the default of a person specified in the notice under subsection (3) or (4),

then -

- (i) that person may be convicted of the offence; and
- (ii) if the original defendant also proves that he took all reasonable steps to ensure compliance with the notice, he shall be acquitted of the offence.

(6) If, after a person has been convicted under the previous provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the notice, he is guilty of a further offence and liable on summary conviction to a fine of -

- (a) one hundred dollars for each day following

his first conviction on which any of the requirements of the notice remain unfulfilled, in relation to land or a building in a zone other than a Hotel/Tourism zone or a Commercial zone as defined in the Development and Planning Regulations (2006 Revision); or

- (b) two thousand for each day following his first conviction on which any of the requirements of the notice remain unfulfilled in relation to land or a building in a Hotel/Tourism zone or a Commercial zone as so defined,

and, in default of the payment of the fine, to imprisonment for a term of three months.

(7) Any reference in this section to the compliance period, in relation to a notice, is a reference to the period specified in the notice for compliance with it.

Appeal to
summary court
against notice
under section
29A

29C. (1) A person on whom a notice under section 29A is served, or any other person having an interest in the land to which the notice relates, may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal against the notice on any of the following grounds -

- (a) that the condition of the land or building to which the notice relates does not adversely affect the amenity of the area;
- (b) that the condition of the land or building to which the notice relates is attributable to, and is such as results in the ordinary course of events from, the carrying on of operations or a use of land which is not in contravention of Part III;
- (c) that the requirements of the notice exceed what is necessary for preventing the condition of the land or building from adversely affecting the amenity of the area; and
- (d) that the period specified in the notice as the period within which any steps required by the notice are to be taken falls short of what should reasonably be allowed.

(2) An appeal under this section shall be made to a court of summary jurisdiction.

(3) Where such an appeal is brought, the notice to which it relates shall be suspended and shall not take effect pending the final determination or withdrawal of the appeal.

(4) On such an appeal, the court may correct any informality, defect or error in the notice if satisfied that the informality, defect or error is not material.

(5) On the determination of such an appeal the court shall give directions for giving effect to its determination, including, where appropriate, directions for quashing the notice or for varying the terms of the notice in favour of the appellant.

(6) Where the notice is varied or the appeal dismissed or withdrawn by the appellant, the notice, unless the court directs otherwise, shall take effect on the date of determination of the appeal.

(7) Where any person has appealed to a court under this section against a notice, neither that person nor any other shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

Appeal to Grand Court

29D. Where an appeal has been brought under section 29C, an appeal against the decision of the court of summary jurisdiction on that appeal may be brought to the Grand Court by the appellant or by the Authority.

Execution and cost of works required by notice under section 29A

29E. (1) If, within the period specified in a notice under section 29A in accordance with subsection (2) of that section, any steps required by the notice to be taken have not been taken, the Authority may -

- (a) enter the land or building and take those steps; and
- (b) recover from the person who is then the owner of the land or building any expenses reasonably incurred by the Authority in

doing so.

(2) Where a notice has been served under section 29A -

- (a) any expenses incurred by the owner or occupier of any land or building for the purpose of complying with the notice; and
- (b) any sums paid by the owner of any land or building under subsection (1) in respect of expenses incurred by the Authority in taking steps required by such a notice,

shall be deemed to be incurred or paid for the use and at the request of the person who caused or permitted the land or building to come to be in the condition in which it was when the notice was served.

(3) Where by virtue of this section any expenses are recoverable by the Authority, those expenses shall be recoverable as a simple contract debt in any court of competent jurisdiction, or there may be the imposition of a caution or restriction on the property in accordance with Part VIII of the Registered Land Law (2004 Revision).”.

Repeal and substitution of Part VI - Infrastructure Fund

11. The principal Law is amended by repealing Part VI and substituting the following Part -

“PART VI-Infrastructure Fund

Infrastructure Fund

38. (1) There is established an infrastructure fund for the purpose of providing funds for development of roads, affordable housing and other infrastructure in the Islands.

(2) The fund shall be administered by the Ministry of Finance and allocations and disbursements approved by the Governor and shall consist of moneys received under subsection (4).

(3) In this section -

- (a) “Area A” means the following registration sections, blocks and parcels -

Registration Section

- (i) West Bay

Block

5C (parcels with water frontage only, but including any parcel subsequently derived from another parcel with water frontage existing at the 15th September, 1997), 5D,

10A, 10E, 11B, 11C, 11D, 12C, 12D, 12E, 17A;

- (ii) George Town 13B, 13C, 13E, 13EH (parcels with road frontage on West Bay Road, Eastern Avenue and North Church Street), 13D (parcels with road frontage on Eastern Avenue), 14BG, 14BH, 14BJ, 14C, 14CF, 14CJ, 14D (parcels with road frontage on Elgin Avenue, Huldah Avenue and Thomas Russell Avenue), OPY, 19A, 19E, 20B, 20C (parcels north of Owen Roberts International Airport);

All those parcels (including any parcel subsequently derived from another parcel) on the sea side and those fronting onto South Church Street, South Sound Road, Shamrock Road and East-West Arterial in Blocks 6D, 7C and 7D, 15D, 21E, 21B, 21C and 23B.

- (b) “Area B” means the following registration sections, blocks and parcels -

Registration Section	Block
Bodden Town, North Side and East End	28C, 28D (parcels zoned Neighbourhood Commercial), 33B, 33C, 33CJ, 33D, 33E, 33M, 39E, and those parcels in 57A, 61A, 65A, 69A and 73A between the sea and the Queen’s Highway; All those parcels (including any parcel subsequently derived from another parcel) not fronting onto South Church Street, South Sound Road, Shamrock Road and East-West Arterial in Blocks 6D, 7C and 7D, 15D, 21E, 21B, 21C and 23B and bounded on the West by Walkers Road, on the North by Academy Way, Aspiration Drive, Fairbanks Road, Fern Circle, Bobby Thompson Way, and Linford Pierson Highway, and on the East by Crewe Road.

- (c) “Area C” means the registration sections, blocks and parcels in Grand Cayman and Little Cayman not included in Area A or B.

- (4) A person to whom planning permission for development of -
- (a) an industrial building;
 - (b) a commercial building;
 - (c) an hotel;
 - (d) an apartment building;
 - (e) an institutional building;
 - (f) a house exceeding five thousand square feet in gross floor area;
 - (g) an extension to a house which would increase its gross floor area to more than five thousand square feet;

- (h) a duplex exceeding five thousand square feet in gross floor area;
or
- (i) a change of use of building,

is granted pursuant to an application made on or after the date of commencement of the Development and Planning (Amendment) Law, 2010 shall contribute to the infrastructure fund as follows -

- (i) in Area A -

Development Type	Rate for Roads and Other Infrastructure per gross sq. ft.	Rates for Affordable Housing per gross sq. ft.	Total Rate
An industrial building	\$2.50 per gross sq. ft.	\$0.00 per gross sq. ft.	\$2.50
A commercial building	\$2.50 per gross sq. ft.	\$2.00 per gross sq. ft.	\$4.50
A hotel building	\$2.50 per gross sq. ft.	\$2.00 per gross sq. ft.	\$4.50
An apartment building	\$2.50 per gross sq. ft.	\$2.00 per gross sq. ft.	\$4.50
An institutional building	\$2.00 per gross sq. ft.	\$1.50 per gross sq. ft.	\$3.50
Any house	\$1.50 per gross sq. ft.	\$5.00 per gross sq. ft.	\$6.50
An extension to a house which would increase its gross floor area to more than 5,000 square feet	\$2.50 per gross sq. ft.	\$0.00 per gross sq. ft.	\$2.50
A duplex exceeding 5,000 square feet in gross floor area	\$2.00 per gross sq. ft.	\$1.00 per gross sq. ft.	\$3.00
A change of use of building	The rate applicable to the type of development being changed to	The rate applicable to the type of development being changed to	Based on development type

- (ii) in Area B -

Development Type	Rate for Roads and Other Infrastructure per gross sq. ft.	Rates for Affordable Housing per gross sq. ft.	Total Rate
An industrial building	\$1.50 per gross sq. ft.	\$0.00 per gross sq. ft.	\$1.50
A commercial building	\$1.50 per gross sq. ft.	\$1.00 per gross sq. ft.	\$2.50
A hotel building	\$1.50 per gross sq. ft.	\$1.00 per gross sq. ft.	\$2.50
An apartment building	\$1.50 per gross sq. ft.	\$1.00 per gross sq. ft.	\$2.50
An institutional building	\$1.50 per gross sq. ft.	\$1.00 per gross sq. ft.	\$2.50
A house -			
(a) 3,001 to 4,000 square feet in gross floor area	\$1.50 per gross sq. ft.	\$1.00 per gross sq. ft.	\$2.50
(b) 4,001 to 5,000 square feet in gross floor area	\$1.50 per gross sq. ft.	\$1.50 per gross sq. ft.	\$3.00
(c) exceeding 5,000 square feet in gross floor area,	\$1.50 per gross sq. ft.	\$3.50 per gross sq. ft.	\$5.00;
and an extension to a house which would increase its gross floor area to more than the respective areas specified in paragraph (a), (b) or (c) shall pay the appropriate rate			
A duplex exceeding 5,000 square feet in gross floor area	\$1.50 per gross sq. ft.	\$1.00 per gross sq. ft.	\$2.50
A change of use	The rate	The rate	Based on

of building applicable to the applicable to the development type
type of type of
development development
being changed to being changed to

- (iii) in Area C, \$0.50 per square foot of the gross floor area of the development;
- (iv) without prejudice to the respective amounts prescribed in subparagraphs (i), (ii) and (iii), in the Islands an additional affordable housing fee is payable on the issue of a Certificate of Completion or Certificate of fitness for Occupancy, and will be assessed as follows -
 - (a) at a rate of \$3,000 per hotel room; and
 - (b) in Area A, at a rate of \$20,000 per apartment, in respect of applications relating to 11 or more apartments; and
- (v) in any case where the Authority is of the opinion that the development (including any temporary development) is necessary for the purpose of restoration following a national disaster, fifty per cent of the respective amounts prescribed in subparagraphs (i), (ii) and (iii).

(5) The total contribution under subsection (4)(i) to (v) is payable as follows -

- (a) fifty per cent of the contribution is payable on the issue of a building permit; and
- (b) fifty per cent of the contribution is payable on the issue of a Certificate of Completion, Certificate of Occupancy or Certificate of fitness for Occupancy.

(6) The interest earned on the moneys of the infrastructure fund shall be retained for the purposes of the fund.

(7) In this Part -

“affordable housing” means any Government assisted housing programme undertaken under the auspices of the National Housing Development Trust, Sister Islands Affordable Homes or any similar Government entity;

“Certificate of Completion”, in relation to a building, means a certificate issued by the Authority that certifies the building is complete in accordance with planning permission requirements but does not grant permission to occupy;

“Certificate of fitness for Occupancy” or “Certificate of Occupancy”, in relation to a building, means a certificate issued by the Authority that the building is complete in accordance with planning requirements and grants permission to occupy; and

“infrastructure” means public services and utilities used in common by the residents of the Islands.”.

12. The principal Law is amended in regulation 42 by repealing subsection (3). Amendment of section 42 - regulations

13. The principal Law is amended in regulation 48 by repealing subsections (1) and (2) and substituting the following subsections - Amendment of section 48 - appeals against decisions of Authority

“ (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 within six months of such appeal being lodged and such appeal shall be heard and determined based on the record of the hearing to which it relates in accordance with any rules made hereunder.

(2) After hearing an appeal hereunder, the Tribunal may confirm, reverse or modify any decision of the Authority or may in appropriate circumstances remit the matter to the Authority with or without directions as to rehearing the matter, and may make such order (including any order for costs) as it thinks just and where the Tribunal finds that an appeal has been made which is frivolous and vexatious, the Tribunal may award costs on an indemnity basis against the appellant.”.

14. The principal Law is amended in regulation 49 by repealing subsection (1) and substituting the following subsection - Amendment of section 49 - appeals against decisions of Board

“ (1) Any person who is aggrieved by a decision of the Board 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 within six months of such appeal being lodged and such appeal shall be heard and determined based on the record of the hearing to which it relates in accordance with any rules made hereunder.”.

Repeal and substitution of section 53 - application

15. Section 53 of the principal Law is repealed and replaced by the following section -

“Application

This Law binds the Crown but where the Governor decides that the public interest requires, the Governor may, by Order published in the Gazette, waive the requirement to obtain permission pursuant to section 13; but nothing in this section shall be construed so as to allow the Governor to waive any other requirement of this Law or any regulations made under this Law.”.

Savings and transitional provisions

16. (1) Every application for permission to develop land made under the former Law and wholly or partly dealt with by the Authority or the Board when the new Law comes into force, is to be continued and dealt with in all respects as if the new Law had not come into force.

(2) Permission to develop land, granted as a result of an application determined under subsection (1), is to be granted on the same terms and conditions that would have applied if the new Law had not come into force.

(3) Every application for permission to develop land made under the former Law and not wholly or partly dealt with by the Authority or the Board when the new Law comes into force, is to be taken to be an application made under the new Law and the provisions of the new Law are to apply accordingly.

(4) In the case of an appeal against –

- (a) any decision of the Authority or the Board; or
- (b) any decision or order of the Tribunal or the Appeals Tribunal,

that has been commenced but not finally determined before the new Law comes into force, the appeal is to continue to be dealt with as if the new Law had not come into force; and when the appeal is finally determined, the former Law is to apply subject to any necessary modifications as if the appeal had been finally determined before the new Law came into force.

(5) Any permission to develop land, granted under the former Law and in force immediately before the date of commencement of this Law -

- (a) shall have effect from that date, as if granted under the new Law; and
- (b) in the case of permission granted for a limited period only, shall remain in force, subject to the provisions of the new Law, for so much of that period as falls after that date.

(6) In this section -

“Appeals Tribunal”, “Authority”, “Board” and “Tribunal” have the respective meanings assigned to those expressions by section 2(1) of the principal Law;

“former Law” means the principal Law in force immediately before the date of commencement of this Law;

“new Law” means the principal Law as amended by this Law; and

“permission granted for a limited period only” has the meaning assigned to that expression by section 15(2) of the principal Law.

Passed by the Legislative Assembly the 12th day of July, 2010.

Mary J. Lawrence, JP

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.