

The rule of law and Paseo Caribe

By : RAFAEL HERNANDEZ COLON

Volume: 35 | No: 50

Page : 21

Issued : 12/20/2007

For much of human history, rulers and law were synonymous: Law was simply the will of the ruler. The American and French revolutions in the 18th century installed the will of the people expressed through the laws as the source of the legitimate use of power in the democratic state. Thus, the rule of law was ushered into contemporary political theory. The rule of law means no individual, president or private citizen, stands above the law. It means democratic governments exercise authority by way of law and are themselves subject to the law's constraints.

The rule of law protects fundamental political, social and economic rights. Thus the rule of law has become a prime criterion on when investors evaluate investing in a particular country.

The protests against the Paseo Caribe project and the government's handling of these protests may be the tipping point regarding the perception of investors as to the efficacy of the rule of law in Puerto Rico.

Two factors have been at work for some time in our society undermining the perception we are ruled by laws in Puerto Rico: One, corruption; the other, the controversies spanning for more than a decade that have arisen between environmentalists, conservationists, developers and government over a series of projects.

The protests concerning Paseo Caribe began with regard to the access to Fort San Gerónimo. They extended beyond that to the issue of whether a part of the project occupied the public domain. The visual image of these protests and the way they were handled by the police projected through the local and stateside media showed the rule of law was being questioned on the streets in Puerto Rico.

The Paseo Caribe demonstrations revealed a deeper problem with the rule of law in Puerto Rico. The access to a historic landmark such as Fort San Gerónimo or the public domain do not need, ordinarily, to be protected or vindicated by citizens at large. It is the function of government to do so.

In the case of access to Fort San Gerónimo, government agencies failed miserably in applying the law to provide for such access. Proper access to Fort San Gerónimo was provided by law under *Reglamento 23* of the Planning Board. These regulations with the force of law were approved during my last year in office as governor. They implemented a Master Plan for Land Use for the entrance to the islet of San Juan.

The policy behind it was to transform the then and still existing disjointed and multilayered entrance to the islet occupied by roads of fast-moving traffic into an entrance with a wide elliptical public space surrounded by trees with traffic flowing in the periphery as it does in the intersections of the great

boulevards in Europe or in the U.S. It intended to recuperate the adjoining maritime areas for public use; it was to be a landmark that would guide the development of the area for residential, commercial and office uses.

The detailed regulations cover all land subdivisions, easements, points of access, volumes, urban walls, parking, access for vehicles, architectural elements and treatment of public spaces. The heights of buildings were limited according to the location of the parcels where the buildings would be situated. They could range from four floors, up to one space where 20 floors would be permitted.

With regard to access to Fort San Gerónimo, the regulations provide for a street to connect Ponce de León Avenue with Fort San Gerónimo. To this end, they establish a legal easement with a rolling surface of a minimum width of 7.3 meters. It is shocking that given this provision of the regulations, the Planning Board did not require this street be built in its resolution authorizing Paseo Caribe; neither did ARPE [Regulations & Permits Administration] in issuing the building permit.

But this was not the only violation of *Reglamento 23* by the Planning Board in authorizing the project. Other provisions of the regulations regarding subdivisions, easements and points of access were disregarded. The alignments as to the buildings and the streets were also violated when the board permitted that the building of Paseo Caribe closest to the Condado Lagoon would occupy various meters of the roadway contemplated for the rotunda that would occupy the entrance to San Juan. Limitations to the heights of the buildings and to recessing the top floors were also trampled upon.

Since there is enough space between the edge of the building closest to the lagoon and the water edge, the problem of access to Fort San Gerónimo could have been easily resolved just by applying the law. But the matter became more complicated by the issue of whether part of Paseo Caribe occupied the public domain. If that were so, then the problem would be one of demolition, which would affect not only the developer, but also the Caribe Hilton as seller, the banks that provided the financing and the families who purchased or optioned the apartments.

The order of the governor suspending the building permits to allow surveyors to access the area, at this point, further undermined the perception about the efficacy of the rule of law in Puerto Rico. It gave the impression that government bows to street pressures. This is what brought us to the tipping point.

With regard to future controversies, we cannot go beyond this point. Doing so will result in dire consequences for Puerto Rico. All sectors involved must assume their responsibility. The protesters must channel their complaints through the proper administrative, legislative or judicial channels, which must respond efficiently. This is what the rule of law requires.

Developers must rein in their pretensions to accommodate the laws and regulations to their projects. It must be the other way around: Their projects must be accommodated to the laws and regulations.

Administrators such as those at the Planning Board and ARPE who authorized Paseo Caribe in violation of *Reglamento 23* must be sanctioned by law. Acts like these cannot continue to go unpunished.

Puerto Rico was an example of a democracy where the rule of law prevailed. This perception has been shaken. To regain our standing, all sectors of society must join in a deliberate, conscious and prolonged effort to reinstall the rule of law in Puerto Rican society.

