**THURSDAY, 19TH NOVEMBER 2020**

***COMMISSION OF INQUIRY HLL PLANNING HEARING***

***held at***

***Royal Bermuda Regiment Camp, Warwick Bermuda***

***Hours of Hearing are from 10:00 am to 1:00 pm***

***HEADED BY (CHAIRWOMAN)***

***JUSTICE MRS. NORMA WADE MILLER, OBE JP***

***With Secretariat***

***MISS MARVA-JEAN O’BRIEN, CLERK TO THE COI***

***MRS ALBERTA DYER-TUCKER, ERTINDA CINDY SWAN and ALICIA LISTER***

**COI SENIOR COUNSEL:** **COI JUNIOR COUNSEL:**

***Mr. Dirk Harrison*** ***Mr. Bruce Swan***

**COI MEMBERS:**

***Mrs. Maxine Binns***

***Mrs. Frederica Forth***

***Mrs. Lyinda Milligan Whyte***

***The Hon. Wayne Perinchief, JP***

***Mr. Jonathan Starling***

***Mr. Quinton Stovell***

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***CONTINUATION OF HEARING***

**MARK PETTINGIL (WITNESS)**

CHAIRWOMAN

Good morning, everyone. We start this morning Council, Harrison with Mr. Pettingil and one of the Commissioners isn't here yet. But we'd have a quorum, and everybody's agreed that we can start when he comes in, he can just join us. Thank you. Thank you Mr. Pettingil Oh, that's great. Counsel, I think we need to start, Mr. Pettingil to speak to, because we don't have a statement from you know, but you indicated you'd like to speak to us. And so of course, we must ask you have to be sworn even though you're an officer of the courts. You should take the Bible.

WITNESS - MARK PETTINGIL

I Mark Pettingil, do solemnly and sincerely affirm that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth. Thank you.

CHAIRWOMAN

Thank you Mr. Pettingil. Counsel Harrison, Mr. Penttingil we will have you speak first Yes,

COUNSEL HARRISON

sure.

CHAIRWOMAN

Go ahead and indicate your purpose.

WITNESS - MARK PETTINGIL

Thank you. It's a privilege and a pleasure to be here. I think it's important that I respectfully set out why I'm here. And why, with the greatest of respect, humility, I've been chosen to be here on behalf of the Gencom which owns the Tucker's Point property Tucker's point property, just by way of background. I am the former Attorney General of Bermuda. I am currently an Associate Justice of the Supreme Court. I am the Senior Partner, Manager of the law firm Chancery Lega. I was appointed to sit on the Lower Form Commission last year, which I currently do in regard to a review of the island's laws. Part of my mandate in that particular role has been to look at and review any laws that are of concern with regard to bias, particularly with regard to racial bias. I recently brought before the Supreme Court the application as related to jury bias, which I'm pleased to say, was successful in the sense that the government acted expeditiously in bringing about a change to the jury selection process as a result of the events of that case, and also as a result of the historical legacy with regard to jury selection. And I have been involved in a number of other very high-profile human rights cases. And I had in fact caused amendments to be brought to the rights act during my tenure as the Attorney General and have advocated throughout my career in relation to human rights issues. I say all that with as much modesty as muster in the sense as to why I was sort of instructed by Jeff, who are the owners of the talking point in the sense that they, too, were very cognizant and aware of these concerns and issues, and wanted to have what they saw as the potentially the right person to speak on their behalf. I say all that to say that I'm not the corporate lawyer here in that capacity with regard to what they wanted, with regard to anyone speaking on their behalf. The owners need to be clear about this, from the beginning, are extremely reputable, and socially conscious company, who internationally are considered as good corporate citizens, and they have an outstanding record with regard to community support. They have come to Bermuda with a view to enhancing the islands image. And I must say in supporting its people to this end panel, they are the second largest employer of Bermudians on island, and are dedicated to the training and advancement of Bermudian hotel professionals. And I can assure you, you get the opportunity to ever be down at the resort, it is heartening, indeed, to see the level of Bermudian involvement of the hotel, the level of training that is taking place, to Bermudians, and more importantly, how those Marines that I count across the board there are relishing the opportunity of working in that industry. With that particular company. They purchased Tucker's Point only a few years ago. And this is key because incenses they came to the mission to use a legal credit. And we're at the time of the purchase, entirely unaware of the situation concerning the history related to Tucker's Town and more disconcerting to the issues related to the grave site on the property for locals at the time, that purchase was in 2017. They are a company that acknowledges fully the historical wrongs of the past both America and Bermuda. And the impact that this has had on the black people. I think that most recently Black Lives Matter and indicated that the most important and significant thing that white people needed to do as a starting point was to recognize that because of the wrongs of the past, they have been legacy issues that impact on black people up to this day. And once white people are able to acknowledge that we begin then surely to take the right steps in the right direction. And I have always been my clients, someone fronted by the concept of wealth. You know, there's a zero but let's just let's just get on with things that recognition has to be made. And indeed, obviously, that is what this is about, is very important, commissioned work. But most importantly, I need to submit to the commission that Gencom, are entirely cognizant of that they themselves are a diverse group of owners that are able to very clearly recognize that. I am pleased to indicate that when the issue really became complicated in relation to the owners That they immediately began to put things in place in that regard. And I became involved on an informal basis. Sometimes I am a member of the club. And this was brought to my attention this year that they were suddenly a prize that there was a significant issue here. And there was immediate concern. And there was immediate recognition that something had to be done. And there was the approach to the best way to go about that. So, I'm pleased to inform you that they have had significant conversations with the MP for the area of his are which is Anthony Richardson. Within we're currently working to establish the best possible solution for the graveyard areas situated on the Tucker's Point property. It is our intention to with the help of Mr. Richardson to put together a remediation plan for the site, which will reflect it as the hallowed ground. It is, let me just pause there because I did have the opportunity to see the submissions that were made before the commission today. I saw yesterday by Dr. Whalen. And each one and I saw the intake of you young. Between previous owners and between previous overturns Yes, something is going to be done. And then it wasn't done. And that, you know, plans have apparently been put forward with regard to this being done that we know that it wasn't done. I'm here to show you that and I take it as a personal undertaking. But I'm here to show you with counsel for the others that I have instruction, not only is it the intention to take action, but to take immediate action with regard to a remediation, and addressing this very disconcerting issue that they obviously recognize has gone on for too long, and also recognized that it must not be forgotten. So, the first step in that was discussing the local area. They are prepared to work with the church with members of the community for their input, with regard to want a would like to see occurring short order at the site, and measures are underway, I can inform you to address these concerns. They have listened as an ally to all of the submissions that have been made in relation to published not just the graveyard, but the entire issue remains to talk this town, read the materials. And I think that those materials have obviously resonated greatly with regard to their understanding, to address this issue in the in the best way possible, they are about bringing proactive and positive change is something to not just the question of the lip service of plants, but to real action that is transpiring before the time of day before the commission with a view to expeditious have real action with the input of what they regard as the stakeholders of the area, which would be the people that have the history are understandably effective and troubling and sad because of the obscurity of historical security, if you will, that that site has fallen into. So, having settled that, that is that is what my undertaking on behalf of the overs. Team is it is my personal invitation to be involved in that as counsel to continue to be involved and invited to be involved in that regard. To ensure that things happen expeditiously. And at least on that basis, the recognition will hopefully bring some solace and some comfort. And indeed, some forgiveness for the fact that has been ignored for so long. So as the relatively new owners, they are surely prepared to debit to all they ca but to ameliorate as best as possible, and at least a very, very positive for the future. I'm happy to address anything that I can.

CHAIRWOMAN

Council Harrison, do you have any questions for Mr. Pettingil?

COUNSEL HARRISON

Thank you, Ma'am. Morning again, I want us to be prepared to offer public apologies?

WITNESS - MARK PETTINGIL

I must say that that is not something discussed at all. To the dress. Of course, I say that with the caveat.

COUNSEL HARRISON

Thank you, would can you say that one has been prepared to place into writing, once you have just indicated is your personality. Do you think that we could get interrupted before the commission closes this year?

WITNESS - MARK PETTINGIL

Absolutely. But yes.

COUNSEL HARRISON

Now, you indicated that your clients and forgive me, is it Gencom? Or is jet? Gencom

WITNESS - MARK PETTINGIL

Yeah. And the company says I would like my clients are actually TP Holdings Limited corporate structures, that political structure, but the overriding elements are general.

COUNSEL HARRISON

And when did they acquire it? When did they purchase into the resort?

WITNESS - MARK PETTINGIL

I believe I was involved with it; I believe it was in 2017

COUNSEL HARRISON

And when did they become aware of the plight of the from a historical standpoint of the persons who have been dispossessed of thier land?

WITNESS - MARK PETTINGIL

To my understanding as far as the actual ownership structure goes, and of course, one has to divide between management and so forth, as far as the actual ownership goes, quite recently I can speak to when, you know, I was approached with regard to that concern, certainly this year in the last few months. I can't speak to the actual knowledge of it, but it does I can say this and given the correspondence with some of the senior ownership quite recently, it appears that they were aware very clear, but appears to be where in the last few months significant.

COUNSEL HARRISON

Unfortunately, some of the questions I have, I have to put them to you, because you have indicated and take you to what you said earlier, that have a root view with what was said yesterday, referring Reverend Whalen they heard and their claims. What if they wish to rewrite, I need to work on test on the past?

WITNESS - MARK PETTINGIL

So, we can rewrite it as best as possible

COUNSEL HARRISON

So, let me start with do you think it prudent to speak to the church before you speak to the Member of Parliament? I just, my starting point would've been there I've just asked, you know, what the starting point the Member of Parliament.

WITNESS - MARK PETTINGIL

I think that the as I know, the Member of Parliament there is extremely well tied into the community. And I think that from the, one of the other standpoints, that was the immediate person that he knew personally was able to reach out to, and certainly finally sort of backup that he would be able to facilitate those other meetings. So yes, I think that that that was a good starting point. There are a number of churches in the area, of course, it's the right one to, to recover. But certainly, one wants to discuss and reach out to the most significant one.

COUNSEL HARRISON

Would you reconsider that the more significant is a Marsden Methodist United Church?

WITNESS - MARK PETTINGIL

From what I've seen, similarly, indications are that it is.

COUNSEL HARRISON

And probably there, everything out there. The path would be to that will be a starting point, the United Methodist Church before we start with a Member of Parliament, a person who's part of the political landscape.

WITNESS - MARK PETTINGIL

I think that the owners, certainly, from my standpoint, are prepared to, you know, start with the most appropriate person and by the way, I think, drawing as many as possible that can contribute to the church serving.

COUNSEL HARRISON

As a, I know, you're bound by your lawyer client privilege. And I don't seek to ask you much less you think of me, isn't it? I would never go there. Has there been any discussion with regards to given access to the descendants or other persons access to the cemetery? Is that one of the discussions that has fallen apart of this amelioration that you mentioned that we will see, excuse me, we will see that access to the cemetery will be afforded to the descendants. Is that something that?

WITNESS - MARK PETTINGIL

Absolutely. Absolutely. 100%

COUNSEL HARRISON

And I'm sure that you are aware more than I am a foreigner.

WITNESS - MARK PETTINGIL

Welcome.

COUNSEL - HARRISON

That even as it is no, no one can just walk into there and visit the cemetery. One has to be given permission. One has to ask, Well, how quickly can you say are the owners are willing to fix that problem? That's I think that's probably that one goes to the core of this month.

WITNESS - MARK PETTINGIL

I would say this, if there was somebody that right now this afternoon wanting to go out and visit that site, I would be extremely stumped on that knowledge in depth in any way to prevent them from doing that. And, to your question, I'm not aware where there has been any prohibition with regard to anyone wishing to go up and see the site. As far as I'm aware. I've been astounded to be the case, but I certainly on the basis of my instructions, and to my knowledge, that that is something that is completely understood there on the table to allow access.

COUNSEL HARRISON

I will share with you my opinion does not count here because I have not been sworn. But if we follow the evidence of Reverend Whelan yesterday, and in your words, yo, yo,yo, yo.

WITNESS - MARK PETTINGIL

That was actually his words. I was quoting him. I don't.

COUNSEL - HARRISON

Thank you. Thank you. If you utilize what Reverend Whalen said yesterday and evidence finish from at least 2009 to the present. There has been there has been this back and forth. And I'm sure the commissioners are grateful for your undertaking today as we embrace that. But, how can one expect anyone to take you seriously? Because we have had this yo yo for at least 11 years? How can you expect that as the council's word is something that is very important that we have what's called can we accept what is being put on the table not interacting? The membership is not here. How can anybody think that you're serious now, why now?

WITNESS - MARK PETTINGIL

Obviously Well, the reason being in mind is stepping perhaps some arrogance to Harrison, I think the chair would be aware of that. I think that my participation in matters in this country, first thing is that he's been taken seriously. So, with respect say that, I would hope that that would resonate. That's why respectfully starting with some of my background, because I can assure you that I will be making that type of statement on behalf of my clients, if I did not believe so be not believe. So, and I will respect to have made well have occurred. But it certainly did and to my knowledge to the to the ownerships if, indeed that happened in 2017, and they will die. Yes, but I mean, they took over in 2017. So, what went before that I just I just don't have the knowledge, but I accept in public.

COUNSEL - HARRISON

And that's why I preface my question by saying another taken by consciousness accepted, as one would understand consciousness, quite separate and distinct from this class. That's why I started by asking, would you prepare to have your clients produce it in writing? Because obviously, necessary? Now, have you or your plans visited the cemetery recently?

WITNESS - MARK PETTINGIL

Yes.

COUNSEL - HARRISON

And Is there any sort of protection and anything that would protect the sanctity of this area from golf balls or from vehicles that may damage say the plaque? Is there anything in place to this date that you could share with us that is in place? Is there anything in place now?

WITNESS - MARK PETTINGIL

Other than the area and the wall rounded that I saw? You know, there are a few trees around there. I don't know how long they've been there. But it appears to be to be under currently sounds quite a space from what I've observed on a number of occasions.

COUNSEL HARRISON

So that's a no?

WITNESS - MARK PETTINGIL

That would be a no.

COUNSEL HARRISON

You're aware of that sometime in the past, and that had been erected. And then that was on somewhat of a catch all the golf balls, which it was said and show it on the grave area and damage the canopy for the graveyard, and as the canopy I refer to the actual grave itself. I am aware that the netting longer exists.

WITNESS - MARK PETTINGIL

There wasn't a net there that I've observed in recent times. I'm not even aware that there was ever I have no knowledge whatsoever. Other than I can say my last observation there. From where I see the land situated, I would say that it would be somewhat hyperbolic to say go full showering down on the site, having said that from my own perspective, one goal would be too many to be there, but I would respectfully describe it as the risk of golf balls showering down on it. That was another case. But as I say, one golf ball is too man in my view. I think, you know, the point is that, unfortunately, the nature of Bermuda, any number of golf courses where there are established graveyards that are home to the golf course, I'm sorry. And of course, it is accepted as it should be less accepted. We shouldn't have anybody going into an area like that. The golf ball shouldn't be there in the first place, in my view, as much as you can prevent.

COUNSEL - HARRISON

Are you aware of Thank you, are you aware that the cemetery know exists? within the driving range of the golf course? Were you aware that?

WITNESS - MARK PETTINGIL

I am aware that the cemetery is in proximity?

COUNSEL HARRISON

I'm about to show you some items that have been made exhibits. In respect of my work showing of golf balls on the site. But, taking you back to where I started. The discussions that, I use the word discussion sparingly, with a Member of Parliament, Mr. Richardson, thank you. Did he bring to your attention, or was it brought to anybody's attention that there are concerns which had been raised by the Marsden First United Methodist Church?

WITNESS - MARK PETTINGIL

I did not personally engage with us as indicated to be aware of all he had to say whether he had discussion

COUNSEL - HARRISON

Or particularly in fairness to you, sir you really can't say what discussion was had between researchers and owners?

WITNESS - MARK PETTINGIL

I can say what I was informed of in regards to that discussion. I can say that the overriding theme of that discussion was to ensure that something was done expeditiously

COUNSEL - HARRISON

Does your privilege prevent you from saying what that is? Because something happened to say with respect that doesn't really take us much further.

WITNESS - MARK PETTINGIL

Well, I think you could say I've been given privilege for me to be held here plus instructed to indicate to you so I am aware that part of the discussion with Mr. Richardson in full bringing the key stakeholders which would obviously the Marsden Church and any other interested members of the community together to have a team in place that was actions not just a plan a plan that works action. Again, I say expeditiously and expeditiously in my mind means like, going here today, putting together the submission that you have indicated and get on with it.

COUNSEL HARRISON

Madam Chairwoman, I'd like to show the witness the exhibit which is labeled Marsden 003 and having the exhibit number shown to me shortly is labeled Marsden 004 I believe it is exhibit numberJFW2. As soon as you have a moment, I apologize Madam Chairwoman, I ensure that on a next occasion we will have the project info the permissions can just indicate that it was it is in the top right-hand corner it says Marsden 003.That is one exhibit that had been tendered through the witness, Mr. Sevelle. And as I say I'm not going to give evidence but the picture of the exhibit as represented shows golf balls, as I used, in my words showering the base of the degree again, do you see that?

WITNESS - MARK PETTINGIL

I see what see that I don't know when this picture was taken or what the date of it is or how long ago. But I mean, that would be somewhat relevant. But that does appear to be the case.

COUNSEL - HARRISON

So

WITNESS - MARK PETTINGIL

I can show the indicate from the time that it hasn't been my observation. But as I said, one is different.

COUNSEL HARRISON

Yes. Had it never been brought to the, forgive me I just have to go through each one because I know what you have said today, as I say that has but just bear with me as I go through. Are you aware that a vehicle had even damaged the plaque on the wall? The plaque on the wall of the cemetery. Admittedly, once again, before the time that the present owners were in ownership. Well, let me just ask Have you answered before go to the next one. Are you aware of even that damage to the plaque at the gravesite?

WITNESS - MARK PETTINGIL

I was not aware of that. I see the photograph here and I see the photograph of the page shows more closely that. Certainly, I think that was part of any remediation to rectify that situation and re-install the appropriate tribute or plaque that that is something that I was not aware of.

COUNSEL - HARRISON

I am aware of correspondence had passed between the Marsden First United Methodist Church and the Tucker's Point Club

WITNESS - MARK PETTINGIL

I'm not aware of any correspondence and I would be surprised to learn if there was any with regard to correspondence with the Marsden Church and Jem Com no but I've not heard of any previous correspondence certainly goes back to 2009. That doesn't surprise me. I haven't seen that as a party directly. I accept of course that there was correspondence

COUNSEL HARRISON

I ask if the witness could be shown what is exhibit JFW004 at the top right-hand page? Madam Chairman, it says Marsden 006. Have you ever seen that document before it is signed by Reverend Whalen? Have you ever seen that document before?

WITNESS - MARK PETTINGIL

No, and know what to expect to have? It's from 2011 to 10 years from the current ownership. So, I have not seen it would be interesting to read it.

COUNSEL HARRISON

What I was meant to ask you is the lever the chairman, you could just read it to yourself, and then I would ask you a question. Irrespective of the evidence given by Reverend Whalen, yesterday, reference was made to this letter. And just before I asked my question, I asked that you could be shown JF03. At the top right-hand corner, it has the words Marsden 005. I just asked you have a look at that too is that, ask my question in context.

WITNESS - MARK PETTINGIL

Yes, thank you.

COUNSEL - HARRISON

Now, withstanding your plans because owners in 2017 I believe you said, was purchased.

WITNESS - MARK PETTINGIL

Yes Sir

COUNSEL HARRISON

I just wanted to put this before you before I go to give some context to the timeline of the words that you have adopted "yo yo". In respect of, nothing has happened. There have been meetings, after meetings, discussions and, as I say once again, whereas counsels' word is his bond. Why should the Marsden take the owner seriously that anything will be done?

WITNESS - MARK PETTINGIL

Well, with respect, the, the yo yo thing occurred before the time of my clients taking over the ownership and I'd indicated I fully accept that they were not aware of these issues. If this was a true shop If this was something that was brought to the attention of the ownership I just simply can't or believe it was the current ownership. I think that this is something certainly, if I may, I'd like to have copies of this, because I will immediately bring this to the attention of the ownership with regard to these points that are made here. So, I think that one has to approach it on the basis of who is in charge now and you know, the undertaking that they are prepared to give, I don't think I would be here on their behalf making the submissions I'm making If one were not to ensure that that was the case, and certainly I am more than prepared to meet personally with Pastors give them my numbers and information or everything else, and there won't be any yo yo if I'm acting as the as the representative. For the others, of course, I'm not on Island live here probably be the right route. But I am certainly prepared to fulfill that role to ensure that it doesn't become an exchange of letters backwards and forwards.

COUNSEL - HARRISON

And, unfortunately, this position of having to face these questions since 2017, and now what have the owners done in respect of meter, it's in what obviously, in your words earlier are some wrongs and, in your words, I summarize them your latest issues. I summarize why people need to acknowledge and I summarize again, it can't be let's just get on with things. What have the owners done since 2017 to present day to ameliorate? What if anything?

WITNESS - MARK PETTINGIL

I think that when the owners became fully cognizant and aware of the issue? Let's bear in mind they were not aware of what's before me here, when they became fully cognizant, aware to indicated to my office's recently they immediately set about saying, asking the question, what can we do? Of course, the Commission began its work at that stage very shortly after that, that they were invited to participate. So that you know, it was set in motion, in very short order, from the time that they became aware of the significant issue. We're here saying that you are prepared expeditiously immediately to get on.

COUNSEL - HARRISON

Thank you are you prepared to have your clients here on a day next week?

WITNESS - MARK PETTINGIL

I'm sorry,

COUNSEL - HARRISON

Are you prepared to have your clients on a day next week, appear before the Commission?

WITNESS - MARK PETTINGIL

I can. I cannot direct my clients to be here on there's a number of people that as a company, I'm the representative of the company. So, you want me back here a day next week, for the instructions that I'm more than happy to oblige.

COUNSEL - HARRISON

Because from my class, and I'm sorry, to the chair and the commissioners, in terms of some of the answers and questions that we have, respectfully, I think the answers and information resides with the owners and for my thoughts, I have some other questions that I'd like to put directly to them. Along the line that I raised earlier and they need listen, you know.

WITNESS - MARK PETTINGIL

Well, if I may speak, yeah, you know, that's what I'm that's what I'm here for any questions and I will address them as best I can I will make a note of any particular questions you have and take that back, as I said that the owners are not on Island, I believe they would say a lot more than the fact that they just are not aware to know about these things. And I'm instructed, you know, to answer any questions to the best of my knowledge and if there is something, I don't know I will take that back. If you want to have you back again, or send me further questions, I will address them.

COUNSEL - HARRISON

Sure, you're aware that we have the facility for zoom platform so if they are not here, we certainly can connect them by the press of a button.

WITNESS - MARK PETTINGIL

As I say, I just don't I'm not trying to be protective, and certainly not in a way that I just don't know that I think that a lot of the answers you get goes back to what I'm saying today is, you know, whoever whichever representative of the ownership, you're speaking with, probably be saying, I don't know, I don't know, because they don't know, or they didn't know about these, these letters, these things that were placed before the previous ownership, you know, over 10 years ago. They will probably say exactly what I'm saying here today is that we are prepared to work with you in earnest to do our best to reiterate this position.

COUNSEL - HARRISON

I will just accept your invitation in terms of asking a question and consider, as you say if you don't know you don't know but do consider it. a little lighthearted a country like Bermuda with its 400-year history and forgive me for your that owner's takeover in 2017. They take over a property in the middle of a lot is known as the old Marsden Cemetery, which has history, which has reports written a Grave Error by the Ombudsman, and that they don't know. Do you think that that takes us much further, in the terms of reference, that they don't know?

WITNESS - MARK PETTINGIL

Understanding something about corporate structure and how these things are done. I have to say, when you talk about change, management, started with the people that run the golf course. And sometimes these things are contracted out. But I say all of this to say they've dealt with conditioning, you know, the standard corporate structure, this type of large, international corporate business, that it is not surprising to me at all, that the owners at the top, the key numbers made Well, and I accepts that they did not be aware of this significant issue. Or the further down the ladder with regard to management or so on where I can't speak to that, but all of those things, you know, the love, I haven't been very well. Other side I have one called Hassan recently the other discussion, so that's but that doesn't surprise me either, because that's just the nature of international initiative. In the hotel business, if you will, surprise I think what they came to the attention they should be upset. That's information I received that I've seen.

COUNSEL HARRISON

Are you aware that the descendants of those buried some of those buried in the cemetery, the trustees of the old Marsden Curch, the continence of the church now that they are able to at their own freewill visit the cemetery, is that's something that you or the owners are aware of?

WITNESS - MARK PETTINGIL

The instructions said to you Is that anybody that wish to visit that site on those terms, I will personally find it, if they were told that they could not do that. But I can say for myself personally that I'd be very surprised if someone wishing to access that site for reflection or prayer as people do, just to sit at peace acknowledging, you know, those memories of the past would be denied access very upsetting and certainly take steps to ensure didn't happen.

COUNSEL - HARRISON

Not to give evidence but I'll just rely on the evidence of Reverend Whalen that words to the effect summarize that even to visit the cemetery, one would basically have to ask the persons who are playing golf to cease services to allow them to cross the fairway or whatever other path one would cross. So, it's not just a matter of gaining access What is it this peace of mind, I want you to think that one exists, when anybody would want to pay respect to the dead is not something that can the done that's why this is my long run up to my question.

WITNESS - MARK PETTINGIL

You might have hoped for that.

COUNSEL HARRISON

That is true. They their appreciation, is it. They understand that they're not just on the current issues but they're real issues that even the basic celebration on a yearly basis that cannot be fixed. Well let me ask questions it has been free speeches. What would the process be? And I know you said that, you have that, as in your words, the first step as that local Member of Parliament and discussion. What in your mind would be the timeline? You're here now Sir, it has been brought to your attention that access can't be gained. Let's say if Reverend Whalen decided that he wanted to take his congregants there next week to celebrate, what was the process and timeline that is involved in these changes because let's start first with access. How long would it take for user to ensure that access would begin to the church on that process? Seem that the owners are overseas, again so how long would that process will take?

WITNESS - MARK PETTINGIL

That I know and would raise that as a concern to be addressed. So, if that was the case and they want to do that next week, I will endeavor to do all I can to ensure that that occurred. I mean, these, the picture that the one that at the top there, I don't know how, how recent that is just because your point of the golf course I'm sure you've be down to the site I wouldn't, from my knowledge, say that the access I would see is a great obtained as a large parking lot off the top there and one would have wanted to visit the site I think we parked there and would be able to walk down without crossing the fairway per-say in order to access the grave certainly without having to ask of permission of anybody. But also, just from the point of view, like my view today to immediately take this 2009 letter and introduce it to my clients it was helpful and say this is this is what we are talking about this is what respectably needs to be done I think they will be more than open to getting on with that. And frankly, looking at the things that are here these are not in my view large ticket items that should take a lot of time. Once they're once they're made aware of that

COUNSEL - HARRISON

I think that's where we started Sir because they are not large ticket items, what we have done 11 years and nothing has happened with the previous owners

WITNESS - MARK PETTINGIL

Yes, and shame on them with respect to the new evidence, passes, clearly instructed that that is their position to be proactive and take positive action. That was as of yesterday,

COUNSEL - HARRISON

When you mentioned earlier that your clients had worse effects had I think our clients I don't think you're referring to so I've made a speech in terms of Black Lives Matter.

WITNESS - MARK PETTINGIL

That was me. Okay.

COUNSEL HARRISON

So, I've just asked as to as that is, this morning, how long would it take? Do you think? Or do you think your clients were prepared to issue a public apology, and to the people of Marsden and the descendants and all other persons for the pain that has been consulted on do you think that will take or do you think your clients would appear to make such a statement?

WITNESS - MARK PETTINGIL

I think and speak for myself as well, for my clients, I think that they are prepared to, to do and take whatever action is necessary to, you know, move forward, as positively as forward and I, you know, the word I used in the speech that I referred to, was a bout a recognition. And candidly, I see that as more important than an apology, apologies are more like a speeding ticket in a car race., You know people are just like Oh yeah, we apologize and let's move forward with that type of thing for the whole time. It's the heartfelt recognition, it's called recognizing that this was, you know, impacting, and it's not to say that people,for instance, Mr. Harris was like, my clients with respect can cannot sensibly apologize for the non-action in this 2009 letter, what they can do, what I'm confident they will do is recognize that it is not like that appropriate action, and expeditious action wasn't taken at the time. That is a recognition that I think is more significant. You can't apologize for what you didn't do it, you can certainly recognize how horrible something was how long that was and that you will do what you can to ensure that nothing like that happens again and you do what you can to ensure that you are going to do your level best to ameliorate the position.

COUNSEL - HARRISON

But in black and white?

WITNESS - MARK PETTINGIL

Yes. It absolutely does mean in a job is shorter for us to choose to say that is the recommendation that's recognized. I would be very, very surprised. A statement or recognition

COUNSEL HARRISON

Are you

WITNESS - MARK PETTINGIL

asked me what I think is volunteer.

COUNSEL - HARRISON

Your parents upset that a cemetery does not belong to them.

WITNESS - MARK PETTINGIL

I haven't had that discussion. I'm aware of what the land issue was I didn't have any dispute of if that was the case of wanting to find the right of the cemetery.

COUNSEL HARRISON

To add that to this

WITNESS - MARK PETTINGIL

No.

COUNSEL HARRISON

They are you aware whether your clients have caused since 2017, the cemetery to be maintained and kept in a manner that is befitting of the dead.

WITNESS - MARK PETTINGIL

I don't know

COUNSEL HARRISON

So, it is a place or what I meant just simplifies it overall with bush and thorns or is it maintain and kept in a manner that is such that the descendants others who would feel comfortable versus these are really some of the issues that we're going to get into. Because that, as you will see from the letters before you in 2009 as also the other the let's go to the full wrong of this issue, the maintenance of the sense.

WITNESS - MARK PETTINGIL

I think that parts of this would be that my clients want to workhand in hand with Marsden, the community members and indeed the people of Bermuda to ensure that the site was properly maintained. I don't know what has been done since the time you've indicated. I have seen it a few times.

COUNSEL - HARRISON

You mentioned earlier that your clients are the second largest employers of people in Bermuda. If one visited in your words, a property one sees Bermudians being trained and so much has been done but can you say from 2017 that your clients have done anything in respect of the cemetery? In terms of investing, in terms of doing anything to fix it, change the face of it?

WITNESS - MARK PETTINGIL

I cannot but again Sir, they understand the significance of that particular area which until quite recently, that doesn't surprise me the issue has been raised with that quite recently. So, I'm not aware of anything that was done. But I am aware that they were not aware.

COUNSEL - HARRISON

I think you can see no; I probably would like to consider was the chair of the Senate and the members to have worked with him by some platform?

WITNESS - MARK PETTINGIL

Well, I think you probably say the platform like that is a question how to do that. But it's very, very clear to me that the ownership was not aware at the time of purchase of this property with regard to the significance of this particular site, or the history or the correspondence or the letters

COUNSEL HARRISON

Just allowing Reverend Whalen to take his seat, as I think you're aware, he has and he may have questions obviously. I just have one more question that I will ask to you, Madam Chairman to allow me to reserve the right to re-call this witness if opportunity allows, I have no further questions at this time, I just ask you to allow me to recall his witness at a later stage.

CHAIRWOMAN

Thank you Cousel, that request is granted. Reverend Whalen you were not here first thing this morning because you were not notified but you've been here long enough to hear some of the evidence of Mr. Pettingil who is appearing on behalf of Tuckers Point. And so, as you're standing, we would like to give you an opportunity to ask questions of Mr. Pettingil and thereafter Commissioners will ask the questions

WITNESS - MR. TUCKER

Is that the both of us or just Reverend Whalen?

CHAIRWOMAN

I will allow both of you to ask questions.

WITNESS - REVERAND WHALEN

Thank you, Justice and good morning, to you and to the Commissioners to Council, Officer Emerson. Good morning Mr. Penttingil, I indeed appreciate your coming this morning and I appreciate comments that you have made. I do have some questions. And I think if I might just have a little way to lead into this question. People have asked, what does this cemetery issue has to do with land loss? And I've been thinking about that, because I think it fundamentally has a great deal to do with the issue of land loss. Because it was the only area that was not under that act. It's a Patriot Act. And so, the question is why? Why was that area, those grounds not included? And I think that perhaps, would you not agree that it was to do with the fact that it was a sacred burial?

WITNESS - MARK PETTINGIL

I would hope

WITNESS - REVERAND WHALEN

So, and then perhaps in doing that there may have been some kind of consent or acknowledgement of those who were living in that regard for them, who had ancestors buried there and that there was a degree of perhaps maybe regard for humanity and having that area set aside. And that it would be continually recognized as a sacred bearer. Would you agree at least the assumption that that may have been operating at that time?

WITNESS - MARK PETTINGIL

I'm fine with even I'll go further. I think not just humanity, but probably given going back in some time was probably a recognition of Christian values by the powers that be at least that was the case. Yes, absolutely.

WITNESS - REVERAND WHALEN

So perhaps maybe the connection with regards to land loss is that even though the land was not, taken or stolen, there was no fair just compensation, perhaps maybe the encroachment upon those grounds, the driving range, within a sense, have the effect of land loss because at least for those who have a great connection with them in terms of ancestry, it is that area and that land is not the original kind of in attendance, it has been disregarded, encroach, so maybe perhaps the opportunity that the owners had Is and I kind of disagree a little bit, I think I agree in part about the issue of apology. But so far as they have been the inheritors of this project and what is going on, they can do so given an apology on behalf of those who have acted before, I hope that maybe at least you would agree to that, that on behalf of the previous establishment that they might offer an apology, you would be open to consider that?

WITNESS - MARK PETTINGIL

For myself, you know, if an apology brings peace and solace to something, then I would be the first person to encourage that that would be done.

WITNESS - REVERAND WHALEN

Do you feel that it would for the people of Bermuda?

WITNESS - MARK PETTINGIL

I think that that is from my own partner, we want to get into semantics, I think that the recognition is more significant than an apology. And let me just expand on that I can tell you that, you know, one of the owners of Gen Con group is a gentleman of Indian descent from colonial background who is very, very cognizant of these types of roles, particularly by former White colonial powers, you know, and his history to them. And so, he is somebody that, you know, is well aware and cognizant of that, I think, and I have advocated for some time and think speeches in this regard, publicly about the what I see as the need for white people, particularly in the society to recognize these legacy histories or these issues and how they have impacted them, I certainly don't live my life like that and I believe that, you know, my clients, the owners of the resort have had that approach to life as well. I don't, I don't see that it is, if someone else has done something, you know, that is visual, let's take like the biggest example Tucker's Point that I've seen here that I've seen for the first time, you know. I think they should be apologizing for not acting, as they indicated in 2009. I think it's for me, I express that view that I recognize i think that is something that's worthy of apology from them. I don't know how that the current owners will be able to say, you know, we apologize for that. They probably say they should be apologizing

WITNESS - REVERAND WHALEN

Could I make a suggestion because she said they've been owners since 2017?

WITNESS - MARK PETTINGIL

Yes.

WITNESS - REVERAND WHALEN

And during that time, have golf balls been driven from the driving range

WITNESS - MARK PETTINGIL

From my understanding, they have.

WITNESS - REVERAND WHALEN

So, this apology could start then

WITNESS - MARK PETTINGIL

Yea, that I find appropriate

WITNESS - REVERAND WHALEN

So, so would you agree that perhaps maybe just a fair compensation, which is something that the Commission has been showing, in terms of how do was there fair and just compensation in terms of land loss? And how can restoration be made? I would ask that you would, if you would put it to the owners, that numero uno, number one primary above everything else is the redirection of the driving range either relocation direction, whatever, that would stop the encroachment which is considered as desecration upon the graveyard, would you be willing to make that before put that before the owners

WITNESS - MARK PETTINGIL

I unequivocally undertake to do that, you know, and if they need some help in moving those two boxes out physically get out there and pick them up

WITNESS - REVERAND WHALEN

Because that singular act, would speak volumes and would lead to a great deal of healing and reconciliation. It may not lead to the elements of resolution certainly will go a long way. I'm going to allow Mr. Tucker.

WITNESS - MR. TUCKER

Thank you, good morning all. The first thing I would like to note is that I did have the conversation And I would like for the commission to be aware that if a company comes into Bermuda and looking to take over a property, usually a structural survey is completed. And in that structural survey should indicate that there is a graveyard on profit. And clearly, something has passed along the way that they could come and take over the company in 2017. Because this history goes back a lot further than that, they had to have been aware when they bought the property, that was a graveyard on the site. And I think it should be clear that for any property that has been transferred for somebody to be developed, that a clear and concise structural survey, and then any issues surrounding what is something that you may play to the new owners so that things are taken care of in the proper ground. And I just want to make that point to you. So that going further in terms of the development of the tourism industry, that people are aware of what they are actually taking? That would be my first question. The second question would be, if when a company takes over another company, I understand that they may or may not know that,

COUNSEL - HARRISON

I'm sorry. Mr. Tucker has indicated a question or probably I know he's asking the witness if he is aware, if I could assist him.

WITNESS - MARK PETTINGIL

I take Mr. Tucker's first point. And I, you know, I agree, but we I'm here, representing the owners and I had a view of various angles. Unfortunately, we did like to sound like always get in the way of things, but this, you know, but you've got the conveyances you have the corporate guys who've been doing this, you have the structure that being set up, it flows up and it is not, and I accept this, I really do that the owners, the guys that top that that would necessarily be brought to their attention. You know, I have conveyancing you know, Department of a law firm, and they would they would look at things if we didn't do this, but in this case, and I'd like to think we flag it as well. But I could fully see where people were instructed to do the conveyance, you know, between one company to the other, and that the land would be conveyed, that they will be flagged on the land. And that would be necessarily, I'm not saying true right, but that would be necessarily part of the ownership. Oh, by the way, this this year, I don't believe that happened. But I honestly believe and I know one of them very, very well, that they were not aware at the time of the purchase. They indicated there were no other learning. But they weren't quite right. I mean, those are things that are flagged and yeah, I think that perhaps, you know, you want to be made aware as much as possible. right up to the top of the ownership. That's what's going on but I believe

WITNESS - MR. TUCKER

And my other question will be historically, from what we heard from Donald Gao, this was sort of the formation of the new tourist industry after 1923 by his presentation that was made. And I just want to be clear to the to the owners, that one of the most influential families that helped to generate tourism, were the Talbot Brothers. And that's my Grandmother's Brother, and they have had family members that have buried in that graveyard and they were significantly involved in helping the development of tourism in Bermuda. And they've been recognized and all sorts of things have been done not only them, but also other members of Marden church who had found the time was down there. And I think that makes it even more significant that something be done because they have family members that are actually buried in that graveyard. And these are icons that were on The Ed Sullivan Show two times they've toured all over the world, they've done a lot of things to help them. And I think, a very basic level, the least we can do is have that graveyard cornered off, taken care of and protected as we as the Bermuda Development Company had promised the church back in the early 1920s.

WITNESS - MARK PETTINGIL

I completely agree with you certainly, more broadly. I completely agree with that decision.

WITNESS - MR. TUCKER

Thank you very much.

WITNESS - REVERAND WHALEN

I have no other questions at this time. We have no other questions at this time

CHAIRWOMAN

Certainly, commissioners will now ask some questions and I will ask Mr. Quinton Stovell to be the first Commissioner to speak,

WITNESS - MARK PETTINGIL

Can I just indicate one thing just before, can I just indicate one thing to the Reverend and Mr. Tucker I just want to say that say, for the commission that they are certainly to give you my contact so that we can commence immediate dialogue that I can be involved with this and to take action

WITNESS - REVERAND WHALEN

If I might just respond, yes. It would not be just solely with regards to ourselves because we have had an evolutionary, I guess, element in terms of our understanding that we are not simply custodians or representative custodian. So, others would, we would like to see at the table, significant stakeholders at the table. I don't want to initiate or begin dialogue and communication to yourself and to those at Tucker's Point, apart from some other key stakeholders. So

WITNESS - MARK PETTINGIL

Of course, I'll do whatever it takes thank you.

CHAIRMAN - QUINTON STOVELL

Yes, Madam Chair. Morning Mr. Penttingil,

WITNESS - MARK PETTINGIL

Morning Sir

CHAIRMAN - QUINTON STOVELL

I'm going to try and be as direct, and take a take a moment

WITNESS - MARK PETTINGIL

fastballs

CHAIRMAN - QUINTON STOVELL

Will Tucker's Point be willing to undertake a comprehensive assessment of the full extent of the cemetery? Okay, you understand beyond the standard context in which I'm asking you that?

WITNESS - MARK PETTINGIL

No. Clarify

CHAIRMAN - QUINTON STOVELL

Okay, the present site, as being visualized in the photographs are probably indicative of a much smaller segment of the actual cemetery. And historically, that has never been reestablished, if you will, subsequent to the development. So that's why I'm asking it would be a significant undertaking in order to restore the true representation of the cemetery. Are you aware that the Tucker's Town Historical Society made an attempt to review the original design surveys/plans for the castle Harbor, golf course? And were refused as access to those documents? And this is based on testimony before this commission

WITNESS - MARK PETTINGIL

I'm not aware of that Sir, when was that?

CHAIRMAN - QUINTON STOVELL

Maybe I can't remember off the top of my head, but it is a part of a commission report. I think Mr. Danny Richardson testified to that.

WITNESS - MARK PETTINGIL

Let me say that again because it's just it's so significant that my clients took over in 2017.

CHAIRMAN - QUINTON STOVELL

WITNESS - MARK PETTINGIL

Yes. To get that was after that period of time. That's something I've thought

CHAIRMAN - QUINTON STOVELL

Well pretty much everything precedes your client's ownership but, you know, it comes with strings attached.

WITNESS - MARK PETTINGIL

Yeah. So, I say that on the basis of that, again, that's that particular behavior that you've indicated there, it would surprise me.

CHAIRMAN - QUINTON STOVELL

Right, so I'm just sort of giving you I guess, finding out what your knowledge of the situation is. And getting to my next question. Would you agree that that would be a good place, a good resource to start with, as this document may provide an indication of the cemetery prior to development?

WITNESS - MARK PETTINGIL

If you say, I accept that,

CHAIRMAN - QUINTON STOVELL

In other words, when you do development, you have an existing representation, I'm a surveyor so, you take a graphical survey of what the land is in order to, you know, determine what the development will undertake

WITNESS - MARK PETTINGIL

Right, and where they encroach, and so on.

CHAIRMAN - QUINTON STOVELL

Yeah.

WITNESS - MARK PETTINGIL

Right. You indicated that my clients would be in possession of that?

 CHAIRMAN – QUINTON STOVELL

No, but what I'm asking is, would you put your clients be willing to assist in that regard? Meaning that previously, the Tucker's Town Historical Society was rebuffed when they tried to get at that information. So, perhaps if your client were willing to assist in that effort, it may have been more credence or weight to their,

WITNESS - MARK PETTINGIL

I'll certainly ask,

CHAIRMAN - QUINTON STOVELL

Okay, to that end, would Tucker's Point, well, I guess in kind asked you would you be willing to be instrumental in acquiring access, and copies of such documents? So, you've shown me that you relay that to your client. Would Tucker's Point be willing to provide a right of way to the Tucker's Town Methodist cemetery?

WITNESS - MARK PETTINGIL

Of course, I'd have to say that's but I can say this, I don't think that that's going to be any issue whatsoever. I would suggest given the position with regard the ownership of the land as what we call the legal easement to access in any event, yes. Lawyer up on behalf of the Morrison, I think is probably that that legal rights exists, but you know, would my clients be willing to ensure and facilitate that that is exercised? Absolutely.

CHAIRMAN - QUINTON STOVELL

Okay, to take that a step further, would you be able to would you be Would you be willing, would your client be willing to formalize that arrangement? I preface that by historically, it's been ad hoc at the mercy of whoever is the owner at the time of the property? So perhaps, now we are on owner number three or four

WITNESS - MARK PETTINGIL

I can't imagine why they would not necessarily think that would they? Would they be prepared to formalize that and say that they recognize that that that illegal access exists?

CHAIRMAN - QUINTON STOVELL

Okay. All right. I'll accept that.

WITNESS - MARK PETTINGIL

I don't know what else I can say about that. Just be very, very surprised.

CHAIRMAN - QUINTON STOVELL

Put it on a plan to formalize it.

WITNESS - MARK PETTINGIL

Yeah. Put a path

CHAIRMAN - QUINTON STOVELL

Right, that would be my line of thinking

WITNESS - MARK PETTINGIL

That is my line of thinking too

CHAIRMAN - QUINTON STOVELL

Okay, can you tell us? What was the original area of land acquisition? For formerly Castle Harbor and now Tucker's Point? Okay, if not,

WITNESS - MARK PETTINGIL

Sir, can you repeat the question

CHAIRMAN - QUINTON STOVELL

Can you tell us what was the original area of land acquisition, for formerly Castle Harbor Bermuda Properties and now Tucker's Point? You just said you can't.

WITNESS - MARK PETTINGIL

No, I can't

CHAIRMAN - QUINTON STOVELL

Are you able to produce that information for the commission?

WITNESS - MARK PETTINGIL

I can ask I don't how

 CHAIRMAN - QUINTON STOVELL

can you find it?

WITNESS - MARK PETTINGIL

I can inquiry into that's the most I can offer.

CHAIRMAN - QUINTON STOVELL

Thank you, further to that. And should some of the original property have been dispensed with? Can you provide the provenance of that dispensation?

WITNESS - MARK PETTINGIL

The best thing I can do is inquire.

CHAIRMAN - QUINTON STOVELL

I would imagine when the property was purchased, there was an E packet.

WITNESS - MARK PETTINGIL

Yes.

CHAIRMAN - QUINTON STOVELL

It should go back to the original acquisition

WITNESS - MARK PETTINGIL

Of, if you mean in 2017.That would go back to the acquisition,

CHAIRMAN - QUINTON STOVELL

Right. So, by virtue of that, what's not there in 2017, would have been dispensed along the way?

WITNESS - MARK PETTINGIL

Yes.

CHAIRMAN - QUINTON STOVELL

Okay. Well, I have a pen, I think, has taught us been involved in recent developments of various subdivided lots from the original 1920 expropriation? If you could resolve to find that out as well.

WITNESS - MARK PETTINGIL

Yeah. This is my way, Mr. Silva because I know that you want to get good audio by indicated, I've been brought up a very specific role in relation to my representation of togas point. Yes. You know, I'm not a corporate guy, lawyer for the hotel.

CHAIRMAN - QUINTON STOVELL

I said, No,

WITNESS - MARK PETTINGIL

sorry. No, I think what I started by saying was they sent the right dog to deal with this particular issue because of their particular role as long as it's just like me, for this one. I'm like a beta reader. I didn't do the conveyance right. I didn't do the corporate structure. So, some of these things. I'm happy to take back that. Yeah, I'm on the position that the Bible.

CHAIRMAN - QUINTON STOVELL

Fair enough. SoI accept that you will go back and

WITNESS - MARK PETTINGIL

make it inquiries

CHAIRMAN - QUINTON STOVELL

Yes. So, if so, meaning if some of that property has not been okay. But from a legal perspective, do you think that these activities if it is being developed, corny, within the spirit and intent that the historic act was of the historic acquisition, in other words, it was a purpose for the expropriation, you’re a lawyer, so if you have familiarity with the history of the expropriation, is the current use, and development of the property in the hands of Tucker’s Point, consistent with the reason that the property was quiet? To begin?

WITNESS - MARK PETTINGIL

I have to start by saying, I don't know. But all I can say is that the current ownership Gen Con bought a property in 2017, as a tourist resort, to obviously developing a world class facility. That's the what they came in with, I don't believe that they were aware of the whole history of the of the issues related to that time and all that, nor Does that surprise me that they weren't maybe they should have been surprised they weren't. And if you think about it, you're selling something, it's not necessarily something that you're going to flag up.

CHAIRMAN - QUINTON STOVELL

Okay, and this is this is in the same day, this is my last question. Which I probably won't be able to answer, but I'm going to have asked anyways. In regards to your ownership, are you able to tell the commission how much property remains on? Approved? Thank you very much. Thank you.

CHAIRWOMAN

Thank you, Mr. Stovell,

 JONATHAN STARLING

I understand that the owners are relatively new. But I just wanted to know, to what extent Are they aware of the legacy issues regarding the Thomas house property, particularly as relates to the original expropriation and the types of why the man who was export, because it that's why we're here. One of the reasons why we're here, the MAS thing, great site, and the golf course, is very powerful. What we're talking about is minus a midocean. Property acquired, probably the bulk of the lands held by the parties within the entities. So, my point is, there is quite a bit of history involved in this whole area, and for your clients come in and not know that these are contained condition. Medicine issues. Notwithstanding I hear what you're saying about moving forward and what the company is looking at to do what they also consider, and it's also in line with, they also look at the inventory that they have in terms of land acquired. And I'm going to say in excess of need would be considered using that property to somehow memorialize the loss to residents. Even if it means extending the grid, and providing a sort of a park area or something, some sort of something other than return property, or financial gain, would they? Would they consider that, which is what I'm asking of you? And if you don't know, you take it back to?

WITNESS - MARK PETTINGIL

Well, first of all, I certainly will take it back. And for their consideration, I think they have been wanting to be extremely considerate, are listening, just with regard to the legacy point that you raise? By perspective, I get where they would, I don't find it that surprising that they were not aware of that because I say that because I did this extensive document with regard to legacy issues, I think many reasons. Even those that live in that area, even those that have to start with attachment to that farm, or they're becoming more aware now with your work, because of the issues being given. But people here were necessarily aware of it and understand where the international public coming in including a purchase of a hotel resort development may not have as part of that package. And you will be given this instead to go, by the way this legacy issue here for a long while, but I could see where they would not have it would not have been flagged. But as far as considerations.

JONATHAN STARLING

Good morning,

WITNESS - MARK PETTINGIL

good morning,

JONATHAN STARLING

my comrades to my right, largely asked questions, I was going to ask some to shake my fist.

WITNESS - MARK PETTINGIL

But a separate communist

JONATHAN STARLING

government commissioners, I am going to try to expand on some of what they said just so that I have clarity. Just speaking about the possible expansion of the graveyard. So, the walls that are there that we see today, they were built in the 1920s, after the community had been expropriated. So those walls are not original to the cemetery. They were built subsequently to I don't know if you've read the ground penetrating radar study on the web. In that, and I understand the researchers were limited to only studying within six feet of the border off the walls, they couldn't go any further. But they did find that the graveyard appears to extend to the east. But they were unable to further study to the east. partly due to that restriction about six feet. They couldn't go beyond that. But also, there's a hill there, which is novel that was created sometime between 1920 and 1960. It was a landfill which obstructed their ability to do radar research there. So, the question that I think my Commissioner, my fellow Commissioners were asking was, whether there is an indication of the original demarcation of the cemetery, as opposed to the current demarcation and how we can ascertain that whether your owners, the owners would be willing to expand the cemetery. To that there.

WITNESS - MARK PETTINGIL

Again, I don't know it's something that I will go back and consider, as indicated, right. Where that report is not something that I have reviewed fully. I'm happy to do that. To raise your question consideration, but it seems to be you're indicating that that the walls of it 20 that there may be hallowed ground that extends beyond that out into other areas. That's one thing I'm trying to ascertain

JONATHAN STARLING

the legitimacy of that one of the questions and I believe you did address this earlier, but I just want to the question like commissioners as well, just wanted to see clarity. So, when Jen come to the purchase of the property, where they have the understanding the cemetery land was part of their purchase.

WITNESS - MARK PETTINGIL

A second at the time of the Gen Con purchase, as far as the owners of Gen Con goes, they were not aware, constructed with regard to issues of the graveyard. Now, you know, in a corporate sense, I'll say this, like, you know, directors of companies are presumed to know, the legal technical position on things, but the fact of the matter is, they just don't necessarily know everything. Everything is not brought to their attention. It may well be that you wish that wouldn't happen. But do I get the memo that went out of business, particular area of land here in a particular way? I really see where that didn't happen. But they weren't aware.

JONATHAN STARLING

I don't mean to say did they know that the land they purchased had a cemetery on it, but rather, did they know that land was not theirs? The purchase? If I read the announcements reported the grave error, there's a question on ownership, which indicates cemetery was never sold.

WITNESS - MARK PETTINGIL

Right? I don't, I don't know what it goes like. Like, most operandi, but I would say this just with limited knowledge of how-to conveyancing that they probably if there is some Island ownership, because that would be or, or easement, as you determine in the basic sense that the bulk of the land that has been purchased would probably have been, you know, ring fence around that particular area. And that, you know, happens a lot with regard to just general conveyancing in the state, you know, you know, pieces of land and also have easements, where you own the land, we have a right. So, having settled that, by way of some limited knowledge, my answer is I don't know. You know, the, the issue with regard to the time to say that, again, they were, you know, they came to the mission, and they weren't aware of that particular issue, that type of practice.

JONATHAN STARLING

Okay, but the Gen Con will consider the, to the possibility of allowing the area to be surveyed and share my other conditions to lay that to probably like deep questions for them. So, I'm going to retire now. Thank you, Madam Chair. Thank you.

CHAIRWOMAN

Thank you, Mr. Starling, only one person to my left

FREDERICA FORTH

Good morning, Mr. Pettingil I'm going to be speaking as an experienced realtor, I know when I showed up to purchases, even the most inexperienced purchaser they have, they are filled with questions and lots of queries about the property. We show them the interior of the property, we show them the exterior, and they pose such questions as Where are the boundaries? And if they have not been identified, certainly one would have to get that those boundaries identified before purchase other questions, do a complete walkthrough of the exterior as I explained, and also, they will want and we will provide a legal description of the property and copy of the lot plan of that property. If you don't have it on hand, certainly the attorney which I encourage them to use when they're purchasing the property will have had that conversation with them to answer any queries. The other thing would be one of the questions that would be used would be the history of that property, especially if it's an older property and not necessarily old but any property, they will want to know the history of that property. And with regard now bringing it back home, I understand that GenCom purchased the property in 2017 and I understand Of course, the corporate structure having been a Vice President of Bank of Bermuda, HSBC for many years, I understand that structure. But I also understand too, that when it comes to purchasing, whether it's a small lot, or a huge property in the millions people Want to know, what are they getting? What do they want will I at the end of the day, for purchasing this property? I just find it hard to believe, with all the newspaper articles surrounding the cemetery in his late as 2011, when they had a function there, and the oldest person at that time was acknowledged, having been a direct descendant of that community and then again, in 2012, when again, that was an article in the paper, of course, showing what was thought to be the desecration of the graves, I just find it hard that an entity Gencom, would not have at least pose, whether it was then directly or who was looking at purchasing this property didn't know some of these basic queries, some of these basic concerns that the most inexperienced purchaser would ask just find that hard to believe. Because even if they purchased it in 2017, I would see you would see that there's a gravesite, I just want to know why they did not reach out to the owners of that cemetery or enquire so there had to be some discussion with someone to raise the issue of the cemetery. And since you said they are good corporate citizens understanding the importance of burial sites and so forth, that they didn't reach out to the church before now.

WITNESS - MARK PETTINGIL

Let me say this I, I very believe that these are genuine people, I think the I appreciate the analogy that you're using, but with respect, they also think your average purchasing going out and buying a local house, and the purchase by international company of a large resort, including an 18-hole golf course. So, on the basis of that corporate structure, I can see where that doesn't necessarily get flagged, I think regrettably, there's Bermudians and aren't aware of the issues going back for publication of those articles. In 2011 2012, the desecration of great sites, and that's people that are right here at odd, odd necessarily, where I think it's coming to the forefront now. But I, you know, there wasn't the correspondence support that we see here, had there been that type of correspondence evidence that I could see with regard to some orders received by emails, or the letters are on file here from Marsden church, the previous owners, that this is, I think it would be news to them. Nobody expected to see the purchase of this type of documentation would be included, I'm not saying it shouldn't be saying it shouldn't have been but I am indicating that it wasn't that hasn't been part of the record of the sale certainly, as far as the owners were aware. So, I don't think they're being disingenuous by saying they just were not aware of the significance in relation to this issue. You know, and I believe that if it were, I would be prepared to say like, Yes, we should have done more at the time. You know, that is not the instructions or the evidence or the information I have, what information I have is like, you know, this is unacceptable. This is a great concern. And we want to be proactive and positive with regard to how we deal with it expeditiously at this time.

FREDERICA FORTH

And I do appreciate those comments, but I still find it that if one is looking to purchase something of that magnitude, that they don't go, I'm not aware of what

WITNESS - MARK PETTINGIL

I think, you know, to your point there, certainly there are people just logically and sensibly that would have been aware, but there's no question, you know, to the points that Stovell raised that the lawyer is doing the conveyance wouldn't have been with in laying out those plans. I'm not saying in the whole structure of the purchase, that there is somebody logically that would have been aware, but I am indicating that I don't believe that that went all the way up to the top of the ladder as being flagged as you know, issue or concern or saying that this particular small segment of this larger property is not owned by you. It's this easement if you will, in the midst of this area. I can I can see this where that gets regrettably lost in the buyer. And I say regrettably because hadn't been aware of that at the time. I believe that they would have looked at and said what's the status and taken positive action had they been properly at the top of the ladder.

FREDERICA FORTH

Thank you.

CHAIRWOMAN

Thank you Ms. Forth, Counsel Harrison do you have any questions as a result of the questions asked by both Reverend and Mr. Tucker and commissioners?

COUNSEL HARRISON

Not at this time Madam Chairman

CHAIRWOMAN

Farewell, Mr. Pettingil you are the counsel on record for the company. Can you give us, we're working with a tight timeline? So, I'm asking you, how soon can you provide us with the information regarding all the undertaking?

WITNESS - MARK PETTINGIL

Is there a transcript of today's interview transcript is provided, I will definitely make a note of many things? But I mean, throughout the official record of transcript can be extremely useful.

CHAIRWOMAN

How soon will the, In a couple of days, yes? Within a week Madam?

WITNESS - MARK PETTINGIL

well, that sounds like the classic 14 days, probably a week and a day. Then once I get in, if I can have a week? lot of surprises, the current chief hasn't wanted to grow, take every opportunity to do that, but our previous last

CHAIRWOMAN

So, within 14 days?

WITNESS - MARK PETTINGIL

Yes Ma'am

CHAIRWOMAN

Because you won't be able to go back and start your discussion,

WITNESS - MARK PETTINGIL

of course. So, I'm going to do that. But what I will do going from here, in addition to giving my contacts the Reverend talker and getting that chain of ball started the chain of correspondence. And then, of course, the clients today, what has transpired here, and you know, the party as much as I can, but of course, the actual questions as an artist, you know, as part of the record, they have to be very specific on

CHAIRWOMAN

Thanks for that, and of course, the Secretary will be contacting you if we don't hear from within the time frame Mr. Tucker did you want to say something?

WITNESS - MR. TUCKER

Can I ask just one question? Yes, Mr. Stovell I couldn't see his name. Sorry. I want to add to the point that if Mr. Pettingil, tries to get information on whether there's more graves within the old Tucker's Town area, my suggestion would be to meet with Mid-Ocean Club as well, because if you're going to do analysis of the whole Tucker's Town prior to the church being established down there they may have been other grave sites in the area and I'm sure my cousin's over there want to know exactly where any bodies are buried in that area. So, it's bigger than just Castle Harbor it also includes the other properties that are around there as well. And I just wanted to enhance his point,

WITNESS - MARK PETTINGIL

I would say, I appreciate that point and I'd rather respect not touch Mid-Ocean Club, that's a different animal I think their counsel is coming this afternoon and but I would contend even early that I think that that's something that that should be done. I just think it's out of my remit. But I agree with you.

CHAIRWOMAN

Thanks. Thank you, Mr. Pettingil If there's nothing else in perspective, what you wish to say Reverend and Mr. Tucker has some unfinished business that they're going to deal with now. And so, I will move on to them.

COUNSEL HARRISON

Madam Chairman Mr. Pettingil had asked in respect of the Exhibits what is numbered Marsden, 003 and 004 that whether they could get copies of them I suppose. I will do was that appointment facility to also

CHAIRWOMAN

Well, I would ask the Secretary to provide to Mr. Pettingil

WITNESS - MARK PETTINGIL

I have this very useful; I'm obliged we're here so to see the this is not for me at this stage this is a copy of the statement it's a very useful document I'd be obliged to have i

CHAIRWOMAN

Indicate to her what your needs are, and I can assure you she will provide it

WITNESS - MARK PETTINGIL

This bungle with the photographs and the matters particularly I have not seen before. So, if I can have those

CHAIRWOMAN

Now, Reverend Whalen and Mr. Tucker you've completed yesterday, I think Reverend Whalen were the first one and you said you were going to be very short and that I don't have counsel that have questions for you but once you complete. Do you swear to tell the truth?

COUNSEL HARRISON

Just to get an idea of the timeline, it's 20 after

CHAIRWOMAN

Is it 20 after?

COUNSEL HARRISON

And then other set of witnesses come at about 130 and some of us would be before but I know that Reverend Whalen and Mr. Tucker will be with us for the day because

**This is to certify that this transcription has been duly transcribed by local transcribers, The Curvy Executive, Devonshire, Bermuda (Tel: 441 732-3141).**

**Chrystal-Lynn El**

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**Dated: 11*th Day of January 2021***