**THURSDAY, 19TH NOVEMBER 2020**

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

***held at***

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

***Hours of Hearing are from 1:00 pm to 3:00 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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COUNSEL HARRISON

We are ready to proceed, I would ask that Mr. Harrison if we can turn it over to him and then he was

MOCL - COUNSEL

Very grateful and thank you Madam Chairman. Justice We, on behalf of the Mid-Ocean Club Limited would like to tender my first and only witness

WITNESS - BEN SULLIVAN

I Ben Sullivan, swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

MOCL - COUNSEL

Should be a sentence in your plan. Yes.

COUNSEL HARRISON

Mr. Sullivan read the statement.

WITNESS - BEN SULLIVAN

I'm Ben Sullivan, of 1 Mid-Ocean Drive St. George's, Bermuda, will say as follows: 1. I am President and a director of Mid-Ocean Club Limited MOCL .2 On behalf of MOCL, I attach and tender to the Commission of Inquiry is a copy of the Private Act of the Bermuda legislature, Bermuda 1950, # 70 titled, "The Mid Ocean Club act 1951" which incorporated pyrene and brought into existence close pyrene MOCL

MOCL - COUNSEL

You should have that on your path copied this be enabled Exhibit B s one.

CHAIRWOMAN

The Mid-Ocean Act 1951?

Yes, you can just refer to that

WITNESS - BEN SULLIVAN

3. If the commission wishes to know more about the history of MOCL how MOCL came into existence and how it came to buy a property from the furnace with the Steamship Company. There's a short history on our website app. And then there's a website link date November 17 2020.

MOCL - COUNSEL

I'm now going to show you a document which is a 1951 conveyance, not about leaving the property of taxes as well. It's got this indenture it's a legal conveyance document. Mr. Sullivan, this is a conveyance of the property notice in relation to MOCL dated 1951 it is this the conveyance with past property or where from The Bermuda Developpement Company and terms of pricing that has got the maps and the fact of the DST. See the please with just this this entire indenture

CHAIRWOMAN

and it Be under estimations?

MOCL - COUNSEL

And managers to for examination by the learned counsel and

CHAIRWOMAN

So, it's ps1, which is the Mid Ocean Club Limited? And then there's PS2, which is the indenture?

MOCL - COUNSEL

Yes

CHAIRWOMAN

Thank you. Counsel Harrison?

COUNSEL HARRISON

Thank you. afternoon. Good afternoon, sir.

WITNESS - BEN SULLIVAN

Good afternoon. Excuse me, sir. counsel.

COUNSEL HARRISON

Because this is a quick run off record. I'd like to ask you to assist me a little more if you can, in respect of your statement, where you refer to the admin portion, blog.com slash web slash pages slash history. I'm not certain that you could assist me with some of the history even though you have given a directed us know, the site, it is a quarter of it's an inquiry, so we need to have to see it. Rather than us virtually going there and searching for information you have to have is under Are you able to assist me with the history? I have some questions. If you aren't able to answer that. Are you? I think it's without reference to the website, the furnace with the Steamship Company, you bought the property that, you know, exists from them? Correct?

WITNESS - BEN SULLIVAN

I believe that's the case.

COUNSEL HARRISON

And when I say you, I don't mean your personal. I make reference to the documents which have been referred to and which makes specific reference to 100 acres. They Mid Ocean Club Limited was this acreage on the it's not much right now.

WITNESS - BEN SULLIVAN

I don't I don't have a specific number for that.

COUNSEL HARRISON

Is it more than 100 acres?

WITNESS - BEN SULLIVAN

I believe it is but I don't know a specific number

COUNSEL HARRISON

to the liberty of looking at the website and I notice that the statement appears on the website. Please bear with me I refer to an extract the clubroom and paranoia to its noble beginnings. The dedication to excellence and the unwavering devotion of its members and staff remains as true today. Begin is what normally begins and you say references we need to know the beginnings of the club.

WITNESS - BEN SULLIVAN

I do not know what that refers to

COUNSEL HARRISON

I took it from your website. Let me just, are aware of the history of the land which was owned by the company that you purchase when your company, your club purchase. I am you aware of the history.

WITNESS - BEN SULLIVAN

I'm not hat familiar with details.

COUNSEL HARRISON

I've learned a lot. Are you familiar with a petition that went to the House of Assembly here in Bermuda in the 1920s. A petition which had been placed before both House of Parliament? Are you familiar with that history?

WITNESS - BEN SULLIVAN

No.

COUNSEL HARRISON

Are you familiar with a petition that had been laid for the Houses of Parliament by residents of St. George's and Hamilton parishes? It was against a bill attached to the Bermuda Development Company Act. Are you familiar with that history?

WITNESS - BEN SULLIVAN

No.

COUNSEL HARRISON

Are you familiar that a law was passed in the Bermuda Parliament which became which was known as I'm sorry, The Bermuda development company Act Number Two, are you familiar with that?

WITNESS - BEN SULLIVAN

No, I'm not.

COUNSEL HARRISON

Are you familiar with the fact that not only was it the intention, but in fact it actually let me read it to you, forgive me

MOCL - COUNSEL

Sorry, what is being read out?

COUNSEL HARRISON

And what indicates charging. I'm reading from the petition. A petition of residents of St. George's and Hamilton Parishes, I'll show you a copy shortly, against a Bill tilted The Bermuda Development Company Act number 21920. It's a petition of certain freeholders of the parishes of St. George and Hamilton titled The Bermuda Development Company Act number to 1920. And from an extract in paragraph one opposite petition reads "The Bermuda Development Company Act number 21920, which among other things provides for the acquisition of the lands and the set parishes of St. George and Hamilton partially described in the first schedule for the set bill can be acquired by the said company" and pause there. Can you see in which parish Mid Ocean Club Limited what parish does it occupy?

WITNESS - BEN SULLIVAN

I'm actually not certain

COUNSEL HARRISON

Do you know what Parish you're in right now? Are you aware that was the intention and according to whether or not in fact that the intention was to displace all persons or persons in the name of development remove all persons who lived in the said parishes in the game of tourism?

WITNESS - BEN SULLIVAN

What was the question again?

COUNSEL HARRISON

I haven't finished, thank you. The petition I refer to the petition of residents of St. George's and Hamilton parishes again to be led to the Bermuda development company at number 219 20. The petition was laid for Parliament by petitioners who own land in the parishes of St George known as Taka stone and of course your comments on parish or join in their tool. Are you familiar with that history?

WITNESS - BEN SULLIVAN

No, I'm not familiar.

COUNSEL HARRISON

This is just an ironic question. Are you familiar with the language Mid Ocean Club limited now occupies prior to 1920 Bermudians blacks and whites had lived there and that they were dispossessed of their land? Are you familiar with that fact? Are you familiar further that haven't been dispossess a number of Bermudians blacks and whites that the company from whom we know Mid Ocean property furnace with it, Steamship Company that they owned and dispossessed the land from the Bermudian blacks and some whites? Are you familiar with that?

WITNESS - BEN SULLIVAN

No, I'm not.

COUNSEL HARRISON

Are you familiar with the fact that they land that many Bermudian black and Bermudian whites had been dispossessed by the expropriation which benefited furnace with his Steamship Company that cause much anger among Bermudian people? Are you familiar with that fact?

WITNESS - BEN SULLIVAN

No, I'm not familiar with that.

COUNSEL HARRISON

Are you familiar with the fact that the land that Mid ocean Club occupies now? It is to this present-day hour and time five minutes to two in the year of our Lord on 19th of November 2020. It still resides is much anger are Bermudian people have been dispossessed of their land. Are you familiar with that?

WITNESS - BEN SULLIVAN

No, I'm not familiar with that.

COUNSEL HARRISON

Are you familiar at all? As to the terms of reference of this commission of inquiry? You don't live right here?

WITNESS - BEN SULLIVAN

I don't believe so. I don't know the specifics.

COUNSEL HARRISON

I'm going to just read something to you. I'm going to ask you whether or not you have heard this statement, or words to this effect, and what to search for that document, which is a public one but I wanted something for the time being, if you could assist me. This is stapler and evidence given by a number of historians, several articles. Have you ever heard the term come to Bermuda Mid Ocean playground?

WITNESS - BEN SULLIVAN

I'm not familiar with that specific term.

COUNSEL HARRISON

Have you ever heard these sentiments as gratitude to furnace with it, building of hotels? One special legislation was passed to foster meal delivery. Have you ever heard that?

WITNESS - BEN SULLIVAN

Yeah, familiar with that.

COUNSEL HARRISON

As a gratitude to protest with the building of hotels, new roads where built, have you ever heard that?

WITNESS – BEN SULLIVAN

No, I'm not familiar with that.

COUNSEL HARRISON

As that gratitude to furnish with a building of hotels, crown lands were sold to the company. You ever heard that?

WITNESS - BEN SULLIVAN

I'm not familiar with that.

COUNSEL HARRISON

As I gratitude to furnish with the building of hotels, they were allowed to dredge Castle Harbour. Are you familiar with that?

WITNESS - BEN SULLIVAN

I'm not familiar with that.

COUNSEL HARRISON

There's a Are you familiar with any parts of the history as it relates to the escrow appropriation of land? I'm just going to read an extract from a document which appears on the websites of a Bermuda the government of Bermuda is also the Commission of Inquiry website. And it's under the heading of commission of inquiry into historic losses of land in Bermuda. And the scope of the commission here is to inquire into historic losses of citizens property in Bermuda through theft of property dispossession of property adverse possession claims are such other unlawful or regular means by which land was lost in Bermuda. At the end of the process, the commission will collect and collate any, and all evidence and information available related to the nature and extent of such historic losses of citizens property, prepare a list of all land to its own historic losses relate and identify any persons, whether individuals or bodies corporate, responsible for social start losses of citizens property. And it continues to just have you Those are the general terms of reference for the inquiry. Have you ever heard that before?

WITNESS - BEN SULLIVAN

Not before you read it to me.

COUNSEL HARRISON

Mr. Sullivan do you know why you're here today?

WITNESS - BEN SULLIVAN

To represent the Mid Ocean Club Limited

COUNSEL HARRISON

And you are representing them against what may I ask?

WITNESS - BEN SULLIVAN

Not sure I can answer that I was asked to be here. So, obey the request to be here, or here to be here based on a request?

COUNSEL HARRISON

Thank you. Would it be more in line with your files that Mid Ocean owns nearly 600 acres of land in Bermuda presently?

WITNESS - BEN SULLIVAN

That's a question, was is that a question?

COUNSEL HARRISON

It is

WITNESS - BEN SULLIVAN

I'm not familiar with a number of that nature.

COUNSEL HARRISON

Are you able to assist whether you have acquired more property than you acquired in 1950 when you bought from furnace with the Steamship Company? Have you acquired more since then? Are you able to answer that?

WITNESS - BEN SULLIVAN

I'm not really familiar with whether the Mid Ocean Club has acquired more land

COUNSEL HARRISON

That is, you're just not? You just don't know?

WITNESS - BEN SULLIVAN

I just don't know.

COUNSEL HARRISON

But you could find that out for us?

WITNESS - BEN SULLIVAN

Could I find it out? I could potentially seek to help somebody find it out.

MOCL - COUNSEL

I'll give some assistance. If there's any questions which the Commission's council wishes the usual way and answers can be given. any specific questions will be answered if they're just channeled. And we didn't come prepared to answer specific questions, but obviously the total input Indeed, we just did provide documents we would did not exist at the time of the relevant event. So, with but obviously, if you want anything,

COUNSEL HARRISON

Please, thank you very much. As I had indicated, the commencement if there's anything that you could not answer, no, you could at a later time, provide that information. Thank you so much. Continue nonetheless. All right, it's a day before you ever had a witness who represented Tucker's Point during Counsel Mr. Mark Pentingill, apologies appeared and a matter directly unconnected to you, but I share it on the desk before I asked my question. It touched on concern the old Marsden cemetery, which appears along the golf course. As I said, unconnected to you, but more particularly connected to Tucker's Point. On behalf of Tucker's Point, Mr. Pettingill here in my words, stopped short of apologizing on behalf of the owners. Four wrongs that have been committed against Bermudian blacks and a few whites were lands had been expropriated and these Bermudians lost everything some of whom were handed cash, some got cash and land. There's a debate which is moods, that there was no consistency as relates to the compensation that was offered to the dispossessed Bermudians. Are you aware Mr. Sullivan, have you ever heard of Bermudians who had occupied lands on which mid ocean is now situated? Have you ever heard of a Bermudians being dissatisfied with the compensation that was offered to them having been dispossessed of lands, which I know on which Mid Ocean is situated, have you ever heard that?

WITNESS - BEN SULLIVAN

I'm not familiar with any specifics.

COUNSEL HARRISON

Do you know anyone in the mid Ocean Club, limited organization who the process of any of this information to know any of this?

WITNESS - BEN SULLIVAN

No, I'm not aware of anybody?

COUNSEL HARRISON

Is there anybody who is in mid Ocean Club Limited from whom information or the files that one to understand the history of the lands that you know occupy? Is there any existing person you can think of?

WITNESS - BEN SULLIVAN

No, I'm not aware of anybody.

COUNSEL HARRISON

Are there files in your offices to indicate prior to acquisition in the 1950s.? So, understand the antecedent history of the occupiers prior to the 1950s.

WITNESS - BEN SULLIVAN

I don't believe so.

COUNSEL HARRISON

Are you familiar with a requirement that was a requirement that upon the acquisition of land and for the land to be transferred that there needs to be some sort of a structure survey done? Are you familiar with that?

WITNESS - BEN SULLIVAN

I'm not aware of that technicality.

COUNSEL HARRISON

In the simplest form, are you aware before No, or no.? That Bermudez? I'd say, mildly quite upset in respect of the history of their forefathers, and lands which have been lost. Are you familiar with that history?

WITNESS - BEN SULLIVAN

I'm not sure I can comment on that. I don't have.

COUNSEL HARRISON

Well, you can comment you either know or you don't know

WITNESS - BEN SULLIVAN

I don't, I don't have awareness, knowledge.

COUNSEL HARRISON

And your Counsel is here to protect you so let me before I ask the question warn him so he can object as far as you're aware, Bermudians up to the time, on time, how long have you been President?

WITNESS - BEN SULLIVAN

President since December 2019, so 11 months and I've been a director, I believe it's for five years.

COUNSEL HARRISON

See, you really can't tell it was very much. Just not very long. Let me try another way. Are you aware that there is a lingering word is used in GST among Bermuda? As it relates, over the five years you have been a director, that there is a deep-seated discontent among Bermudians, blacks and whites going back almost 100 years. Having been dispossessed of lands on under the name of expropriation, to advance tourism interests. Are you familiar at all with that? And to see that history?

WITNESS - BEN SULLIVAN

I don't have specific knowledge of that.

COUNSEL HARRISON

Do you have general knowledge?

WITNESS - BEN SULLIVAN

I don't have enough general knowledge to speak to it.

COUNSEL HARRISON

The law some that shared with us. We're here.

WITNESS - BEN SULLIVAN

I don't have enough to speak to

COUNSEL HARRISON

Tell me what you to know.

WITNESS - BEN SULLIVAN

It would be any if it was anything, it was something I may have read in the press whether it be Royal Gazette or Bernews, something along those lines doesn't go beyond that.

COUNSEL HARRISON

Is it something that you're concerned about? As it relates to the image of made Ocean Club limited? Is that something that you're set up on your club that you're concerned about? The image or the perception as it relates to Bermudians black and white, having been dispossessed of land going back 20 years, even before you were owners, is that something that concerns you? Or just by me?

WITNESS - BEN SULLIVAN

I don't think I'm a position to answer that.

COUNSEL HARRISON

Let me repeat it then

MOCL - COUNSEL

With respect to Counsel, I'm not sure how this assist the commission is RG. This, this line of questioning is simply asking the seeking to humiliate my client who didn't exist at the relevant time by asking questions whether we're concerned that or not, and we're not around time. So, I'm not sure how this helps to try to pry out some announced which, which is, shall we say is embarrassing either way, how is this helping the commission?

CHAIRWOMAN

Counsel could you just lightly touch on the object of your questioning because I know commissioners can comment on but you might comment of course

COUNSEL HARRISON

Thank you, Madam Chairwoman, the line of questioning is in keeping with the terms of reference of the Commission and certainly what one thing rather than me indicating No, which is tantamount to me giving evidence is an understanding of the antecedent history. Again, please allow me, thank you, thank you. So, understand the antecedent history of this matter. And to get a further understanding that there is an appreciation on the part of the witness as to what has happened, what he has inherited, since that time, without giving him too much direction in terms of were employing an appreciation that if something happened in the past, and the company is known for all intents and purposes on all fours, assuming positive acquisition that previous one had, there may be some responsibilities, which is a concept. Simple question. Those are the

MOCL - COUNSEL

The question is whether or not Mid Ocean Club should show remorse for events that took place 30 years before Mid Ocean Club existed. Now, I'm not sure my time is able is authorized to express remorse on behalf of Mid Ocean Club Limited full stop and in any event in relation to events which took place 30 years before the company existed. So, it's an impossible question. I'm happy for my learned friend to ask it. But it's this is this is not

CHAIRWOMAN

Certainly Mr. Adams and the questions that I hear counsel asking, they're actual questions and either Mr. Sullivan is able to answer them or is not able to answer them

MOCL - COUNSEL

the learner council now that can repeat the question, I probably interrupt this flow as a factual question then of course.

COUNSEL HARRISON

I have nothing further I will just if you had permit me, I will just continue. and just to be clear, nobody here means to embarrass or seek to do anything we're just seeking some facts finding mission. So, Mr. Sullivan I want to give you a scenario and if you can assist me as based on the guidance of Madam Chair, either you can or you can't. I'm just trying to understand a little bit and I'm learning too. If tomorrow, you're advised that a special order has been made and that's all lands on by Mid Ocean Club limited are immediately expropriated how would you feel?

WITNESS - BEN SULLIVAN

I don't believe I can address it.

COUNSEL HARRISON

Suppose you're advised tomorrow, that law has been passed, and all the lands on the Mid Ocean Club limited exist, they're being taken away and they have been handed to Bermudians every bit of land that is owned, is will be taken away and given to somebody else. How would you feel?

WITNESS - BEN SULLIVAN

Again, I'm not comfortable answering a hypothetical question?

COUNSEL HARRISON

I'm almost finished. Thank you for your cooperation so far, I'm almost done. Thank you. You have been a Director for five years and earlier I had asked a question of you, which I had reference websites of Mid Ocean Club limited that you had so kindly directed us to in your statement that the club remains loyal to its normal beginnings, the dedication to excellence. Could you just share with us? What are the normal beginnings of the club?

WITNESS - BEN SULLIVAN

Again, I'm not familiar with exactly what that statement references.

COUNSEL HARRISON

I have nothing further this time and just ask Madam Chair, that there is a likelihood that I'd like to reserve the right to recall and Mr. Sullivan, I trust it's convenience to him and his Counsel but I have nothing further at this time.

CHAIRWOMAN

I have Commissioners here, Mr. Starling would like to start

JONATHAN STARLING

Good afternoon, thank you for coming today, thank you Madam Chair. I just have one quick question you said you'd been the President for the last year and a Director of the board for five years, as well, correct?

WITNESS - BEN SULLIVAN

Correct, I believe it's approximately five years.

JONATHAN STARLING

How long have you been a member of the Mid Ocean Club?

WITNESS - BEN SULLIVAN

I have been a member of Mid Ocean Club since sometime in the late 1980s. I'm not sure precisely the year but late 1980's

JONATHAN STARLING

Okay, that was just piquing my curiosity. Thank you.

CHAIRMAN - QUINTON STOVELL

Good afternoon Sir, I'm beginning to wonder what you can answer for us. I'm astounded by your ignorance in these matters. Just referencing the Mid Ocean Club documentation, I see that there was an initial acquisition of 200 acres. Is there a master plan, in laymen terms cropland boundary survey, which reflects the extents of the property acquired?

WITNESS - BEN SULLIVAN

The 1951 acquisition? Is that what you're referring to?

CHAIRMAN - QUINTON STOVELL

Yes.

WITNESS - BEN SULLIVAN

I don't know, I'm not I'm not sure we can come back to you with that. I don't believe it's various supply plans, I haven't seen a master.

CHAIRMAN - QUINTON STOVELL

So, you get that information for us?

WITNESS - BEN SULLIVAN

If you, if you, we could determine whether there is one,

CHAIRMAN - QUINTON STOVELL

Well, it says 200 acres in the document.

WITNESS - BEN SULLIVAN

So, the reason I'm pausing, I know over the years, whatever documents, they might be at the Mid Ocean Club, from time to time, have whatever unrelated to what we're talking about now, I find that, you know, been lost and disappeared. And hurricane Fabian took a lot of files away, et cetera, et cetera. So that's why I'm not saying will certainly get delivered to you. But we'll look into it.

MOCL - COUNSEL

So, if you're looking for a master plan for the land belonging to Mid Ocean?

CHAIRMAN - QUINTON STOVELL

To Mid Ocean, in the first instance. Secondarily, and the acquisition in 1951. Yes. And then subsequently, if the club has acquired more, because according to this document, it should be at 200 acres unless there is supplemental information, which gives you a different total. Because this is the act that governs your property ownership, is that correct?

WITNESS - BEN SULLIVAN

That's, that's what I understand when I when I glanced at that packet, within spec, there's a specification 200 years, right.

CHAIRMAN - QUINTON STOVELL

So, if I correct on the stand that anything exceeding 200 acres, the Act would have to be modified.

WITNESS - BEN SULLIVAN

I'm not familiar with how, how that works, but I noticed the 200 acres,

CHAIRMAN - QUINTON STOVELL

Would you be able to advise if that's the case?

MOCL - COUNSEL

Again, these questions are very helpful, we'll pick them up

CHAIRMAN - QUINTON STOVELL

Please, and the rationale behind this is part of the antecedent history would be that the property was expropriated for specific purposes. Part of the responsibility of this commission is to get to the truth. So, what we would also like to do get the information from Mid Ocean is in subsequent development and use. Can you advise us if you've obtained more property and we like to determine or if you can advise us that the use for tourism and it's all spelled out in your act? We would like to determine if those conditions have been met.

MOCL - COUNSEL

Would it be helpful if I liaised with your counsel to get a list of questions?

CHAIRMAN - QUINTON STOVELL

Absolutely

MOCL - COUNSEL

We would like to have the answers to

CHAIRMAN - QUINTON STOVELL

Absolutely

MOCL - COUNSEL

We got it done, not knowing what which areas you need to be more than happy to try to get your answers on specifics for us, because we can go into our archives and see what we have. We obviously do not exist in the 1920s. But we can help you

CHAIRMAN - QUINTON STOVELL

Is there anyone in the organization, and Counsel sort of touched on this throw back? Is that any historian knowledgeable person within your organization that can attest to the historical developments and undertakings of the Mid Ocean Club

MOCL - COUNSEL

You mean Mid Ocean Club Limited in 1951?

CHAIRMAN - QUINTON STOVELL

Or before.

MOCL - COUNSEL

Well, we didn't exist

CHAIRMAN - QUINTON STOVELL

Well, what led up to it? I'm just asking, is there a knowledgeable person in your organization who knows the history of the organization?

MOCL - COUNSEL

We don't have any historians within the club

CHAIRMAN - QUINTON STOVELL

So, you're say there are no old people in your organization, who will be knowledgeable of the organization, the establishment?

MOCL - COUNSEL

I'm saying we have no expert

CHAIRMAN - QUINTON STOVELL

I didn't say expert.

MOCL - COUNSEL

If you ask if you want us to, to look for people who are members of the club to go back to the 1950s and the 1920s. I mean, we can ask if they'd be willing to come along the interview. But I would love to help. But I mean, a lot of you are asking, you're saying why don't we know more about what took place in Matthew 20? I think you'd have the answer. You're asking what why do we know more? refer to the ignorance, you want to know. You're asking us? Why don't we know more about events which took place before we existed?

CHAIRMAN - QUINTON STOVELL

What I'm asking is, within your organization, I already accept that you guys are not the guys who have the answers. I'm asking you if in the in your organization. You have the knowledge base to provide us with that information. That's all you would do your organization I don't

MOCL - COUNSEL

I think that we cannot see answers. If you ask the specific questions, we'll try to dig around and try and come up with like what acreage we bought master plan to do the best we can in terms of coming up with, like historians' reports, and what all we have is a website, which is not, frankly, that can authorize history in the sense of like an expert. It's simply a positive to focus on goals. Okay.

CHAIRMAN - QUINTON STOVELL

Okay Thank you very much Chair Thank you Mr. Stovell, Mr. Perenchief Thank you very much.

CHAIRMAN - MR. PERENCHIEF

Thank you, Mr. Sullivan, Mr. Adamson. I take that as a club, you would keep minutes and records of meetings held annually or otherwise. Is that correct?

WITNESS - BEN SULLIVAN

I know for certain in recent years of the five years I've been on the board, and there may be records Previous to that I know for the last five years, but may be the case

CHAIRMAN - MR. PERENCHIEF

From 1951 at the time that there is a copper clad the landholdings of friends really apply that there would have been meetings held and minutes, all of those meetings would have been held somewhere. And should this permission require or request records of minutes, would they be available to this commission? Should we do so in writing?

WITNESS - BEN SULLIVAN

Turn to counsel here for specific requests like that.

MOCL - COUNSEL

If they exist and then of course we can.

CHAIRMAN - QUINTON STOVELL

I would think that as an esteemed club such as yourselves, such as Mid Ocean Club, with lawyers, members of parliament, and persons of some stature would retain records of meetings, certainly, if they're into acquire land, transfer or land, acquired shares, etc. And I'm asking should this commission request copies of those records or sight of those records? Would they be made available?

WITNESS - BEN SULLIVAN

Yes.

CHAIRWOMAN

FREDERICA FORTH

Good afternoon, I just noticed in the back there are several Memorandum of deposits or transfer of properties. Were they all prepared by one law firm, Conyers Dill & Pearman?

MOCL - COUNSEL

the

FREDERICA FORTH

Various individuals.

MOCL - COUNSEL

I believe there are as used a different article all these ones up to the 1980s.

FREDERICA FORTH

Okay, I was just wondering if maybe that particular law firm, Conyers Dill & Pearman, may have any relevant information pertaining to the properties prior to 1951. Do you think they will have any knowledge? So, were they the company that maybe the Mid Ocean acquired the company 51 that was with Conyers Dill & Pearman relating law firm regarding the conveyance property to the Mid Ocean?

MOCL - COUNSEL

I'm not sure if Conyers was the attorney

FREDERICA FORTH

Would you be able to find out as to who the attorney was? Or firm, company?

MOCL - COUNSEL

The firm who put together the 1951?

FREDERICA FORTH

Yes, thank you very much

Speaker 3

Good afternoon gentlemen have a letter that was submitted as an exhibit a 20th of October 19 marked confidential from the Colonial Secretary to the resident manager of the midocean Club. Are you aware of this letter?

WITNESS - BEN SULLIVAN

I'm not familiar,

Speaker 3

Do you mind if I read it to you?

WITNESS - BEN SULLIVAN

Yes.

COUNSEL HARRISON

The document will be shown to the witness before presented to us

Speaker 3

Have you seen this letter before?

WITNESS - BEN SULLIVAN

I don't know

Speaker 3

Okay, so this will give you an indication on one of the reasons you're here today. Not going to read it. For the benefit of those who do not have a copy. It says I am directed to refer to your letter of appeal in connection with the sale of land at Chalmers county residents. Your executive committee is no doubt aware that the original intention of the undertaking and toughest town had Its objective, the development of the choice trade and hotel business in harmony, and especially in the tourist town area, purchases of land in the club area and immediately bump bordering on Club Golf Course had to be members of the club, and they come in to use their houses for residential purposes only. To enable this project to get started, former residents of the toughest town area are forced to sell their properties and had to seek other moves in the colony. They have recently been several sales of property in the area to Bermudians. And it is doubtful whether this conforms to the original purpose, which land come home should be purchased or acquired. Your executive committee will appreciate that if there is any change of policy. The persons who were forced to sell their properties may well have genuine grounds for complaint. It is for these reasons that His Excellency the governor and council is seeking a clarification of the present position and also to inquire whether as a matter of policy, all persons to whom land within the club's property is sold, or required to be members of the Mid Ocean Club. I am Sir, your obedient servant, the Colonial Secretary. So, the reason

COUNSEL HARRISON

I'm sorry could commission what's the dates for the record of that document?

Speaker 3

Sorry, the 20th of October 1945 that would give me an indication of why you all here if you don't know the complete history of the lands, the land holding from the point of purchase in 1920s to the point or the acquisition by the Mid ocean Club, there is a history which cannot be dismissed because you can't or you build the facts. If you could use what would have been a response to this letter, if you can look through your archives and provide the commission with the response given or given from wherever you have given their reasons as to the on-sale property. And further it was within the original intent of purpose for which the land was purchased.

MOCL - COUNSEL

Thank you, if there's nothing in the archives and see what we have and come back

Speaker 3

That would be perfect

CHAIRWOMAN

Counsel is there anything that arising? Is that the last question of Commissioners?

COUNSEL HARRISON

I would ask Madam Chair; the document will be 10 admitted as an exhibit. It is what is already exhibited, that just make it to no another is already an exhibit on

CHAIRWOMAN

Mrs. Talbot, what's the date of the letter?

COUNSEL HARRISON

Madam Chair, it is projected on your screen during

CHAIRWOMAN

I have to turn I'm not as agile as I used to be. I've made a note that that has been read into the record and it can be found in those exhibits previously. And I suspect a number of questions will be sent to Mr. Adamson, both from counsel and the Secretary in relation to matters would like some answers to counsel? Is there anything you wish to ask our rising public questions of Commissioners?

COUNSEL HARRISON

Nothing at all. I would like to thank Mr. Adamson and Mr. Sullivan for their cooperation

CHAIRWOMAN

Right, and I believe you indicated that you may wish to recall them at some later stage

COUNSEL HARRISON

Depending on the answers that we get to the questions. I'd like to ask Reverend Whalen to resume his seat and for us to continue with his evidence

WITNESS - REVEREND WHALEN

Good afternoon, Justice and Commissioners

CHAIRWOMAN

Is this Reverend? Get started now that you've

WITNESS - REVEREND WHALEN

Yes, I will

CHAIRWOMAN

I'm not sure if Mr. Tucker is going to be speaking as well but we insist on debentures Mr. Tucker if you are going to do so And Council, they are now source debentures

WITNESS - REVEREND WHALEN

Yes, Council. I will try to move very quickly; I just have a few slides we left off talking about the application plan. And basically, the reason why that is put before us because

COUNSEL HARRISON

I really am sorry, you just the document had this. I was asked to produce it was not there earlier

WITNESS - REVEREND WHALEN

Yes. Okay. So, basically, my feeble attempts to trying to dispel the notion that the trustees of the church operated within a kind of criminality, especially given the case that we were informed on prior testimony that a complaint had been launched 2020 14 with the police department, and just to be clear, and our understanding for what the trustees went about, and worked with restoration, to have that classified as desecration, or as any kind of the criminal act would need a sense of ill intent, or to the app, and, and a way in which one was doing destruction, to property not around. So, I just wanted to just be clear about the mindset of the trustee. And what their motive and intent was. One of our trustees, we refer to as Rocky Darrell would give me this quote, whenever I would come upon him when he was in the midst of work, and I would question something, and he would say to me, don't comment on unfinished work. So, this shows the before and after picture. And basically, what happened in 2012, in the midst of the work that was intended by the trustees to be a work of restoration. It was stopped, bolted, but there was a process the end intent was reflected and the plans that were submitted to plan and there is in the bundle of material that was submitted. I got a letter dated 12th of February 2013 from the Director of Planning, or to the Director of Planning, excuse me plan, Department of Planning. And this letter is from the architectural firm that operated on behalf of the church, facilitated by Dr. Ed Harris and it specifies what the intention was at that particular time for the cemetery to have a monument there, and what this schematic shows is not the actual monument, but it just gives an example of something that we had in mind the intent was, for more reflecting a broader representation of a dozen or so tombstones

COUNSEL HARRISON

I'm sorry Justice just an object, your screen is on projection, have it turned around instead

WITNESS - REVEREND WHALEN

On the screen now? Oh, that connection is now functioning? Okay. So, I apologize that the schematic, this was the actual part of the package that was submitted for planning, submission, and the shows the pictures of the cemetery. After some of the work was done, which was unfinished work, it was part of an attempt to have a memorial there. And what is reflected in the picture is only suggestions suggested of what was the intent of being considered. The intent that the trustee said was for broader representation? And part of

COUNSEL HARRISON

I'm sorry can you just take us back to the slide and was trying to understand you are that that that is exhibited there as a representation of what the trustees had in mind to do?

WITNESS - REVEREND WHALEN

Right. That's not the actual monument?

COUNSEL HARRISON

So, the pictures in the top right, one in an extreme right, that's an actual picture? And the one beside it is, are those actual pictures or are those something else?

WITNESS - REVEREND WHALEN

Well, certainly there are actual pictures of the cemetery, the first picture on the right, is definitely a picture that reflected the work that was carried out under the supervision of Dr. Harris, to our knowledge by Rosewood Tucker's Point

COUNSEL HARRISON

And just system

WITNESS - REVEREND WHALEN

to 2012.

COUNSEL HARRISON

Just to guide commissioners on the same side that their showing, on the left top that just shows gradient, gradient says location. Just that we have to say it for the record has to reflect it's when the transcript has been prepared and somebody reading the transcript needs to know exactly what was happening.

WITNESS - REVEREND WHALEN

I believe what it shows is a view from the Southwest and the other one is a view from the Northeast, that's what's listed in the caption.

COUNSEL HARRISON

Okay, thank you. And then what you're showing us as a bottom right-hand corner, that was just a projection of what you trustees would like the cemetery, well at the old Marsden cemetery to look like?

WITNESS - REVEREND WHALEN

This did not originate from us. So, this was, this originated from the architectural firm that was operating with Dr. Harris was facilitating this. This was not what we actually intended and it was just suggestive of what we wanted to do the intent.

COUNSEL HARRISON

Okay so, it's cause of intent but you're showing us also this is what Dr. Harris had presented to the trustees as something that you would consider to do?

WITNESS - REVEREND WHALEN

No, we had talked about having, as Mr. Tucker mentioned yesterday, the intent of the trustees was to restore the cemetery back to its original state. The other intent with regards memorialized was the fact that the concrete slabs did not truly represent the extent of the cemetery, those who gave the impression that there was a limited number of people there only, like a that it was a small area. And so, the monument idea was to reflect the broader scope of those who were buried there and the assets and systems.

COUNSEL HARRISON

Thank you.

WITNESS - REVEREND WHALEN

And the so this was a first step of a process involving a broader collaboration with stakeholders to determine what would be appropriate. So, the intent was to have a memorial that were captured as many lives of ancestors buried in Tucker's Town. And so, this is reflected on the timeline, what happened afterwards and 2012 October 29. And this is on the statement that is presented the timeline. A meeting was held by Marsden Church requesting input from the community on how the grave sites should be memorialized. And November 6 2012, there was a meeting between myself, Mr. Tucker, and two members from my recollection was Mr. Eugene Stovell, and Mr. Keith Dubois and Dr. Harris to discuss the submission to the planning to the Department of Planning. So, the plans, the ideas and everything were discussed with them. I recall, Dr. Harris, being very much impressed with what Mr. Stoneham, James Stoneham had collected, the research that he had done, and the information and offered that he could provide individuals with expertise to help him to really actually Chronicle all the evidence and materials that he had from those associated with the toughest in our community. And there were some preliminary discussions about how those legacies could be properly memorialized. And going from there was a meeting that the former ombudsman, who was very much concerned about the stakeholders, and she had an interview for her report, she had interviewed extensively on the various stakeholders trying to mediate a lot of the tensions that exist that she noted, in her report 'A Grave Error', that when they had to big conversation that Marsden was excluded and that Marsden did not like the fact that they were excluded as if their role as custodians of the cemetery did not matter when they had the visit to the cemetery, Marsden was not involved. And then on the other hand, she noted how individuals of the Tucker's Town Historical Society were very much upset and fronted by the fact that they had unquote, been left out of the loop when the decision was made to do the restoration work at the cemetery and so in trying to arbitrate between these tensions, she called a meeting on July 3rd, I wasn't present but Mr. Tucker was there As well as the others who mentioned here she presented Dr. Janet Ferguson and Mr. Glen Fubler to serve as arbitrators leaving the process for healing and reconciliation. There were members from the planning department there near the National Museum was there believe Ms. Winfield from CURB from was there, there was CURB representation and, and some others. And so that meeting did not meet with any kind of fruition going forward. The current Ombudsman, Victoria Pearman and there's been other efforts that have been taking place, the church has been endeavoring to try to bring some reconciliation of the matter. But on September the 18th, the current Ombudsman, Ms. Pearman held a meeting with myself, our current chairperson Sinclair, White trustee board, representatives, there was two representatives from Tucker's Town Historical Society where present to try it out along with journalists to have a way forward, and terms of dealing with addressing concerns with Rosewood Tucker's Point. That's why when Mr. Mark Pettingill stated, he was willing to get with myself and with Mr. Tucker, I noted the fact that we would not be moving forward solo, the church recognizes the need for others to be at the table to bring forth a reconciliation. So, I'd like to just make four points in summary. One is unfortunate that other stakeholders were not consulted before the concrete tops were removed. I personally, am questioning Mr. Dubois and Mr. Stone express that that's not an admission that the church was operating, and any kind of way that could be called criminal. So, Second, we find the unsubstantiated claims that the graves were dug up, bodies removed from PubMed, and actually counterproductive to the process of healing and reconciliation. Thirdly, Mars and supports efforts to determine the actual physical scope of the cemetery by determining the graves beyond the boundary wall. Mr. Tucker has mentioned that repeatedly for Marsden and supports the broad-based coalition stakeholders to collaborate on the way forward. We're not taking the lead on that. Fortunately, thankfully, the current Ombudsman as we as a neutral party to try to leave for an effort and we're willing to centrally to work with all stakeholders to restore this image to bring a sense of reconciliation and community let me say that 2023 would mark 100 years after the last person was at expropriate, expropriated or from Tucker's Town. It would be good if prior to that time, the work could be done because we could celebrate in that time, the legacy and so one of the things that I think is actually my last point, the summary is that Marsden advocates for the rewriting of the bi-laws I think that is key and essential. It has to be done. It's okay. It has to be done because desecration cannot be okay, under any kind of circumstance that continued desecration, this is the two weeks ago, I went to the cemetery, this is an actual picture of the cemetery. Now. This is the actual picture of the cemetery. So overgrown, and actually, if I might be permitted, this is the state of affairs. If you look, this little video, as I walked through, you can see the condition. It has not been kept up, the net, whatever netting was there is not there. So, it has been really, since a net where the wall was part portion was taken. But it's shameful that it is in this current condition and state. So, what we are hopeful for is that we can have reconciliation, move forward stakeholders and agreement on how best to honor and to restore, even the gate there

COUNSEL HARRISON

I'm sorry Reverend, can you just go backwards and just pause. In our old time we would say rewind

WITNESS - REVEREND WHALEN

This was towards the end of the?

CHAIRWOMAN

Golf balls

WITNESS - REVEREND WHALEN

Yeah, those are golf balls.

COUNSEL HARRISON

But there you said this was taken when?

WITNESS - REVEREND WHALEN

Two weeks ago, I did a walkthrough. And so that, that concludes, I don't know if Mr. Tucker

WITNESS - MR. TUCKER

it's just a few things that I want to be able to clear that I wanted evidence to be able to show what Marsden has done in order for us to get this situation sorted out, it's been a series of things that have happened over a number of years. And the end result is this is what it looks like today. And it is pathetic, I don't I understand Tucker's point of view and the fact that they came in 2017. And I understand that, I don't know if he understands what the costs is going to be. And that's going to be for Tucker's Point to be able to deal with that to redirect golf course, because it involves two sides of the fairway on either side of the graveyard, as well as the actual Golf Club is built up on the hill where the driving range is. And he had mentioned that he doesn't know what the cost would be to fix it. But it's going to be in my view is probably going to be expensive, but in my view, it needs to be done. That's the bottom line for Marsden Church. But I want to be clear that the church has done everything that is possible for them to do up until this point, and the fact that we don't own all the land areas around the graveyard. And we've tried to get it fixed on numerous occasions to declare as a representative or trustee.

CHAIRWOMAN

Thank you.

COUNSEL HARRISON

I have no questions. Madam Chairman, I just ask that the offline presentation is saved as an exhibit to be JFW08

CHAIRWOMAN

How do you characterize this Counsel?

COUNSEL HARRISON

There is a PowerPoint presentation which supports evidence of Reverend Whalen and I'm asking that it's being made Exhibit JFW7 PowerPoint presentation which has a short video attached, which was taken some two weeks ago.

CHAIRWOMAN

Thank you, I'm entering it as JFW7 the PowerPoint presentation that supports Reverend Whalen's and Mr. Tuckers presentation

COUNSEL HARRISON

Those are the for today, as I have no questions, I'm not sure if the commissioners or you, Madam Chairman have questions

CHAIRWOMAN

Ms. Forth has one, go ahead Ms. Forth

FREDERICA FORTH

Just for clarification, good afternoon Reverend just referring to this article that was written in the Bermuda sun, November 29 1996. And it indicates that Marsden Minister, Reverend Peter Tink, said the graveyard was a real mess. He said, and this is a quote from reading from, he said, he discovered it when he was playing golf, and found himself staring in an open grave. So, based on this article and the quotes here, I just want to know whether it is the norm for Pastors to play golf at the Mid Ocean? And, if so, did you, Pastor Whalen play?

WITNESS - REVEREND WHALEN

No, I was actually given a set of golf clubs., I was offered a set of golf clubs, and if I would just go golfing one time with someone, and I did. And But anyway, I've never picked up a golf club. Reverend Peter Tink was my predecessor. and he Pastored Marsden and Centenary Were on the circuit. And I do know that there was at least one member of Centenary, who was a member of the mid ocean. And so, he was probably on the golf course, by invitation by this member

WITNESS - MR. TUCKER

Just to be clear, we don't have any access to play golf for free

FREDERICA FORTH

Thank you, Mr. Tucker. The second question is did or are you aware after Reverend Tink had noticed it, was there a formal report given to the church of his findings? Is there any sort of record that he brings into the vestry? Or is it in the minutes that he discovered this just wondering if he made a proper formal report about his findings when he made this claim

WITNESS - MR. TUCKER

Just for clarification, at that particular time, Reverend Whalen wasn't in the office, and I wasn't a trustee. But he did bring it to the trustee. And I think that's what sort of started this whole process. And by the time rather than leaving, I think you will be really sorry at that particular time. And we started to work on things. He was actually an interesting gentleman, because he was actually from Australia. And he came to us, and was a very integral part for the church. He helped a lot with the Sunday school, children, he knew all about cricket, which threw him right into the background. And he pushed us on making sure that something happens. And I think that's what started time for us to do but a formal report, probably not but that's what started the process for us

FREDERICA FORTH

Thank you for that information.

JONATHAN STARLING

Good afternoon, thank you Madam Chair. I have two questions for you just to clarify my own timeline. Would it be correct to say that between 1923 when the church relocated to its present site, and 1990 early 1990s when Reverend Tink was playing golf with the church had minimal custodianship or maintenance of the graveyard

CHAIRMAN - MR. PERENCHIEF

You are correct

JONATHAN STARLING

and Then I would be correct to say that I'm really sorry. No, I

WITNESS - MR. TUCKER

wasn't at the microphone. So, you are correct. Yes.

JONATHAN STARLING

Thank you. And then from the early 90s, Reverend Tink assisted with the erection of those concrete slabs over the groans. As per what I read in that newspaper article you saw yesterday from the Bermuda Sun. Then you guys were active through to what I have in your timeline here to 2013 March 18 2013, which is when you know, the Ombudsman issued a press release announcing their investigation into the disappearance of gravestones for your edification, I'm referring to Marsden 001. I don't know if your opening document and then there seems to be a gap between 2013 and 2020. Just trying to understand what happened between that period. There's anything

WITNESS - REVEREND WHALEN

Well CURB submitted an objection; CURB was joined join with the Tucker's Town Historical Society with regards to the plans that were submitted to the submission to plan and so that halted everything. We had the July 3rd meeting and with the former Ombudsman try to start right and 2013. away. It was okay, it was on my slide there July 13 2013, I believe it was July 3rd 2013, is when the former Ombudsman Arlene Brock, had called a meeting right in July 2014... 2013... 2014, excuse me. And it just kind of ground to a halt. And so contrary to what some have thought churches matches, but the process was objected to. And there hasn't been a sense of coming together bringing the stakeholders together, except for their current efforts with the current Ombudsman's Victoria Pearman, hopefully, things will progress. Hopefully, given an indication today from Mr. Mark Pettingill there can be a meeting with all of the stakeholders and we can try to move things forward to do whatever is needed than the subject matter. Whether it's putting the concrete slabs back or whatever, to properly memorialize the site.

JONATHAN STARLING

Madam Chair, with your indulgence, can I ask one more questions? Thank you, Madam Chair, you included in your submission here a number of correspondences between yourself and the Tucker's Point. Was there any correspondence beyond the most recent one I had this year, July 13 2011 correspondence where he was sent to the Minister, and cc'd were there other correspondents that are not included in your submission?

WITNESS - REVEREND WHALEN

I can say definitively that there has been no official correspondence. Definitely since 2012. There's been no communications.

JONATHAN STARLING

Thank you

WITNESS - MR. TUCKER

Can I just, if I may just add one thing. If you look at that picture that was done two weeks ago, and I know that Mr. Pettingill had mentioned that Rosewood cannot see that that was a graveyard. I, I find it pretty hard to believe by looking at the video that you just showed. And that that course is kept impeccable, both Castle Harbor and Mid Ocean Club that they couldn't understand that that was not that was a graveyard and that it should have been kept up. I understand what he was saying that they weren't aware and all that but just the physical scene of the graveyard. And the plaque is right there saying what is actually there. I think that they weren't aware that was a graveyard, thank you.

CHAIRWOMAN

Counsel

COUNSEL HARRISON

I have nothing else today. I am advised that we don't doing this tomorrow to resume on Monday.

CHAIRWOMAN

So, thank you everyone for participating today. We are now on Monday morning at 10 on this resuming at 10 attends unless you hear otherwise from us as some people did last. But I believe it's going to be 10 o'clock.

WITNESS - REVEREND WHALEN

I believe

**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: 18*th Day of January 2021***