COMMISSION OF INQUIRY ON HISTORIC LAND LOSSES IN BERMUDA

COMMISSIONER: Justice Norma Wade-Miller

TRANSCRIPT OF PROCEEDINGS

LOCATION OF MEETING: Warwick Camp - Dining Hall

DATE: 14 January 2021

TIME: 9:30 am to

**Commission Counsel** 00:00: At Marsden Church, Mr. Mark Pettingill, Counsel, appears on behalf of the owners of Tuckers Point, to whom standi had been granted, I would like to defer to Mr. Pettingill at this time.

**Madam Chair** 00:13: Thank you, Counsel. Mr. Pettingill?

 **Mark Pettingill** 00:25: Good Morning umm, Mr. Harrison and other

 participants.

 **Madam Chair** 00:26: I don't think your speaking into the mic.

 **Mark Pettingill** 00:28: Does that help?

 **Madam Chair** 00:28: A little bit.

**Mark Pettingill** 00:29: Usually it doesn't matter. Well, I tend to be accused of being loud enough. Umm Thank you mum. So, since the last occasion, obviously, I um reported uh fully, I think back to the owners um. I'm pleased to report that immediate action was taken and a plan um put in place. Uh, part of what, by way of background, that I, I personally undertook in that regard in advising them was a visit um to the St. Peter's Church Yard where of course, you'll be aware, there is a

**Commission Counsel** 00:29: I'm sorry, Mr. Pettingill, I don't know if you probably

 would want to swear or affirm...?

 **Mark Pettingill** 01:19: Oh I'd be happy to.

**Commission Counsel** 01:20: Madam Chair I'm just reminding counsel to swear. He had sworn on the bible in the last occasion seeing that he's providing evidence to us I just asked that he could be sworn now and affirm for him to speak.

**Madam Chair** 01:31: Oh yes certainly.

**Commission Counsel** 01:34: I, Mark Pettingill....

**Mark Pettingill** 01:34: I can affirm to. I Mark Pettingill, counsel for Gemcon, the owners of Tuckers Point affirm to tell the truth and the whole truth in relation to the matters that I um give before the Commission and any evidence that I present. That's ok. I affirm to uh..

**Madam Chair** 01:36: Thank you Mr. Pettingill. Thank you Counsel.

**Mark Pettingill** 01:56: Thank you. So, on that basis, I undertook advising them, because they're not there all of the time, and visited the St. Peter's churchyard, and took a series of photographs and so on. So of course, the remediation that was done there, I think is along the lines of what had been proposed regrettably in 2007, which was an action by the previous owners at Tuckers Point. And I, in looking at how that is something of a garden piece at St. Peters, and what they did, with regard to the benches, and the planting of trees and so on, one gets a certainly, a particular feel, for I think, what was being sought by the Marsden Church, and what reflects the acknowledgement of a particular historic site, like the one in Tuckers Point. So, I'm pleased to report that the owners immediately, and in consulting with one another and consulting with the management at Tuckers Point, commenced immediate action. And that was set out in a letter of the 12th of January, which the commission should have. And the steps that have been taken are, are being taken and have been taken. So, there's a plan in place and these things are happening.

 So, there's been actual physical work, I can indicate, I'm informed about with the moving up in relation to tee boxes, so that they're not in direct line of of fire, so that we would avoid the showering down as Mr. Harrison called.

 On the last occasion you recall I said like, one golf ball was too many in my view. So there has been that immediate, um that that was a very prompt action, with regard to uh the tee boxes not being. If you can picture, and you've all seen it, the trajectory that comes into line with going anywhere near uh to the uh to the graveyard site itself, where it's walled in. The um. So, there's the improvement and modifying the golf cart and walking access to the site. So that this again kind of flowed out of my suggestion from looking at the St. Peter's site and since it was a nice path that was going to the area that was particularly dedicated for that purpose. So that is one of the things that is in process. There is an estab- There's going to be an established protocol for family and guests to access the site and work around any of the golf course operations, of course.

Commission, you'll be aware that the site is an island. It's a historic registered site, but it's an island, the land Island in and of itself. The only way to get to it is through the, some access through the golf course uh Tucker's Point property. So, it is intended that there should be a very clear delineated access that allows for that, so that it's not a disturbance to anybody wishing to, to come and visit the site. And again, we invite the input from the church in that regard. Three, uh, I just touched on this, the redirecting of the, the driving range is already underway or has been done in part. Four, install a canopy or netting system over the graveyard area to prevent both balls for being able to enter the site from both the first tee and the driving range. I pause there because that is something that I know. (Oh, I see my letters on board um). That is something that one, I think, wants to have done in a way that is as aesthetic as possible. So, advice has been taken on that, I mean, I saw the old pictures, it's like a net, which I don't think enhances, the historic site whatsoever. So, it is a question of how that's done, and how to ameliorate uh, any kind of impact with regard to the you know, aesthetics of the of the area and, and so on. So that is under consideration. Is going to happen. It might be that it's one of these things where something goes up, you may pannable, seen this.

If you go past Belmont, this is one of the things I recommend. If you go past Belmont they used to have a driving range in use there, which had a netting system, um not very attractive, but part of the plan with that is to ultimately have trees grow in front. This type of thing that takes away from you know, just looking like you've got, you know, a net planted there. So that is something that is also under, under consideration to ensure that you know, it's at least aesthetic looking. Um.

The club will certainly, the owners certainly intend to undertake to clean and tidy up the landscaping, and establish a regular maintenance program of the area. So, in conjunction with anything that the church may wish to add, as far as any trees going in there or anything like that, or where they'd like any planting to go or, if it's a case of you know; at the St. Peter's site there's Bermuda cedar trees or in certain areas, if they would like to be involved in suggestions on that, the Tucker's Point owners undertake to maintain that site. So whether it's the grass on the inside, or the weeding or, ensuring that it doesn't become overgrown. Maintaining any of the features that may be added including the path, or the benches that we're mentioning and come on to that type of thing. The owners undertake that as part and parcel of this acknowledgement. They will undertake to maintain that and have any dialogue with the the church ongoing in that regard. So that's one of the things, installing benches or seating access within the graveyard walls; if they agree and so desire as a, I think you know, as the kind of picture was as in St. Peter's in St. George's a place of reflection. And that there there were a number of the lighter photographs of of stone benches that had been put in place for people to sit and contemplate and reflect. So that is one of the things that will also be put in place in short order. We will confirm and establish a permanent access right to the site. And I advise on the adding of this, if you will, as something of um you know, a good faith position.

It is a registered historic site. If wanted to get into, if one wanted to get into convoluted kind of discussion on legal easements and so on. My own view would be that it exists on the basis of that, and the people have gone there for a long time. These principles in law of nec vi, clam precario, which is Latin for not blocking the site. Basically, there's not intention to do that. But we did think that something of record uh, that this access, the path that we're putting in was for this specific purpose, and more importantly, was deemed to be for this specific purpose in perpetuity. And so, that would create the position of you know, hotels get sold. I mean, we all know that these things and you know, one day that may happen. So, you want it to be, and this is (I pause), this is what didn't happen before which is concerning. The new owners, you know, took over the property without the flag of the historic site being made clear, running up the ladder to the top. And that I think is where things have really, really fallen down. There was an action and there wasn't that carryover. So, by having something in place that does that, by way of legal attachment, if you will, to deed or whatever, which we can do to indicate that this right of access, one, is in our view in existence, but is deemed to exist as a right of access in perpetuity. Putting the any new owner on notice that that's there, I think, is a very important and significant feature that I have advised on, and I hope that um, would think, that you would probably agree with that, and that the church would also accept that as being significant, important. There is no gray about what goes on. It has to come. No decision where anything in relation in land needs to be in writing. And that that needs to be attached to the property and the deed package, if you will. And it was not before other than this. I would say regrettably, vague indication of a historic preserved site that um almost required some digging to see it needs to be more pronounced in my view. So, it's a short line item number seven, but it's a very important one.

Eight, to designate the area out of bounds and "do not enter". sign with regard to golfers in the area. The way that we are going to structure this, I mean, you have to be pretty horrendous in the way that I'm looking at it to actually put, be putting a ball down and into the into the graveyard. But you know, things happen. There’re some horrendous golfers out there, I just you know, you don't want to be firing backwards, I think. In doing that, I think that we're gonna make sure that we don't have with respect to some wayward tourists wandering into the graveyard site deciding, they're going to play their, their ball. So, to me, for those of you who know golfing a designated uh, very clearly designated out of bounds site, both on the marker cards, um, that that, that one has in relation to golfing. And also, as far as the staking goes in relation to the course itself. So, for those that don't know, there are in golf and within the rules of golf that people tend to adhere to there are, you know, stakes, red stakes that will be put to delineate what is deemed out of bounds, and a lost ball. So, if your ball happened to go in there, which we tried to do to ensure that it doesn't. It's gone. Our maintenance crew then come along, and you know, pick that up as part of the regular maintenance program. And I think that's, that's obviously important as well, and that then carries with the provision uh, also.

And of course, in including the significance of the site, as a historic position with regard to number nine, and the African dysphoria trail information, we're happy to do whatever it may be suggested in that regard. So, in closing Commission I invite any questions to take back. We invite and I'm happy to be, happy to have further dialogue. Certainly, to have meeting with the church with regard to dotting the I's and crossing the T's, as to their input with regard to, where would you like the many benches to go? You know uh, other than the things that have been set out, I refer back to the letter.

So, what we've done really is advance from the letter in 2007, which wasn't acted on by adding these additional things. If there are other things, then the owners are entirely open and would welcome, hearing about that, hearing suggestions. Having a meeting to say, before they actually do anything. "Yes, so we'd like to have this bench here. We'd like to have this tree here." And that type of landscaping exercise and how they would like to see it. As it's really their historic site. I personally made suggestions on the basis of, you know, as I said that the St. Peter's site. That type of thing. That might not be their vision. But we're just going from the 2007 position and what we gleaned from the last hearing. So, that is where we are at. The timeline is immediate and is taking place. I would think that within, you know a matter of perhaps three months, and I'm just grabbing that. I don't know. I know that I was told short order about how things go. Also because of things to be ordered that you know. We welcome a visit from the commission to see what has taken place and certainly a follow-up regularly from the Marsden Church. I'm happy to answer anything I can. Thank you.

**Madam Chair** 13:21: Thank you. I'll call in Commission Counsel.

**Commission Counsel** 15:05: Thank you Madam Chair, At first indicated, I have no questions but I would ask that the document which is projected on the screen at us remain in attendance as an exhibit uh, with leave of counsel. It is his document.

**Mark Pettingill** 15:18: Yeah, of course.

**Madam Chair** 15:23: And what number should we now give it counsel? Is it a continuation of the numbers or a new...

**Commission Counsel** 15:32: It's a continuation but I'm going to ask for the purposes of the exercise to have it designated Marsden zero, zero, four. Marsden zero, zero, four. Madam Chair? Exhibit.

**Madam Chair** 15:49: Marsden...?

**Commission Counsel** 15:50: Zero, zero, four.

**Madam Chair** 15:51: Zero, zero, four. Entered.

**Commission Counsel** 15:56: Could I also ask at this time, Madam Chair, I know the representatives from the Historical Society from the Marsden United Church, they're here. If they have questions, they could be invited to take their seat and, at this time they could ask questions or offer any comments but, I have no questions at this time.

**Madam Chair** 16:08: Reverend Whalen? As you appreciate you have been granted, you know, standing, and so both you and Mr. Tucker, you have heard what Mr. Pettingill has had to say. And um, if you wish to ask any question or have anything explained further, um, you're prepared to come over here. You can come over here and do so. I think counsel, should we also have them take the oath?

**Commission Counsel** 16:54: I'd appreciate that Madam Chair.

**Madam Chair** 16:57: Sorry?

**Commission Counsel** 16:57: Yes, Madam Chair.

**Madam Chair** 16:58: So, we'll administer. Individually.

**Commission Counsel** 17:06: Get an extra chair for them. Get them another chair. They may want to sit together.

**Madam Chair** 17:06: Together or individually, individually I would think. That makes it a little tidier. Will you show uh, administer the oath? Go ahead, please.

**Commission Counsel** 17:50: Okay, okay because of the protocol.

**Madam Chair** 18:00: Would you stand Mr. Tucker?

**Commission Counsel** 18:02: Would you stand and raise your right hand? Is he going to affirm or is he going to swear on the bible.

**Madam Chair** 18:17: Are you swearing or affirming Mr. Tucker?

**Craig Tucker** 18:20: I did it before but.

**Commission Counsel** 18:23: Just put on the bible. Just raise your right hand and repeat that... Just raise your right hand?

**Craig Tucker** 18:27: I'll do whatever you want me to do. Just affirm. My name is Craig Tucker.

**Attendant** 18:40: I do solemnly swear.

**Commission Counsel** 18:41: No, no, no..

**Attendant** 18:41: I do solemnly and sincerely affirm.

**Craig Tucker** 18:40: I do solemnly and sincerely affirm.

**Craig Tucker** 18:51: that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

**Madam Chair** 18:59: Thank you. And Reverend? You may sit Mr. Tucker.

**Craig Tucker** 19:02: Thank you.

**Rev. Whalen** 19:08: I Joseph Whalen Jr. solemnly and sincerely affirm, that the evidence that I shall give shall be the truth, the whole truth and nothing but the truth.

**Madam Chair** 19:27: And bear in mind that when you speak you may wish to remove your mask so that we can hear you and, it can be recorded accurately. Go ahead please.

**Rev. Whalen** 19:46: Good morning Justice and The Commissioners, Counsel Harrison, Mr. Pettingill and everyone. I want to thank Mr. Pettingill for bringing these nine items before the Commission so that we might move forward in terms of bringing some healing and resolution, closure on the Marsden cemetery issue. I have reviewed, myself and Mr. Craig Tucker, who is the former trustee of the Marsden Church, who was the trustee chair for numerous years, in dealing with the matters with regard to the cemetery. He is quite knowledgeable, and he will have some questions and input.

 I would like to respond and ask some questions with regard to your presentation. The first is, I have no objection to some of the items with regard to access pathway, to management and upkeep of the cemetery. However, I have some some deep concerns. Part of the narrative that has been heard and presented to The Commission with regards to the overall Tucker's Town situation has been a sense that those in power and those with the abilities of executing their will, have not always heeded or taken into consideration uh, the voices of everyone. And so, as a church, we're very concerned in our own recent involvement, and our history with regards to the cemetery to make sure that key stakeholders are included. And towards that end the current ombudsman, Miss Victoria Pearman, has undertaken with no alliance on anyone's particular side, but just in terms of trying to have this matter, which has a historical significance, and also ongoing significance to the island as a whole, to bring to the table. And she has done this, she started a process.

 There's been meetings that began with the former ombudsman, Arlene Brock, in terms of trying to bring stakeholders to the table to address this. And my presentation to The Commission, I made this awareness. And so, my question is are, is Rosewood, Tucker's Point owners going to allow for the input and voices to be heard with regards to all of those who have a vested interest to Tucker Town Historical Society and others, along with the church with regards to what our viewpoint, should happen, and consensus to be reached. And I say this because if you’re moving expeditiously and you are actually on the site, making a determination to put benches in the area. That may be an affront, to individuals who may want to have their viewpoint as far as how best to memorialize and honor those who are buried there. So that's a concern that that would be actually presented. And, and just, you know, I don't mean any disrespect, but it kind of feeds into this narrative that we know best. And we're just going to go ahead and do what we think is best. Without actually getting the input of all of those stakeholders. I know that the intent is well, intentioned. And I have no reason to question the new owners. But I would really ask that on that point that the stakeholders would weigh in, and that Miss Victoria Pearman, the current Ombudsman, help facilitate that process or, to continue the facilitation of that process, because I think it's key and essential, and important. The other thing that I think is missing, that has been strongly voiced is

**Commission Counsel** 25:50: Sorry, I'm just wondering if you could just break it down. Could you allow, just allow Mr. Pettingill to answer that before he moves on to the other issue.

**Rev. Whalen** 25:56: Okay, would you answer the question?

**Mark Pettingill** 26:00: On the first one, thank you Reverend, I think I addressed that, this morning with respect in my submission, because we, I certainly get that as the middleman and I've advised as such, and I think that the owners do. So, the, the wish list, if you will, was taken from the original wish list of the of the church in the 2007, letter that was laid out. And the evidence that was heard before the commission. I think that some things are, are pretty obvious and would need very little input. In other words, you've got to move the, you know, the driving range over so you don't have that I think, you know. Those those are things you'll be ad idem on. You know, the staking of the out of bounds area and everything I said, I think those are, are, are things that are with respect no brainers. But the other matters that I did raise with regard to you know, the bench, the planting and so on, I think I indicated that there's other things that obviously, with respect for what you've just said. Nobody would want to do those without the input of the church or, whoever you know, should have input in relation to that. So those are line items, you know. There's no intention to go along at all. And be very clear on this; and just stick a bench somewhere in there, you know if you don't know where particularly it's going to go or, how best it should be placed, or so on. So that is, as I've said, something that I think should involve, you know, further and important dialogue.

 Same thing with the path and with the other items that I would say, directly impact on the reverence and the aesthetics of the of the site itself. So, no question of just going ahead and doing those things saying that has to be done and I think you know we set that out in the original letter and this letter, and that's what I'm saying today. And I'll give you that assurance myself. So that's a question of, you know, I um, Miss Pearman and I, was the first person I ever served in office with. We go back a long time. And I would think she would know that she can certainly have a discussion with me, reach out with me and have dialogue with regard to any concerns like that. And we can proceed from there. I certainly uh, deliver that message and more importantly, ensure that it happens in accordance with what is best desired.

**Rev. Whalen** 28:23: So I take it that you and the owners are open to having a meeting, with the ombudsman and the stakeholders.

**Mark Pettingill** 28:35: Entirely, we are open to having a meeting with, you know, whoever wanted to attend at a meeting with the owners. We saw, the main point of that is being the church that was invited before. I mean, if the ombudsman or Ms. Pearman is part of you know, that church process then I am certainly open to um participating in any type of meeting along you know, that line. I have the authority to do that so, you know so 100 percent.

**Rev. Whalen** 29:03: Okay. Thank you. Umm…

**Craig Tucker** 29:08: Just for clarity. Please recognize that in Tucker's Town...

**Commission Counsel** 29:13: I’m sorry. Just for the record, just to ensure that Mr. Tuck, Mr. Craig Tucker is now asking a question. Yes. The record would not reflect it. I'm just asking that the record would reflect that Mr. Tucker is now asking a question.

**Madam Chair** 29:29: Yes. If you would state your name just for our record.

**Craig Tucker** 29:31: Sorry, Craig Tucker. I just want to be clear that Marsden Church was down there, the Methodist Church would have been down there at that particular time. There was an AME Church that was also been down there at that time. And I think there were people that lived down there that may have either gone to St. Peter's or St. Marks at that particular time. So, Marsden has the graveyard but however, other people that lived in the area, we're not 100% sure that within that boundary of graveyards that there may still be additional bodies buried in that area. And I just want to add to what Reverend Whalen had said. That's why the concern will be around benches and things like that. Because at some point, we're gonna have to have the property looked at to make sure that there aren't any other burial grounds in the area. But people that may not be associated with Marsden Church may have also been buried somewhere in that graveyard as well.

**Mark Pettingill** 30:37: Mr. Tucker I can, I can fully appreciate that and then if I may, I think that obviously, Marsden is, is is the point interest for this, if you will, or the point person as I guess I'm the point person, um, you know, for, for, for Tuckers, and uh so I while, I'm open to any any form of meeting and you know, these things going backwards and forwards, that's, I think, uh you know, a sensible approach. And that, that perhaps would be best, you know, filtered through you, with regard to any of those stakeholders, and, and what their views are. And we can, we can give you, you know, discuss that. I think obviously that sometimes it's better, If I may, that, that's a better way to have things accomplished with the less people that you have in the room that are delivering the message for consideration in order to get it done. But I, I could give you my assurance that I'm prepared and I'm instructed to um you know, take uh take that role and address any concerns like that you know.

**Craig Tucker** 31:43: Well, we just want to be cautious just to make sure that there are other parties out there. And we want to make sure that they're involved in the process. Marsden has an issue in terms of the graveyard but we make sure that people that don't actually attend Marsden, and who have people that are buried in that graveyard, that group has also been associated with any changes or things that you want to make. And I think that's probably why Reverend really wants to make sure that the ombudsman has the ability to bring everybody together, and that when we come up with a common process in terms of what we want to do, that she can receive all the information and make sure what's done is correct, just.

**Mark Pettingill** 32:19: Sure. I understand this entirely. I would suggest it's an open letter um, you know, to The Commission it's in evidence. It's up to you or, you're copied in. Obviously, it's a matter for you to share that letter, my letter on behalf of the owners, with whoever you wish, and, you know, if it's a case of anybody writing directly back to me or to you and, and raising further things for consideration, let's do that. What we wanted to do, I think what we are doing, which wasn't done in the past, is ensure that, you know, things immediately happened.

 I tend to think of myself as a results type of guy, and I'm pleased to say that so do the owners. You know, it's like something needs to be done. You know, they found it atrocious as did I that this letter of 2007 sat around for 13, 14 years. And that like, even the simple things, you know, were, didn't seem to occur, right? Well, they have now. But one fully appreciates that when it comes to, you know, as I indicated, the planting or benches and so on, that it's you know, it's the real stakeholders property. It just happens to be an island in the midst of the other things.

 So, what has been offered is, you know, as part of that acknowledgement, we, the owners, will ensure that there's this perpetuity that hasn't existed before. We, the owners will ensure that the site is maintained, you know, at their expense. And, you know, on an ongoing basis. And that's something that should carry on, for whoever owns it as well. But that type of thing. And that's all with the input of the stakeholders, which I see is the pivot point being the Marsden Church but, you know where else, ever else you are rightly taking input from and all you have to do is just direct that if you would, in my direction.

**Craig Tucker** 34:04: I think just for clarity, we want all of the bodies that are involved, if they have questions or issues, we want that to come essentially through the ombudsmen.

**Mark Pettingill** 34:14: Okay.

**Craig Tucker** 34:15: Okay? So, we have issues at Marsden Church, that's the process we're going to go through. If the Tuckers Point Historical Society have issues, they can, but she will be the one that will bring everything together to make sure that everything is addressed. We don't want stuff coming to Marsden Church for us to deal with. We will offer our own opinions in terms of what we want to do. But Tuckers Point, Historical Society may have additional issues or people outside that area may have different issues and the property. We just want to make sure that the person that's going to be bringing it together will be essentially the ombudsman.

**Mark Pettingill** 34:50: Well, I certainly undertake Madam Chair, Commission to be the point person for the receipt of that information and for actioning it. And I would suggest, Mr. Tucker that you know, you indicate that and you know, please, if there's anything further to contact me, I can assure you that one thing that I tend to be good at is dialogue, and I will come back to you or whoever. After I speak with the clients, which I have done promptly on each occasion, as I will continue to do and say, you know, this is, this position has been raised.

And in the meantime, the things that we can agree on, which as I said, I think some of those are pretty obvious, ones that we can agree on, we can actually move forward on. The ones that are more sensitive, which everybody can appreciate, like, the benches and so on, within the graveyard walls. Absolutely. That's a matter for input, you know.

**Craig Tucker** 35:46: Thank you.

**Rev. Whalen** 35:46: Uh, Mr. Pettingill...

**Commission Counsel** 35:50: Just for the record, Reverend Whalen is now asking another question.

**Madam Chair** 35:54: If you state your name please...

**Rev. Whalen** 35:57: Ah yes, uh Joseph Whalen. So on the big issue, which I'm happy to see that there is a plan to redirect the driving range, I'm a little bit confused as to how that actually works. I know where the current driving range is. And the reason is, is because under number three, you say redirect a part of the driving range to minimize any errant golf balls coming into contact with the graveyard. And then number four, the canopy netting to prevent golf balls from being able to enter this. So, I'm from the first tee and the driving range. So, I'm confused as to how this issue which we're concerned about golf balls coming in to the cemetery, is actually being corrected? How is it? Can you explain this redirecting of a,.. you say a part of the driving range? Because I mean, we would have wanted no golf balls

**Mark Pettingill** 37:33: Yeah.

**Rev. Whalen** 37:34: ....coming in there, at all.

**Mark Pettingill** 37:35: That's that is as you heard me say I mean, that is the the aim. But you know, let me say this, there, there. I think that the chance of guaranteeing, given where the historic site is in the middle of you know, one golf course. Which frankly, off of a good drive is reachable from another golf course as well, you know, with a wayward type of shot; of guaranteeing that that couldn't or, or wouldn't happen. Potentially the aesthetics of closing it off... When I say in the in the letter there, a canopy netting, my view of that is, you wouldn’t want to have it looking like it's some type of camouflage battlefield tank site with the netting over it, to like stop that going in. So, I think that the, you know, and better for golf. I'm a golfer but, you know for golf course designers to say this.

 I would say with regard to the actual driving range well the two tee boxes immediately got you know, shut out so that immediately takes out and minimizes greatly the risk of any any wayward shot uh, going in. It then becomes a question, with I think, the input of the church about whether there is a a netting that runs down the side of that. Much the example I gave, like, is it you know, is there a Belmont? Which would really eradicate that from from occurring, because you'd be putting almost a partition that it would be very very, almost impossible for something to, to get over the top of that into the graveyard. So that is an option. And then the same with the approach, you know, from from any any tee shop, but I think those are certainly items for discussion, because I think the balancing act there is to A) ensure you don't get the any errant golf balls going in, but also to have the balance of the aesthetics of the site, you know that it is, and making that attractive. Those nets and so on, particularly you know, attractive looking items um. So, it's how you ameliorate and mitigate that. But that's, that's for the discussion.

**Rev. Whalen** 39:48: So, if this table, let's say that this is the clubhouse.

**Mark Pettingill** 39:51: Yeah,

**Rev. Whalen** 39:52: All right? And this is the current uh

**Mark Pettingill** 39:56: Range, driving range

**Rev. Whalen** 40:00: Driving range right? And the cemetery is over so. So, you're saying that this is going to be partially a part of the drive. So, so this is not being removed, this driving range? It's still gonna be there at the clubhouse, and people are still going to be hitting golf balls from here. Or maybe. I'm trying to understand how is the redirect?

**Mark Pettingill** 40:30: Right. So, the, and this has already happened, right? There are a series of what's called, you know, tee boxes, they're right for people that have picked balls off. I think two, perhaps three of those have already been decommissioned. Right, and then there is the potential to um. And say, I'm not a designer. But this is like, what you know, it has been in discussion to angle those boxes, so if you will, they're firing away from the graveyard position. That's number two. And number three is the netting which is common in any type of driving range. You can see in the cities. You can see it in other countries protecting historic sites, you know, even in Bermuda, you have that type of thing. So, the one key factor, there would be that appropriate partitioning as aesthetic as possible between the range and any access to the, the, um graveyard.

 But as you know, I mean, it's, you know, a golfer even in my standard could hit a golf ball 300 yards. So, there is, there's always going to be that type of risk. That's why I think we built in the extra feature about the out of bounds about, you know, that that type of position, because I would dare say, there's probably not a golf course in Bermuda, in thinking about it. Belmont is another good example. I mean, you know, you go there and you like are hitting basically across the road and through the churchyard. And you know, and along the whole fairway. There is the graveyard there. And I can think of, that's the same up in um, Port Royal and other golfing sites, you know to have had to ameliorate and address that. So, I think it has to be like the model is taken, taken from from that type of position. But unfortunately, golf is the game that it is, and you know, like hitting a ball, that type of distance, you could put it a quarter of a mile away, and still somebody somewhere is gonna hit a ball that you're not going to be able to stop or catch. But it becomes of course, it's minimizing risk. Isn't it? As it becomes more and more unlikely. That's what you want.

**Craig Tucker** 42:45: This is Craig Tucker speaking again. My suggestion to the Commission would be that any plans that Rose Point have, to make for adjustments that they're going to make to the, their driving range, that we have the opportunity to be able to see them and be able to comment on them. Not just Reverend Whalan and myself, but our trustee board as well. As well as the other groups, before any, any uh changes are actually made for, for keeping the golf balls out of the, uh burial grounds.

**Mark Pettingill** 43:23: Absolutely. As I say, I mean, I think that one of those might be you know, I could come along and suggest, which I don't think, but this is a balance, and this is a matter for input. You know, that the type of thing, that's at Belmont. I mean, I think those things are at least 50 feet high um, with the netting. I think it's ugly um, and you know personally would you'd rather suggest that that is done with a degree of you know, hedging or, or trees or... The closer you put up a block up, for instance, to like a tee box, you don't necessarily have to have the whole phased run of the fencing, which takes away I think, from the aesthetics of the land, and the openness of it, and the breeze and all these things you want to feel if you're at a reflective site, and there's ways to, I think to to box and block that off that are aesthetic. And I think those are things to be had for discussion.

 And it's important kind of. Give position if you will, because I think it'd be very easy for the owners to come along and say, Oh, yeah, we'll stop that. We'll put up this big, kind of ugly netting, running the whole length of it. And, when one got down there, you'd find that that wasn't particularly conducive to the type of space that you wanted to have, you know. So, I think, far beyond my legal view, there has to be that type of input on the aesthetics of that, which of course, entirely open to that.

**Rev. Whalen** 44:43: So, I guess this might be my final question. So, I'm understanding from your comments. This is Joseph Whalen. I'm sorry. Am I to understand from your comments that the timeline that you indicated, the sense of moving forward expeditiously, is not going to happen without the consultation from the church and the uh, stakeholders. That will be, that will be the first order. So that we can, so that everybody. Because the reason why I ask this is because, you know, this is, we're trying to have healing.

**Mark Pettingill** 45:39: I understand that.

**Rev. Whalen** 45:40: And we don't want to have something done where people say, well, we know what's best and, we're just going to go ahead and get it done. And then it leaves us at a point where there is great angst in the community. Certainly, there's a concern for how best to honor that grave site. There's a concern to have a determination as to if there are other graves in that area. And there is the concern with regards to this whole issue that Mr. Tucker just mentioned, in terms of how the desecration issue of the grave balls is actually going to be put to bed. So, I appreciate that. And I know that Mr. Dubois may have some questions, so I'm not going to steal any more time or, take up any more time.

**Mark Pettingill** 46:36: Can I just say that the room to that point, I'm, I think that the dialogue is the way to go, and I think but also wanting to act expeditiously is the way to go and that those things, you know, must be balanced. I think in good faith, what the owners have done, and been encouraged to do is to take immediate action. A number of these things on this list, I think you would agree, we can be ad idem on. Like we, you know, we're, we're ensuring there's an out of bounds position. I mean, that's just that doesn't say with respect, is a no- brainer. Immediate threat from the, uh those types of driving range boxes that almost would have cut quite across the graveyard, is a no-brainer. To close those, those out. When it comes to, I think agreeing, you know uh, something in perpetuity that protects the site and allows access and easement is a no brainer. And the landscaping and regular maintenance is a no-brainer. So, it's the other things. So that's why your very clear on this. So, you know what this is when it comes to those factors of wanting the stakeholders of this church to have the input? Yes. And I would say that we do that by way of immediate and expedited dialogue to have come - back whether it's through the Ombudsman, the person choosing to write back and say, you know, this is what we envisioned for the installing of the benches and where they should go. This is what else

**Rev. Whalen** 48:15: Can you not say for the installing of the benches? Because we have not, we have not said that we want benches? No one has said, not from the church nor the Tucker's Town Historical Society have said. I think one of the commissioners indicated that there could be an area outside for benches and reflection, but in terms of in in the area, I would appreciate if you would not put this narrative that benches are going to be put because that's going to have an immediate backlash and pushback.

**Mark Pettingill** 48:49: But nobody's going to install benches, I have to say part and parcel was, as I said. That's from, you know, taking the lead on what was done at another historic site like this. It is an indication as to what could be done. Nobody's gonna go down and stick a bench in the middle of the graveyard or inside of it or anything like that. Unless you're saying, oh, that would be an abomination to do that candidly. Nobody wants to do that. You know, it's kind of like you going and putting a sofa in my houses where I wanted, I wanted it to be. Nobody totally gets that.

**Rev. Whalen** 49:16: I would just respectfully ask that you would not say what's going to be in the graveyard itself. That needs to be determined by those who have a deep vested interest in preserving the legacy of those to whom they're connected to. Their ancestors, at that site.

**Mark Pettingill** 49:41: Okay, let me be clear on the record for that. Okay. These are suggestions and offers that had been made on the basis of um, you know, what was looked at with regard to remediation. I can certainly indicate to you and undertake fully that the owners will not uh place or do anything within the walls of the graveyard or, anywhere else by way of benches or, a bush or, a plant, unless there is the input from the church and the other stakeholders. But I would also request on the heel of that, to, you know, come come-back on that. Otherwise what happens is. Because I frankly think that is something of a good suggestion whether you do it in or out or whether it's one bench, you know, looking at the sunset, and over the graveyard. Like those are, those are spiritual aesthetic things that I totally get. So,

**Rev. Whalen** 50:31: But Mr. Pettingill, you're missing the point. And I started with saying this. The narrative that is not serving you. The narrative of what happened, uh you know, in 1920, and whatever, is that those who were in power said, this is what's best for you.

**Mark Pettingill** 50:54: I'm sorry. I am not missing that point Sir. I'm not missing that point Can I actually add a point

**Rev. Whalen** 50:54: So, when you continue to say, "Well, you know, you think. It's ignoring that really, uh, if I could say this, without, you know, being taken with any kind of slighting of you, or disrespect. You know, it's really not your call to say what happens, you know, on that burial ground. It's really those who, who have the vested interest in that site. And there's an emotional bond. And that's the only way that true healing is going to happen with this so. I hope you just take it in the spirit that I was saying it.

**Mark Pettingill** 51:39: No, I think with respect, I think that I do. I totally, you know, I entirely and utterly from the very core of my being, appreciate that. As I believe the owners, do. They, we, I have come to the table on the basis of what was sought before and put it out there with regard to what do you wish to have. So, you know, by my placing of suggestions, or questions, if you will, on the table um, with regard to you know, this is one thing we're willing to do, or not willing to do is entirely on the basis of you giving the input, as you have done back in 2007. As you have done now with regard to what you like. I'm merely using that as an example. If you decide that that is like that is where you'd like to have a bench positioned. Then that's what can be done. If you don't want to have that, then that won't happen. And that's the end of that.

 So, it's like it's kind of really an open book with regard to, you know, what you wish to have, uh, by way of those types of things. And I think it's accepted fully that, you know, you should have great input with that regard you know. Including the path that gets put in going across from Tucker's Town from the, from the, from the club, you know, which becomes an easement and a path even on that basis, like the owners aren't saying, we're just going to put a path flowing down, the way that we like to access it, the way that we want to, whatever. Entirely a matter for you to say like, thank you, you know, appreciate that this is a suggestion of a path, we don't want a path or, we want the path to look like this or we think the path should be like that. Fantastic.

**Craig Tucker** 53:35: This is Craig Tucker again, I would just like to, to say that we appreciate the immediate response that we've had. And also, that we have, and to no offense to Mr. Pettingill. But we've heard this before in terms of what they were going to do. And that's why I'm mentioning about the emphasis; that we go through, that the ombudsman gets involved in it, because we make sure that whatever’s going to be done is actually going to be carried out this time in terms of what we agreed to being done, for the protection of the graveyard. But we certainly appreciate your response. And we certainly look forward to working with you, along with the other bodies that may be involved.

 And please also understand that the descendants from that area stretched the whole length of Bermuda. There are people living in Somerset. People that were MPs, like Reggie Burrows, his family came from down in Tucker's Town. There's a whole group of people. So, what we want to do is to make sure that somebody is in the middle trying to coordinate all the information that's coming in and that the bodies can agree in terms of what's going to be done for the protection of the graveyard.

**Mark Pettingill** 55:00: Well with that, we certainly Mr. Tucker ad idem. I think it's the coordination that is key because, I think you've got to have people that are on point. I've undertaken to do this on this as a lawyer. But, you know, I would regard myself as an interested party. I've given sworn evidence here, you know, and as a Bermudian um, that is aware of the history and acknowledges it, that you know the key is to have that coordination. And that's why I've made that invitation you know, the ombudsman and all the rest of it. To have a person on point is going to direct that, gather that information. Because, as you know, if you just leave it out there, and I appreciate with the degree of the people that may be involved. But if you just leave it out there without coordination, it's like herding cats. And you may have some people putting input in over here that to the Reverend’s point, you know, you don't agree with that input. And so, it is the coordination of you know, of what people want to see. So, I think that's why that needs to be that people on point like myself and the owners, and whether it's Ms. Pearman, or yourself with regard to the coordinating um, the stakeholders, that I keep calling them, aside. Not just the church. Thank you.

**Madam Chair** 56:04: Thank you.

**Craig Tucker** 56:06: Thank you very much.

**Madam Chair** 56:07: Thank you very much gentlemen. Yes, I'm reminded Mr. Pettingill, that you have to be in another place by eleven?

**Mark Pettingill** 56:12: I am.

**Madam Chair** 56:13: Or that has gone by the back?

**Mark Pettingill** 56:14: That has not with respect but, I intended just to blame your ladyship obviously if I was late no, but with respect I do, I do have to. :

**Madam Chair** 56:21: The missionaries have um well, a few questions and or statement?

**Mark Pettingill** 56:25: Yes.

**Madam Chair** 56:25: And I've reminded them. And, Mr. Dubois, who has testified, wanted to ask a question or two. So, um, If you come forward Mr. Dubois? I'm not taking over your place Counsel. It's just that I'm mindful of the time.

**Commission Counsel** 56:52: I, just to remind. I have no questions so that is fine.

**Madam Chair** 56:58: Sorry?

**Commission Counsel** 56:59: I have no questions at this time, Madam Chair. So that's fine.

**Madam Chair** 57:01: Okay. Come forward Mr. Dubois. And please bear in mind, Mr. Dubois, I'm going to ask you to be precise, or concise, because we have a time constraint. If we would have Mr. Dubois take the oath or affirm please?

**Commission Counsel** 57:40: Have him just raise his right hand.

**Attendant** 57:47: I do solemnly and sincerely affirm.

**Dubois** 57:49: I do solemnly and sincerely affirm.

**Attendant** 57:52: That the evidence I shall give.

**Dubois** 57:54: That the evidence I shall give.

**Attendant** 57:55: Shall be the truth.

**Dubois** 57:58: Shall be the truth.

**Attendant** 57:59: The whole truth.

**Dubois** 58:00: The whole truth.

**Attendant** 58:01: And nothing but the truth.

**Dubois** 58:03 And nothing but the truth

**Madam Chair** 58:10: Did he state his name?

**Attendant** 58:11: Yes.

**Madam Chair** 58:12: Thank you. Go ahead please Mr. Dubois.

**Dubois** 58:17: Yes.

**Madam Chair** 58:21: You may take off your mask.

**Dubois** 58:22: Mr. Pettingill, um, I've been dealing with this issue since at least 2000. When I started the Tuckers Town Historical Society. Our issue is with the driving ranges right? I understand that when the actual building was built, (the clubhouse), that that's not where it was supposed to go. It was supposed to be facing the stables instead. And at the last minute, somebody bright idea, to put it there. I don't know who it was but, I just thought it was ridiculous, you know. Knowing full well it is a historical site. And at the time, there was a lot of discussion around it. I mean, I had been to at least two celebrations there. And Tucker's Town, they hosted it. Well, Tucker's Point. They hosted the thing. Um, and to find out that um they were going to. In fact, I'll tell you what happened. I remember going to the celebrations, and on the hill there was nothing, right? No clubhouse or nothing and um,

END OF TRANSCRIPTION at 59:56