

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Public Law Division

2005/PUB/jrv/FP/#5

IN THE MATTER of an application for judicial review

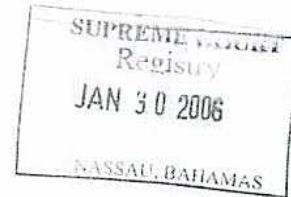
BETWEEN:

THE QUEEN

and

WENDELL MAJOR

As Secretary to the National Economic Council



First Respondent

THE MINISTER RESPONSIBLE FOR CROWN LANDS

In the person of the Honorable Mr. Perry Gladstone Christie,
Prime Minister of the Commonwealth of The Bahamas

Second Respondent

THE TREASURER OF THE BAHAMAS

Third Respondent

Ex parte

SAVE GUANA CAY REEF ASSOCIATION LIMITED

The Applicant

AFFIDAVIT OF KAYUS FERNANDER

I, **KAYUS FERNANDER**, of the Western District of the Island of New Providence, one of the Islands of the Commonwealth of The Bahamas, make oath and say as follows:

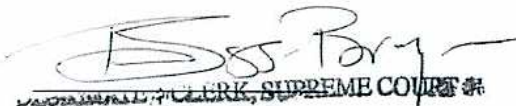
1. I am presently employed as an Investments Officer in the Ministry of Financial Services and Investments and have been so employed since January of 2003
2. I am duly authorised to make this affidavit.
3. On Friday 20th August 2004 I attended a community meeting at Great Guana Cay School at Great Guana Cay in the Island of Abaco, one of the Islands of the said Commonwealth.
4. I took notes and photographs of the proceedings at this meeting. I also took a photograph of Baker's Bay and the entrance to Joe's Creek.
5. There are now produced and shown to me exhibited hereto marked "K.F.1" true copies of the said notes and photographs.
6. The contents of this affidavit are true and correct to the best of my knowledge, information and belief.

Sworn to at Nassau, The)
Bahamas this 30th day of)
January, A.D. 2006)



KAYUS FERNANDER

BEFORE ME,



CLERK, SUPREME COURT

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Public Law Division

2005/PUB/jrv/FP/#5

IN THE MATTER of an application for judicial review

BETWEEN:

THE QUEEN

and

WENDELL MAJOR

As Secretary to the National Economic Council

First Respondent

THE MINISTER RESPONSIBLE FOR CROWN LANDS

In the person of the Honorable Mr. Perry Gladstone Christie,
Prime Minister of the Commonwealth of The Bahamas

Second Respondent

THE TREASURER OF THE BAHAMAS

Third Respondent

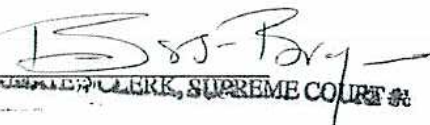
Ex parte

SAVE GUANA CAY REEF ASSOCIATION LIMITED

The Applicant

CERTIFICATE

This is the exhibit marked as "K.F.1" mentioned and referred to in the affidavit of Kayus Fernander sworn before me this 30th day of January, 2006.


CLERK, SUPREME COURT

ANNEX III

"K.F. I"

MINISTRY OF FINANCIAL SERVICES AND INVESTMENTS

GREAT GUANA CAY COMMUNITY MEETING – FRIDAY, 20th AUGUST 2004

DISCUSSION: PROPOSED DEVELOPMENT OF 'PASSERINE AT ABACO', RESIDENTIAL AND RESORT COMMUNITY ON NORTHERN END OF GREAT GUANA CAY

VENUE: GREAT GUANA CAY SCHOOL ROOM

TIME: 6:30PM

The meeting was called to order at 6:35 pm by Administrator for Central Abaco, Mr. Alexander Williams.

Mr. Williams introduced the Central Government representatives in attendance, including: Dr. Baltron Bethel, Managing Director and Investment Consultant, Hotel Corporation of The Bahamas and the Ministry of Financial Services and Investments, respectively; Mr. Michael Major, Director, Department of Physical Planning; Mr. David Davis, Undersecretary, Office of The Prime Minister; and, Mr. Kayus Fernander, Investment Officer, Ministry of Financial Services and Investments.

Local representatives of Government also in attendance included: Mr. Robert Sweeting, Member of Parliament for South Abaco; Mr. Cay Mills, Chief Councillor; Mr. Glen Laing, Hope Town Local Council; Mr. Walter Sweeting; and other representatives of the Hope Town Local Council.

Passerine at Abaco representatives: Mr. Jay Mannelly, Passerine Partners; Mr. John Head, Passerine Partners; Mr. Steve Adelson, Discovery Land Company; Mr. Joey Arenson, Discovery Land Company; Dr. Kathleen Sullivan Sealy (Environmental Consultant); and, Mr. Fred Gottlieb (Attorney).

In opening the session, Dr. Baltron Bethel thanked the representatives of Central and Local Government, the local community and the Developers for the opportunity to convene this open discussion on the proposed development. Dr. Bethel reminded the group that while the Government was pro-investment in its approach and sought to maintain very stringent environmental policies, it was important to be guided by the views of the community that would be most affected by the development. He assured the group that the Government had not yet rendered a decision on the proposal and that the Government was very interested in the views of the Great Guana Cay community.

Mr. Fred Gottlieb, speaking on behalf of the Developers, indicated that because the majority of the subject land was privately held, it was inevitable that the Vendor (Mr. Ludwig Meister) would have it developed, either personally or by a development group. Previous plans for the site included a very high density residential development and marina that would have completely destroyed the Joe's Creek area¹. However, the plan advanced by the current Developers was primarily a low-density residential community, non-commercial marina and villa-styled inn; he invited the group to consider that since the development of the private property was inevitable, they should listen to the presentation of the proposed development with an open mind, and determine whether they would be in favour of an ad-hoc type development, or a planned, community-based, low-density development.

¹ Mr. Gottlieb displayed a site plan, which appeared to be very high density in design. It was his opinion that this plan, created by Mr. Meister, was still a possibility.

Proposed Development – Passerine at Abaco

The development, presented in Power Point by Mr. Jay Mannelly, included:

Second-home residential community of approximately 300 homes; 18-hole championship golf course (comprising 200 acres); beach club; 240-slip marina; 75-room villa-style inn; 60-acre public access nature preserve, inclusive of Joe's Creek; and, utility systems including sewerage system, reverse osmosis water production, garbage transfer station to service entire island, etc².

The nature preserve would be held in a proposed Foundation, administered by the Government and Academic Institutions, for the purposes of study and research. The implementation of the entire development would also be documented and studied by the Foundation, which if successful, could serve as a model in The Bahamas and the world, for coastal development.

Only a small percentage of the 105 acres of Crown Land would be used for residential lots (approximately 13 acres) and marina/waterways (approximately 30 acres), while the balance of land would be undisturbed or placed in the preserve. Also, the Developers had reduced their request for the Treasury Land from the entire 45.5 acres to approximately 19 acres.

Components that would benefit the local community included: public dock, public beach park on northern coastline; community centre (clinic, Customs/Immigration, fire station, police station); and paved roads.

The Developers would also undertake an extensive and costly clean-up of the site previously leased by the Disney Company, which included old electricity transformers, buried 50-gallon drums, debris from guest facilities/attractions and refuse. Additionally, numerous invasive plants and exotic species had been introduced by Disney, which were having an adverse effect on the natural habitat and indigenous species. The Developers would remove these invasive species and would implement and maintain a native plant nursery.

The Developers had identified the Discovery Land Company and Farallon Capital Management LLC as strategic development partners. Discovery Land, developer of eight (8) successful residential/golf projects in the United States and Mexico worked closely with Farallon, a \$3 billion company, to capitalize the projects.

During the presentation, members of the local community posed questions and commented on the proposal before them. Notably, many of the more vocal participants were second-home owners and seasonal residents of Great Guana Cay, who admittedly owned homes that were either personally built or part of some larger development on the Cay.

Some of the larger questions and answers included:

Q. Geri Sylvester (American citizen): Would the Developers be able to leave a set of three (3) printed documents at establishments on the Cay for leisure perusal and study by locals?

A. Mr. Mannelly indicated that copies of the printed documents would be left with local Government officials, but that copies would also be sent to individuals who registered their names and addresses at the meeting.

² Although the capital investment was not mentioned, it had been previously pegged at approximately \$55 million in the early stages of the development, with total investment at build-out of approximately \$500 million.

Q. *Bob Sylvester (American citizen): Would there be any impact to reef systems from golf course discharge and residential properties? What steps would be taken to mitigate the impact?*

A. **Dr. Sullivan Sealy indicated that coastal buffers and setbacks of 45 feet from the crest of the dune systems would be put in place. The golf course would be built in stages to minimize the impact of clearing, the type of grass to be used would require less fertilizer and irrigation, and organic fertilizers would be used.**

Q. *Mary Shilling (American citizen): Does the Developer then acknowledge that there would be impact to reef systems and what assurances would be put in place to protect the local environment?*

A. **Dr. Sullivan Sealy indicated that the Developer acknowledges and understands the types of impact experienced by coastal communities as a result of traditional golf courses; in this development, steps would be taken to avoid all those practices that result in the those types of impact. Additionally, this project would differ from any other type of development in The Bahamas, where independent monitoring of the project would be undertaken by the proposed Foundation, which would add to the usual efforts of such agencies as the Ministry of Works and Utilities and the BEST Commission. Dr. Ballron Bethel also added that it is now mandatory for Developers to produce and follow Environmental Management Plans, approved by the Government, for the implementation of development projects.**

Q. *Johnny Roberts (Bahamian): What is the Government's policy on Crown Land, i.e., does it consider the needs of local communities when determining how to 'distribute' Crown Land?*

A. **Dr. Ballron Bethel advised that it is the Government's policy to lease Crown Land to any group and that pre-determined development conditions have to be met prior to the sale of Crown Land.**

Q. *Johnny Roberts: Do the Developers plan to import plant species for the development?*

A. **Dr. Sullivan Sealy advised that it is proposed to grow native plant species in a nursery for all aspects of the development.**

Q. *Community participant: It would appear that the areas designated for community beach access (northern shoreline) were the worst areas on the Cay and that Guanians never used those designated beaches. Were there plans to place buoys around the beaches to the south, which Guanians traditionally access by boat and use most frequently? References were made to the situation on Paradise Island, where buoys had been placed around Cabbage Beach to prevent beach access. It was noted that while that beach was considered 'public', access had been restricted.*

Lori Malone: There had also been incidents at Winding Bay, where locals had been 'kicked off' the beach by the Developers or their representatives.

A. **The Developers responded that while their plans had placed the 2-acre community beach access along the northern shoreline, Guanians would still be able to have access any beach. They also assured that there were no plans to place buoys along the southern coast or any coast preventing access to the beaches by boat. The Discovery Land representatives made reference their development experience in Hawai'i, where there is no restricted access to the beach.**

Jim Alderman (American): Speaking from his Government experience working with local communities in the United States on development projects, he invited all involved to carefully consider the effects of the development on the environment, despite the Developer's plans to implement a wastewater treatment plant and to use organic fertilizer.

Other Community comments/questions

There were questions about the 'private' nature of the proposed development. The Developers advised that the golf course would be private and the clubhouse would be for members; however, the development would be primarily accessible by locals.

There was concern that the proposed usage of the Treasury Land, i.e., utility components, paved roads, community centre, etc., would disturb and wipe out the crab and bird populations in that area. The Developers advised that while their plans had purposely avoided known animal populations, the placement of the elements of the Treasury Land could be changed.

There was concern about the potential negative impact on Joe's Creek.

Rules of beach access need to be publicized so that there is a greater understanding by both Developers and locals about access rights.

Great Guana Cay and its residents have been able to build value and are currently very successful. There is no perceived need for a development of this nature for either revenue or employment reasons.

There were many Black Abaconians living on the mainland, who were unemployed and who would benefit from the employment opportunities to be gained.

The majority of individuals commuting to Great Guana Cay for work were of Haitian heritage. Bahamians would not take the opportunity to commute to Great Guana Cay to fill the employment needs of the proposed development.

The community of Great Guana Cay had other viable development options and had its own ideas for the use of the Government lands.

What would be the impact on the community if the development were to fail?

The Developers could only speak to their track record of success.

Would there be public access to the private clubhouse?

No, the clubhouse would be for members.

Will the Developers run convenience stores, retail shops, etc., within the development?

No. The Developer, if the need is apparent, would construct spaces for enterprises to be operated by Bahamians.

As non-Bahamians, would the Developers be able to achieve a true, Bahamian island atmosphere?

111

The Discovery Land representatives indicated that all their developments were able to 'blend in' with the local character.

Member of Parliament, Robert Sweeting addressed the group, indicating that while he like many others would have wanted to see a less-developed and more pristine Great Guana Cay than what existed today, he also knew that the depressed economic state of the Cay had motivated many locals to move to New Providence in search of work. He recognized that with the proliferation of second homes came the impetus for re-population of the Cay by Bahamians with historical roots. With the development of the private property being an inevitable fact, it was important for the local community to find a level of development with which all could be comfortable. He asked the Developers to consider moving the proposed community beach access to the southern coastline, where it would be a more logical location to members of the community.

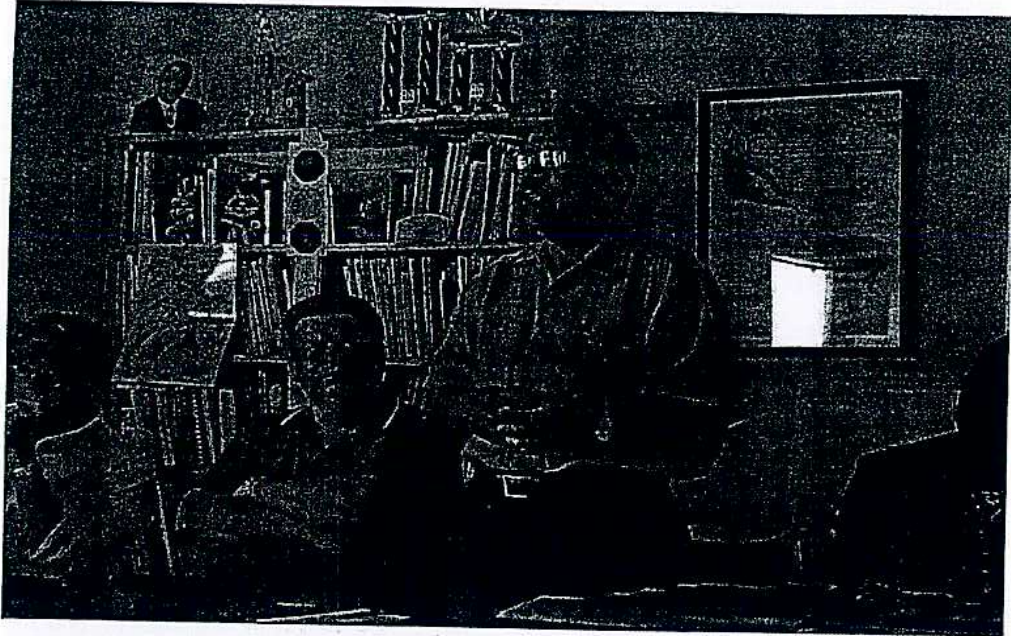
In closing, Dr. Baltron Bethel indicated that this exercise spoke to the necessity of formulating a master plan for Abaco, which must account for future growth of the community. He added that the Right Honourable Prime Minister was leading the planning initiatives for the country. Additionally, the Government had implemented a policy whereby the Government would engage independent advisors for the review of Environmental Impact Assessments produced by Developers. He reiterated the Government's commitment to working with all parties involved to achieve the optimal scenario.

The meeting came to a close at 9:30 pm.

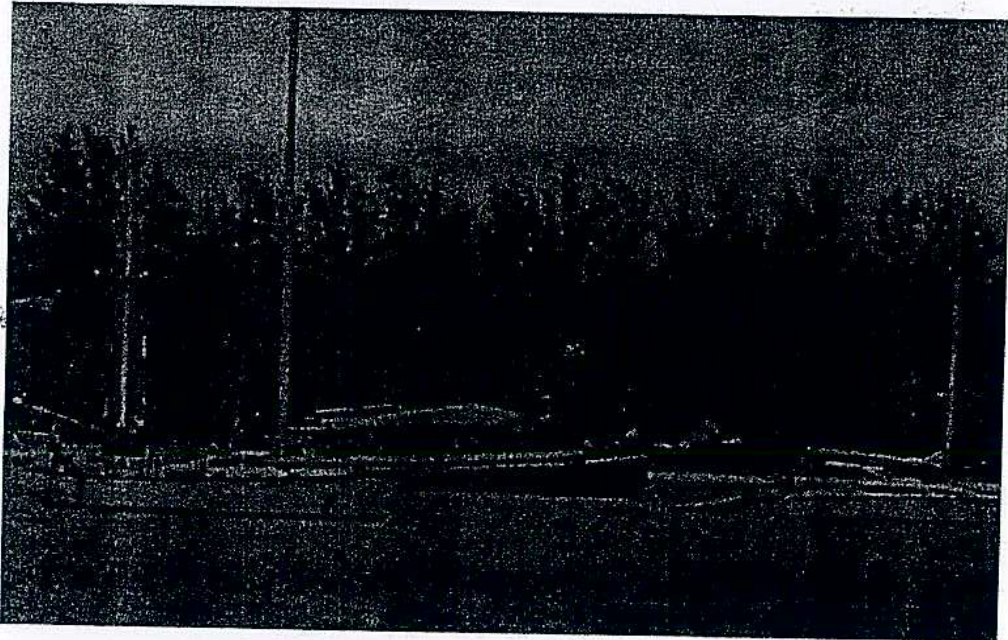
PHOTOS



Community meeting



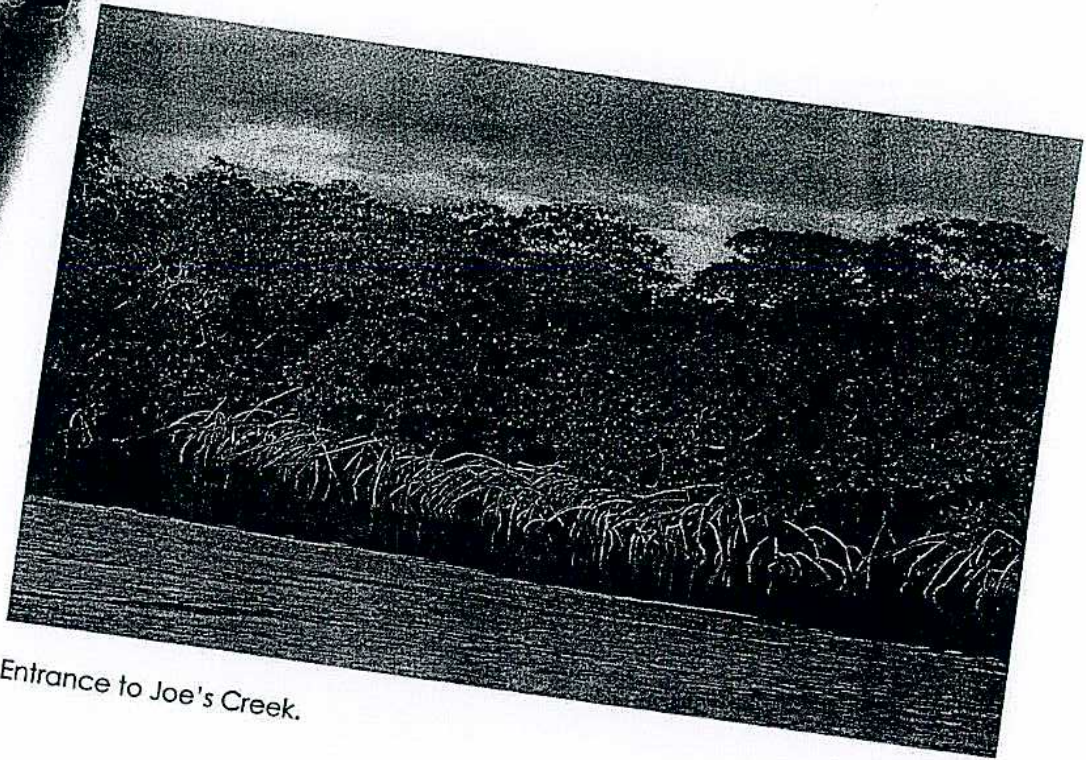
Dr. Baltron Bethel, addressing the group.



Sailboats anchored in Baker's Bay.

6/17/72

SMITH



Entrance to Joe's Creek.