

THE TRIBUNE  
**business**

WEDNESDAY, JUNE 24, 2009

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## 10 issues cited in Guana Cay's Privy Council legal appeal

### Three-day hearing over bid to stop multi-million dollar Baker's Bay project set for July 6-9

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**Tribune Business Editor**

THE Save Guana Cay Reef Association will attempt to halt the multi-million dollar Baker's Bay Golf & Ocean Club project with a three-day hearing before the London-based Privy Council that begins on July 6, having cited 10 different grounds for their appeal to the Bahamas' highest court.

The Association, through its Bahamian and London-based attorneys, is asking the Privy Council to determine issues that include whether the Government had a duty to consult Guana Cay residents on the project, being developed by Arizona-headquartered Discovery Land Company, before the two parties entered into their Heads of Agreement in early 2005.

If this was so, the Association is asking the Privy Council to determine whether proper consultation took place and, if not, whether the failure to consult resident residents of the Abaco cay should be remedied.

Other appeal grounds include asking the Privy Council to determine the legal effect of the Heads of Agreement, and whether this constituted an agreement to grant Crown and Treasury land leases, and confer other rights and incentives, upon the developers.

The appeal challenges the then-Cabinet Secretary Wendall Major's power to confer these leases, rights and incentives upon Discovery Land Company, and asks it to rule on whether the decision to do so was "irrational" and "constituted an unlawful fettering of the powers of other government agencies.

The Privy Council's decision could have major implications for the process governing how developments, especially major ones, are approved in the Bahamas, and the rights of persons impacted by them to be consulted and heard. It could potentially cause a major shake-up of the Bahamas' development model, depending on which way the Council rules.

On the consultation issue, the Association said the judge at first instance, Acting Supreme Court Justice Carroll, found

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that it had a right to be heard and consulted over the proposed development.

"The Government's decision to enter into the agreement was one that affected, or was likely to affect, the individual rights and freedoms of the residents of Great Guana Cay," the Association alleged.

"In particular, the development that is envisaged by the agreement will interfere with the local residents' right to freedom of movement throughout the Bahamas, which is protected by Article 25 of the Constitution of the Bahamas."

This point, the Association alleged, had been identified by Dame Joan Sawyer, president of the Court of Appeal, who had said in her ruling: "There is, however, one matter which the learned judge mentioned towards the end of his judgment about the effect of the percep-

tion the existence of the developers' gated community, lying between the existing inhabitants of the southern part of Guana Cay and the northern part of that island to which those inhabitants previously had free access along either the existing roads or tract roads.

"It appears also that that community will bestride the new 'public' (?) road. Be that as it may, it is possible that questions about the infringement of those inhabitants' constitutional rights to freedom of movement within the Bahamas may arise under Article 25 of the Constitution."

Drawing on this, the Association's attorneys alleged: "The Government's decision to enter into the agreement was one that would result in the liberty of

the local residents being restricted in important respects. In particular, the development deprives the local residents of traditional fishing and crabbing grounds, and is thus restricting their liberty to earn a living as they choose.

"In any event, the Government's decision to enter in the Agreement was one that it was absolutely clear would have a profound impact upon the lives and lifestyles of the residents of Guana Cay. The land that is the subject of the agreement plainly constitutes an important site on the island, and it is clear that the development is of considerable local public interest.

"Further, the [government and developers] were well aware that the residents of Guana Cay desired to be consulted

and to make representations, and that the objectors to the development enjoyed considerable local public support. It is also relevant that the residents of Guana Cay are relatively few in number and will be affected by the development to a far greater extent than other Bahamians."

The Association is also challenging the Supreme Court and Court of Appeal findings that two meetings held in February and August 2004 fulfilled the Government's requirement to consult residents.

It is alleging that "the Gov-

ernment deliberately intended to make its decision as to whether to approve the development before engaging in consultation", and claiming that previous evidence filed with the courts shows no detailed information on the Baker's Bay project was made available at the February 2004 meeting.

As for the August 2004 meeting, the Association is alleging that copies of important documents relating to Baker's Bay were not lodged with local government offices as promised, and pledges of further consultation never materialised.

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