



**Jamaica
Developers
Association Ltd.**

September 2021

NEWSLETTER



THE JAMAICA MORTGAGE BANK & JAMAICA DEVELOPERS ASSOCIATION



(Incorporated May 30, 1969)

present a

Real Estate Development Webinar

Developing Jamaica - Recovering Together 2021 and Beyond

The New Building Code and Its Effect on the Environment,
Project Financing Options..., Covenant Modification



MR. TREVOR DELEON
Consultant
Nunes, Scholefield, DeLeon & Co.
Moderator



HON. PARNEL CHARLES JR., MP
Minister of Housing, Urban Renewal,
Environment & Climate Change
Opening Remarks



MR. RICHARD LAWRENCE
Manager, TIS Branch
Bureau of Standards Jamaica
"Building Code"



MR. COURTNEY WYNTER
General Manager
Jamaica Mortgage Bank
"Project Financing"



MR. ALTON MORGAN
Attorney-at-Law
Alton E. Morgan & Company
"Covenant Modification"

PRESENTERS



MR. THOMAS LYEW
Structural Engineer/Partner
Hue-Lyew-Chin Engineering Ltd.



MR. MICHAEL LAKE
Past Chairman of JDA
Director of Island Homes Ltd



MR. KARL VENDRYES
Director
Jamaica Developers Association



MR. KRISHNA DESAI
Partner, Myers, Fletcher & Gordon
Energy, Environmental & Planning Law, Real Estate



MRS. LICEA-ANN SMITH
Partner
Nunes, Scholefield, DeLeon & Co.

PANELISTS

THURSDAY, MAY 13, 2021 9:30 AM - 12:30 PM



“Developing Jamaica – Recovering Together 2021 and Beyond”

The Jamaica Developers Association Limited and the Jamaica Mortgage Bank hosted its second online Real Estate Development Webinar on Thursday, May 13, 2021 and continued with the theme “Developing Jamaica – Recovering Together 2021 and Beyond.” The event was a resounding success with 311 registrants and 211 persons participating at the event.

The Hon. Parnell Charles Jr., M.P., Minister of Housing, Urban Renewal, Environment, and Climate Change gave the Opening Address. The Minister acknowledged the important role that the Association plays in the encouragement of its members to follow industry best practices – observing approval protocols, satisfying their contractual agreements with their clients. He advised that he would be willing to encourage all developers to join the JDA.

Presentations were made by various representatives for the industry, including:

- Mr. Richard Lawrence – Bureau of Standards Ja. “The New Building Code and its effect on the environment”.

- Mr. Courtney Wynter, General Manager – Jamaica Mortgage Bank
“Mortgage Financing options for development schemes”
- Mr. Alton Morgan – Attorney-at-Law and JDA Member
“Covenant Modification”

These presentations were very well received by the participants.

Other contributions were given by the Moderator, Mr. Trevor DeLeon, who shared his wealth of experience as both an attorney and as a Developer. The panel discussion provided further clarity on the presentations. Our thanks to:

- Mr. Michael Lake
- Mr. Krishna Desai
- Mr. Thomas Leow
- Mr. David Goldson
- Mr. Karl Vendryes
- Mrs. Licea-Ann Smith

COMING SOON!

REAL ESTATE DEVELOPMENTS – DATA BASE FOR MEMBERS

The JDA is in the process of setting up a real estate database which will be of great assistance to members as it will provide general and specific information on housing developments done in each parish including the number of units sold, number of houses already on the market and selling price for each unit.

Once the data base is properly established, an update will be sent to our members every three months.

CHAIRMAN’S FOOTNOTE

Our Association has been aggressive in addressing the many challenges that have been impeding the development approvals process. Some of the critical areas we are now addressing are: -

- Restrictive Covenant Modification
- NWC Bulk Metering of gated communities
- Breaches of the planning guidelines

Some developers have not been adhering to the planning guidelines and approvals obtained. Such disregard results in unfair competition for our membership. It is, therefore, critical that as an industry we address the problems outlined above with a view to greater transparency and efficiency in the regulatory process.

In furtherance of this, the Association has commenced a series of Webinars aimed at engaging our regulatory partners and membership in discussions that will lead to a greater understanding of what is required. Our aim is to make our industry better serve the needs of our nation with environmentally sensitive and sustainable developments.

RESTRICTIVE COVENANT MODIFICATION – DEVELOPMENT PERSPECTIVES

ALTON MORGAN & COMPANY

MR. ALTON MORGAN – ATTORNEY-AT-LAW & JDA MEMBER

Mr. Alton Morgan delivered a very comprehensive presentation on Restrictive Covenants Modification. In simple terms, he described a Restrictive Covenant as a contractual limitation placed on a Certificate of Titles that restricts how the land may be used. For a Developer it means that while all lands can be physically developed, unfortunately because of Restrictive Covenants not all lands may legally be developed.

Mr Morgan preceded to give a brief history on the introduction of Covenant Modification, which is correctly referred to as Equitable Restrictive Covenants which are a modern area of development law. The legal principle first emerged in the mid 1800's from a case known as development law.

In Jamaica, the practice of developers prescribing Restrictive Covenants became entrenched when the post war development of housing estates such as Mona Heights and commercial subdivisions such as New Kingston in the late 1950's. Prior to that there were mainly land parcel subdivisions where each owner built what suited them.

Mona Heights was a planned development which had extensive input from the Town Planner under the newly passed Town Planning Act of 1958. Mona Heights scheme created a problem of being so large that where a breach of Restrictive Covenant occurs, such as a house being built by the developer too close to a boundary, it was practically impossible to notify every other owner to get consent to modify the Restrictive Covenant.

The Building Societies and other financial institutions had to ensure that the titles they held as mortgage security were uncontaminated by any breach of covenant. Consequently, at the urging of those financial

institutions the Restrictive Covenant (Discharge and Modification) Act came into effect in February 1960.

The Statute was intended to enable persons needing to change a Restrictive

Covenant on their titles to apply to the Court to do so. Over the past sixty years the Restrictive Covenant (Discharge and Modification) Act has proven to be one of the most important pieces of legislation as a driver of property development.

The list of covenants which appear on a subdivision approval are imposed by the local planning authority by powers conferred under Section 8 of the Local Improvements Act which allows the approval to be given "subject to such conditions as they may by such resolution prescribe".

Continuing he said that Section 126 of the Registration of Titles Act incorporates Restrictive Covenants from the conditions of Subdivisions Approval into what is referred to as the "patent" of the registered title issued for each lot in the new Subdivision.

Restriction which relate to the setback of buildings from roadways or management of storm water, waste water are described as "restriction in gross". They are meant to benefit the land area over which the Parish Council has control, such as the road reservation which is either parochial road or a main road. Where a Restrictive Covenant speaks of a roadway it means either an external public road or a reserved road shown on the subdivision plan but it does not apply to a driveway which is part of a common area.



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RESTRICTIVE COVENANT MODIFICATION – DEVELOPMENT PERSPECTIVES

Continued from page 3

AMENDMENT OF RESTRICTIVE COVENANT

It is accepted at common law that the Local Parish Councils and the National Environment & Planning Agency (NEPA) which have imposed a Restrictive Covenant and any remaining owners entitled to the benefit of a Restrictive Covenant can give consent to a change, of that Restrictive Covenant on any related title.

Older titles show that this was the method used prior to the Restrictive Covenant (Discharge & Modification Act) of 1960.

The Titles Office has issued a guideline document, an extract from which explain the elements of a Restrictive Covenant. These covenants must be negative in their nature and must be capable of running with the land.

Restrictive Covenant must:-

1. Directly control the use of the land of the covenantor
2. Benefit the land of the covenantee
3. Be negative in their content and
4. Be expressed by the parties creating them with the land

REALTORS NEED TO BE CAUTIOUS

Mr. Morgan advised that Realtors need to be cautious where land is offered for sale, especially through a Realtor. It is misleading to describe the land as suitable for development if there are restrictive covenants that prohibit such development. It could turn out to be an intentional misrepresentation made to induce the buyer to contract but that allows the buyer to back out of the contract. It could also be a negligent mis-statement which makes the Realtor liable and sued for damages.

VARIATION OR MODIFICATION OF RESTRICTIVE COVENANTS

He said that there seems to be a modern misconception that the only way to change a restrictive covenant is by



an application to court. Restrictive Covenants may be removed and/or modified upon a Certificate of Title either by a Deed of Consent for agreement between the parties having an interest in the covenant, or an order of the Supreme Court or Court of a higher appellate jurisdiction.

The Deed of Consent Agreement or order of the Court must state:-

- (a) Details of the Certificate of Title
- (b) The numerical identifier of the restrictive covenant being modified or discharged and
- (c) The precise wording of the modification or removal of the entire covenant.

Unfortunately, only the very experienced lawyers now know how to research and prepare the Deed of Consent.

STRATA ARE AN EXCEPTION

The change of restrictive covenants on the title for a Strata Corporation does not require an application to Court. The Covenants are actually noted on the Strata Plan, not on the individual title. By Sections 9 and 12 of the Registration of Titles, Strata Titles Act, the owners of a Strata Corporation may by unanimous resolution remove or modify a restrictive covenant affecting the common area of the strata development. The process is governed by Regulation 11 of the Strata Titles Act – Regulations.

The Strata Corporation executes the required documents as a representative of the registered proprietors of the strata lots and common property and submits them to the Registrar of Titles who being satisfied that everything is in order, then notes the change of the covenant on the Strata Plan.

Recently that process was ignored and a host of Court applications were made in relation to the Aqueduct to correct a restrictive covenant affecting the gate house.

Continued on page 5

RESTRICTIVE COVENANT MODIFICATION – DEVELOPMENT PERSPECTIVES

Continued from page 4

NEW APPROACH FOR DEVELOPERS

Mr. Morgan advised that the Real Estate Board has instituted a policy to restrict registration of developments unless Restrictive Covenants that would impede the issue of individual titles are first modified and actually endorsed upon the relevant title. This prescription is reasonable as a means to prohibit pre-construction sale of units in a development to the unsuspecting public.

Attorneys also advise their clients to be cautious when considering entering into pre-construction sale agreements where Restrictive Covenants have not yet been modified to permit the development.

Bankers are now very aware of the risk that developments maybe stalled due to non-compliance with terms and conditions of approvals and the powers under the Building Act 2019 for Municipal Authorities to issue and enforce “Stop Orders” supported by heavy fines.

That general approach is consistent with protecting the public from consequences such as the Courts decision in “Michael Young et al v the KSAMC, NEPA, NRCA and EWAMH Development Ltd. (2020) JMSC Viv 251”, a ruling that the approvals which were granted for new apartment building in Birdsucker were improperly obtained. That decision must have affected the unsuspecting purchasers.

The problem with first making an application to modify Restrictive Covenants to permit development is that in the current dispensation since the Building Act took effect in January of 2019 a Covenant Modification application may not be made until development approval is first given.

The development approval need not be the final Subdivision or Building Approval. Outline Approval under S. 14 of the Town & Country Planning Act issued from the NEPA Development Assistance Centre will suffice to support the Restrictive Covenant Modification Application to the Court. The NEPA Development Assistance Centre has been in operation for over ten years to facilitate that process.

The Court is also being more vigilant in enforcing S. 3(2) of the Restrictive Covenant (Discharge & Modification) Act which entitles the Court to make enquiries of NEPA and the Local Authority regarding any proposed development that requires modification of the Covenants.

In closing he said that the old tried and tested and proven method of the Deed of Consent to modify restrictive covenants may well be the answer for developers. It involves the same research as a Court Application but more importantly, it involves pre-consultation with the neighbourhood.

NEW MEMBERS

We take pleasure in welcoming the following members:

1. Mr. Xi Wang - Managing Director, ZDA Construction Ltd. (Full Member)
2. Ms. Carolyn Chuck – Partner, Delroy Chuck & Company (Associate Member)

JDA WEBSITE

We are pleased to advise that our website is up and running. You may view the website at <https://jamaicadevelopersassociation.org>



THE NEW BUILDING CODE AND ITS EFFECT ON THE ENVIRONMENT

MR. RICHARD LAWRENCE

In his presentation, Mr. Lawrence dealt with various codes important to real estate developments:-

International Property Maintenance Code (IPMC)

The Jamaica Application Document for the International Property Maintenance code deals with the maintenance issues for exterior and interior structures, rubbish and garbage, light, ventilation and occupancy limitations.

To ensure that public health, safety and welfare are not negatively affected by the continued occupancy of structures and premises.

The IPMC:-

- Preserves structure
- Reduce waste
- Extend life of building

International Fire Code (IFC)

The Jamaica Application Document for the international Fire code comprehensively addresses issues to prevent fires as well as to extinguish them.

It covers accessibility, minimum designs for fire safety, permit requirements, fire detection and suppression systems specifications for buildings. In the event of a fire, adherence to the guidelines will:-

- Reduce damage to building
- Reduce effect on environment for fires
- Slower burning of materials

International Building Code (IBC)

This Code comprehensively covers design and construction requirements for all building types except detached one and two family dwellings and multiple single-family dwellings (townhouses) as well as existing buildings to be renovated.

It addresses building issues that impact directly on other codes (IFC, IECC, NEC, IMC, IPC.)



International Residential Code (IRC)/ Small Building Code

Using this Code, Non-professionals may design small buildings:-

- Floor area up to 300 m²
- Single or two family detached dwellings
- No more than two stories

He said Registered Professionals (Architects or Engineers) are required for:-

- Buildings with floor area larger than 300m²
- Complex Structures (e.g. cantilevers, expansive soil or land slippage areas)
- Complex Systems (e.g. Buildings having 3 phase electrical mains or central air conditioning systems)

Adherence to the IRC will result in:-

- Reduction in damage to structure
- Reduced debris due to hazards
- Preservation of life
- Safer materials

International Energy Conservation Code (IECC)

Jamaica Application document for International Energy Conservation Code addresses energy efficiency or conservation in all types of commercial office, hotel high rise residential and for the first time low rise detached multi-family residential buildings.

This Code does not cover industrial plants and special purpose buildings. It provides prescriptive methods for design of:-

- Un-air-conditioned buildings
- Residential/small conditioned Buildings
- Commercial and high rise residential conditioned buildings

International Energy Conservation Code affects the design of buildings by defining requirements for the portions of a building and buildings systems that affect energy use and to promote the effective use of energy.

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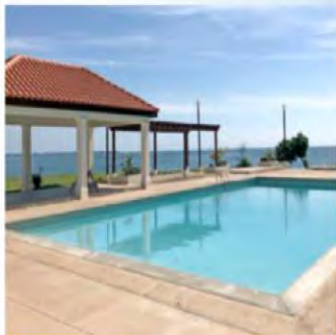
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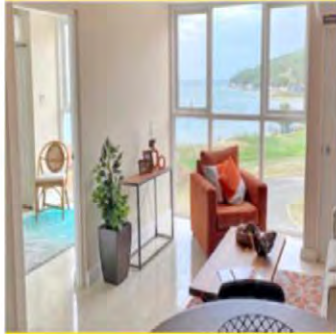
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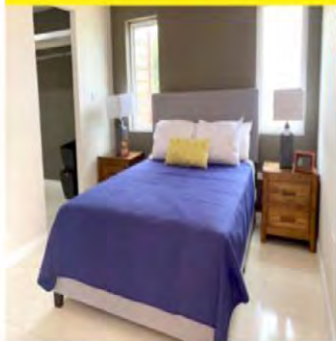
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JDA MEMBERS NEW DEVELOPMENTS

Developer	Project	Description
CHALMERS OASIS LTD	CHALMERS COMMERCIAL COMPLEX KINGSTON	Construction of BPO Centres
GEON GROUP OF COMPANIES	LIGUANEA AVENUE KINGSTON 6	Coming soon! Silverwood 2 –Townhouses
GORE DEVELOPMENTS LTD.	MONTEGO BAY WEST VILLAGE, ST. JAMES	1,174 - 2 Bedroom 2 Bath Detached Houses
GUARDIAN GROUP LIMITED	THE CAMBRIDGE NEW KINGSTON	176 units: Studios, Penthouse and 1 Bedroom Apartments
ISLAND HOMES LIMITED	HUDDERSFIELD, ST. MARY	2 -2 Bedroom Townhouses
	BAYFRONT VILLAS, PHASE 2 PORTMORE, ST. CATHERINE	1 Bedroom Apartments
JAMAICA PROPERTY COMPANY LTD.	ROK HYLTON HOTEL AND APARTMENTS, KINGSTON	Hotel – 150 Rooms
		59 – 1,2 &3 Bedroom Apartments
MATALON HOMES LTD.		
NEW ERA HOMES 2000 LTD.	MARINA VILLAS DRAX HALL VILLAGE, ST. ANN	98 3 Bedroom, 3 Bathroom Beach Front Bungalow
SAGICOR PROPERTY SERVICES LTD.	33 SEYMOUR AVENUE, KINGSTON 6	23 – 3 Bedroom Townhouses 8 – 2 Bedroom Apartments
	MILLENNIUM MALL, CLARENDON	Offices and Stores
SELECTIVE HOMES LTD.	LITTLE BAY COUNTRY CLUB	2 & 3 Bedroom Beach Front Townhouses and Studios
	THE WINCHESTER , GREEN ISLAND, HANOVER	Low Income Starter Homes
WEST INDIES HOME CONTRACTORS. LTD.	SEASCAPE HARBOUR VIEW, KINGSTON	72- 2 Bedroom , 2 Bathroom Townhouses

AN INSPIRATIONAL THOUGHT

“Life is like a bicycle. To keep your BALANCE you must keep moving”
- Albert Einstein

UPCOMING EVENTS

SAVE THE DATE!

- JDA ANNUAL GENERAL MEETING
WEDNESDAY SEPTEMBER 8, 2021
- JDA REAL ESTATE DEVELOPMENT WEBINAR
THURSDAY, OCTOBER 28, 2021



THE JAMAICA DEVELOPERS ASSOCIATION LTD.

JDA Members are Developers, Contractors, Suppliers, Financial Institutions, Professionals: Attorneys, Architects, Engineers, Land Surveyors, Real Estate Agents etc.

**For membership apply to: JDA Secretariat
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