

LAW OFFICES OF BENHAM & CHAN
ATTORNEYS AT LAW

P.O. BOX 11720
NO. 1001 FREDERIKSBERG GADE
CHARLOTTE AMALIE, ST. THOMAS
U.S. VIRGIN ISLANDS 00801-4720
Telephone: (340) 774-0673 ■ Fax: (340) 776-3630

JOHN H. BENHAM
BENNETT CHAN

Email:
benham@bclawvi.com
chan@bclawvi.com

Of Counsel:
BOYD L. SPREHN
MICHELLE T. MEADE

August 11, 2014

sprehn@bclawvi.com
meade@bclawvi.com

Hon. Jean-Pierre Oriol, Commissioner
Virgin Islands Dept. of Planning &
Natural Resources
Cyril E. King Airport
Terminal Building, Second Floor
St. Thomas, Virgin Islands 00802

Mr. Norman Williams, Director
Division of Coastal Zone Management
Virgin Islands Dept. of Planning &
Natural Resources
No. 45 Mars Hill - Rainbow Building
Frederiksted
St. Croix, Virgin Islands 00840

Re: Major CZM Permit Application Nos. CZJ-3-14L and CZJ-4-14W
Coral Bay, St. John, Virgin Islands

Dear Commissioner Oriol and Director Williams:

This firm represents The Summer's End Group, LLC ("Summer's End"), the applicant for the above-referenced Coastal Zone permits. We have been engaged to respond to a certain letter submitted to your department on August 5, 2014 by attorney Maria Tankenson Hodge of the law firm of Hodge & Hodge (the "Hodge letter"). The Hodge letter has been submitted on behalf of the Moravian Church VI Conference (the "Church"), which owns real property in the Coral Bay area, and T-Rex St. John, LLC, ("T-Rex") the lessee of the Church property. The Hodge letter asserts that the Summer's End marina project will interfere with the littoral rights of the Church and T-Rex. The letter further states that T-Rex intends to apply for a Coastal Zone Permit for development of an 85-slip marina in Coral Bay at some indeterminate time in the "immediate future."

We have reviewed the general statements of law contained in attorney Hodge's letter. We do not dispute her characterization of her clients as "littoral land owners." Likewise, Summer's End is a littoral land owner. A littoral land owner is the owner of property which "borders an ocean, sea, or lake." Alexander Hamilton Life Ins. v. Gov't of the Virgin Islands, 757 F.2d 534, 538 (3d Cir. 1985). The department's own rules and regulations recognize the concept of littoral ownership. 12 V.I.R. & R. §902-2 - *Definitions*.

The ownership of littoral property incorporates numerous legal components incidental to such ownership, including -

- the right of unobstructed access to the water across the full frontage of his land;
- the right of access to the navigable portion of the water body, or deep water; and
- the right, subject to reasonable restrictions, to pier out to reach deep or navigable water.

See generally Kalo, North Carolina Oceanfront Property and Public Waters and Beaches: The Rights of Littoral Owners in the Twenty-First Century, 83 North Carolina Law Review 1427, 1471-74 (2005). The Church and T-Rex claim that the Summer's End development "would interfere with the rights of the Moravian Church and T-Rex to access, and wharf out over, the water adjoining their land." *Hodge letter at 1, unnumbered ¶ 3*. The Church and T-Rex "urge the Division of Coastal Zone Management to appropriately limit the scope of the [Summer's End] development." *Id. at page 2, unnumbered ¶ 3*. The Church and T-Rex do not define, or even suggest, what limitation might be "appropriate." In response to this ill-defined and untimely challenge to the Summer's End permit application, we submit that:

- the Summer's End development will not interfere with the littoral rights of the Church, or its lessee T-Rex; and
- the Church and T-Rex cannot use the hearing process to try to advance their own commercial interests by impeding the committee's consideration of the Summer's End project, which is close to fruition.

The claim of the Church and T-Rex that the Summer's End marina development will impede their access to the waters of Coral Bay is without basis. Attached hereto as Exhibit A is a copy of the vicinity map submitted by Summer's End as a part of the permit application process. Superimposed on this photo is a diagram of the pier structure of the marina. At no point does this structure impede or obstruct the Church's, or any other littoral owner's, access across the full frontage of their property to the waters of Coral Bay, or to the navigable portions of the harbor.

As noted by attorney Hodge, an owner's littoral rights also include the right to "pier out" or "wharf out" to reach navigable water. However, there is no basis for any claim that the Summer's End marina will interfere with the Church's ability to "pier out" to navigable water. The Church and T-Rex assert that:

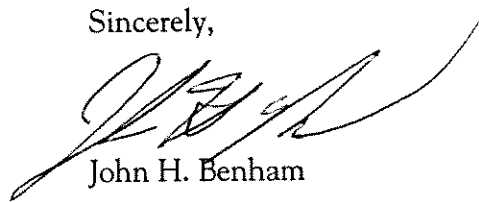
...the size of the marina proposed by Summer's End must be sufficiently controlled such that a channel exists for the navigation of vessels between the proposed Summer's End marina and the marina development planned by the Moravian Church and T-Rex.

Hodge letter at page 2, unnumbered ¶ 2. It is unknown what this means since nowhere in their letter do the Church or T-Rex reveal what channel is referred to, nor how this relates to their

"planned" marina development. What is known is that the piers of the Summer's End marina will be located far from the navigation channel depicted on Exhibit A. Accordingly, the only future obstruction to navigation could result from the Church/T-Rex development, not the Summer's End project.

In summary, the comments submitted by counsel for the Moravian Church and T-Rex St. John, LLC lack any factual basis. All owners of shoreline properties in the Virgin Islands enjoy certain littoral rights. These rights can only be exercised pursuant to the Coastal Zone Management Act, and the regulations promulgated pursuant to that act. The permit application of Summer's End is a regulated exercise of those rights. That exercise of those rights should not be impeded by speculation.

Sincerely,



John H. Benham

JHB/sw

enc.

cc: All members of St. John Coastal Zone Management Committee
CZM file - Permit No. CZJ-14-04W
Maria T. Hodge, Esq. (via e-mail w/enclosure)



VICINITY MAP
 ST JOHN MARINA.
 THE SUMMERS END GROUP, LLC

Exhibit A

