

Testimony of Gaylin Vogel, Esq. on behalf of Paul G. Sabers and 13-A Estate Carolina LLC and 13-B Estate Carolina LLC before the Committee of the Whole of the 33rd Legislature of the United States Virgin Islands on October 26, 2019.

Good morning. My name is Gaylin Vogel. I am attorney based on St. Thomas and am here on behalf of my clients 13-A Estate Carolina LLC and 13-B Estate Carolina LLC, who collectively own two parcels that are included in Summer's End Group, LLC's development scheme. Mr. Sabers is off island otherwise he would be here himself. On behalf of my clients and me we thank the Committee of the Whole and the Senators present today for the opportunity to give this testimony. My testimony today can be summed up in couple sentences. **Please reject proposed permit CZJ-04-14(W)** because the power of attorney used to apply for changes to parcels 13A and 13B Estate Carolina was revoked by the property owner in 2016. The permit applicant, the Summers End Group, does not own parcels 13A and 13B Estate Carolina. The current owners of the two parcels do not support the proposed permit.

You may be asking yourself, how a permit application can get to this end stage of the process when the owner of the property does not support the development of said property. To answer this question you will need to understand the recent history of parcels 13A and 13B Estate Carolina.

In 2013, Merchants Commercial Bank acquired full interest in 13A and 13B Estate Carolina through a foreclosure of a mortgage they had on the parcels. On March 28, 2014, Merchants Commercial Bank gave Summer's End Group, LLC a revocable power of attorney over the parcels so that it could apply for the CZM permit application that is before this body today. The power of attorney explicitly stated that it expired on December 1, 2014. Summer's End Group, LLC applied for the permit on April 4, 2014.

On June 24, 2014, Merchants Commercial Bank assigned its interest in 13A Estate Carolina to 13-A Estate Carolina LLC. On the same day Merchants Commercial Bank also assigned its interest in 13B Estate Carolina to 13-B Estate Carolina LLC.

The LLCs became the owners of the respective parcels by Marshals Deed dated September 10, 2014. The deeds were recorded in the Recorder of Deeds Office for the District of St. Thomas and St. John on June 30, 2016.

Merchants Commercial Bank sold all of their membership interest in 13-A Estate Carolina LLC and 13-B Estate Carolina LLC to Mr. Paul G. Sabers on June 22, 2016. In June and July, 2016, Merchants Commercial Bank notified Chaliese Summers and Summer's End Group that the power of attorney was revoked and asked for proof that the permitting authorities were notified that 13A and 13B Estate Carolina were no longer part of the proposed development of the marina. I do not know if CZM was notified of this change. It is my understanding that the Army Corps of Engineers was notified and that the parcels were removed from the Army Corps application.

On August 6, 2019, Mr. Sabers on behalf of 13-A Estate Carolina LLC and 13-B Estate Carolina LLC wrote to Senate President Novelle Francis objecting to the inclusion of parcels 13A and 13B Estate Carolina in the development plan and permit. In that letter Mr. Saber clearly identified the parts of the permit that call for development of parcels that 13-A Estate Carolina LLC and 13-B Estate Carolina LLC own. I am including a copy of his letter as Exhibit 1 to my testimony.

Besides pointing out that Summer's End Group does not own Parcels 13A and 13B Estate Carolina and does not have permission to develop the parcels from the owner, the letter also points out other deficiencies. For example, prospective permit CZJ-04-14(W) shows that key development features are slated for parcel 13A Estate Carolina. These key features include a sewage treatment plant, storm water management, parking spots and ADA parking, generator and cistern. The key development features slated for parcel 13B Estate Carolina include waste water treatment, storm water management plan, parking spots and cistern. Removal these parcels results in the loss of a generator, 26 parking spots and over 60,000 gallons of cistern capacity. Simply removing the portions of the proposed permit that relate to parcels 13A and 13B Estate Carolina is not sufficient because the proposed permit is based on a grand development scheme and not self-contained segments.

In his letter Mr. Sabers also pointed out that the proposed permit gives Summer's End Group a lease of the submerged lands that touch on 13A Estate Carolina. Such large scale development will degrade the natural beauty of having waterfront property. As an illustration, I ask all of you to think of your home. Imagine if your neighbor was given control of who can park in front of your house and was able to charge that person for the parking spot. You would be upset.

The final concern Mr. Sabers raised in his letter – that granting Summer's End Group the authority to develop his property amounts to an unpermitted and uncompensated taking. Sovereign immunity cannot protect the Government of the Virgin Islands if it takes 13A and 13B without following proper procedure. This is not a threat but a warning of the can of worms granting the permit will open not only for Summers End but also for the Government of the Virgin Islands. I will again ask you to think back to your own home. Imagine if your next door neighbor was given full rights to develop your land. They could kick you out, knock down your house, turn it into a sewage treatment plant and leave you with your mortgage and a deed but no rights. What good is such a deed if you cannot reasonably enjoy your property. This is exactly what my client faces with this proposed permit.

The fact that the two parcels remain in the Summer's End pending CZM permit harms 13A and 13B Estate Carolina. The marketability of the titles is in question as there is public record notice that someone else (that someone else being Summer's End) is claiming a development right to the parcels. Without a marketable title a property cannot be sold or mortgaged due to the unavailability of title insurance.

Real property is unique. No two parcels are alike. There is no exact replica of Parcels 13A and 13B Estate Carolina. Due to the uniqueness of real property it has special protections under the law, such as the protections in the 14th Amendment to the United States Constitution that forbid the State from taking property without due process. The due process protections of the 14th Amendment must be respected. This hearing and permitting process is not due process under the 14th Amendment.

My final point is directed towards Summer's End Group as much as it is directed to this body, any attempt to enter parcels 13A and 13B Estate Carolina by Summer's End Group to develop parcels 13A and 13B Estate Carolina will be met with swift legal action in Court. Rejecting this permit will prevent what I can only imagine will be an unpleasant legal battle involving Summer's End Group and the Government of the Virgin Islands. Rejecting the permit would prevent a legal mess and force Summer's End Group to redo their development scheme (should they choose to try again.)

Thank you for your time and attention today. I am happy to answer any questions you may have.

Paul G. Sabers
13-A ESTATE CAROLINA LLC.
13A Est Carolina, Coral Bay
St John, VI 00830

The Honorable President Novelle Francis
Legislature of the Virgin Islands
Capitol Building, Charlotte Amalie
P.O. Box 1690
St Thomas, VI 00804

August 6, 2019

re: **CZM Major Water Permit CZJ-04-14(W) for the Summers End Group LLC**

Dear President Francis,

I am writing to you about a CZM Major Water Permit that is before the Legislature and which involves land that I own in Coral Bay, St John. I, Paul Sabers, am the managing member of 13-A Estate Carolina LLC and 13-B Estate Carolina LLC, which own parcels 13A Carolina, Coral Bay, St John and 13B Carolina, Coral Bay, St John, respectively.

I understand that the Virgin Islands Legislature may be considering the ratification of "Coastal Zone Management Major Water Permit CZJ-04-14(W)" for a marina project proposed by the Summer's End Group, LLC, in Coral Bay Harbor, St John. This permit was approved by the St John Committee of the Virgin Islands CZM Commission about five years ago, on October 24, 2014. I also understand that Governor Bryan recently signed this permit, on April 4, 2019.

This permit, and an associated CZM Major Land permit, were appealed by the Moravian Conference and the Virgin Islands Conservation Society to the Board of Land Use Appeals ("BLUA") in November 2014. The appeals were heard by BLUA in May 2016, and the decision of BLUA was rendered in July 2016. The BLUA decision included an order that the two individual permits (land and water) be consolidated into a single permit application since they were, in fact, two aspects of a single project.

It is clear that further processing of the separate CZM water permit by the Virgin Islands Legislature is in direct contradiction to the order of the Board of Land Use Appeals. I respectfully submit that the Legislature must return this CZM Major Water Permit CZJ-04-14(W) to the applicant until a consolidated permit is approved by CZM, as ordered by BLUA.

However, of even greater concern to me is the fact that the scope of the permit currently being considered by the Legislature directly infringes on my property rights as the owner of parcels 13A Carolina and 13B Carolina. The water component of this project is described as follows on the first page of Major Coastal Zone Management Permit No. CZJ-04-14(W):

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| <p>2. <u>SCOPE</u> (a) This permit allows the construction of a 145 slip marina, a designated mooring field of up to 75 moorings, a pump-out station and a fuel station at and seaward of Plot Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13 Rem. Estate Carolina, St. John, U. S. Virgin Islands.</p> |
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The reference to Parcel 13A Carolina and Parcel 13B Carolina has never been authorized by me. As the owner of these two parcels I wish to inform you that I have no intention now or in the future of

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providing such authorization to the Summers End Group. I will not now, or in the future sell these parcels to the Summers End Group or an affiliated entity. This permit cannot, therefore, be approved or issued inasmuch as it grants authorization to the Summers End Group, LLC to perform development activities at and seaward of my privately owned land which they do not own or control.

Moreover, the associated CZM Major Land Permit CZJ-04-14(L), which BLUA ordered to be consolidated with the Major Water Permit, describes the scope of the land development as follows:

2. SCOPE This permit allows the redevelopment of seven contiguous properties in Estate Carolina, Coral Bay, St. John (in two phases) for the construction of various supporting facilities for the Coral Bay Marina. Phase 1 will enhance the existing commercial business sites at CoCo Loba, Shoreline Inn and Island Blues and renovate the "Voyages" restaurant building. Phase 1 redevelopment will include the following:

- 120 off street parking spaces
- A new 56 seat restaurant
- Customs and Border Protection office
- A Marina Office
- Marina Engineering
- Marina Security
- Fish and Farmers Market
- Crew shower and locker facilities
- Apartments to support marina management
- Proper solid, hazardous and liquid waste management
- Proper storm water management , and
- Proper fueling.

Phase 2 of the development (implemented strictly on demand) will include:

- Additional retail
- Restaurant
- Office space
- Commercial space and
- Six short-term rental units

The project is located on Parcel Nos. 10-17, 10-18, 10-19, 10-41 Rem., 13A, 13B and 13 Rem. Estate Carolina, St. John, U.S. Virgin Islands.

I would like to bring your attention to the following matters of extreme concern to me as the owner of property referenced in this permit:

1. The DPNR Commissioner, Mr. Jean-Pierre Oriol, has stated to me that the CZM Major Land permit for the Summers End Group will become effective if and when the CZM Major Water permit is ratified by the Legislature.
2. Parcels 13A Carolina and 13B Carolina are not only listed within the Scope of the Major Water Permit (as described earlier in this letter), but they are also within the Scope of the related Major Land Permit (as shown above). I have given no authority for the Summer's End Group, LLC, or its managing partner Ms. Chaliese Summers, to apply for permits or to utilize these parcels as part of this project, and I have no intention of doing so in the future. In the CZM permit application,

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Summers End Group, LLC and Ms. Chaliese Summers fraudulently misrepresented that they had the right to use these properties for the proposed project. They do not and I intend to take legal action against them for their fraudulent misrepresentation which, if the Legislature approves the CZM permit, will constitute a slander on my title to the property.

3. In addition, the Scope of the Major Land permit specifically states that the permit allows the applicant to "renovate the Voyages restaurant building". I own this building and I have given no authorization for the Summer's End Group to undertake any work whatsoever on this building.
4. Both the CZM Major Water Permit and the related CZM Major Land Permit incorporate a number of documents by reference. These documents are identified as follows:

4. DOCUMENTS INCORPORATED BY REFERENCE

- Exhibit A: CZM Permit Application dated April 4, 2014.
- Exhibit B: Site Plan and Drawings dated July 11, 2014
- Exhibit C: Environmental Assessment Report dated April 4, 2014

5. The referenced document identified above as "Exhibit B" entitled "Site Plan and Drawings dated July 11, 2014" indicates that many of the features in the scope of the project are located on Parcel 13A or Parcel 13B Carolina. The features located on Parcel 13A are identified within this document as follows:

PARCEL NO. 13-A

SEE DWG. NO. C203 FOR SITE PLAN

- REMOVE POOL, SELECTED STRUCTURES AND BUILDINGS
- RECONFIGURE PEDESTRIAN ACCESS TO BUILDINGS ALONG ROADWAY
- EXPAND AND IMPROVE OUTDOOR SEATING AREA AROUND BUILDING
- NEW PARKING AREAS FOR 8 SPACES AND 1 ADA VAN ACCESSIBLE SPACES
- NEW CONCRETE PAVED WALKWAY SYSTEM
- NEW DOMESTIC WATER TREATMENT PLANT
- NEW GENERATOR
- NEW RAISED PEDESTRIAN CROSSWALK CONNECTING UPLAND WITH MARINA BOAT SLIPS
- NEW TIMBER DECKING AND PERGOLA CONNECTING UPLAND WITH MARINA BOAT SLIPS
- NEW STORM WATER MANAGEMENT MEASURES
- NEW DRIVEWAY OPENING
- NEW PLAZA AREA
- UPGRADE SELECTED LANDSCAPED AREAS
- NEW SANITARY SEWER TREATMENT FACILITY WITH WATER RECYCLING/GREYWATER SYSTEM
- NEW WATER CISTERN – 4,000 GALLONS REUSE
- EXISTING CISTERNS TO REMAIN – 52,800 GALLONS POTABLE

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6. The features located on Parcel 13B are identified as:

PARCEL NO. 13-B
SEE DWG. NO. C203 FOR SITE PLAN

- REMOVE SELECTED STRUCTURES AND TREES
- NEW PARKING AREA FOR 17 SPACES
- NEW CONCRETE PAVED WALKWAY SYSTEM
- NEW WASTEWATER TREATMENT PLANT
- NEW STORM WATER MANAGEMENT MEASURES
- UPGRADE SELECTED LANDSCAPED AREAS
- NEW WATER CISTERN – 5,000 GALLONS REUSE

It should be readily apparent that a significant portion of the overall project, including parking, storm water management, sewage treatment, walkways and cisterns is located on Parcels 13A Carolina and 13B Carolina, both of which I own in their entirety. The Legislature has no authority to grant a permit for demolition, construction and occupancy of private land owned by me, against my express wishes.

I am writing to you today to inform you that if the Legislature were to undertake any action to ratify CZM Major Water Permit CZJ-04-14(W) then that action would take from me substantially all rights in my property and deprive me of the benefits I enjoy as the legal owner of the parcel under Virgin Islands law. I have been advised that such an action by the Legislature, the Governor and the CZM Board, under color of state law, taken against my express wishes, without my permission, is a clear violation of my rights under the Revised Organic Act, pursuant to 42 U.S.C. §1983, deprived me of rights, privileges or immunities governed under federal law and the U.S. Constitution, including but not limited to, my constitutional due process and property rights under the 5th and 14th Amendments.

It is my express intention to vigorously defend all of my rights as an owner of real estate in the United States Virgin Islands with all recourses available under Virgin Islands and US federal law. I have contacted Robert Fox (copied here), a well known environmental litigator (www.mankogold.com), to represent me to pursue any and all claims should the Legislature so act. I strongly urge you to either deny, or not to consider this permit due to the serious defects embodied in it, including the use of my property without my authority.

Respectfully yours,



Paul G. Sabers, Managing Member, 13A Estate Carolina LLC

phone: 561-329-6298
email: ps_13a_carolina_llc@yahoo.com

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cc: Senators of the 33rd Legislature of the USVI
Attorney Yvonne Tharpes, Legal Counsel to the Legislature
Mr. Jean-Pierre Oriol, DPNR Commissioner
Mr. Marlon Hibbert, CZM Director
Attorney Vonetta Norman, CZM Legal Counsel
Robert D. Fox, Esquire