

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 33<sup>rd</sup> Legislature of the United States Virgin Islands on October 26, 2019.

Good day. My name is Gaylin Vogel. I am an 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. On behalf of my clients and me we thank the Senators present today for the opportunity to give this testimony.

We object to the permit for the following reasons:

- The revised permit includes 13-A and 13-B Estate Carolina in the proposed development plans. SEG does not own or have any rights to 13-A and 13-B Estate Carolina.
- The proposed development will negatively impact 13-A Estate Carolina's appurtenant property rights as the entrance to the proposed marina is on 13-A Estate Carolina.
- The process used to modify the proposed permit is improper.
- The economic impact of giving one business control over Coral Bay.

**Right to Due Process and Protection of Property Rights:**

If the revised permit is approved as is this will amount to an illegal taking of private property by the Government for the private use by SEG. It is unlawful for the Legislature of the Virgin Islands to deprive my client of its property rights without due process. The Revised Organic Act as well as the United States Constitution guarantees this protection.

At the last Legislative hearing on this matter SEG agreed to remove 13-A and 13-B Estate Carolina from the development permit application. The Governor's cover letter to the Legislature, which states that the two parcels are removed from the permit, is insufficient as the parcels are still listed in the actual proposed permit. The owners of 13-A and 13-B Estate Carolina do not consent to their property being taken over and developed by SEG.

We respectfully request that the permits in question either be denied by the

Legislature due to the serious questions surrounding their legality and their unlawful impact on my client, or be returned to the Governor without any action taken.

It is my client's wish and our intent to protect its property rights using all available remedies under Virgin Islands and United States law.

**Property Rights Appurtenant to 13-A Estate Carolina LLC:**

As an owner of property at the shoreline of Coral Bay Harbor, my client is entitled to certain appurtenant property rights, including the littoral right of an unobstructed view over the water.

This property right was one of the main considerations in my client's 2016 purchase and renovation of the Shops at Isola located at 13-A and 13-B Estate Carolina. The view over the water is a key element in the appeal of the restaurants and shops which occupy the structures on this parcel. My client has invested over \$4 million in the purchase and renovation of these properties, which were in a derelict state when acquired.

The proposal by the SEG to construct a 30 acre marina directly in front of my client's property deprives my client of this valuable aspect in his real estate. It should be immediately apparent that the proposed marina is **DIRECTLY** in front of my client's property. In fact, the main pier of the proposed structure leads to 13-A Estate Carolina. This design would completely obliterate my client's water view as well as substantially impair the ability to construct any small docking structure in front of his property. It will block the roadway in front of my client's property.

In the five years which have elapsed since my client purchased this property SEG has had more than ample time to modify their designs so as not to impede my clients views or access to the water.

A marina this size without the land based support will impact 13-A and 13-B Estate Carolina. At the last hearing when SEG agreed to remove the parcels SEG treated the removal as a reduction of their footprint. But removing the properties does not remove the land based support required for such a large marina. DPNR approved an overall development project not a series of small self-contained projects. Removing the property from the development plan is

akin to removing a random chapter from a book and then boasting you reduced the length of the book.

**Improper Modification of Consolidated Permit:**

We have reviewed a document entitled "Modification of Major Coastal Zone Management Permits" signed by Governor Bryan on December 16, 2019. The Governor is apparently requesting that the Legislature ratify this modification document as well as the related "consolidated permit" document.

As stated above, the "consolidated permit" still makes extensive references to Parcels 13-A and 13-B Estate Carolina. Presumably it was the intent of the Governor that this "consolidation" document be read as if it were modified by the accompanying letter from Governor Bryan to Ms. Chaliese Summers entitled "Modification of Consolidated Major Coastal Zone Management Permit" signed by the Governor on December 16, 2019.

We do not believe that section 911(g) of Title 12 of the Virgin Islands Code cited by the Governor as the authority in the "modification" letter is applicable to an unapproved CZM permit. The Section 911(g) authority is an emergency enforcement action pertaining to protection of the environment resulting from actions taken by a developer under an approved permit. This is clearly not the case in the present matter.

We do not believe that the "Consolidation of Permits" document is an "approved permit" as required by Section 911(g). According to affidavits filed by the Virgin Islands Conservation Society there was no meeting of the St John CZM Committee to approve this permit document.

We understand that various parties are contesting the legality of the Governor's action and we believe they will prevail in their arguments. The language of 911(g) is very clear – it solely applies to the approved permits and neither the newly created "consolidated permit" nor the underlying 2014 permits were ever fully approved, as approval requires ratification by the Legislature which has not happened.

In fact, this argument is supported by CZM Attorney Vonetta Norman. In August 2019 my client asked DPNR to revoke the CZM permits for the SEG

because they were proposing development on its property. My client cited DPNR's authority to revoke approved or issued permits. Attorney Norman refused to do this on the basis that the authority for revocation by DPNR only applied to the issued or approved permits, and the SEG permits were not eligible for revocation because they did not meet those conditions. If the underlying permits, in Attorney Norman's opinion, were not "approved or issued" in August 2019, then they certainly are not approved or issued today.

Please consider the following: if the Legislature were to ratify the "consolidated permit" which includes extensive references to my client's property (13-A and 13-B Estate Carolina), and the highly questionable "modifications" by the Governor were subsequently deemed illegal in court, then we would be left with a fully approved permit allowing SEG to develop my client's private property. This clearly cannot be allowed to happen.

This is all a consequence of an apparent attempt to circumvent the permit modification procedures of the Virgin Islands Coastal Zone Management Act. Had proper procedures been followed we would not be in the situation we find ourselves in today.

### **Economic Impacts:**

We note that the Governor cited several financial figures to argue for the positive economic impact of this project. Without debating those numbers, which we believe are highly dubious, we would like to point out that my client currently provides a direct contribution to the economics of the territory through the multiple small businesses operating within the Isola Shoppes on Parcel 13-A Carolina.

Pre Covid-19, there are approximately 20 full or part-time employees in the six businesses occupying the property at 13-A Estate Carolina. If this permit were approved the ensuing multi-year construction and long-term impact of a marina in Isola's "front yard" would almost certainly lead to loss of a majority of these jobs and failure of the small businesses. This is a real, direct negative economic impact of the proposed construction, as opposed to an unsupported claim of positive impacts from the marina.

On behalf of my client, 13-A Estate Carolina LLC and 13-B Estate Carolina LLC, we respectfully request that the Legislature fully respect its property

rights, its economic contribution to the territory, and its legal rights to due process in this matter.

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