

THE UNITED STATES VIRGIN ISLANDS
BOARD OF LAND USE APPEALS

Virgin Islands Conservation Society, Inc.,))) Appellant))) v.)) St. John Committee of the Virgin Islands) Coastal Zone Management Commission))) Appellee) _____)	Permit No. CZJ-03-14 (W) Permit No. CZJ-03-14 (L) BLUA Appeal No. 002/2020
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ST. JOHN COMMITTEE OF THE COASTAL ZONE MANAGEMENT COMMISSION'S NOTICE OF JOINDER IN SUMMER'S END GROUP'S MOTION TO DISMISS AND MOTION TO STAY BRIEFING WHILE SAID MOTIONS ARE PENDING.

COMES NOW Respondent, St. John Committee of the Coastal Zone Management Commission ("CZM") and joins in the Motion to Dismiss filed by Summer's Edge Group ("Intervenor") because the Board of Land Use Appeals lacks subject matter jurisdiction over the present appeal. CZM adopts and incorporates by reference Intervener's arguments for the reasons stated by Intervener because if the Board lacks subject matter jurisdiction it cannot hear the appeal as to *any party*. Because briefing would be futile in an appeal where the Board lacks subject matter jurisdiction, CZM moves this honorable Board to stay its Amended Scheduling Order dated April 7, 2020 pending decision of the pending motion.

Permit Nos. CZJ-03-14(L) and CZJ-03-014W were approved by the CZM at its decisional meeting on October 1, 2014 and issued said permits to Intervener on October 24, 2014. Pursuant to 12 V.I.C. Section 914 Appellant had forty-five days to appeal that action by the Commission. Appellant did so; its appeal was denied *V.I. Conservation Society v. St. John Committee of the V.I. Coastal Management Commission*, Appeal Nos. 005, 006, 008/2014 Decision and Order (June 3, 2016); and that matter is now pending before the Superior Court under

Writ of Review. No new action of the Committee has been taken by CZM giving rise to an appeal within this board's jurisdiction.

THIS BOARD LACKS SUBJECT MATTER JURISDICTION

The Board's jurisdiction is found at 12 V.I.C. §914, which provides that an aggrieved person may appeal an "action by the Commission, its Committees, or the Commissioner taken pursuant to section 910 or 911 . . .within forty-five days thereof." Jurisdiction is further explained in Board regulations, which provide that the Board "may review any "decision-below" in which the findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional, Organic Act of 1954, or statutory provisions;
- (b) in excess of the statutory authority of the Commission, Committee, or Commissioner,
- (c) made upon unlawful procedure,
- (d) affected by other error of law,
- (e) erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

CVIR 12-021-914 § 914-3

"Decision below" is defined as any decision of an authority-below which is final and conclusive upon an applicant, CVIR 12-021-914 § 914-(f), and "authority below" is defined as the Commission, Committee, or the Commissioner who rendered a decision in connection with an application for a major or a minor coastal zone permit, and whose decision is final and conclusive upon the applicant. CVIR 12-021-914 § 914-(d).

Here Commissioner Penn did not render any new "decision" in connection with an application for a major or minor coastal zone permit. To the contrary, pursuant to this Board's order, Penn performed the ministerial act of affixing his signature to the permit earlier consolidated by this Board in its June 3, 2016 order. In doing so, Penn did not render a decision—the decision to approve the underlying permits consolidated by the Board was

rendered on October 1, 2014 and was already the subject of an appeal by Appellant and affirmed by the Board. *V.I. Conservation Society supra*. Decision and Order (June 3, 2016). Instead, Penn executed the consolidated permit pursuant to the Board's Order just as a clerk would enter judgment ordered by a court. Time for appeal of the decisions of the Commission which were consolidated by the Board was in December 2014, or 45 days following their issuance by the Commission on October 24, 2014 *La Vallee Northside Civic Assoc. v. Virgin Islands Bd. Of Land Use Appeals*, 866 F.2d 616 (3rd Cir. 1989). To be clear, Appellant has already had its bite at that apple. *See Appeal Nos. 005,006,008/2014*.

Because there is no new "decision below" before the Board, and instead, Appellants appeal the ministerial act of the Committee Chairman of execution of a consolidation of Permit Nos. CZJ-03-104 (L) and (W) pursuant to the Board's Order (as opposed to any decision of or action of the Committee), AND the actions of Governor Bryan (an indispensable third-person who is not party to this Appeal), the Board lacks subject matter jurisdiction over this Appeal. For the foregoing reasons, the Board must dismiss this matter for lack of subject matter jurisdiction.

Finally, because this court has no jurisdiction over this matter, it would be expedient, efficient, and in the interest of judicial economy to stay briefing in this matter pending the Board's resolution of the present motion to dismiss. To do otherwise would cause government resources to be wasted by requiring respondent CZM to expend time and resources and its' government attorney's salaried time by responding to an opening brief in a venue without jurisdiction.

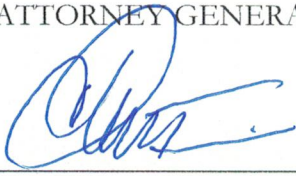
WHEREFORE, Respondent CZM joins in intervener's Motion for Immediate Dismissal, and asks this Board to dismiss this appeal for lack of subject matter jurisdiction. Defendant further prays that this Board will stay its briefing schedule pending its decision

with respect to jurisdiction.

Respectfully submitted,

DENISE N. GEORGE, ESQ.
ATTORNEY GENERAL

By: _____


CHRISTOPHER TIMMONS, ESQ.
Assistant Attorney General
Department of Justice
213 Estate La Reine, RR1 Box 6151
Kingshill, St. Croix USVI 00850
Tel: (340) 773-0295
christopher.timmons@doj.vi.gov

DATED:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of April, 2020, I caused a copy

of the foregoing to be delivered via email upon the following counsel of record:

Andrew C. Simpson, Esq.
Andrew C. Simpson, PC
2191 Church Street, Suite 5
Christiansted, St. Croix
U.S. Virgin Islands 00820
asimpson@coralbrief.com

Boyd L. Sprehn, Esq.
Law Offices of John H. Benham, P.C.
P.O. Box 11720
St. Thomas, VI 00801
sprehn@benhamlawvi.com

Vonetta Norman, Esq.
Legal Counsel
Division of Coastal Zone Management
Wesley Turnbull's Regional Public Library
4607 Tutu Park Mall
St. Thomas, VI 00802
vonetta.norman@dpnr.vi.gov

Ariel M. Smith, Esq.
Chief, Civil Division
Virgin Islands Department of Justice
34-38 Kronprindsens Gade
St. Thomas, VI 00802
ariel.smith@doj.vi.gov