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

August 9, 2019

re: **Submerged Land Lease for the Summers End Group LLC**

Dear Senator DeGraff,

When we met in Cruz Bay several months ago I reviewed with you many aspects of the Summers End Group marina project proposed for Coral Bay Harbor. One of the items that you expressed some interest in was the computation of the Submerged Land Lease fee and my assertion that it had been computed incorrectly, resulting in a significant financial advantage to the applicant, and significant lost revenue to the territory.

Given the possibility that this permit application will soon be coming before the Legislature, I wanted to provide you with more detailed information on this aspect of the permit.

As I am sure you know, a Submerged Land Lease is required for occupancy and construction upon submerged lands of the Virgin Islands. The rules and regulations governing submerged land leases are found in the CZM Rules and Regulations at 12 VIRR 910-5(e). These rules specify the method of calculation and special conditions that apply when waivers or discounts are allowed (specified in 12 VIRR 910-5(f)).

The calculation of the fee begins by determining the Fair Market Value of the land. Section 910-5(e) states:

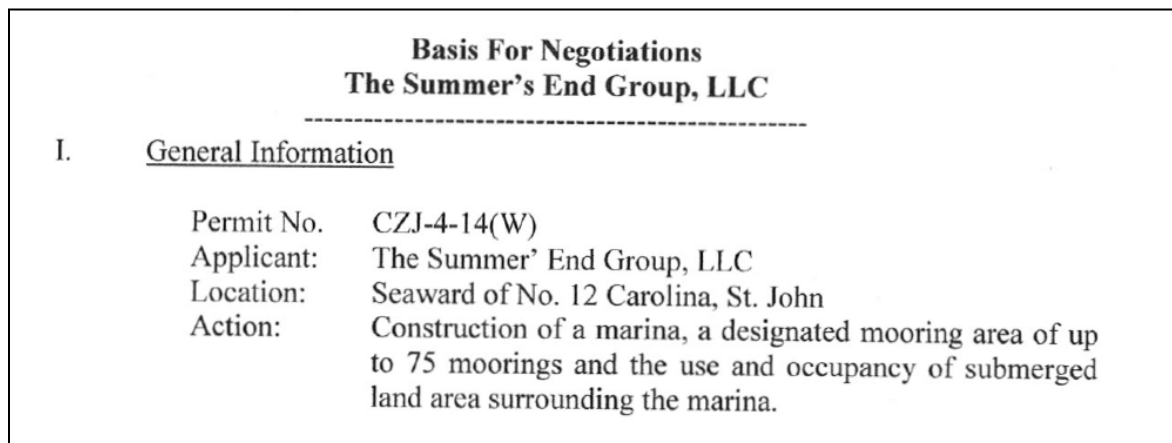
"rentals and fees ... shall be based on the fair market value of the land or improvements, gross receipts of commercial operations, and any other factors that may be pertinent thereto; provided however, that the weight being given to the criteria used shall be attached to the lease or permit"

Since no other factors were specified in this lease, the fee is based on the "fair market value of the land" and this is determined by the Assessed Value of the land parcels on which the project is based. In the case of the Summers End Group marina, there are seven parcels that is based upon, and the average fair market value over those seven parcels (based on 2014 Tax Assessments) is \$414, 984 per acre, as detailed in the table below:

PARCEL	ACRES	LAND ASSESSED VALUE	PER ACRE
13 REM	0.78	\$361,000	\$462,821
13 A	0.37	203,900	\$551,081
13 B	0.23	48,000	\$208,696
10-41	1.00	413,400	\$413,400
10-17	0.29	82,800	\$285,517
10-18	0.26	74,200	\$285,385
10-19	0.24	132,200	\$550,833
Average	3.17	\$1,315,500	\$414,984

However, in the case of the Submerged Land Lease for the Summers End Group, the Fair Market Value used in the calculation did NOT reference the land on which the marina is built. Instead it used a parcel north of the marina which is a non-buildable mangrove wetland parcel (Parcel 12 Carolina). The assessed value of this parcel per acre is less than half of the marina parcels. So as a result of this error, or sleight of hand, the final fee was immediately reduced by 52%.

Here is an excerpt from the "Basis for Negotiations" document (the entire document is attached to this letter):



The line above beginning "Location" is simply incorrect. This marina is seaward of Parcels 10-17, 10-18, 10-19 and 13 Remainder Carolina. It is NOT seaward of No. 12 Carolina, St John.

The assessed value per acre of Parcel 12 Carolina was \$197,941.17 in 2014, which is 52% lower than the assessed value of the actual marina parcels. By virtue of the use of an incorrect parcel for Fair Market Value, the Summers End Group received a 52% discount on the statutory fees.

However this isn't the only problem. Apparently DPNR agreed with the applicant that they would only need to pay 1/3 of the annual lease fee until the marina is completed. The Basis for Negotiation includes this language: "Until such time that construction of the marina is completed, the Permittee shall pay 33% of the total annual fee." This is reflected in the CZM Major Water Permit in the section copied below:

1. A rental fee of **One Hundred Ninety Four Thousand, Twenty Six Dollars and Forty Six Cents (\$194,026.46)**, per year shall be charged for the use and occupancy of the submerged land area occupied under this permit. Prior to the completion of construction of the permitted marina described in Section "2" of this permit, the Permittee shall pay an annual rental fee of **Sixty Four Thousand Twenty Seven Dollars and Eight Cents (\$64,027.08)**, per year for the use and occupancy of the submerged lands as described in Section "2" of this permit.

The "completion of construction" language in the paragraph above presents a serious concern. If you look at Section 2 of the permit the Scope includes features which the Summers End Group has decided not to build. Here is the excerpt from Section 2:

2. **SCOPE** (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.

The "designated mooring field of up to 75 moorings" is no longer a part of the project that Summers End is pursuing. It has been dropped from their Army Corps permit application. Summers End has no intention of pursuing this element of the CZM Major Water Permit. The marina design has also changed and it is now, I believe, 144 slips.

As a consequence, the permittee, the Summers End Group, will never fully complete the Section 2 scope of work, and by the language of the permit they would be entitled to a 2/3 fee discount for the entire duration of the lease. This, combined with the 50% reduction due to use of the incorrect parcel, means that the fee being charged is 1/6 of what it should be, or a discount of 83%.

In dollars, this means that over 20 years the Summers End Group is receiving a benefit of close to \$7million. Put differently, it means that seven million dollars of Virgin Islands public resource is being given to a private developer. This, in my opinion, is wrong.

In this analysis I didn't even mention the "Cap Rate" which was used for the Summers End lease. Under normal circumstances I have seen cap rates of 6% to 12%, with 8% commonly used for submerged land leases. This lease for the Summers End Group used a cap rate of 3% for the majority of the submerged land which is the lowest I have ever seen on a submerged land lease. If a 6% cap rate had been used it would have doubled the annual lease. Here is the computation that used the 3% cap rate, without any justification or explanation:

III. FMV Plot No. 12, Carolina - \$336,500.00/1.7 acres = \$197,941.17/acre (Tax Assessors Office)

Calculations

Total square footage of structures = 1.7 acres:
 $\$197,941.17/\text{per acre} \times 1.7 \text{ acres} = \$336,500.00 \times 6\% = \underline{\$20,190.00}$

Total square footage for submerged area surrounding the structures
1,123,848.0 or 25.8 acres

$\$197,941.17/\text{per acre} \times 25.8 \text{ acres} = \$5,106,882.18 \times 3\% = \underline{\$153,206.46}$
(Structures)

So, if I can summarize, there are multiple defects in the Submerged Land Lease for the Summers End Group. An incorrect parcel is used for the Fair Market Value. A 2/3 discount is given, potentially for the entire term of the lease. A below market Cap Rate is used resulting in a very significant fee reduction.

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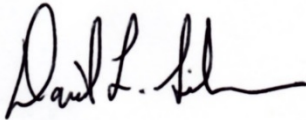
In aggregate these factors bring the final Submerged Land Lease fee to less than 10% of what it should be based on CZM Rules and Regulations and standard market practice, a discount of over 90%.

Here is what the regulations say about fee waivers and fee reductions for submerged land leases (12 VIRR 910-5(f)):

"The Commissioner may waive or reduce rentals when he determines that such a waiver or reduction is in the public interest. The Commissioner must render such a waiver or reduction of rental in writing and specify the reasons therefor. A copy of said decision must accompany the permit or lease when it is transmitted to the Governor for approval and to the Legislature for ratification."

As far as I know this was not done. I have never seen a rationale or reasons for a fee reduction and a determination of public interest, as required by Virgin Islands law. Perhaps this was all a mistake, in which case it must be corrected before it is enacted by the Legislature. We can ill afford to be giving away millions of dollars in future revenue to private developers, without justification.

Respectfully yours,



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GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES
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Basis For Negotiations
The Summer's End Group, LLC

I. General Information

Permit No. CZJ-4-14(W)
Applicant: The Summer' End Group, LLC
Location: Seaward of No. 12 Carolina, St. John
Action: Construction of a marina, a designated mooring area of up to 75 moorings and the use and occupancy of submerged land area surrounding the marina.

II. Activity

Permittee proposes to construct a marina and designated mooring field, and the use and occupancy of approximately 1.7 acres or 74,900 sq. ft. of structures occupying submerged land, and 25.8 acres or 1,123,848 sq. ft. of submerged lands surrounding the structures. Permittee will also install a total of 75 boat moorings for boats of various sizes.

III. FMV Plot No. 12, Carolina - \$336,500.00/1.7 acres = \$197,941.17/acre (Tax Assessors Office)

Calculations

Total square footage of structures = 1.7 acres:
 $\$197,941.17/\text{per acre} \times 1.7 \text{ acres} = \$336,500.00 \times 6\% = \underline{\underline{\$20,190.00}}$

Total square footage for submerged area surrounding the structures
1,123,848.0 or 25.8 acres

$\$197,941.17/ \text{per acre} \times 25.8 \text{ acres} = \$5,106,882.18 \times 3\% = \underline{\underline{\$153,206.46}}$
(Structures)

75 total boat moorings at an average boat length of 27.5 feet per mooring and a fee of \$10.00 per foot = **\$20,625.00.**

IV. Fees

Annual fee = \$194,021.46 per year

Until such time that construction of the marina is completed, the Permittee shall pay 33% of the total annual fee (**\$194,021.46**). Therefore, the annual submerged land fee to be paid until such time that construction of the marina is completed is **\$64,027.08.**