



GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

DEPARTMENT OF PLANNING AND NATURAL RESOURCES

**Division of Coastal Zone Management
Charles Wesley Turnbull Regional Public Library
4607 Tutu Park Mall
St. Thomas, U.S. Virgin Islands 00802**

Telephone: [REDACTED]

Fax: [REDACTED]

March 12, 2019

VIA U.S. POSTAL and EMAIL: [REDACTED]

Erika Kellerhals, Esq.
Royal Palms Professional Bldg.
9053 Estate Thomas—Suite 101
St. Thomas, VI 00802

**Re: Cease & Desist Order No. C&D-01-19-STT
Great St. Jim, LLC
Great St. James, St. Thomas, Virgin Islands**

Dear Attorney Kellerhals:

This letter is in response to your correspondence of February 13, 2019. Your letter outlined your objections to C&D-01-19-STT, and you asserted that the work that was being done was properly permitted. You also stated your objections to the manner and means of the inspections that have been done on Great St. James.

I. Background

A. Application No. CZT-28-17L

Great St. James, LLC ("GSJ") submitted an application with the Department of Planning and Natural Resources', ("DPNR") Division of Coastal Zone Management for Minor permit CZT-28-17L on July 25, 2017. The associated property was Plot-Rem A, Great St. James (GSJ). The proposed work was for a residential cottage, swimming pool, terrace, and storage buildings. A deficiency letter was sent on August 23, 2017¹ via email from former CZM Environmental Planner, Paul Kalloo to John Woods (who was representing GSJ in the application). The

¹ During the meeting held on January 19, 2019, the undersigned erroneously stated that a deficiency letter was sent in April of 2018 in response to additional submissions that were made by your client. The deficiency letter was in fact sent on August 23, 2017 in response to the deficiencies of the original submittal. No other deficiency letter was sent after that time.

response to the deficiency notice was due in November 21, 2017 (90 days after the deficiency letter was sent). In September of 2017 the Virgin Islands was hit by Hurricanes Irma and Maria, affecting the functionality of DPNR. Applicant filed a revised application on February 12, 2018 in response to the August 23, 2017 notice.

B. Application No. CZT-29-17L

Great St. James, LLC submitted an application for Minor Permit No. CZT-29-17L on July 25, 2017. The associated property was Plot-C1, Great St. James. The proposed work was for a residential cottage, tennis court, and storage building. Former CZM Environmental Planner, Paul Kalloo sent John Woods (who was representing GSJ in the application) a deficiency letter on August 24, 2017², via email. The response to the deficiency notice was due in November 22, 2017 (90 days after the deficiency letter was sent). As previously stated, in September of 2107 the Virgin Islands was hit by Hurricanes Irma and Maria, affecting the functionality of DPNR. On February 12, 2018 a revised application was submitted in response to the August 24, 2017 notice.

C. Permit No. CZT-05-17L

A request to modify Permit No. CZT-05-17L was submitted on January 12, 2017, and, Permit No. CZT-05-17L was issued on October 21, 2016 for work completed on Plot C1 Great St. James. The permit was issued for limited brush and debris removal, and installation of a flag pole. The modification attempted to include Plots A-1, A-2, B-1-2, and C1 Remainder to the permit. The modification proposed additional work for bush and debris removal, island wide "driveway stabilization", two 80 ft. flag poles, a tiki bar, 75 ft. diameter deck, 25 ft. x 75 ft. concrete deck, limited landscaping, and 2 access driveways.

II. The Applications were effectively withdrawn for lack of activity and were not approved by operation of law.

Pursuant to V.I.R.R. tit 12 §§ 910-6(e), 910-7(a), once the Department notifies the applicant of any deficiencies to its application, the applicant then has 90 days to respond to the deficiency notice, failing which, the application is deemed withdrawn³.

The applications for CZT-28-17L and CZT-29-17L were both submitted on July 25, 2017. To count 90 days from the dates the deficiency letters were sent out, the responses would have been

² During the meeting held on January 19, 2019, the undersigned erroneously stated that a deficiency letter was sent in April of 2018 in response to additional submissions that were made by your client. The deficiency letter was in fact sent on August 24, 2017 in response to the deficiencies of the original submittal. No other deficiency letter was sent after that time.

³ "...All responses must be submitted within 90 days of the Notice of Deficiency, unless a request for extension is granted. Failure to provide the requested information may be deemed a withdrawal of the application pursuant to Section 910-6(e) of these Rules and Regulations..." V.I.R.R. tit 12 § 910-7(a).

due by November 21, 2017 and November 22, 2017, respectively. On Feb. 12, 2018, applicant submitted revised applications for both projects. This was 83 days after the original 90-day period mandated by the rules and regs.

It is noted that during the pendency of the application DPNR operations were severely impaired by Hurricanes Irma and Maria, which delayed application processing. That being the case, the Department was not strict with the deadlines and gave leniency to delayed submissions. However, in this case the submission was excessively outside of the 90-day period, even with allowances made for the storms. Thus, the applications were deemed withdrawn and were effectively “dead” by the time GSJ tried to cure the deficiencies. Since the revisions were not submitted in time the clock did not start running for the application to be approved, and it could not be approved by operation of law.

III. A permit that is approved by operation of law is not automatically issued.

If the application was indeed approved through operation of law, the proper procedure was not followed for the permit to be issued. Pursuant to V.I. Code Ann. tit. 12 § 910(d)(4), if an application is not acted upon within the requisite time—then it is automatically approved. However, although the statute states that the application is approved, it does not state that it is issued. As stated in Virgin Islands Conservation Society, Inc. v. V.I. Board of Land Use Appeals, 49 V.I. 581, 594 (D.V.I. 2007), “... the CZMA’s regulations expressly mandate application approval and not permit issuance...”. Once approved, even if it is through operation of law—the permit must adhere to certain structural and procedural requirements as laid out in 12 V.I.R.R. 910-10. The provisions include, among other things: (1) statement of the authorized development; (2) the date when the permit becomes effective; (3) statement that the work will begin in 12 months. Id. That being the case, if the application is approved—the Department would still be required to draft and issue the permit in adherence with the statutory requirements. Therefore, it follows that the proper procedure would be for the applicant to request that the permit be issued.

There is nothing in file to show that there was a request that the permit be issued before the February 13, 2019 letter. Further, even if the CZM permit was issued (as claimed), GSJ is still required to go through the Building Permit process. GSJ has never claimed that a building permit was issued for the work that was being done. If it was, please advise. Further, the modifications requested for Permit No. CZT-05-17L were also not approved. Given the above, Cease & Desist Order No. C&D-01-19-STT is still in effect until the proper CZM and building permits are applied for and issued.

IV. DPNR's authority to conduct searches.

Finally, in your letter you raised objections to DPNR's inspections of Great St. James, citing 12 V.I.C. §§ 913(b)(4) and (b)(6). Although permits CZT-28-17L and CZT-29-17L were not granted and not in effect, Permit No. CZT-05-17L is active. As you stated in your letter under 12 V.I.C. § 913(b)(4), the Commissioner has the right to enter and inspect parcels where a permit has been issued. DPNR had the right to enter the parcel to inspect under the active permit. Further, the statute says that the Commissioner has the power to "enter at reasonable times". It does not require that any permission must be granted, or any coordination has to be made with the owner before the inspection is done. Since this inspection was done on a weekday during regular business hours, it can be considered reasonable. Also, it bears mentioning that any inspection done was done because of reported or observed activity and were not done arbitrarily.

We would also like to establish a good working relationship with your client where all his development is done in compliance with the laws of the Virgin Islands. We appreciate all your cooperation in moving forward with getting the proper permits in place.

Sincerely,


Vonetta C. Norman, Esq.
CZM Legal Counsel

cc: Jean-Pierre L. Oriol, Commissioner Designee
Christopher Allen Kroblin, Esq.