IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

VIRGIN ISLANDS CONSERVATION SOCIETY, INC. Petitioner, vs. VIRGIN ISLANDS BOARD OF LAND USE APPEALS Respondent, GOLDEN RESORTS LLLP, Intervenor.	CIVIL NO. 83/2005 WRIT OF REVIEW **MEMORANDUM OPINION AFFIRMING GRANT OF PERMIT** **NOT FOR PUBLICATION**

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CABRET, MARIA M., Presiding Judge:

MEMORANDUM OPINION

(Filed May 25, 2006)

THIS MATTER is before the Court on the Writ of Review of Petitioner Virgin Islands Conservation Society, Inc. [hereinafter "VICS"], challenging the grant of a major coastal zone permit to Golden Resorts LLLP [hereinafter "Golden"] by the Virgin Islands Board of Land Use Appeals [hereinafter "Board"]. Intervenor Golden filed a brief in opposition, to which VICS replied. For the reasons that follow, the Court will affirm the Board's grant of the permit to Golden.

I. BACKGROUND

On or about September 5, 2003, Golden filed an application (Joint Appendix at 21-22) [hereinafter "J.A."] with the Virgin Islands Department of Planning and Natural Resources [hereinafter "DPNR"] for a major coastal zone permit, seeking to develop certain parcels of land in the East End Quarter A, Estates Hartmann and Great Pond, on the island of St. Croix; this development was to include a resort, conference center and casino. A major coastal zone permit is required any time an entity seeks to "perform or undertake any development in the first tier of the coastal zone." V.I. CODE ANN. tit. 12, § 910(a)(1) (1998). This first tier includes the "area extending landward from the outer limit of the territorial sea ... to distances inland as specified in the maps incorporated by reference in section 908, subsection (a) of [the Virgin Islands Coastal Zone Management] chapter." 12 V.I.C. § 902(r). This proposed development fell, at least in part, within the first tier. (J.A. at 22.)

By letter of September 23, 2003, Dean Plaskett, Commissioner of DPNR, notified Golden that its application was incomplete; this letter identified a list of deficiencies and allowed Golden ninety days in which to supplement its answers before the application would be denied. (J.A. at 43-44.) On November 3, 2003, Golden filed a Response to Deficiencies and on November 18, 2003, Dean Plaskett deemed Golden's application complete pursuant to subsection 910(d)(1) of title 12 of the Virgin Islands Code. (J.A. 323.) Soon thereafter, Golden's application was referred to the St. Croix Committee of the Coastal Zone Management Commission [hereinafter "Committee"] to conduct a public hearing. Once the Committee selected the date, relevant government agencies and interested parties were timely notified.

On January 8, 2004, the Committee held a public hearing[1] on Golden's application. Representatives of VICS were among the members of the public that participated in the hearing; however, even those that did not voice concerns could file written comments until January 15, 2004. A decisional meeting was tentatively scheduled for the first week of February 2004 to comply with the statutory mandate that the Committee act on the application within thirty days of the public hearing. *See* 12 V.I.C. § 910(d)(4). At the close of the public hearing, the Committee required that Golden file any responses to public comments at least seven days in advance of the decisional meeting. During the public hearing and afterwards by a January 15, 2004 letter, members of the Committee indicated that should Golden require an extension, such a request had to be reduced to writing. (J.A. 455-56, 527.)

Unable to comply with this timing requirement, Golden, by a January 20, 2004 letter, sought a one-week extension to permit the filing of its responses on February 6, 2004, under the impression that a decisional meeting was to follow seven days later, on February 13, 2004 (J.A. at 528); on February 6, 2004, Golden filed responses to the public comments. The Committee, by a February 6, 2004 letter indicated a different understanding. From the Committee's perspective, Golden waived its right to a decision on its permit application within thirty days of the public hearing held on January 8, 2004. (J.A. at 529.) The Committee interpreted Golden's letter as a waiver permitting it an indefinite time period to consider the

[1] In advance of the hearing, by a December 23, 2003 letter, Golden advised the Committee that its primary biological resource analyst, Amy Dempsey would be unavailable for the January 8, 2004 hearing. Golden sought to delay any vote on its application until February 2, 2004, when Dempsey would be available to appear. To that end, Golden offered to "waive the thirty day time frame under Title 12 V.I.C. § 910(d)(4) for a decision of the Committee, allowing the Committee until thirty days thereafter, or Monday March 1, 2004 for its decision on the permit application." (J.A. at 325.) On January 5, 2004, John Beagles, on behalf of the Committee, notified Golden that "your request [for postponement of the January 8, 2004 hearing] has been granted." (J.A. at 326.) An undated, type-written addendum to the same letter, purportedly written by counsel for Golden memorializes that Golden did not want the January 8, 2004 hearing cancelled; this position purportedly had been communicated to the Commissioner. (Id.) Since the hearing proceeded as scheduled, it is unclear what effect, if any, this exchange had on the Committee's obligation to act within thirty days of the public hearing.

application, not as an extension of limited duration. The Committee provided that a meeting on February 13, 2004 might not be possible, though it would "make an effort to comply." Golden then wrote a February 9, 2004 letter attempting to clarify its position regarding an extension; Golden did not intend to grant a waiver. (J.A. at 561.) The Committee sent two additional letters in February 2004, neither of which indicated when such a decisional meeting would occur; this evidenced that the Committee no longer felt bound by the thirty-day requirement. An April 5, 2004 letter further confirmed this lack of urgency, communicating that a decisional meeting was not possible because of the inability to form a quorum; such a meeting was tentatively scheduled for May 12, 2004. In response, Golden sent an April 14, 2004 letter reiterating its position that a timely decisional meeting was paramount and agreeing to such a meeting on May 12, 2004.

When a decisional meeting was finally held, on May 26, 2004, after one additional postponement (J.A. 807), the Committee conceded that a permit "had been granted by default" due to its inaction. (J.A. 595-96.) Conditions on this permit were to be developed by the staff over the course of forty-five days. (J.A. 595-96.) No written decision or conditions ever followed. Instead, on July 1, 2004, the Committee held a meeting to discuss the status of the pending application. Under the belief that Golden's submission of a warranty deed for the parcels in question on March 22, 2004, reset the timing requirements for the consideration of application – as an amendment to the application – the Committee, by motion and unanimous vote, retreated from its earlier pronouncement and rescinded its grant of a permit by default. (J.A. at 645, 650.) This decision was reduced to writing in a July 2, 2004 letter. (J.A. at 654.)[2]

[2] In response to the Committee's July 2, 2004 letter, on July 23, 2004, Golden filed an action in the Territorial Court at Civ. No. 352/2004 seeking declaratory, mandamus and injunctive relief against the Committee.

On July 30, 2004, Golden timely appealed this determination to the Board, seeking to stay any further action by the Committee.[3] (J.A. at 810-12.) The Board issued a notice of such a stay of the Committee's decision to rescind the CZM Permit No. CZX-37-03(L) on August 2, 2004. (J.A. at 813.)

Nevertheless, on August 2, 2004, the Committee proceeded with its decisional meeting. (J.A. at 809) (noting the Committee's intent to hold a Decision Hearing in spite of the stay). As an outgrowth of the meeting, the Committee, by motion and unanimous vote, required Golden to supplement its application by addressing specific deficiencies within ten days, or face a withdrawal by default. (J.A. 5, 689, 692-93.) On August 3, 2004, this decision was reduced to writing (J.A. at 814); that same day, Golden timely appealed this decision (J.A. 815-16B).[4] Soon thereafter, the Board consolidated the two pending appeals and set September 28, 2004, as the date for a hearing. As a result of the hearing, the Board resolved to issue Golden a permit and sought from the parties proposed (1) findings of fact, (2) conclusions of law, (3) terms of the permit, and (4) special conditions on the permit. (J.A. at 723-24.) The requested materials were submitted (J.A. at 817-74), and on December 15, 2004, the Board convened to identify the terms and conditions of the permit. The Board issued an official decision granting Golden a permit, designated as CZX-37-03(L), on January 12, 2005, with Golden acquiescing to the attachment of such conditions two days later, on January 14, 2005.

On February 11, 2005, the St. Croix Farmers in Action[5] and the VICS petitioned this Court for a writ of review as persons aggrieved by the January 12, 2005 decision of the Board.

The Court denied Golden's request for a temporary restraining order and preliminary injunction on July 30, 2004. The Court did not take any further action.

[3] This appeal was docketed at Appeal No. 003-2004. (J.A. at 810-12.)

[4] In response to the decision made in August 2, 2004 meeting, Golden initiated a second appeal at Appeal No. 004-2004.

[5] By motion, the St. Croix Farmers in Action voluntarily sought to dismiss its petition for writ of review. This motion was granted on January 4, 2006.

Motions to intervene filed by Golden and the Committee were granted and denied, respectively. The Court denied a motion to dismiss filed by Golden asserting VICS lacked standing. In its petition, VICS challenges (1) the legal sufficiency of Golden's application and environmental assessment report; (2) the timeliness of Golden's February 6, 2004 supplement to the administrative record, (3) the asserted failure of the Committee to follow the statutory procedures regarding a completeness determination after allowing an untimely supplement and (4) the Board's alleged usurping of the Commission's primary authority to regulate the permit process.

The VICS's Petition for Writ of Review was granted on January 10, 2006, permitting the parties to fully brief these matters. In its brief, VICS elaborates on the purported deficiencies in the underlying proceedings in great detail. In response, Golden seeks to uphold its permit by defending the completeness of its submissions and the actions of the Board. The Court need not address the first three grounds of the VICS Petition, however, as they were not raised before the Board, and thus may not be raised for the first time on appeal. *See V.I. Conservation Soc'y, Inc. v. V.I. Bd. of Land Use Appeals*, 881 F.2d 28, 36 (3d Cir. 1989). Consequently, the Court considers only whether the Board acted beyond its authority.

II. STANDARD OF REVIEW

The Superior Court has subject matter jurisdiction over all purely local civil matters. *See* V.I. CODE ANN. tit. 4, § 76(a) (1997);[6] *Moravian Sch. Advisory Bd. v. Rawlins*, 33 V.I. 280,

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[6] Section 76(a) provides:

> Subject to the original jurisdiction conferred on the District Court by section 22 of the Revised Organic Act of 1954, as amended, effective October 1, 1991, the *Superior Court shall have original jurisdiction in all civil actions regardless of the amount in controversy*; to supervise and administer estates and fiduciary relations; to appoint and supervise guardians and trustees; to hear and determine juvenile, divorce, annulment and separation proceedings; to grant adoptions and

284-85, 70 F.3d 270, 273 (3d Cir. 1995) (concluding that section 76(a) of title 4, as amended in 1991, vested jurisdiction over all civil matters in the Territorial [Superior] Court of the Virgin Islands consistent with the 1984 Amendment to the Revised Organic Act). Writs of review of administrative decisions fall within the definition of purely local matters. *See Moravian Sch. Advisory Bd.*, 33 V.I. at 285, 70 F.3d at 273; V.I. CODE ANN. tit. 5, § § 1421-23 (1997). The writ of review at issue, petitioned under subsection 913(d) of title 12 of the Virgin Islands Code, also constitutes a purely local matter. *See* V.I. CODE ANN. tit. 12, § 913(d) (1998) (incorporating the requirements chapter 97 of title 5 of the Virgin Islands Code). Subsection 913(d) provides:

> Pursuant to Title 5, chapter 97 and Appendix V, Rules 10 and 11 of this Code, a petition for writ or review may be filed in the District Court of the United States Virgin Islands in the case of any person aggrieved by the granting or denial of an application for a coastal zone permit, including a permit or lease for the development or occupancy of the trust lands or other submerged or filled lands, or the issuance of a cease and desist order, within forty-five days after such decision or order has become final provided that such administrative remedies as are provided by this chapter have been exhausted.

12 V.I.C. § 913(d). Thus, despite the references to the District Court in subsection 913(d) of title 12 of the Virgin Islands Code, the Superior Court now reviews the determinations of the Committee and Board in the same capacity as the District Court did previously. *See generally V.I. Conservation Soc'y, Inc. v. V.I. Bd. of Land Use Appeals*, 30 V.I. 191 (D.V.I. 1994).

Accordingly, the review of the Committee's and Board's determinations should adhere to the standards contained in *V.I. Conservation Society, Inc.*, 30 V.I. at 197-98. The District

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> changes of name; to establish paternity; to legitimize children and to make orders and decrees pertaining to the support of relations.

4 V.I.C. § 76(a) (emphasis added).

Court identified the standard of review as the following:

> In reviewing the actions of the CZM Committee and the Board, the court must, in effect, apply two standards of review: 'the first to be applied by the Board to the CZM Committee's decision, and the second to be applied by this Court to the Board's actions.' *V.I. Conservation Society v. V.I. Board of Land Use Appeals*, 21 V.I. 516, 519 (D.V.I. 1985).
>
> The standard of review applied by the Board to CZM Committee actions authorizes the Board to review any decision or action of the Committee in which the findings, inferences, conclusions, or decisions are:
>
> (a) in violation of constitutional, Organic Act of 1954, or statutory provisions;
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> (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;
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> (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.
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> V.I.R. & Regs. tit. 12, § 914-3.
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> In reviewing decisions of the Board on appeal, this court must 'determine[] whether the Board correctly applied the appropriate standard.' *V.I. Conservation Society v. V.I. Board of Land Use Appeals*, 21 V.I. at 520. This court must accordingly determine:
>
> (1) *Whether the agency acted within the limits of its statutory powers*;
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> (2) Whether the agency applied the relevant law correctly;
>
> (3) Whether the agency findings are supported by substantial evidence on the record; [and]
>
> (4) Whether the agency has abused its discretion by acting in an arbitrary or capricious manner.

V.I. Conservation Soc'y, Inc., 30 V.I. at 197-98 (emphasis added) (citations omitted). The Court now applies this standard.

III. DISCUSSION

VICS and Golden agree on the sequence of events contained in the Background section of this opinion. In its Petition, VICS primarily challenges the Board's authority to issue a permit

under these circumstances, arguing that it usurped the responsibility of the Committee to regulate the permit process. Golden posits that it was the Committee's abdication of this responsibility that mandated the Board's action in the first place. The Court finds that the Board acted within the limits of its statutory powers, applied the relevant law correctly and did not act in an arbitrary or capricious manner. The Board's findings were also supported by substantial evidence.

A. The Board Is Authorized to Review Actions of the Committee and Issue Permits

The Board is duly authorized to "either affirm or reverse the Commission's or its appropriate Committee's or the Commissioner's action and shall either approve or deny an application for a coastal zone permit." 12 V.I.C § 914(d). Incidental to this authority to review the actions of the Committee is the Board's authority to attach conditions to the grant of a permit, as "the Board shall impose such reasonable terms and conditions on such permit as it deems necessary to achieve the objectives and purposes of this chapter." *Id.* Finally, should the Board *reverse* the actions of a Committee on a coastal zone permit, "it must make all of the findings required by section 910, subsection (a), paragraphs (2), (3) and (4) of this chapter." *Id.* Thus, whether the instant Committee activities fell within the Board's appellate authority will depend on whether these decisions qualify as actions.

B. The Board Properly Reviewed Actions of the Committee

An action of the Committee is generally defined in Regulation section 902-2 of the Virgin Islands Coastal Zone Management Regulations. Regulation section 902-2 provides in relevant part, that an action is "[a] vote by a quorum of Committee members or Commission members upon a motion, proposal, resolution or order, whether or not resulting in a collective decision by a majority of those voting members present." 12 V.I. R. & REGS. § 902-2

(Lexis 2006). Outside the voting procedure outlined above, section 910(d)(4) of title 12 of the Virgin Islands Code supplies an additional circumstance that may qualify as an action: a "[f]ailure of the appropriate Committee of the Commission or the Commissioner to act within any time limit specified in this paragraph shall constitute an action taken." 12 V.I.C. § 910(d)(4). Moreover, "[r]egulation section 914-5(2) provides that petitions for appeal are 'timely if filed with the Chairman, or Administrative Officer of the Board within forty-five (45) calendar days after the decision-below has been rendered in written form, and has been served on the applicant.'" *LaVallee Northside Civic Ass'n v. V.I. Coastal Zone Mgmt. Comm'n*, 866 F.2d 616, 622 (3d Cir. 1989) (citing 12 V.I. R. & REGS. § 914-5 (1984)). The same regulation also requires that the decision-below be "final and conclusive as to the applicant." 12 V.I. R. & REGS. § 914-5. Although VICS characterizes the decisions of July 30, 2004 and August 3, 2004 as interim as opposed to final and conclusive decisions, this argument is unpersuasive in light of the broad definition of *action*. If a decision qualifies as an action and the Board has jurisdiction to review a timely appealed action, it is necessarily final and conclusive as to the applicant.

Golden timely appealed two decisions of the Committee to the Board: (1) the Committee's decision to rescind Golden's default permit on July 1, 2004, as reduced to writing on July 2, 2004, and (2) the Committee's decision to mandate that Golden submit additional information on August 2, 2004, as reduced to writing on August 3, 2004. The July 2, 2004 letter provides that the Committee unanimously voted to rescind the grant of a permit to Golden. (J.A. at 654.) This Committee served Golden soon thereafter and Golden appealed the decision to the Board within forty-five days, on July 30, 2004. (J.A. at 810-12.) Likewise, the August 3, 2004 letter indicates that the Committee's decision to require Golden to submit

additional information was the product of a unanimous vote. (J.A. at 814.) Golden challenged this action of the Committee within forty-five days, as the Notice of Appeal was filed the same day. (J.A. 815-16B.)

Together, Golden's appeals sought a stay of further action by the Committee, a determination that the challenged Committee actions were invalid, and the issuance of a written major coastal zone permit for its proposed development in conformity with the relevant rules and regulations. By its July 30, 2004 appeal, Golden specifically requested the Board "for a declaration that the St. Croix Committee of the Coastal Zone Management Commission shall issue a writing to Golden Resorts constituting a Major Coastal Zone Management Permit." (J.A. at 811.) Then, through its August 3, 2004 appeal, because of the perceived futility of seeking additional action from the Committee, Golden sought a permit directly from the Board (J.A. at 816B.)

Under Regulation section 914-3, the Board has the authority to review actions of the Committee that, among others, are "in excess of the statutory authority of the Commission, Committee or Committee or Commissioner." 12 V.I. R. & REGS. § 914-3(b). The Board correctly determined that nowhere in the Code is the Committee authorized to revisit the grant of a permit issued by default, through rescission or the mandating of additional submissions. (J.A. at 7-8.) Instead, the Board concluded that "[i]n situations where the Committee has approved the issuance of a CZM permit, whether by affirmative action or by operation of law, CZM Act only empowers the Committee to issue the initial decision described in 12 V.I.C. § 910(d)(4)." (J.A. at 8.) This is a correct summarization of the law.

Subsection 910(d)(4) provides that the Committee "shall act upon a major coastal zone permit application within thirty days after the conclusion of the public hearing."

12 V.I.C. § 910(d)(4). This subsection also provides for grant of a permit by operation of law. A "[f]ailure of the appropriate Committee of the Commission or the Commissioner to act within any time limit specified in this paragraph shall constitute *an action taken* and shall be *deemed an approval of any such application*." *Id.* (emphasis added). The provision further provides that, "[a] copy of the decision of the appropriate Committee of the Commission or the Commissioner, whichever is applicable, on an application for a coastal zone permit shall be transmitted in writing."

The Commission had no discretion to reopen the proceedings, as the grant of the permit by operation of law was the penalty for the Commission's inability to reach a decision within the statutorily mandated time period. This was true because as the Board indicated, among the goals of this legislation was "to provide for the prompt disposition of a CZM application." (J.A. at 7.) Once an application was approved, the Committee was compelled by statute to transmit the permit in writing. This conclusion, however – that the Committee was unable to reopen the proceedings where a permit is granted by default – implicates the necessity of determining whether in the instant matter the Committee's failure to act within thirty days of the January 8, 2004 hearing resulted in the granting of a permit by default; more expressly, the Court must decide whether Golden waived or extended the period of time for the decision on its application for a major coastal zone permit.

C. Golden Did Not and Could Not Waive or Extend the Time Period for a Decision on its Application

The Virgin Islands Coastal Zone Management Act of 1978, found in sections 901 to 914 of title 12 of the Virgin Islands Code, was enacted to further the dueling goals of the "protect[ion], maint[enance], preserv[ation] and, where feasible, enhance[ment] and restor[ation], the overall quality of the environment in the coastal zone," and the "promot[ion of]

economic development and growth in the coastal zone" with an eye towards "(1) the impacts of human activity and (2) the use and development of renewable and nonrenewable resources so as to maintain and enhance the long-term productivity of the coastal environment." 12 V.I.C. § 903(b)(1), (2). To that end, the Legislature protected the economic interests of coastal zone developers by requiring timely decisions on pending applications. *See* 12 V.I.C. § 910(d). The regulatory framework, as codified, follows a demanding schedule for the review of applications for major coastal zone permits which is seemingly untenable in light of the Committee's torpor during the pendency of Golden's application.

After the Commissioner of the DPNR preliminarily reviews an application for completeness, relevant entities are notified and the application is referred to a local Committee for a public hearing. 12 V.I.C. § 910(d)(1), (2), (3). Once the Committee conducts the public hearing on an application for a major coastal zone permit, it must issue a decision within thirty days. 12 V.I.C. § 910(d)(4). The statute, unlike similar provisions in other jurisdictions, does not contain any provisions for a waiver or extension of this time period, whether at the behest of an applicant or the Committee. *See e.g.,* MASS. GEN. LAWS Ann. ch. 40A, § 9 (West 2006) (providing express written waiver of timing requirement for the issuance of special permits); MINN. STAT. ANN. § 15.99 (West 2006) (allowing for an extension of time periods for agency actions); CONN. GEN. STAT. § 8-7d (2006) (allowing for maximum extension of sixty-five days for similar time periods for the issuance of permits).

Nevertheless, the Committee identifies Regulation section 910-7(d) as the basis for granting a waiver or extension of this statutory period. 12 V.I. R. & REGS. § 910-7(d). This Regulation provides, "[t]he Committee shall act on a major Coastal Zone Permit application within thirty (30) days after the conclusion of the public hearing on such application unless the

applicant agrees in writing to expressly waive and extend the statutory time limit." *Id.* This regulation was purportedly promulgated pursuant to the authority found in section 910(e) of title 12 of Virgin Islands Code. In relevant part, this section provides

> (e) Regulations. The Commission *shall*, in the manner required by law and after public hearings, *adopt such supplementary regulations* pertaining to the issuance of coastal zone permits as it *deems necessary*. The Commission may thereafter, in the manner required by law, and from time to time, after public hearings, modify or adopt additional regulations or guidelines as deemed necessary to carry out the provisions of this chapter; provided, any such rules, regulations, or guidelines issued by the Commission pursuant to this chapter may be modified, amended or revised by the Legislature in accordance with the provisions of subsection (b), section 913 of Title 3 of this Code. Such regulations shall include but are not limited to the following:
> (1) procedures for the submission, review and denial or approval of coastal zone permit applications, and the form of application for coastal zone permits. The Commissioner shall devise a temporary application form which shall be used upon enactment of this chapter until such time as rules and regulations are adopted;
> ...
> (7) requirements for the conduct and *continuance of public hearings* and the methods of providing public notice on major coastal zone permits. A public notice shall at a minimum state the nature and location of the proposed development, and the time and place of the public hearing, and shall be advertised in a newspaper of general circulation, and in addition be given to the applicant, any person who requests such notification in writing, any person who the Commissioner determines would be affected by or interested in such development, and the owner(s) of any/all lot(s) within or adjacent to the site of the proposed development. Joint public hearings may be held in conjunction with any such hearing required by any federal agency;

12 V.I.C. § 910(e)(1), (7) (emphasis added). While subsection 910(e) of the title 12 of the Virgin Islands Code mandates the promulgation of rules that the Commission deems *necessary*, these rules may only supplement, not conflict with, the contents of the *Virgin Islands Coastal Zone Management* chapter. 12 V.I.C. § 910(e)(1). Unlike the provision for the continuance of public hearings in subsection (e)(7), there is no authority for enacting rules that extend or waive

the statutory time period for considering applications for permits. *See* 12 V.I.C. § 910(e)(7). Subsection 904(g) confirms this limitation by prescribing the means of promulgating rules as:

> The Commission shall promulgate rules and regulations *necessary to carry out the provisions of this chapter*; provided, however, that no such rules or regulations shall be promulgated unless public hearings are held by the Commission after appropriate notice as hereinafter provided. Any rules and regulations promulgated pursuant to this chapter may be modified, amended or revised by the Legislature in accordance with the provisions of subsection (b), section 913, Title 3 of this Code.

12 V.I.C. § 904(g) (emphasis added). The Legislature mandated the promulgation of rules "necessary to carry out the provisions of this chapter." *Id.* To devise a permissible waiver and extension framework would be in contravention and derogation of the statutorily imposed time limits and the grant of a permit by operation of law. Such rules and regulations are not permissible.

Although the imposition of statutory limits inures to the benefit of an applicant, should the applicant seek an extension or petition to waive the statutory time limit, there is no authority within chapter 21 of title 12 for a Committee, Commission, or Commissioner to grant such relief. Even if there were such authority, the correspondence between Golden and the Committee between December 2003 and May 2004 yields the ineluctable conclusion that there was no express agreement between the relevant parties. To the contrary, as ships passing in the night, the alternating correspondence indicates a misunderstanding regarding the consequence of the Golden's January 20, 2004 letter. (J.A. at 8, 528-29, 561-62.) It would be a disservice to Golden to conclude there was the requisite meeting of the minds for an express agreement. That said, there is nothing, however, to prevent such an applicant from withdrawing and later recommencing the permit process. After all, the only time an applicant might want to delay the

decision of a Committee would be when it perceives that an application for a permit will be denied for a failure to satisfy certain requirements.

D. The Issuance of Permit by the Board was Proper

In light of the Board's determination that there was no waiver or extension, the Board properly granted Golden's August 3, 2004 requested relief: the issuance of major coastal zone permit. This is true, despite the fact that no one appealed the May 26, 2004 pronouncement that "this permit has been granted by default[,]" within forty-five days.[7] Under section 914(d), the Board is authorized to grant an application for a coastal permit. 12 V.I.C. § 914(d). In light of the Committee's flagrant disregard for the Board-imposed stay of the August 2, 2004 meeting, any further directives, including one mandating the issuance of a written permit in accordance with section 910(d)(4) would have been futile.

That said, the Board must make the requisite findings under section 910(a)(2), (3) and (4), as required by section 914(d) before issuing a permit. In particular, the Board must assess whether the issuance of a major coastal zone permit to Golden, on the basis of the submitted materials, "is consistent with the basic goals, policies and standards provided in sections 903 and 906 of this chapter," and whether "the development as finally proposed incorporates to the maximum extent feasible mitigation measures to substantially lessen or eliminate any and all adverse environmental impacts of the development." 12 V.I.C. § 910(a)(2). The Board did so is evidenced by the existence of a detailed list of conditions in the instant permit. (J.A. at 11.)

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[7] As indicated earlier, the regulations clarify that this forty-five day time period commences from the date such a decision is reduced to writing and served on the relevant parties. This decision was never reduced to writing, as a further example of the Committee's failure to comply with clear requirements set forth in subsection 910(d)(4), the very statute it is charged with enforcing.

IV. CONCLUSION

The Board did not exceed its statutory authority when it reviewed the timely appeals of the Committee's decisions (1) to rescind Golden's permit by default and (2) to mandate that Golden submit additional information. The Board did not act arbitrarily or capriciously. The Board applied the relevant law correctly, and its findings were supported by substantial evidence. Golden did not and could not waive or extend the statutory period for the Committee's consideration of its major coastal zone permit application after a public hearing. Accordingly, when the Committee failed to comply with the statutory requirements, Golden was granted a permit by default. Once a permit was granted by default, the Committee could not rescind that grant or mandate that Golden supplement the record. As a result of the Committee's failure to comply with relevant statutes and Board directives, the Board was authorized and justified in issuing a major coastal zone permit. This permit complied with the statutory requirements of section 914 of title 12 of the Virgin Islands Code. The Board's decision will be affirmed in an accompanying order.

ATTEST:
Denise Abramsen
Clerk of the Court
By: _____
Deputy Clerk
Dated: _____

MARIA M. CABRET
Presiding Judge of the Superior
Court of the Virgin Islands