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3 **FOR PUBLICATION**
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5 **IN THE SUPERIOR COURT**
6 **OF THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 L & T Group of Companies,

9 Petitioner,

10 v.

11 Coastal Resources Management Office and
12 The Office of the Governor of the
13 Commonwealth of the Northern Mariana
14 Islands,

15 Respondent.

Civil Action No. 03-0034-CV

ORDER

16 **I. INTRODUCTION**

17 **THIS MATTER** came before this Court for a hearing on Petitioner’s application for judicial
18 review, on December 11, 2003. Steven P. Pixley, Esq., represented the Petitioners, L & T Group
19 of Companies. Assistant Attorney General, Peggy Campbell, represented the Respondents, Coastal
20 Resources Management Office and The Office of the Governor of the Commonwealth of the
21 Northern Mariana Islands. The Court, having reviewed the arguments of counsel, having examined
22 the evidence, having reviewed the complete record, and being fully informed of the facts and
23 premises of the current action, now renders its decision.

24 **II. FACTS**

25 This action for judicial review concerns the final agency action of the Office of the Governor
26 denying the Petitioner’s application to the Coastal Resources Management Agency for a major siting
27 permit regarding the renovation and use of a housing facility located in Garapan, Saipan.

28 Seeking permission to renovate the property in Garapan, the Petitioner, through MB Castro
Consulting & Associates, forwarded a letter to the Coastal Resources Management agency (“CRM”) on June 14, 2002. The property known as the Wilson Project is located north of Liberty Plaza on

1 Beach Road in Garapan, Saipan. The Wilson Project was previously used by the Petitioner for staff
2 housing. The chief purpose of the renovation was to provide housing for approximately 142 of the
3 Petitioner's garment workers.

4 The Petitioner was advised via a letter sent from the Division of Environmental Equality
5 ("DEQ") that a sewer feasibility study may be required in order for the CRM Major Siting Permit
6 to be approved, with special conditions. However, a Minor Coastal Permit for the renovation of the
7 Wilson Project was issued on July 8, 2002. The Minor Coastal Permit issued with the following
8 statement, "this permit shall not be construed as a guarantee that the CRM program Agencies will
9 issue the Major Siting permit for the Wilson Staffing House." Petitioner's Administrative Record
10 ("A.R.") at 37-41.

11 On June 15, 2002, a CRM Board Meeting was held at which the Wilson Project application
12 was introduced by Martin Castro. At the July 10, 2002, Board Hearing, an unidentified Board
13 Member stated: "[w]e're just looking really quickly, looks like CUC is gonna be the critical agency
14 to get their opinions, whether or not the water and sewer can accommodate the project and the power
15 I suppose." A.R. at 243. CRM issued a written notice on July 12, 2002, stating that Petitioner "had
16 satisfied the required permit conditions." A.R. at 58. CRM approved commencement of the Minor
17 Coastal Permit work for the Wilson Project renovation.

18 On July 16, 2002, a letter was submitted to CRM by the Liberty Department Store Manager,
19 Ray Yumul, opposing the Wilson Project renovation. Yumul's letter stated that the periodic sewer
20 flows causing unpleasant odors had subsided when the Wilson Project was no longer used for
21 staffing housing.

22 On July 24, 2002, DEQ submitted a memorandum to CRM again raising concerns regarding
23 the sewage overflow and requested that the Petitioner acquire written statements from the
24 Commonwealth Utilities Corporation ("CUC") that CUC could accommodate the capacity.

25 A public hearing was held on July 25, 2002, at which time the Wilson Project was discussed.
26 Martin Castro, Jack Torres and Herman Guerrero appeared on behalf of the Petitioner at the hearing
27 and issues were raised regarding power and sewage disposal at the Wilson Project. Becky Lizama
28 of the CRM stated that those issues had been forwarded to CUC. On July 30, 2002, CRM certified

1 the application as complete, pursuant to Section 8(A)(ix) of the CRM Rules and Regulations, 24
2 Com. Reg. 19,895 (Dec. 27, 2002) *adopted* 25 Com. Reg. 20,078 (March 31, 2003).

3 On August 9, 2002, in an internal CUC memorandum, CUC stated the sewage overflow
4 problems at The Wilson Project were not related to the line itself, but to the problems associated
5 with the downstream pump station. CRM submitted a memorandum to CUC on September 10,
6 2002, stating that the Petitioner should conduct an analysis of the system, and that if the analysis
7 shows that the system is insufficient to handle the load, then Petitioner should be required to upgrade
8 the system at its own expense.

9 The CRM Board met again on September 17, 2002, at which time the issue of the Wilson
10 Project sewage impact was again discussed. The DEQ representative stated that there was
11 insufficient data to make a good decision regarding the sewage issue. CUC stated it would request
12 a capacity assessment from the Petitioner. During the CRM Board Meeting a memorandum from
13 the Acting Wastewater Division Manager containing the following language was discussed:

14 We have reviewed your memorandum of 8/5/02 regarding the subject connection.
15 The gravity sewer system that will serve the facility does have sufficient capacity to
16 accommodate the expected peak flows from the 142 garment workers that will
17 occupy it. Sewer overflows experienced in this area are related not to the capacity
of the line itself, but to problems associate with the operation of the downstream
pump station. When the pump station is operating properly, the system functions
adequately.

18 A.R. at 111. No resolution regarding the Major Siting Permit was achieved at the CRM Board
19 Meeting.

20 On September 25, 2002, the CRM Board met for a final time to consider the application. At
21 this meeting, CUC representative Larry Guerrero, stated that the Petitioner should be required to
22 conduct an analysis of the Wilson Project renovation impact on the Garapan water and sewage
23 system. Guerrero suggested that a permit could be conditioned on a satisfactory analysis, similar
24 to what had been done on an earlier project. Brian Bearden, the DEQ representative, stated that
25 DEQ was waiting for a definitive answer on the sewer issue. Petitioner's representative, Martin
26 Castro, suggested the issuance of a conditional permit, subject to the addressing of the sewage
27 concerns.

28 The agencies making up the CRM Board then voted on the issuance of the permit. Five

1 agencies voted for the issuance of the conditional permit, and one, DEQ, voted against the permit.
2 DEQ's Bearden stated, "DEQ's position is without the sewer information, we don't believe that a
3 permit should be issued, so we vote to deny." Jack Salas of CRM, after hearing the votes, declared
4 the CRM Board deadlocked. The permit was not issued.

5 On September 27, 2002, Martin Castro submitted to the CRM Board, for its consideration,
6 a Sewer Capacity Analysis completed by Stan Good of Azuma Limited. Good's report found that
7 the sewer line capacity was sufficient to accommodate the intended usage. However, Good's report
8 also stated, "[t]he concern for the system is that downstream capacity is near the full pipe flow based
9 on the contributing flows at design flow from the existing sewer lines. The owner can do little to
10 alleviate the overloaded downstream conditions." A.R. at 137-49. The purpose of this submission
11 was to allow the CRM Board to reconsider its decision. DEQ responded to the submission pointing
12 out that the analysis was not performed using actual flow data and that capacity could potentially
13 be exceeded.

14 On October 7, 2002, the Wilson Project issue was submitted to the Office of the Governor
15 for deadlock resolution pursuant to 8(F)(iv) of the CRM Rules and Regulations, 24 Com. Reg.
16 19,899 (Dec. 27, 2002) *adopted* 25 Com. Reg. 20,078 (March 31, 2003). Governor Babauta
17 formally denied the application on November 8, 2002. The critical element, as stated in the
18 Governor's memorandum, was the lack of sewer capacity.

19 On October 22, 2002, Martin Castro, representing Petitioner, met with CUC regarding the
20 issue that the Sewer Capacity Analysis was not prepared using actual flow data. The next day,
21 Bernard P. Villagomez, Deputy CUC Executive Director, submitted a memorandum to CRM stating
22 that the Wilson Project would not adversely impact the Garapan area sewer system.

23 The Petitioner then appealed the adverse decision to the CRM Appeals Board on December
24 6, 2002. Acknowledging receipt of the appeal, the CRM Administrator notified Governor Babauta
25 on December 10, 2002, that the CRM Appeals Board did not have the necessary appointed members
26 to properly handle the appeal. On January 3, 2003, the CRM notified the Petitioner that the appeal
27 hearing prescribed by 2 CMC § 1541(b) was "unable to convene due to lack of quorum." A.R. at
28 218. The Petitioner thereafter initiated this civil action on January 17, 2003.

1 **III. DISCUSSION**

2 “The standard for judicial review [of the decision of the Coastal Resources management
3 Appeals Board] is whether the decision is supported by substantial evidence on the record made
4 before the board, taken as a whole; the facts in question are not subject to trial de novo.” 2 CMC
5 § 1541(b). “Substantial evidence is such relevant evidence as a reasonable mind might accept as
6 adequate to support a conclusion.” *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37, 44 n.25
7 (1993) (internal quotations omitted).

8 The purpose of the Coastal Resources Management Agency is to facilitate, through education
9 and management, the efficient use of coastal resources. Coastal resources are a vibrant and vital part
10 of Saipan and the Commonwealth, as an island community. This important function is underscored
11 by the ability of CRM to “[e]ncourage land use master planning, floodplain management, and the
12 development of zoning and building code legislation.” 2 CMC § 1511(a)(1). The statutory mandate
13 of CRM is to encourage and help develop zoning legislation and practice. There is no authority,
14 statutory or otherwise, that empowers the CRM to act as a zoning board itself. Therefore, no facts
15 will be considered regarding the impact of the Wilson Project, beyond that of its impact on the
16 capacity of the sewage line at issue. Aesthetic impact is not a proper basis for this Court to consider
17 in making its determination, as it is not supported by any type of zoning authority held by the CRM.
18 Indeed, zoning is the prerogative of the people of the Commonwealth, as expressed by their elected
19 leaders.

20 Two aspects of the permit denial are not supported by substantial evidence. First, and most
21 important, CUC, the agency in the best position to analyze such matters, stated that the Wilson
22 Project has “sufficient capacity to accommodate the expected peak flows from the 142 garment
23 workers that will occupy it.” A.R. at 111. This appears to end the discussion regarding the capacity
24 issue. The capacity analysis submitted by Stanley Good indicated that the sewage lines could handle
25 the capacity, and that any defects were those that could not be cured by the Petitioner. The concerns
26 appear to have been addressed and satisfied, and are supported by substantial evidence that line
27 capacity is sufficient for the project.

28 More troubling to this Court than the substantial evidence issue, is the denial of a statutorily

1 prescribed layer of agency review. “The appeals board shall hear and rule on appeals brought by
2 any persons aggrieved by coastal permit decisions, as prescribed by regulations.” 2 CMC § 1541(b).
3 This is a right, moreover a due process right, that was not afforded the Petitioner. Administrative
4 procedure is an essential and integral part of the Commonwealth system of government, where many
5 decisions are placed in the hands of largely autonomous agencies dealing in delegated power. The
6 reason such layers of review exist is to protect the integrity of the administrative process. That
7 procedural integrity is called into question any time steps in the administrative procedural process
8 are not followed.

9 The root of the problem at hand is the lack of appointments of CRM Appeals Board
10 Members. The Petitioner followed all procedures mandated by statute and by CRM regulations, and
11 an inequity is generated when the procedure is not observed by the governing agency. The
12 Commonwealth Supreme Court has stated, “In an administrative proceeding where a person's life,
13 liberty, or property is at stake, Article I, § 5 of the Commonwealth Constitution requires, at a
14 minimum, that the person be accorded meaningful notice and a meaningful opportunity to a hearing,
15 appropriate to the nature of the case.” *Office of the Attorney General v. Deala*, 3 N.M.I. 110, 116
16 (1992). Petitioner’s right of review should have been afforded.

17 Respondent asserts that because the Petitioner received review in the form of the decision
18 of the Office of the Governor and other agency officials, that it has in effect received its appropriate
19 level of review. This Court cannot sanction this concept, because it circumvents the statutorily
20 mandated process and would create precedent for possible abuse in the future. While abuse does
21 not appear to be at issue here, any finding that appellate review, agency or judicial, could be avoided
22 creates precedent this Court is not willing to engender.

23 **IV. ORDER**

24 The permit shall issue conditionally subject to evaluation of the sewer line and resolution of
25 the concerns indicated by the DEQ.

26
27 **SO ORDERED** this 5th day of April 2004.

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/s/
David A. Wiseman
Associate Judge