



Building, Planning & Zoning Department

MEMORANDUM

To: Supervisor Christopher P. St. Lawrence
Deputy Supervisor Frances M. Hunter
Councilman Edward Friedman
Councilman David J. Stein
Councilman Yitzchok Ullman

Cc: Michael L. Klein, Esq., Town Attorney

From: Alan M. Simon, Director of Planning and Zoning Administration

Date: May 8, 2009

Re: Zone Change Petition of Scenic Development, LLC

Please be advised that at its May 5, 2009 meeting, the Town of Ramapo Planning Board voted 7-0 to recommend to the Town Board that they look favorably upon the request of Scenic Development, LLC for a change in zone on its property from an R-40 zone to an MR-8 zone.

Please do not hesitate to contact me with any questions.

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ATTORNEYS AT LAW
FOUR EXECUTIVE BOULEVARD
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SUFFERN, NEW YORK 10901
(845) 357-4000

TERRY RICE *
CLAUDIA AMON

* ADMITTED TO PRACTICE IN N.Y. & N.J.

Fax: (845) 357-0765

SHELDON DAMSKY
OF COUNSEL

November 16, 2009

Re: Patrick Farm

This letter is intended to comment on the letter of Susan Shapiro, dated July 22, 2009 with respect to the to the 2001 conveyance of a portion of the Patrick Farm property to KLM Properties. As is related herein, the contention that the conveyance was contrary to unspecified common law is erroneous. Moreover, not having challenged the 2001 conveyance from the Town of Clarkstown to KLM Properties LLC in an appropriate action, the time to do so has long since lapsed and the issue may not be raised at this late date, particularly in the instant application to which the Town of Clarkstown is not a party.

The appropriate mechanism for a challenge to the conveyance from the Town of Clarkstown to KLM would have been a taxpayers action pursuant to General Municipal Law § 51. General Municipal Law § 51 authorizes an action "by any person or corporation whose assessment, or by any number of persons or corporations, jointly, the sum of whose assessments shall amount to one thousand dollars, and who shall be liable to pay taxes on such assessment in the county, town, village or municipal corporation." It is apparent from the address on the Shapiro letter that the Shapiros are residents of the Town of Ramapo and, as such, do would not have standing to challenge the conveyance by the Town of Clarkstown.

In addition, the statute of limitations applicable to a taxpayers' action pursuant to General Municipal Law § 51 is one-year. *See Clowes v. Pulver*, 258 A.D.2d 50, 691 N.Y.S.2d 649 (3d Dept.), *lv. denied*, 94 N.Y.2d 858, 704 N.Y.S.2d 533, 725 N.E.2d 1095 (1999); *Miller v. Town of Gorham*, 163 Misc.2d 250, 620 N.Y.S.2d 735 (Sup. Ct. Ontario Co. 1994); *see also* 103 N.Y.Jur.2d Taxpayers' Actions § 9. The period in which a challenge could be made has long since passed.

In addition, the reasoning and conclusion suggested by the letter are erroneous. It is my understanding that the Town of Clarkstown took title to only a portion of the Patrick Farm property by a series of deeds. It is my understanding that those deeds consist of three deeds from Haverstraw Lands, Inc and one deed from Lawrence Kaufman and others, all dated October 9, 1996; a deed from Arthur Harris to the Town of Clarkstown dated November 30, 1998; and a deed from Ronnie A. Tortorello to the Town of Clarkstown dated March 4, 1999. I have reviewed the foregoing deeds. None of the deeds specify the purpose for which the parcels were

acquired by the Town or contain and recitation, restriction or limitation as to the use of the land relevant to the claims in the Shapiro letter.

Pursuant to the applicable law, the conclusion advocated in the letter is misplaced. Where land is acquired with a restriction for park use in the deed, or by an authority whose power is restricted to acquisitions for park purposes, or land is dedicated to park use by the public, such property may not be used for any other purpose unless there is specific authority from the state legislature. *See Brooklyn Park Commissioner v. Armstrong*, 45 N.Y. 234 (1871); *Williams v. Gallatin*, 229 N.Y. 248, 128 N.E. 121 (1920); *Rivet v. Burdick*, 255 App.Div. 131, 6 N.Y.S.2d 79 (4th Dept. 1938); *Aldrich v. City of New York*, 208 Misc. 930, 145 N.Y.S.2d 732 (Sup Ct. Queens Co. 1955), *aff'd*, 2 A.D.2d 760, 154 N.Y.S.2d 427 (2d Dept. 1956); *O'Shea v. Hanse*, 3 Misc.2d 307, 147 N.Y.S.2d 792 (Sup Ct. Suffolk Co. 1955); *Pearlman v. Anderson*, 62 Misc.2d 24, 307 N.Y.S.2d 1014 (Sup Ct. Nassau Co. 1970). However, “[t]his principle of law has never been applied to land acquired for general municipal purposes and used for a park.” *Pearlman*, 62 Misc.2d at 26, 307 N.Y.S.2d at 1016.

In *Pearlman*, the Court concluded that “land acquired in fee for general purposes without any restriction even though used for a park may be used for other municipal purposes.” *Id.* at 26, 307 N.Y.S.2d at 1017.

The Attorney General has determined that if land has not been dedicated, used or otherwise devoted to park purposes, and neither the deed of conveyance, nor the title to the property restricted or conditioned in its use to such purposes, a municipality may sell it after determining that it is no longer required for a public use or was unsuitable therefor. 9 Op.St.Comp. 251-252, discussed in *O'Shea*, 3 Misc.2d at 311-12, 147 N.Y.S.2d at 797-98. There, the town in which a Village was located, conveyed to it for a money consideration three lots in a residential district. The deed contained no restriction on the use of the property, although at two previous meetings of the board of trustees it was mentioned either in a resolution or elsewhere in the minutes that the property should be a park dedicated to public use. The property had never been so dedicated or used as a park and in the opinion of the board of trustees was not suitable for such use. *See also* 1967 Op.AttyGen. 83, 1967 WL 157125 (1967).

As a result, the contention that a defect in the title exists or that the Town of Clarkstown could not have conveyed the property without approval by the State legislation is substantively mistaken.

Very truly yours,

Terry Rice

TR-wp-1116/125-126



COUNTY OF ROCKLAND

SEWER DISTRICT NO. 1

4 Route 340
Orangeburg, New York 10962
(845) 365-6111
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C. SCOTT VANDERHOEF
County Executive

JULIUS GRAIFMAN
Chairman
CHRISTOPHER P. ST. LAWRENCE
Vice-Chairman
DIANNE T. PHILIPPS, P.E.
Executive Director

October 27, 2009

Mr. Dennis Rocks, P.E.
Leonard Jackson Associates
26 Firemen's Memorial Drive
Pomona, NY 10970

Re: Patrick Farm
Route 202 and Route 306
Tax Lots 89/32.11-1-2, 3, 4, 12, 13, 14, 15 & 16 and 89/32.14-2-3

Dear Mr. Rocks:

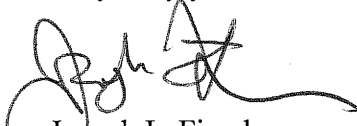
Our office has received and reviewed your request for confirmation that the District's wastewater treatment plant has capacity for the projected sewage flows from the above referenced project.

Rockland County Sewer District No. 1's wastewater treatment plant in Orangeburg, New York has hydraulic capacity to treat the additional estimated daily flow of 198,800 gallons per day (gpd) from the Patrick Farm development.

The District's existing State Pollution Discharge Elimination System (SPDES) permit for the Orangeburg plant can accommodate the additional estimated daily flow of 198,800 gpd from the Patrick Farm development.

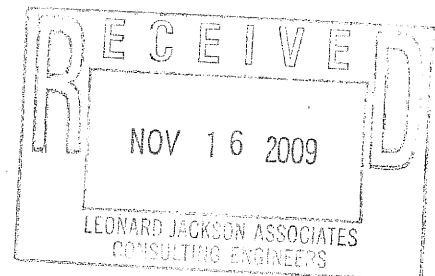
Please inform us of all developments in this project. If you have any questions, please contact this office at 845-365-6111.

Very truly yours,


Joseph LaFiandra
Engineer II

cc: D. Philipps M. Saber

File: TOR 32.11-1-4 et al. – Patrick Farm
Reader



SIVE, PAGET & RIESEL, P.C.

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WEB SITE: www.sprlaw.com

October 2, 2009

By Email

Anne Cutignola, AICP
Tim Miller Associates, Inc.
10 North Street
Cold Spring, NY 10516

Re: Patrick Farm

Dear Ms. Cutignola:

We write to confirm that the Corps of Engineers, New York District Office, has approved the delineation of federally-regulated wetlands and other waters of the United States on the Patrick Farm development site and verified that the activities associated with the project are authorized under Nationwide Permit (NWP) 29.

Dr. Christopher Mallery of the Corps of Engineers, New York District Office, had reviewed the delineation of waters of the United States, including wetlands, on the development site set forth in the Preliminary Layout Study dated January 10, 2006. By letter dated February 1, 2007, Dr. Mallery approved that delineation and confirmed that the activities associated with the development were sufficiently minor in nature so as to comply with NWP 39 (since renumbered as NWP 29). Dr. Mallery thus authorized these activities to proceed, provided that they are implemented consistent with general conditions of the NWP program.

Although development plans have slightly changed since Dr. Mallery's letter, the project as modified does not have any additional impacts on delineated wetlands or other waters of the United States (in fact, the changes reduce activities near such areas). Thus, as set forth in Dr. Mallery's letter, the changes do not affect the project's authorization under NWP 29.

SIVE. PAGET & RIESEL, P. C.

Ann Cutignola
October 2, 2009
Page 2

Consistent with Dr. Mallery's letter, the development also complies with applicable general conditions of the NWP program: there will be no impact to water flows (General Condition 9); the project complies with all applicable floodplain requirements for the 100-year floodplain that parallels the stream that crosses the northeast part of the Site (General Condition 10); no heavy equipment is expected to be used in wetlands but, in such event, mats or similar measures will be taken to protect the wetlands (General Condition 11); appropriate soil erosion and sediment controls will be used and maintained (General Condition 12) (in this regard, the project will comply with applicable SPDES Stormwater General Permit provisions and will have a Stormwater Pollution Prevention Plan in place); no temporary fills of waters of the United States, including wetlands, are expected, but if that occurs, the fill will be removed in its entirety and the affected area returned to pre-filling elevations and re-vegetated as appropriate (General Condition 13); no threatened or endangered species, or habitat thereof, will be affected by the project (General Condition 17); the Mather Farmstead site (which is eligible for the National Register of Historic Place) will not be disturbed, and there will be an appropriate buffer around this site (the cemetery, though not eligible for listing, will also not be disturbed) (General Condition 18); and no critical resource waters are on or near the Site (General Condition 19).

Please feel free to contact me if there are any questions.

Sincerely,



Mark A. Chertok

cc: Scenic Development
Ann Cutignola (TMA)
Greg M. Fleischer (CEA)

4836\Ltr TMA 10.2.09



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

FEB 1 - 2007

Regulatory Branch

Subject: Enforcement Case No. 2004-047 (NAN-2004-505)
Scenic Development, LLC
Town of Ramapo, Rockland County, New York

Mr. Greg M. Fleischer
Carpenter Environmental Associates, Inc.
307 Museum Village Road
P.O. Box 656
Monroe, New York 10950

Dear Mr. Fleischer:

On May 17, 2004, the New York District of the U.S. Army Corps of Engineers issued a Cease and Desist Order to Scenic Development, LLC, restricting further construction on the project site of a residential development known as Patrick Farm, located between Route 202 and Route 306, in the Town of Ramapo, Rockland County, New York. This order was based on observations by a representative of this office during a site inspection on May 12, 2004, when it was noted that fill had been placed in waters of the United States, particularly streams and wetlands, on the project site, without prior authorization from this office.

In a letter dated November 27, 2006, Carpenter Environmental Associates, as environmental consultants for the project, detailed measures that had been taken to remediate the previously impacted areas, and provided a preliminary layout for the future development of the site, including its proposed impacts to areas within the jurisdiction of this office. On December 19, 2006, a representative of this office conducted an inspection of the project site with representatives of Carpenter Environmental Associates. In a letter dated January 12, 2007, Carpenter Environmental Associates described the further measures that had been taken to complete the remediation of the previously impacted areas, and submitted a drawing entitled "Patrick Farm, Town of Ramapo, Rockland County, New York - Preliminary Layout Study (SF)", dated January 10, 2006, with revised graphics dated January 15, 2007, which set out a proposal for the current project, which involves the construction of 139 single-family homes.

Based on observations during the recent site inspection and the submittals of the project consultant, it appears that the completed remedial measures have fully addressed the enforcement concerns of this office with regard to the previously impacted areas. Accordingly, the Cease and Desist Order issued by this office on May 17, 2004, is considered rescinded, effective on the date of this letter, and the relevant enforcement case is considered administratively closed.

Subject: Enforcement Case No. 2004-047 (NAN-2004-505)
Scenic Development, LLC
Town of Ramapo, Rockland County, New York

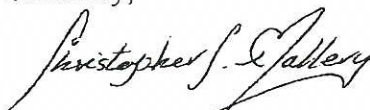
This office has reviewed the proposal for the further development of the site, and specifically the above-referenced drawing, and has determined that the prior and proposed impacts of the project as set out in this drawing are sufficiently minor in scope as to be considered authorized under nationwide general permits (specifically nationwide general permit No. 39), provided that the remainder of the project is carried out in accordance with the general conditions of the nationwide general permit program. In this last regard, and in light of the sensitive nature of the watercourses on the site, it would be in the best interests of the project sponsor to be especially diligent in the design and implementation of adequate erosion and sediment controls during construction on the project site.

If, at any time during the course of construction, the project is modified in such a manner that it would have additional impacts to areas identified on the above-referenced drawing as wetlands and waters of the United States, additional written authorization from this office will be necessary prior to the implementation of such modifications.

It is anticipated that the project will be carried out in accordance with all appropriate state and local approvals that may be required.

Your cooperation with the regulatory requirements of this office is appreciated. If any questions should arise concerning this matter, please contact me at 917-790-8418.

Sincerely,



Christopher S. Mallery, Ph.D.
Chief, Harbor Supervision
and Compliance Section

c: NYSDEC
Scenic Development
Leonard Jackson Associates
Town of Ramapo