

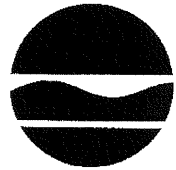
APPENDIX C
Correspondence

New York State Department of Environmental Conservation
Division of Environmental Permits, Region 3

21 South Putt Corners Road, New Paltz, New York 12561-1620

Phone: (845) 256-3000 • FAX: (845) 255-4659

Website: www.dec.ny.gov



Alexander B. Grannis
Commissioner

October 6, 2009

STEVE MARINO
TIM MILLER ASSOCIATES
10 NORTH STREET
COLD SPRING, NY 10516

RE: DEC Application #3-3720-00386/00001
401 Water Quality Certification Application
Hillcrest Commons – 150 Condominium Units
Town of Carmel, Putnam County

NOTICE OF INCOMPLETE APPLICATION

Dear Mr. Marino:

On September 3, 2009 the New York State Department of Environmental Conservation (DEC or Department) received a permit application submitted on behalf of BBJ Associates, LLC for subdivision of 107.75 acres and construction of eight buildings to include 150 age restricted condominium units, including the proposed fill of .53 acre of federally regulated wetland related to the construction of an access road. The Department has reviewed this application and determined that it is incomplete. The following items must be addressed before review of this application may continue:

I. Plan Revisions – Based upon review of aerial photos and the wetland delineation provided, it appears that the subject property contains wetlands that are of size and quality to be eligible for inclusion on the state regulatory maps for Freshwater Wetlands. Although not currently identified on state wetland regulatory maps, it is the Departments position that impacts to these wetlands should be avoided and minimized to the extent practicable. In similar circumstances, the Department has worked with project sponsors to achieve an acceptable development consistent with the state regulatory permit standards for Freshwater Wetlands (6 NYCRR Part 663) without being delayed by the formal process of adding a wetland to the state map. The above referenced wetland is located along the south-western portion of the subject parcel. This proposal includes disturbance within the 100 foot adjacent area of this wetland for the implementation of a wetland mitigation plan to compensate for the federally regulated wetlands to be lost through construction of the access road. The proposed disturbances are consistent with Freshwater Wetland regulations and therefore, the Department does not object to this proposal. However, the eligibility of these wetlands for mapping must be reflected in the project plans. Therefore, the Department requires the following plan revisions:

- a. All plan sheets which include the delineation of the eligible wetland must include the preferred language of DEC. The wetland must be labeled “NYS DEC Eligible Freshwater Wetland” and the 100 foot adjacent area must be labeled “NYS DEC Eligible Freshwater Wetland 100 Foot Adjacent Area.”
- b. The final subdivision plat must include the plan note denoted on the enclosed “Notice to Local Governments, Project Sponsors and Applicants.”

Hillcrest Commons
150 Condominium Units
October 6, 2009

Note: If a permit is ultimately issued for this project, it likely will contain a special condition requiring that the deed for each affected parcel contain a notice as written below:

“ The real property on this map contains freshwater wetlands eligible to be designated and mapped as freshwater wetlands regulated by the New York State Department of Environmental Conservation (NYSDEC) pursuant to Article 24 of the New York State Environmental Conservation Law (the Freshwater Wetlands Act). Article 24 provides that there shall be no construction, grading, filling, excavating, clearing, or other regulated activity as defined by Article 24 of the ECL within any lands which may be so mapped and designated, nor within a 100 foot area immediately adjacent to such mapped wetlands, without a permit from the NYSDEC. Prior to commencing any such activities on such lands as shown on this map, a party should contact the NYSDEC Regional Office to determine the extent to which any wetlands on site are then being regulated as Article 24 Freshwater Wetlands and therefore requiring an appropriate Article 24 permit. This restriction shall bind the Grantees, their successors and assigns and shall be expressly set forth in all subsequent deeds to this property.”

2. State Environmental Quality Review Act (SEQR) – Draft and Final Environmental Impact

Statements have been prepared to evaluate potential adverse environmental impacts which may result from the undertaking of this project. The Department is also in receipt of a Supplemental Draft Environmental Impact Statement (SDEIS) dated July 23, 2009, on which the Department has recently provided comments. Pursuant to 6NYCRR Part 617.11(c) the Department cannot make a final decision on this application until 10 days after acceptance of the FSEIS by the lead agency. The Department will issue its SEQR Findings at the time of permit decision.

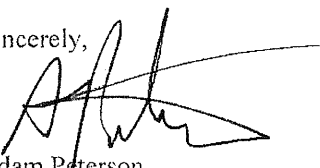
3. Compliance with the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-0-08-001) - All construction activities that disturb greater than 1 acre of land require a SPDES General Permit for Construction Activities and a Notice of Intent must be filed with DEC to obtain coverage under this permit. As this parcel is located within the Town of Carmel Municipal Separate Storm Sewer System (MS-4) the MS-4 Acceptance Form must be submitted when filing the Notice of Intent for coverage with the Department.

Note: Per the September 5, 2008 correspondence from Ms. Cynthia Blakemore of the New York State Office of Parks, Recreation & Historic Preservation (NYS OPRHP), it has been determined that this project will conditionally have “No Adverse Impact to historic properties in or eligible for inclusion in the State and National Registers of Historic Places.” As a State Agency with regulatory authority over this project, the DEC has an obligation pursuant to the State Historic Preservation Act to ensure that the concerns of the OPRHP are addressed. Therefore, any permit issued by this Department will include reference to the conditions included in the September 5, 2008 letter referenced above. These conditions will include the filing of a deed covenant (language enclosed) regarding the presence of culturally sensitive areas within the bounds of the subject parcel.

Please submit **two copies** of all documents submitted in response to this Notice. Contact me with any concerns that you may have at (845) 256-3096.

Hillcrest Commons
150 Condominium Units
October 6, 2009

Sincerely,



Adam Peterson
Environmental Analyst

Enclosures

Cc: BBJ Associates, LLC (w/enclosures)
Town of Carmel Planning Board (w/enclosures)
NYC DEP, East of Hudson
Brian Orzel, USACOE
Brian Drumm, DEC

SAMPLE COVENANT

In consideration of the conveyance of certain real property, hereinafter referred to as [**name of property**] located in the City of _____, County of _____, State of New York, which is more fully described as follows:

[**insert legal description**]

[**name of recipient**] hereby covenants and agrees on behalf of [**him/her/itself**], [**his/her/its**] heirs, successors, and assigns at all times with the New York State Office of Parks, Recreation and Historic Preservation or its successor agency, hereinafter referred to as OPRHP, that should any change in land use be proposed which would result in ground disturbing activities, the OPRHP must approve in writing plans for the proposed change.

This covenant is binding upon [**name of recipient**], [**his/her/its**] heirs, successors and assigns in perpetuity, and shall be inserted verbatim or by express reference in any deed or other legal instrument by which

[**he/she/it**] divests [**him/her/itself**] of either the fee simple title or any other lesser estate in the [**name of property**] or any part thereof. The failure of the OPRHP to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

New York State Department of Environmental Conservation
Division of Environmental Permits, Region 3
21 South Putt Corners Road, New Paltz, New York 12561-1620
Phone: (845) 256-3054 FAX: (845) 255-4659
Website: www.dec.ny.gov



Alexander B. Grannis
Commissioner

Notice to Local Governments, Project Sponsors and Applicants:

Freshwater Wetlands Eligible for State Mapping - Subdivisions

In order to clarify and explain the meaning of the State eligible freshwater wetland boundary and 100 foot adjacent area depicted on development and subdivision plans, the New York State Department of Environmental Conservation (DEC) requests that the following note be incorporated onto the plans:

"Some or all of the lots, as shown on this subdivision plan, contain freshwater wetlands that are eligible to be designated and mapped as freshwater wetlands regulated by the New York State Department of Environmental Conservation (NYSDEC) pursuant to Article 24 of the New York State Environmental Conservation Law (the Freshwater Wetlands Act). Article 24 provides that there shall be no construction, grading, filling, excavating, clearing or other regulated activity within any lands which may be so mapped and designated, nor within a 100 foot area immediately adjacent to such mapped wetlands, without a permit from the NYSDEC. Prior to commencing any such activities on such lands as shown on this map, a party should contact the NYSDEC Regional Office to determine the extent to which any wetlands on site are then being regulated as Article 24 Freshwater Wetlands and therefore requiring an appropriate Article 24 permit."

Freshwater Wetlands Eligible for State Mapping - Individual Parcels

In addition to the above, applicants and project sponsors should be aware that if a permit is ultimately issued for the project by DEC, it likely will contain a special condition requiring that the deed for each affected lot or parcel contain a restriction as written below:

"The real property on this map contains freshwater wetlands eligible to be designated and mapped as freshwater wetlands regulated by the New York State Department of Environmental Conservation (NYSDEC) pursuant to Article 24 of the New York State Environmental Conservation Law (the Freshwater Wetlands Act). Article 24 provides that there shall be no construction, grading, filling, excavating, clearing or other regulated activity as defined by Article 24 of the ECL within any lands which may be so mapped and designated, nor within a 100 foot area immediately adjacent to such mapped wetlands, without a permit from the NYSDEC. Prior to commencing any such activities on such lands as shown on this map, a party should contact the NYSDEC Regional Office to determine the extent to which any wetlands on site are then being regulated as Article 24 Freshwater Wetlands and therefore requiring an appropriate Article 24 permit. This restriction shall bind the Grantees, their successors and assigns and shall be expressly set forth in all subsequent deeds to this property."

In order to ensure that State freshwater wetland requirements are known, DEC requests that municipal planning boards also require the above plan note and deed notice for each affected lot as part of any subdivision of property containing State eligible freshwater wetlands and/or adjacent area. DEC encourages planning boards and property owners to involve DEC early in the planning of subdivisions involving freshwater wetlands potentially eligible for state mapping to ensure that all proposed lots will comply with State requirements and that wetland benefits and functions are protected and preserved.



BUILDING INSPECTOR

Town of Kent
25 Sybil's Crossing, Kent Lakes, New York 10512

(845) 225-3900

Fax: (845) 225-5130

Email: buildinginspector@townofkentny.gov

September 28, 2009

John R. Bainlardi
Senior Development Manager
Wilder Balter Partners
570 Taxter Road, 6th Floor
Elmsford, New York 10523

Re: Hillcrest Commons, Route 52
Tax Map # 44.9-2-27 & 44.10-2-1

Dear Mr. Bainlardi:

I write in response to your request for an interpretation of the application of the Town of Kent's Zoning Law, as recently amended to the above referenced project.

As described to me, the project is located in both the Town of Carmel ("Carmel") and the Town of Kent ("Kent") and includes, on the portion of the site in Carmel a 150-unit multi-family housing project. In addition to the housing to be located in Carmel, there currently exists on the portion of the site in Carmel, a 500,000 gallon municipal water tower which serves, and is owned and maintained by Carmel Central Water District #2 ("CWD#2). Additionally, as part of the multi-family housing development the developer will be constructing a high pressure water system including a new pump station and smaller water storage tank, all to be located on the portion of the site located in Carmel. This water system including the pump station and water storage tank are to be dedicated to and owned and maintained by CWD#2 as required by Carmel.

The only improvements to be located on the portion of the site in Kent are the access road and the drainage and stormwater improvements. The portion of the site in Kent is located in both R-10 and Commercial Zoning Districts. The proposed access road will serve as a permanent, non-revocable right-of-way to both the water tower and water system.

It should be noted that this project was the subject of a previous interpretation by me on October 23, 2006 which was later the subject of an appeal to the Zoning Board of Appeals and to the Appellate Division Second Department. At that time no mention was ever made by the developer of the existing municipal water tower or of the proposed municipal high pressure water system. Since that time Kent's Zoning Law has undergone extensive amendments. It is based on this change of facts – the existence of the municipal towers – and the change in law that the developer now seeks this interpretation.

The Zoning Board of Appeals determined in its January 19, 2007 decision, that the access road, even if not accepted for dedication by Kent is a road. The Appellate Division, Second Department, upheld this decision in its June 23, 2009 decision.

As the access road is in fact a road, one of the relevant provisions of the Code of the Town of Kent ("Kent Code") is the recently added portion of Section 77-6D of the Kent Code which states:

No street or road, whether private or public, which exclusively serves or support a lot located in another district, which lot is used for any prohibited purpose in the district in which the street or road is located, shall be used to provide access to said lot.

The proposed access road does exclusively serve a lot in another district, i.e. the district in Carmel, as there are no uses on the lots in Kent being served by the road. However, there are two different uses being served. First, there is the multi-family housing use. If this use were alone on the site, Section 77-6D would prevent the construction of the road in Kent because multi-family housing is not allowed in either the R-10 or Commercial Zoning Districts in Kent. There is, however, an additional use on the site in Carmel, the existing municipal water tower and the proposed municipal high pressure water system, both of which meet the definition of public utility under the Kent Code:

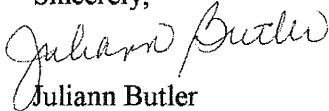
PUBLIC UTILITY – Any person, firm, corporation or governmental agency, duly authorized to furnish to the public, under governmental regulation. electricity, gas, water, sewage treatment, steam or communication service. This definition shall not bestow any special status or standing not already provided by state or federal law.

Section 77-15A(5) and section 77-21A(18) of the Kent Code permit public utility structures and rights-of-way as a principal permitted use, subjective to site plan approval, in the R-10 and Commercial Zoning Districts, respectively. Accordingly, because the proposed access road will be a right-of-way to at least one public utility structure, it is a permissible use of that portion of the site in Kent. Furthermore, as the public utility

structures themselves are a permitted principal use themselves in the R-10 and Commercial Zoning Districts, Section 77-6D does not bar the construction of the road because it is accessing what would be a permitted use in Kent. This is consistent with both the Zoning Board's January 19, 2007 decision and the Appellate Division's June 23, 2009 decision which relied on the fact that the proposed road served a single use not allowed in the R-10 and Commercial Zoning Districts in Kent, whereas under the current facts the proposed road itself is a permitted use (a right-of-way to a public utility) and serves two uses, one permitted (public utility) and one not permitted (multi-family housing) in the districts where the road will be constructed.

In summary, the proposed access road on the portion of the site in the Town of Kent is a permitted use subject to site plan approval.

Sincerely,



Juliann Butler
Building Inspector
Town of Kent

JB:pk

cc: Town of Kent Planning Board



**DEPARTMENT OF
ENVIRONMENTAL
PROTECTION**

465 Columbus Avenue
Valhalla, New York
10595-1336

**Steven W. Lawitts
Acting Commissioner**

Tel. (718) 595-6565
Fax (718) 595-3557

Bureau of Water Supply

**Paul V. Rush, P.E.
Deputy Commissioner**

Tel (914) 742-2001
Fax (914) 741-0348

April 20, 2009

Jeffrey Contelmo, P.E.
Insite Engineering, Surveying & Landscape Architecture, P.C.
3 Garrett Place
Carmel, NY 10512

Re: Hillcrest Commons
(T) Carmel; NYS Route 52
Croton Falls Reservoir Drainage Basin
DEP Log #2003-CF-0918-SP.1

Dear Mr. Contelmo:

The New York City Department of Environmental Protection (DEP) has received your April 9, 2009 letter with enclosures concerning the above-referenced application for approval of a Stormwater Pollution Prevention Plan (SPPP). Upon review of the preliminary Stormwater Pollution Prevention Plan (Report) dated March 6, 2009 and the associated drawings, the following comments are offered.

1. The existing conditions plan (1 inch = 100 feet) does not appear to have been included with the April 6, 2009 submission.
2. DEP acknowledges that the following items will be addressed/provided in a future submission:
 - An analysis of the capacity of the Fair Street culvert.
 - An analysis of velocities for the 2 year/24 hour storm at the outlet of each of the emergency access road cross culverts.
 - Sizing calculations for all temporary and permanent stormwater conveyance structures.
 - The locations of grass and rip rap sections of proposed drainage swales.
 - 36 inches deep sumps will be added to all terminal catch basins.
 - The total area of disturbance and material cut and fill amounts associated with each construction phase.

If you have any questions, please do not hesitate to contact me at (914) 742-2028.

Sincerely,

Matthew Giannetta, CPSWQ
Program Manager
Regulatory & Engineering Programs Section

xc: Town of Carmel Planning Board
John Karell, P.E., Town of Carmel
Michael Budzinski, P.E., Putnam County Health Department
Town of Kent Planning Board

BBJ Associates c/o Wilder Balter Partners
570 Taxter Road, 6th Floor, Elmsford, NY 10509

SCHEDULE E

SAMPLE STORMWATER CONTROL FACILITY MAINTENANCE AGREEMENT

Whereas, the Municipality of _____ ("Municipality") and the _____ ("facility owner") want to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Municipality for the below named project, and

Whereas, the Municipality and the facility owner desire that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components. Therefore, the Municipality and the facility owner agree as follows:

1. This agreement binds the Municipality and the facility owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans which are attached as Schedule A of this agreement.
2. The facility owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. The facility owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.
4. The facility owner shall provide for the periodic inspection of the stormwater control measures, not less than once in every five year period, to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the State of New York. The inspecting

engineer shall prepare and submit to the Municipality within 30 days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.

5. The facility owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures except in accordance with written approval of the Municipality.

6. The facility owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Municipality or in accordance with the recommendations of the inspecting engineer.

7. The facility owner shall provide to the Municipality within 30 days of the date of this agreement, a security for the maintenance and continuation of the stormwater control measures in the form of (a Bond, letter of credit or escrow account).

8. This agreement shall be recorded in the Office of the County Clerk, County of _____ together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to _____.

9. If ever the Municipality determines that the facility owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Municipality or by the inspecting engineer, the Municipality is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property.

10. This agreement is effective _____.

From: Lake George Park Commission Model Stormwater Management Ordinance