



May 29, 2024

Lisa M. Czechowicz, Deputy Regional Permit Administrator
NYS Department of Environmental Conservation
Division of Environmental Permits, Region 9
700 Delaware Avenue
Buffalo, New York 14209

Re: Rezoning of 3880 & 3910 East Robinson Road from GB to MFR-7 [Z-2024-02]
Applicant/Project Sponsor: MJ Peterson Corp. c/o Rainbow Racquet Club
File No. 10005.8

Dear Lisa:

Our firm represents the Project Sponsor in connection with the above referenced project. I have prepared this letter for the purpose of responding to the comments contained in your lead agency response letter to Scott Marshall dated May 20th. A copy of your letter is attached as Exhibit "1". For purposes of convenience, the five comments contained in your letter have been reproduced below in *italics* followed by the Project Sponsor's responses.

Comment #1: *Since project activities will involve land disturbance of 1 acre or more, the project sponsor, owner or operator is required to obtain a State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001). This General Permit requires the project sponsor, owner or operator to control stormwater runoff according to a Stormwater Pollution Prevention Plan (SWPPP), which is to be prepared prior to filing a Notice of Intent (NOI) and prior to commencement of the project. More information on General Permit GP-0-20-001, as well as information on how to electronically submit the eNOI form, is available on the NYSDEC's website at www.dec.ny.gov/chemical/43133.html. Information on permitting requirements and preparation of a necessary Stormwater Pollution Prevention Plan (SWPPP) is available on the NYSDEC's website at www.dec.ny.gov/chemical/8468.html.*

The Town of Amherst is designated as an MS4 community. The project sponsor, owner or operator of a construction activity that is subject to the requirements of regulated, traditional land use control MS4 shall have their SWPPP reviewed and accepted by the MS4 community. The "MS4 SWPPP Acceptance" form must be signed by the principal executive officer or ranking elected official from the MS4 community, or by a duly authorized representative of that person, and submitted along with the eNOI to receive NYSDEC approval before construction commences.

Response to Comment #1: The Project Sponsor acknowledges the need to submit a SWPPP and to obtain the approvals referenced in Comment #1 above based on the fact the proposed senior housing project will result in greater than one acre of land disturbance. A SWPPP prepared by Carmina Wood Design will be submitted to the Town of Amherst in connection with the future submission of a Site Plan Application.

HOPKINS SORGI & MCCARTHY PLLC

Attorneys at Law

5500 Main Street, Suite 343 • Williamsville, New York 14221

Direct: 716-510-4338 • E-mail: shopkins@hsmlegal.com • www.hsmlegal.com

Comment #2: *This proposed project requires a sanitary sewer connection that is designed to convey 2,500 gallons/day or more of municipal sewage and is therefore considered a sanitary sewer extension. The Erie Health Department, 503 Kensington Avenue, Buffalo, New York 14214, telephone: 716/961-6800, which acts as our agent, will be the approving agency.*

A detailed Downstream Sewer Capacity Analysis must be performed and submitted for the project as part of the Project's Engineering Report. Recent wet weather flow monitoring data and proposed new development flow should be analyzed relative to theoretical capacity at key nodes in the downstream sewer system and at pump stations (if any) to determine if capacity exists. Recent wet weather system flow data can consist of:

- *Comprehensive information from recent Sanitary Sewer System Evaluation Studies, or*
- *Wet weather data collected at (minimum of 3) key downstream nodes specified by the municipality.*
 - o *This dated information can consist of instantaneous flow measurements or continuous flow or sewer depth measurements obtained during significant wet weather events, preferably during high groundwater conditions. Peak sewer flow recording methods are an acceptable method to collect this information.*
 - o *Depth or flow measurements should continue until a significant wet weather event occurs, but would not have to extend beyond three months. A significant wet weather event is considered to be a daily rainfall amount of ½" or greater.*

The Downstream Sewer Capacity Analysis must also contain a narrative and a detailed map showing the downstream routing of sewers from the proposed project site to the Wastewater Treatment Plant. Line sizes, theoretical capacity and pump stations must be identified and included in the analysis.

This Downstream Sewer Capacity Analysis, as well as any required infiltration and inflow (I/I) rehabilitation offset work at a 4:1 ratio, should be part of the Project's Engineering Report. These items must be received as part of a complete sanitary sewer extension plan submission. The Town of Amherst shall coordinate the information contained in this submission. If adequate capacity is not available, the sewer extension will not be approved until an acceptable remediation plan is developed.

Response to Comment #2: *The Project Sponsor acknowledges that Sewer Extension Approval will be required. The Project Sponsor also acknowledges that it will be necessary for a Downstream Sewer Capacity Analysis to be prepared and that it will be necessary for the infiltration and inflow ("I&I") requirement to be satisfied via payment to the Town of Amherst since the senior housing project will generate more than 2,500 gpd of sanitary sewer flow. Christopher Wood, P.E., the Project Sponsor's engineer, is well aware of the requirements cited above in Comment #2 and the Downstream Sewer Capacity Analysis Report is in the process of being prepared and will be submitted to the Town of Amherst once it has been completed.*

Comment #3: *It was noted on the Federal Emergency Management Agency's (FEMA) FIRM Map No. 36029C0062H that the site is located within the designated 100-year floodplain. The proposed project should be designed in accordance with all applicable local municipal laws for flood damage reduction.*

Response to Comment #3: The Project Sponsor acknowledges the requirements contained in Comment No. 3 above.

Comment #4: *The project site was noted to be located in an archaeologically sensitive area based on information obtained through the Cultural Resource Information System (CRIS) on the New York State Office of Parks, Recreation and Historic Preservation's (OPRHP) website at <https://cris.parks.ny.gov/>. As part of the SEQR process, this concern should be evaluated, unless it can be verified by appropriate documentation that the site has been significantly disturbed in a way that would destroy potential artifacts.*

Please recognize that normal agricultural activities, such as plowing, would not constitute such land disturbance. If there are any questions regarding this, contact OPRHP (telephone: 518/237-8643).

Response to Comment #4: Powers Archaeology LLC has been retained by the Project Sponsor to conduct an archaeological assessment of the Project Site and a copy of the Phase I (IA and IB) Cultural Resource Investigation Report will be submitted to the Planning Department and SHPO upon its completion.

Comment #5: *The project area may include federally regulated wetlands based on a review of the National Wetlands Inventory wetland mapping. The project sponsor should consult with the United States Army Corps of Engineers (USACE), telephone: 716/879-4330, concerning USACE regulatory jurisdiction to determine if the project will impact federally regulated wetlands or require any other approval from that agency. If federal wetlands are involved, USACE may require the project sponsor to obtain a Section 401 Water Quality Certification (WQC) from NYSDEC. More information related to this requirement can be found on NYSDEC's website at https://dec.ny.gov/regulatory/permits-licenses/waterways-coastlines-wetlands/protection-of-waters-program#Water_Quality_Certification.*

Response to Comment #5: Davey Resources Group has submitted a copy of its Wetland Delineation Report dated May 10, 2024 to the United States Army Corps of Engineers for the purpose of requesting a Jurisdictional Determination. It is the professional opinion of Davey Resources Group per its Wetland Delineation Report dated May 10, 2024 that the 0.66 acre wetland area on the Project Site is not jurisdictional due to it being isolated within the area and not connecting to other waters of the United States.

If you have any questions regarding this letter or the status of proposed senior housing project, please feel free to contact me at 510-4338 or via e-mail at shopkins@hsmlegal.com.

Correspondence to Lisa M. Czechowicz, Deputy Regional Permit Administrator

May 29, 2024

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Sincerely,

HOPKINS SORGI & MCCARTHY PLLC



Sean W. Hopkins, Esq.

Enc.

cc: Scott A Marshall, Senior Planner, Planning Department
Victor L. Peterson III, President/CEO, M.J. Peterson Corp.
Christopher Wood, P.E., Carmina Wood Design
Donald Wilson, Davey Resources Group
Paul Powers, Powers Archaeology LLC

Exhibit 1

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 9
700 Delaware Avenue, Buffalo, NY 14209
P: (716) 851-7165 | F: (716) 851-7168
www.dec.ny.gov

May 20, 2024

SENT VIA EMAIL

Scott Marshall, Principal Planner
Town of Amherst Planning Department
5583 Main Street
Williamsville, New York 14221

Dear Scott Marshall:

SEQR LEAD AGENCY DESIGNATION 3880 & 3910 East Robinson Rd. Rezoning Town of Amherst, Erie County

NYSDEC has reviewed the Town of Amherst request for Lead Agency status on the above referenced project. The Department agrees that the Town should act as the SEQR Lead Agency since the environmental impacts of the proposal are primarily of local significance.

1. Since project activities will involve land disturbance of 1 acre or more, the project sponsor, owner or operator is required to obtain a State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001). This General Permit requires the project sponsor, owner or operator to control stormwater runoff according to a Stormwater Pollution Prevention Plan (SWPPP), which is to be prepared prior to filing a Notice of Intent (NOI) and prior to commencement of the project. More information on General Permit GP-0-20-001, as well as information on how to electronically submit the eNOI form, is available on the NYSDEC's website at www.dec.ny.gov/chemical/43133.html. Information on permitting requirements and preparation of a necessary Stormwater Pollution Prevention Plan (SWPPP) is available on the NYSDEC's website at www.dec.ny.gov/chemical/8468.html.

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2. This proposed project requires a sanitary sewer connection that is designed to convey 2,500 gallons/day or more of municipal sewage and is therefore considered a sanitary sewer extension. The Erie Health Department, 503 Kensington Avenue, Buffalo, New York 14214, telephone: 716/961-6800, which acts as our agent, will be the approving agency.



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Recent wet weather system flow data can consist of:

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 - This dated information can consist of instantaneous flow measurements or continuous flow or sewer depth measurements obtained during significant wet weather events, preferably during high groundwater conditions. Peak sewer flow recording methods are an acceptable method to collect this information.
 - Depth or flow measurements should continue until a significant wet weather event occurs, but would not have to extend beyond three months. A significant wet weather event is considered to be a daily rainfall amount of $\frac{1}{2}$ " or greater.

The Downstream Sewer Capacity Analysis must also contain a narrative and a detailed map showing the downstream routing of sewers from the proposed project site to the Wastewater Treatment Plant. Line sizes, theoretical capacity and pump stations must be identified and included in the analysis.

This Downstream Sewer Capacity Analysis, as well as any required infiltration and inflow (I/I) rehabilitation offset work at a 4:1 ratio, should be part of the Project's Engineering Report. These items must be received as part of a complete sanitary sewer extension plan submission. The Town of Amherst shall coordinate the information contained in this submission. If adequate capacity is not available, the sewer extension will not be approved until an acceptable remediation plan is developed.

3. It was noted on the Federal Emergency Management Agency's (FEMA) FIRM Map No. 36029C0062H that the site is located within the designated 100-year floodplain. The proposed project should be designed in accordance with all applicable local municipal laws for flood damage reduction.
4. The project site was noted to be located in an archaeologically sensitive area based on information obtained through the Cultural Resource Information System (CRIS) on the New York State Office of Parks, Recreation and Historic Preservation's (OPRHP) website at <https://cris.parks.ny.gov/>. As part of the SEQR process, this concern should be evaluated, unless it can be verified by appropriate documentation that the site has been significantly disturbed in a way that would destroy potential artifacts.

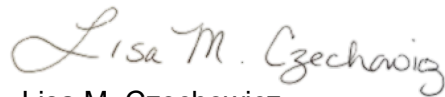
Scott Marshall
May 20, 2024
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Please recognize that normal agricultural activities, such as plowing, would not constitute such land disturbance. If there are any questions regarding this, contact OPRHP (telephone: 518/237-8643).

5. The project area may include federally regulated wetlands based on a review of the National Wetlands Inventory wetland mapping. The project sponsor should consult with the United States Army Corps of Engineers (USACE), telephone: 716/879-4330, concerning USACE regulatory jurisdiction to determine if the project will impact federally regulated wetlands or require any other approval from that agency. If federal wetlands are involved, USACE may require the project sponsor to obtain a Section 401 Water Quality Certification (WQC) from NYSDEC. More information related to this requirement can be found on NYSDEC's website at https://dec.ny.gov/regulatory/permits-licenses/waterways-coastlines-wetlands/protection-of-waters-program#Water_Quality_Certification.

Thank you for providing this office the opportunity to review this proposal. If you have any questions, please feel free to contact Lisa Connors of my staff at 716/851-7165 or lisa.connors@dec.ny.gov.

Sincerely,



Lisa M. Czechowicz
Regional Permit Administrator

LDC/slr