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*Wilfred A. Rohde, P.E. • Michael W. Soyka, P.E. • John V. Andrews, Jr., P.E.*

# Memorandum

To:	Planning Board Town of Kent	Attn:	Philip Tolmach Chairman
From:	Julie S. Mangarillo, P.E., CPESC	Subject:	Erosion Control Plan Wetland Permit
Date:	April 10, 2019	Project:	DiSanza - 381 Ludingtonville Rd TM # 12.-3-63 & 64

The following materials were reviewed:

- Combined application form dated 3/1/2019, unsigned, including:
  - Agricultural Data Statement, Site Plan Checklist, Agent of owner's affidavit, Certification of Professional Engineer,
  - Owner's affidavit, incomplete, and Disclosure of Business Interest, incomplete.
- Wetland Delineation & Report prepared by Ted Kozlowski, dated February 27, 2019
- Short Environmental Assessment Form (EAF), Dated 3/4/2019, unsigned
- Drawing "Site Plan" prepared by John Karell, Jr., P.E., dated March 21, 2019
- Portion of older survey, with no discernible reference to preparation.

The project is to address an order to remedy for wetland violation and violation of erosion control for filling wetland & buffer with woodchips. Applicant will need to obtain permits for wetland disturbance and erosion control in order to correct the situation.

The subject Erosion and Sediment Control Plan is not approved. The following comments are provided for the Planning Board's consideration:

1. A wetland disturbance permit is required, therefore an erosion control permit is required. Additionally, more than 100 cubic yards of fill (woodchips) have been brought in, which also requires an erosion control permit.
2. The proposed project is within the NYCDEP East of Hudson watershed. Based upon the drawings provided, it is difficult to determine the extent of disturbance. It is likely greater than 5,000 SF. A Town of Kent Erosion & Sediment Control Permit is required. Coverage under NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-15-002 is anticipated.
3. This property is located along Stump Pond Stream. Based on FEMA flood mapping, the woodchips are in both the Special Flood Hazard Area Zone AE (100 year flood plain) and the Regulatory Floodway. The FEMA flood maps are based on aerial photo mapping. Provide additional survey and elevations consistent with FEMA elevation references to determine the boundary of the flood way and special flood hazard area relative to the wood chips.

- a. Per Town Code Chapter 39-15 "Floodways" – "Located within areas of special flood hazard are areas designated as floodways... The floodway is an ***extremely hazardous area due to the high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces***. When floodway data is available for a particular site... ***all encroachments, including fill***, new construction, substantial improvements and other development ***are prohibited within the limits of the floodway*** unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge." (emphasis added)
  - b. The woodchips pose a particular hazard as they can be swept away in flooding and contribute to blockages downstream, causing additional flooding.
  - c. Consultation with the Building Inspector will be required for the flood development permit. Our recommendation is at a minimum, any fill/woodchips within the floodway be removed to restore flow volume.
4. Provide revised Application with request for erosion control permit. Provide missing information and signatures on application and affidavits. Provide a copy of the deed per #14 of the application form.
  5. For the erosion control permit, provide the following information as required by Town Code Chapter 66-6.B.2:
    - a. §66-6.B.2.a – Provide "the location of the proposed area of disturbance and its relationship to property lines, easements, buildings, roads, walls and wetlands, if any, within 50 feet of the boundaries of said area."
      - i. **An area of disturbance is not shown on the drawing. Provide a line representing area of woodchip fill.**
    - b. §66-6.B.2.b – Provide "existing topography of the proposed area of disturbance at a contour interval of not more than two feet. Contours shall be shown for a distance of 50 feet beyond the limits of the proposed area of disturbance, or greater than 50 feet if determined necessary by the Planning Board Engineer..."
    - c. §66-6.B.2.c – Provide "proposed final contours at a maximum contour interval of two feet, locations of proposed structures, underground improvements, proposed surface materials or treatment, and dimensional details of proposed erosion and sediment facilities, as well as calculations used in the siting and sizing of sediment basins, swales, grassed waterways, diversion and other similar structures."
    - d. §66-6.B.2.e – Provide "a soils and slopes map indicating existing soils on the property, based on the most recent United States Department of Agriculture (USDA) Soil Conservation Service soil survey for Putnam County. Generalized slope areas for slopes 0% to 15%; 15% to 25%; and greater than 25% shall be delineated. This map shall be drawn on a topographic base map with the date and source of the soils and steep slope data noted on said map."
    - e. §66-6.B.2.g – Provide "a soil erosion and sedimentation control plan designed utilizing the standards and specifications contained in the most recent version of New York State Standards and Specifications for Erosion and Sediment Control. The design, testing, installation, maintenance and removal of erosion control

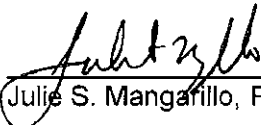
measures shall adhere to these standards and any conditions of this chapter and the erosion control permit. This plan shall:"

- i. [1] Describe or depict the temporary and/or permanent structural and vegetative measures that will be used to control erosion and sedimentation for each stage of the project, from land clearing to the finished stage.
  - ii. [2] Delineate the area of the site that will be disturbed and shall include a calculation of the acreage or square footage so disturbed.
  - iii. [3] Include a map drawn at a scale of not less than one inch equals 40 feet showing the location of erosion and sediment control measures, swales, grassed waterways, diversions and other similar structures.
  - iv. [4] Provide dimensional details of proposed erosion and sedimentation facilities as well as calculations used in the siting and sizing of sediment basins, swales, grassed waterways, diversions and other similar structures.
  - v. [5] Include a timetable and schedule for completion and installation of all elements of the erosion control plan, together with a schedule for completion of the construction and disturbance proposed by the applicant.
  - vi. [6] Provide an estimate for the cost of implementing all elements of the erosion control plan.
  - vii. [7] Provide a maintenance schedule for erosion control measures.
6. Provide a note on the drawing stating "Per §66-6.K (1): Within 10 days after installation of all erosion control plan measures, the applicant shall submit to the Building Inspector a letter from the qualified professional who designed the plan for the applicant/landowner stating that all erosion control measures have been constructed and installed in compliance with the approved plan(s)."
7. It is anticipated that coverage will be required under GP-0-15-002. Provide an erosion and sediment control only SWPPP in accordance with GP-0-15-002. Provide required information from Part III.B including:
- a. Part III.B.1.a – "Background information about the scope of the project, including the location, type and size of project;"
  - b. Part III.B.1.b – "A site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map shall show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s), floodplain/floodway boundaries; wetlands and drainage patterns that could be affected by the construction activity; existing and final contours; locations of different soil types with boundaries; material, waste, borrow or equipment storage areas located on adjacent properties; and location(s) of the stormwater discharge(s);"
  - c. Part III.B.1.c – "A description of the soil(s) present at the site, including an identification of the Hydrologic Soil Group (HSG);"
  - d. Part III.B.1.d – "A construction phasing plan and sequence of operations describing the intended order of construction activities, including clearing and

grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance;"

- e. Part III.B.1.e – "A description of the minimum erosion and sediment control practices to be installed or implemented for each construction activity that will result in soil disturbance. Include a schedule that identifies the timing of initial placement or implementation of each erosion and sediment control practice and the minimum time frames that each practice should remain in place or be implemented;"
- f. Part III.B.1.f – "A temporary and permanent soil stabilization plan that meets the requirements of this general permit and the technical standard, New York State Standards and Specifications for Erosion and Sediment Control, dated August 2005, for each stage of the project, including initial land clearing and grubbing to project completion and achievement of final stabilization;"
- g. Part III.B.1.g – "A site map/construction drawing(s) showing the specific location(s), size(s), and length(s) of each erosion and sediment control practice;"
- h. Part III.B.1.h – "The dimensions, material specifications, installation details, and operation and maintenance requirements for all erosion and sediment control practices. Include the location and sizing of any temporary sediment basins and structural practices that will be used to divert flows from exposed soils;"
- i. Part III.B.1.i – "A maintenance inspection schedule for the contractor(s) identified in Part III.A.6. of this permit, to ensure continuous and effective operation of the erosion and sediment control practices. The maintenance inspection schedule shall be in accordance with the requirements in the technical standard, New York State Standards and Specifications for Erosion and Sediment Control, dated August 2005;"
- j. Part III.B.1.j – "A description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in the stormwater discharges;"
- k. Part III.B.1.k – "A description and location of any stormwater discharges associated with industrial activity other than construction at the site, including, but not limited to, stormwater discharges from asphalt plants and concrete plants located on the construction site; and"
- l. Part III.B.1.l – "Identification of any elements of the design that are not in conformance with the requirements in the technical standard, New York State Standards and Specifications for Erosion and Sediment Control, dated August 2005. Include the reason for the deviation or alternative design and provide information which demonstrates that the deviation or alternative design is equivalent to the technical standards."
- m. The Applicant and Applicant's design professional are expected to be familiar with the provisions of the newly issued NYSDEC GP-0-15-002, particularly the sections regarding the maintenance of documentation on-site (Part II.C.2), provisions for modifying the SWPPP (Part II.C.5), trained contractor requirements (Part III.A.6), inspection and maintenance requirements (Part IV) and the procedure for termination of coverage in an MS4 community (Part V.A.4). These requirements are to be referenced in the SWPPP.

- n. In accordance with Part III.A.6, provide copies of the Contractor Certifications and copies of training certificates prior to the start of earth-disturbing activities.
  - o. Please note – With issuance of NYSDEC General Permit GP-0-15-002, per Part I.B.1.b 'Soil Stabilization' "In areas where soil disturbance activity has temporarily or permanently ceased..." and "...is located in one of the watersheds listed in Appendix C [Entire New York City Watershed located east of the Hudson River] the *application of soil stabilization measures must be initiated by the end of the next business day and completed within seven (7) days* from the date the current soil disturbance activity ceased..." (emphasis added). Provide a note on the drawing with this requirement.
8. Provide a Notice of Intent (NOI) for review.
9. Provide an MS4 SWPPP Acceptance Form with Sections I and II completed.
10. Refer to the Drawings:
- a. Provide revised survey with woodchip area, 100 year flood plain and flood way delineated. Provide an area calculation of woodchips within the flood way, 100 year flood plain, wetland and wetland adjacent area.
  - b. The woodchips were spread up to an existing fence. Show the location of that fence on the survey for reference.
11. We defer to the Planning Board's environmental consultant regarding wetland issues.
12. We defer to the Planning Board's planning consultant regarding planning and zoning issues.

  
Julie S. Mangarillo, P.E., CPESC

cc: Planning Board via email  
Bill Walters via email  
19-261-999-165

Bruce Barber via email  
Liz Axelson via email

# New York Law Journal

## Real Estate Trends

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### ZONING AND LAND USE PLANNING

## Are Schools Exempt From Local Zoning Regulations?



By  
Anthony S.  
Guardino

Many land use practitioners and local government officials believe that schools are exempt from all local zoning regulations. Indeed, the generally accepted practice in towns and villages throughout New York is that public and private schools need not comply with the zoning rules applicable to other property owners.

Various court decisions over the years apparently have led to that view. For example, nearly 50 years ago, in *Matter of Board of Education of City of Buffalo v. City of Buffalo*, 32 A.D.2d 98 (4th Dept. 1969), the Appellate Division, Fourth Department, declared that “school districts, in the performance of their purely governmental duties and activities, should not be subject to building code regulations or such other regulatory restrictions as zoning ordinances.”

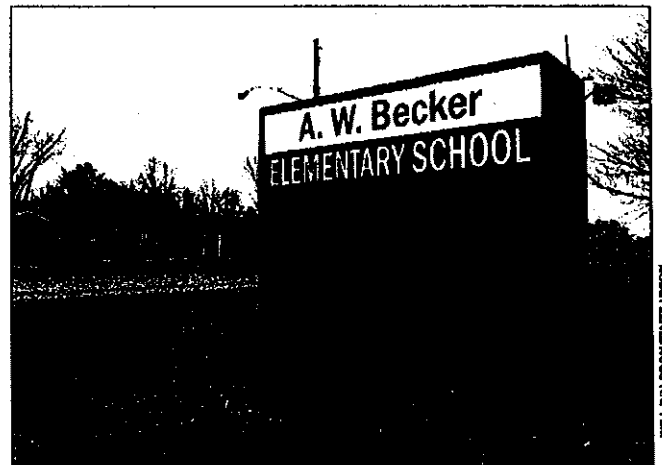
The Appellate Division, Third Department, recently issued a well-reasoned decision, in *Matter of Ravena-Coeymans-Selkirk Central School District v. Town of*

*Bethlehem*, 156 A.D.3d 179 (3d Dept. 2017), that clarified that zoning laws do apply to schools, except in very specific circumstances. The court reviewed and discussed a number of other decisions, including by the New York Court of Appeals, that it explained had been misinterpreted. The Third Department’s opinion in *Bethlehem* is one that doubtless will be studied, referred to, and cited for years to come.

### The ‘Bethlehem’ Case

The case arose when the Ravena-Coeymans-Selkirk Central School District asked the town of Bethlehem whether any local law prohibited it from replacing an existing traditional sign at one of its elementary schools with an electronic message board sign. The town responded that these kinds of electronic signs were expressly prohibited under its zoning laws.

The district then applied for a permit to install an electric sign that already had been donated to the school. The



DIGITAL SIGN outside the A. W. Becker Elementary School in Selkirk

town denied the district’s application, but the district nevertheless installed the sign.

The town informed the district that it was in violation of the town’s zoning law and that it needed to remove the sign. In response, the district said that, as a public school, it was not subject to the town’s zoning requirements. The district also appealed the town’s sign permit denial by seeking a variance from the town’s zoning board of appeals (the ZBA). After a public hearing, the ZBA denied the district’s application for a variance, citing, among other things, traffic safety concerns.

ANTHONY S. GUARDINO is a partner with the law firm of Farrell Fritz in the firm’s office in Hauppauge. He can be reached at [aguardino@farrellfritz.com](mailto:aguardino@farrellfritz.com).

The district then filed a combined CPLR article 78 proceeding and action for declaratory judgment seeking, among other things, a declaration that it was immune and did not have to comply with the town's zoning law.

The town and the ZBA counterclaimed, seeking an order directing the district to remove the sign.

The Supreme Court, Albany County, rejected the district's immunity argument, dismissed the petition, and directed that the district remove the electronic sign. The district appealed to the Third Department, arguing that, as a public school, it was immune and exempt from all municipal zoning regulations as they applied to the use of real property for school purposes.

### The 'Bethlehem' Decision

The Third Department affirmed, concluding that although schools enjoyed some immunity from zoning regulations, that immunity was "not so broad and absolute" as the district contended.

In its decision, the *Bethlehem* court explained that the Legislature has charged the New York State Education Department and local boards of education with the management and control of educational affairs and public schools. The court observed that some courts have interpreted this mandate as the state reserving unto itself the control over and the authority to regulate *all* school matters. The court explained, however, that some of these courts had "incorrectly interpreted prior decisions to extend a full exemption from zoning ordinances where it was not warranted."

According to the *Bethlehem* court, reliance on cases granting schools immunity from all zoning regulations was misplaced, given the Court of Appeals decision in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986). The *Bethlehem* court explained that, in *Bagnardi*, two private universities sought declarations that their respective locality's zoning ordinances, under which each had been denied a special permit to expand into a zoning district where not otherwise permitted, were unconstitutional. The Court of Appeals said that, historically, schools

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The Third Department's opinion in *Bethlehem* is one that doubtless will be studied, referred to, and cited for years to come.

have enjoyed "special treatment with respect to residential zoning ordinances" and have been "permitted to expand into neighborhoods where nonconforming uses would otherwise not have been allowed," because "schools, public, parochial and private, by their very nature, singularly serve the public's welfare and morals," which is the overarching purpose of all zoning laws.

The Court of Appeals added that concerns over inconveniences such as traffic and noise led many municipalities to prohibit the new construction of schools, either in the entire municipality or at least in certain areas, which prompted courts to protect educational institutions from such exclusionary ordinances.

Significantly, the Court of Appeals said, that "[t]hese general rules...

were interpreted by some courts to demand a full exemption from zoning rules for all educational and church uses"—an interpretation that was "mandated neither by the case law of our [s]tate nor common sense." The court clarified that it had never intended to render municipalities powerless in the face of an educational institution's proposed expansion, "no matter how offensive, overpowering or unsafe to a residential neighborhood the use might be," and it renewed its rejection of the existence of "any conclusive presumption of an entitlement to an exemption from zoning ordinances" for schools. The court thus concluded that there were "many instances in which a particular educational or religious use may actually detract from the public's health, safety, welfare or morals [and, i]n those instances, the institution may be properly denied." Accordingly, the court held in *Bagnardi* that the presumed beneficial effects of schools and churches "may be rebutted with evidence of a significant impact on traffic congestion, property values, municipal services and the like," because the "inherent beneficial effects ... must be weighed against their potential for harming the community."

The *Bethlehem* court was not persuaded by the school district's argument that *Bagnardi* applied only to private schools. It acknowledged that the case involved challenges brought by two private universities, but it pointed out that the Court of Appeals had not limited its holding to private schools; rather, it pointed out that the Court of Appeals had explicitly mentioned

public schools when discussing the beneficial presumption enjoyed by schools generally, and public schools "provide benefits to the community at least as great as those bestowed by private schools."

Moreover, the *Bethlehem* court ruled that *Bagnardi* also could not be narrowly construed to apply solely to circumstances where there was a wholesale exclusion of educational uses in a particular zoning district. It noted that the Court of Appeals had stated that proposed educational uses that were "dangerous to the surrounding area" were "unquestionably within the municipality's police power to exclude altogether." The *Bethlehem* court reasoned that if, in the event of a sufficient safety concern, educational uses of property by a school district could be wholly excluded by local law, then it followed that a school could be "subject to minor curtailment of an accessory use of real property on the same basis."

The *Bethlehem* court pointed out that its case did not involve matters that required Education Department oversight, such as the selection of building sites and the erection or demolition of buildings (see Education Law Sections 401, 407, 408), the sale or acquisition of property (see Education Law Sections 402-405), health or safety conditions within a school (see Education Law Sections 409-409-I) or any use of a school building (see Education Law Section 414). The *Bethlehem* court added that the Education Department does not require review of sign placement, and that the school district had not requested any Education

Department review of its request for the sign. Therefore, it found, there was no duplication of review—nor the possibility of conflicting determinations—by state and local entities, and no encroachment by the town or the ZBA on a state agency's authority.

Having concluded that the school district was not immune from and, therefore, was subject to the town's zoning ordinances, the *Bethlehem* court next addressed whether the ZBA had properly denied the district's application for a variance. It noted

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'Bethlehem' makes clear that despite the special treatment afforded schools by the law, they are not entitled to a full exemption from zoning rules and local governments are not powerless to apply their zoning laws to educational institutions.

that the town and the ZBA had not refused the district the opportunity to install any sign but that the ZBA had rejected an application for permission to install an electronic message center sign, which was prohibited in the town and which also failed to comply with at least three additional size and location requirements of the signage provisions of the town's zoning ordinance. The court found that the ZBA had provided "rational reasons" for its determination, including a concern for traffic safety due to the sign's brightness and potential to be more distracting and hazardous to passing motorists than an ordinary sign.

That determination, the Third Department ruled, was not arbitrary

or capricious, and it concluded that the Supreme Court had correctly dismissed the petition and directed the school district to remove the sign. The district sought leave to appeal the Third Department's determination to the Court of Appeals, but the motion was denied. *Matter of Ravena-Coeymans-Selkirk Central School District v. Town of Bethlehem*, 31 N.Y.3d 901 (2018).

### Conclusion

The Court of Appeals has ruled that the total exclusion of schools from a residential district serves no end reasonably related to the morals, health, welfare, and safety of the community and, therefore, was beyond the scope of local zoning authority. *Matter of Diocese of Rochester v. Planning Board of Town of Brighton*, 1 N.Y.2d 508 (1956). As *Bethlehem* makes clear, however, despite the special treatment afforded schools by the law, they are not entitled to a full exemption from zoning rules and local governments are not powerless to apply their zoning laws to educational institutions. Municipalities may require that schools obtain special permits and they may impose reasonable conditions directly related to the public's health, safety, and welfare on schools to the same extent that they may impose them on non-educational applicants.



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Scott J. Steiner

May 23, 2019

Carmel Central School District  
81 South Street  
P.O. Box 296  
Patterson, New York 12563

Re: Proposed Purchase of 1264 Route 52, Kent, New York

Ladies and Gentlemen:

The Town Board of the Town of Kent is aware of the impending purchase of the premises situated at 1264 Route 52, Kent New York (the "Property") by the Carmel Central School District (the "District"). I am writing on behalf of the Town Board of the Town of Kent to advise the District that, prior to the development of the Property as a Transportation Facility, numerous land use approvals will be required from the Town of Kent. Additionally, you should be aware that the Property has recently been issued violations due to erosion control and wetland violations.

Although the District's website states that the Property was selected for the construction of a bus garage because it has been fully approved for the proposed use, that information is inaccurate. Site plan approval for the Property was previously issued authorizing the development of a contractor's yard, not a bus depot. A review of the Town Code §77-24 evidences that a transportation facility is not a permitted, accessory or specially permitted use in the IOC Zoning District. Recent case law clarifies that the District is not absolutely exempt from zoning regulations. Therefore, in order for the Property to be used for the intended purpose, a special permit and approved site plan is required from the Town.

As set forth in *Matter of Ravena-Coeysman-Selkirk Central School District v. Town of Bethlehem* 156 A.D. 3d 179 (3d Dept. 2017), clarified that zoning laws *do* apply to schools, except in very narrow circumstances. In that decision, the Third Department referred to *Cornell University v. Bagnardi*, 68 N.Y. 2d 583 (1986) which held that schools are not fully immune from zoning, particularly where, as here, the use "may actually detract from the public's health, safety, welfare..." Should the District proceed with the purchase of the Property, the Town of Kent intends to exercise any and all remedies available to ensure that the District complies with its land use regulations in all respects.

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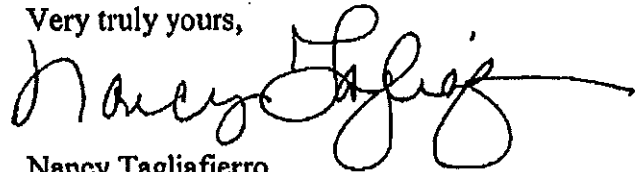
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**Attorneys At Law**

In addition to the need for land use approvals from the Town, the Property is also burdened by violations of the Town's wetland and erosion regulations. Attached for your reference please find a copy of a violation was issued on April 4, 2019, noting three (3) existing violations threatening the stability of the Property and impairing the wetlands. Runoff and flooding are occurring on the Property. Sediment is present in the wetlands and storm water basins are in need of maintenance and repair. This needs to be addressed immediately with approval and oversight by the Town Planning Board and the Building Inspector to ensure the correct remediation of the Property.

Please be guided accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Nancy Tagliafierro', with a long horizontal flourish extending to the right.

Nancy Tagliafierro

cc: David Shaw, Esq. Bond Counsel to Carmel Central School District  
Lana Cappelli, Town Clerk

Reply all | Delete Junk |

UP

## Route 52 Development



Garcia, Cynthia <CGarcia@dep.nyc.gov>

Tue 6/4, 9:52 AM

Planning Kent; Brian.A.Orzel@usace.army.mil; 'DEP.R3@dec.ny.gov'; Mich

Reply all |

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Attached is DEP's SEQRA response with comments on the Draft Scope.  
Thank you,

Cynthia Garcia | Bureau of Water Supply | SEQRA Coordination Section  
465 Columbus Ave., Valhalla, NY 10595  
(O) 914 749 5302 | (F) 914 749 5472 | [cgarcia@dep.nyc.gov](mailto:cgarcia@dep.nyc.gov)

June 4, 2019

Mr. Phillip Tolmach, Chairman  
Town of Kent Planning Board  
25 Sybil's Crossing  
Kent, New York 10512

Re: Route 52 Development - Draft Scope  
NYS Route 52  
Town of Kent, Putnam County, NY  
Tax Map #: 12-1-31  
DEP Log #: 2017-MUL-0675-SQ.1

Dear Mr. Tolmach and Members of the Planning Board:

The New York City Department of Environmental Protection (DEP) has reviewed the Town of Kent Planning Board's (Board) Notice of Positive Declaration and Public Scoping Session.

DEP respectfully submits the following comments for the Board's consideration:

#### IV. Environmental Analysis

##### B. Geology and Soils

1. In addition to a sediment and erosion control plan, permanent stabilization of the site once the mining operation is complete should be included and discussed in the DEIS, as the mining operation precedes the actual development of the site.

2. Potential impacts of any soil limitations on the proposed sewage disposal area should be discussed. As noted farther below, soil testing for the proposed disposal area must be witnessed by DEP.

##### C. Topography and Slopes

3. A post development grading plan should also be required that includes the cut and fill balances.

##### D. Surface Water & Wetlands

4. Potential impacts on wetlands, particularly wetland hydroperiod, as a result of the proposed WWTP disposal area should be discussed.

##### E. Stormwater Analysis

5. DEP has met with the applicant's representative and informed the project sponsor that soil testing for the proposed stormwater

management practices in NYC's watershed must be witnessed by DEP to verify conditions are suitable for the proposed practices. To date, soil testing has not been witnessed by DEP. As such, it has not been fully demonstrated that the proposed method of stormwater treatment will function as intended. It is imperative that soil testing be scheduled as soon as possible. The project sponsor is advised to contact Andreea Oncioiu at (914) 749-5356 to make arrangements.

#### **G. Groundwater Quality & Availability**

6. Potential impacts on groundwater and the seasonal water table as a result of the proposed WWTP and disposal area should be discussed in the DEIS.

#### **Utilities (erroneously labeled as G in the Draft Scope)**

7. Sanitary Wastewater Disposal - A sewage modeling analysis is required as the proposed design flows exceed 5,000 gallons per day. This information was not discussed in the Draft Scope and must be presented in the DEIS.
8. DEP has met with the applicant's engineer on 12/14/17 and discussed the importance of having both the County Health Department and DEP witness soil testing in the proposed subsurface treatment areas. As this has not been scheduled yet, it has not been fully demonstrated that suitable viable areas exist and can accommodate the proposed action. As the action's full build-out is questionable, it is again recommended that the project sponsor schedule soil testing as soon as possible with both the County and DEP.

It is imperative that accurate projected wastewater flows be discussed in the DEIS as the treatment area is situated within West Branch Reservoir drainage basin. As West Branch Reservoir is located within the 60-day travel time to water supply intakes, it is subject to various water quality protection initiatives.

9. Ownership and management of all project components should be included in this section.

#### **V. Reasonable Alternatives**

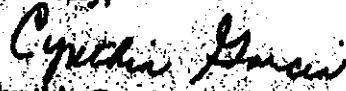
10. The scope's section on alternatives, specifically alternative 3 "Alternative plan layouts, modification or elimination of uses" is extremely general and leaves much discretion to the applicant during DEIS development. The Board may want to be more specific in terms of the number of alternatives they want considered, and which alternative layouts, modifications, or elimination of uses they would like to see. From a water quality standpoint, DEP recommends a reduced scale/impact alternative that attempts to minimize impervious surfaces and reduce/eliminate impacts to steep slopes or wetlands/buffers. The information should be quantified to the extent possible and should be presented in sufficient detail so that a meaningful evaluation of alternatives is possible.

#### **VII. Other Required Analysis**

11. The project sponsor should ensure the DEIS includes sufficient consideration of growth inducing impacts. The discussion should include a sufficient level of detail so that reasonable conclusions can be made. As per the SEQRA Handbook, this section should consider the likelihood that the proposed action may induce further development. This analysis should identify the type of activities that might be induced by the proposed project, and discuss any potential environmental impacts.
12. The Cumulative impacts appears to be too broadly defined. At a minimum, the Board should consider requiring that the applicant identify other large, approved or proposed developments in the area and evaluate cumulative impacts in light of these developments. The information provided should be quantified where possible and should be presented in sufficient detail to allow for adequate evaluation.

Thank you for the opportunity to provide comments. You may reach the undersigned at [cgarcia@dep.nys.gov](mailto:cgarcia@dep.nys.gov) or (914) 749-5302 with any questions or if you care to discuss the matter further.

Sincerely,



Cynthia Garcia, Supervisor  
SEQRA Coordination Section

X: B. Orzel, USACE  
J. Petronella, NYSDEC  
M. Budzinski, PCDH

Reply all | Delete Junk |

## FW: Kent Materials, LLC, NYS Route 52, Town of Kent, New York, Tax Map No. 12.-1-44



Maureen Fleming

Today, 11:23 AM

Planning Kent; Nancy Tagliaferro <ntag@hoganandrossi.com>; Tamara I

Reply all |

Inbox

Flag for follow up. Start by Monday, June 03, 2019. Due by Monday, June 03, 2019.

doc0353882019053113...

185 KB

Show all 1 attachments (185 KB) Download

Vera -

Here is the letter from Counsel to the school district. Please distribute. Thanks.

*Maureen Fleming*

Maureen Fleming

Supervisor

Town of Kent

25 Sybil's Crossing

Kent Lakes, New York 10512

(845) 225-3943

[www.townofkentny.gov](http://www.townofkentny.gov)



---

From: Nancy Tagliaferro <ntag@hoganandrossi.com>

Date: Friday, May 31, 2019 at 2:03 PM

To: Maureen Fleming <mfleming@townofkentny.gov>

Cc: Tamara Harrison <tharrison@townofkentny.gov>, Bill Huestis <bhuestis@townofkentny.gov>, Paul Denbaum <pdenbaum@townofkentny.gov>, Jaime McGlasson <jmcglasson@townofkentny.gov>, Chris Ruthven <cruthven@townofkentny.gov>

**HOGAN & ROSSI**

**Attorneys At Law**

3 Starr Ridge Road - Suite 200  
Brewster, New York 10509

Telephone: (845) 279-2986  
Facsimile: (845) 279-6425  
(845) 278-6135

John J. Hogan  
Donald M. Rossi  
Michael T. Liguori\*  
Jamie S. Spillane\*\*  
Sean H. Lewis

\* Admitted in CT  
\*\* Admitted in NJ

**Of Counsel**

Nancy Tagliaferro\*  
MaryJane MacCrae  
Scott J. Steiner

May 23, 2019

Carmel Central School District  
81 South Street  
P.O. Box 296  
Patterson, New York 12563

Re: Proposed Purchase of 1264 Route 52, Kent, New York

Ladies and Gentlemen:

The Town Board of the Town of Kent is aware of the impending purchase of the premises situated at 1264 Route 52, Kent New York (the "Property") by the Carmel Central School District (the "District"). I am writing on behalf of the Town Board of the Town of Kent to advise the District that, prior to the development of the Property as a Transportation Facility, numerous land use approvals will be required from the Town of Kent. Additionally, you should be aware that the Property has recently been issued violations due to erosion control and wetland violations.

Although the District's website states that the Property was selected for the construction of a bus garage because it has been fully approved for the proposed use, that information is inaccurate. Site plan approval for the Property was previously issued authorizing the development of a contractor's yard, not a bus depot. A review of the Town Code §77-24 evidences that a transportation facility is not a permitted, accessory or specially permitted use in the IOC Zoning District. Recent case law clarifies that the District is not absolutely exempt from zoning regulations. Therefore, in order for the Property to be used for the intended purpose, a special permit and approved site plan is required from the Town.

As set forth in *Matter of Ravena-Coeymans-Selkirk Central School District v. Town of Bethlehem* 156 A.D. 3d 179 (3d Dept. 2017), clarified that zoning laws *do* apply to schools, except in very narrow circumstances. In that decision, the Third Department referred to *Cornell University v. Bagnardi*, 68 N.Y. 2d 583 (1986) which held that schools are not fully immune from zoning, particularly where, as here, the use "may actually detract from the public's health, safety, welfare..." Should the District proceed with the purchase of the Property, the Town of Kent intends to exercise any and all remedies available to ensure that the District complies with its land use regulations in all respects.

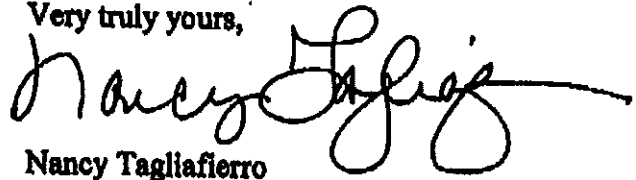


**HOGAN & ROSSI**  
**Attorneys At Law**

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Please be guided accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nancy Tagliafierro", with a long horizontal flourish extending to the right.

Nancy Tagliafierro

cc: David Shaw, Esq. Bond Counsel to Carmel Central School District  
Lana Cappelli, Town Clerk



**BUILDING INSPECTOR  
OF  
THE TOWN OF KENT, PUTNAM COUNTY, N.Y. 10512  
845-306-5597**

**ORDER TO REMEDY VIOLATION**

**Kent Materials LLC  
60 Richbell Rd.  
White Plains, NY 10605**

**Tax Map #: 12.-1-44**

**Date: April 4, 2019**

**Owner: Kent Materials, LLC  
1264 Route 52  
Kent Lakes, NY 10512**

**Report # SV-19-032**

**Complaint: Erosion control site inspection for planning board final**

**Inspections related to this complaint found the following:**

**Conducted site inspection for a final erosion control for planning board, found the following violations:  
Sand and stone runoff found in the rip-rap swale on Route 52 from the driveway entrance.  
sediment pond 1 (upper) has silt from banks that are not stable and is holding waters  
sediment pond 2 (lower) holding water longer then 48 hour or week. possible blocked with silt  
bypassing pond # 1 or rock dust from site rock processing, need remediation  
Found water pathways and large deposits of crushed rock and fillings in and near wet-lands buffer  
that should be removed. Erosion and sediment remediation is required.**

**In violation of:**

**Town of Kent Wetlands\39A.3B.- wetlands impairment which states B. Considerable acreage of freshwater wetlands in the Town has been lost, despoiled or impaired by unregulated draining, dredging, filling, excavating, building, pollution or other acts inconsistent with the natural uses of such areas. Other freshwater wetlands are in jeopardy of being lost, despoiled or impaired by such unregulated acts**

**Town of Kent Wetlands\39A.3C - Recent flooding which states C. Recurrent flooding aggravated or caused by the loss of freshwater wetlands has serious effects upon natural ecosystems.**

**Town of Kent Slope & Erosion Control\66-6K.2 - Approved erosion plan which states At all times during the construction and site work/disturbance, the erosion control plan shall be maintained in compliance with the permit, and the applicant, the owner, and the contractor shall be fully responsible for said maintenance.**

**You are hereby directed and ordered to remedy the violations by:5/9/2019**

**You are hereby directed and ordered to remedy the violations by:5/9/2019**

**You are hereby directed and ordered to remedy the violations by:5/9/2019**

**Failure to remedy the condition aforesaid and to comply with the applicable provisions of the law may constitute an offense punishable by fine or imprisonment or both.**

**If you have any further questions, please feel free to contact me at 845-225-3900.**

---

**From:** Rocco D'Agostino <rdagost463@aol.com>

**Sent:** Friday, May 31, 2019 1:25 PM

**To:** Planning Kent; Maureen Fleming; JMangarillo@rsaengrs.com; eaxelson@cplteam.com; barberbruce@yahoo.com

**Subject:** Kent Materials, LLC, NYS Route 52, Town of Kent, New York, Tax Map No. 12.-1-44

**PUTNAM COUNTY NOTICE**

**THIS EMAIL IS FROM AN EXTERNAL SENDER!** DO NOT click links, DO NOT open attachments, DO NOT forward if you were not expecting this email or if it seems suspicious in any way! REMEMBER: NEVER provide your user ID or password to anyone for any reason!

Dear Chairman Tolmach and Members of the Town of Kent Planning Board:

This law firm has been retrained to represent Kent Materials, LLC, previous owner of premises located at N.Y.S. Route 52, Town of Kent, New York [Tax Map No. 12.-1-44].

As you may be aware, the Carmel Central School District Bus Garage referendum to build a new bus garage on the Kent Materials property passed. The property owner, Kent Materials, LLC transferred its interest to the Carmel Central School District on May 30, 2019, and is no longer the property owner.

Since school properties and/or school projects are exempt from local zoning and land use regulations, The Town of Kent no longer has jurisdiction over this property. The school is not exempt from regional, state, and federal requirements. Therefore, the school is required to comply with State and County Health Department, NYCDEP, and NYSDEC regulations.

Accordingly, Kent Materials, LLC formally requests the Town of Kent to release the currently posted bond amount of \$75,185.00 (\$17,885.00 for the Erosion and Sediment Control Bond and \$57,300.00 for the Stormwater Management Facilities Bond). In addition, Kent Materials, LLC further requests the Town of Kent to cease any further consultant time/inspections on this job.

Please note that I have attached hereto a formal letter that was sent to your office via certified mail simultaneously herewith.

Trusting all meets with your consent and approval, I remain,

Very truly yours,

**Rocco F. D'Agostino, Esq.**

*Attorney at Law*

445 Hamilton Ave., Suite 607

White Plains, New York 10601

**LAW OFFICES OF  
ROCCO F. D'AGOSTINO**

**445 HAMILTON AVE., SUITE 607  
WHITE PLAINS, NEW YORK 10601**

**TEL: (914) 682-1993  
FAX: (914) 682-1994**

**May 31, 2019**

**Via Email and Certified Mail  
Return Receipt Requested  
7013-2250-0001-1184-6245**

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

**RE: Kent Materials, LLC  
NYS Route 52  
Town of Kent, New York  
Tax Map No. 12.-1-44**

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**Very truly yours,**

  
**ROCCO F. D'AGOSTINO, ESQ.**

**Cc: Kent Materials, LLC**

Reply all | Delete Junk |

## FW: Kent Materials, LLC, NYS Route 52, Town of Kent, New York, Tax Map No. 12.-1-44



Maureen Fleming

Today, 11:23 AM

Planning Kent; Nancy Tagliaferro <ntag@hoganandrossi.com>; Tamara I

Reply all |

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Vera -

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*Maureen Fleming*

Maureen Fleming  
Supervisor  
Town of Kent  
25 Sybil's Crossing

Kent Lakes, New York 10512  
(845) 225-3943  
[www.townofkentny.gov](http://www.townofkentny.gov)



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**Date:** Friday, May 31, 2019 at 2:03 PM

**To:** Maureen Fleming <mfleming@townofkentny.gov>

**Cc:** Tamara Harrison <tharrison@townofkentny.gov>, Bill Huestis <bhuestis@townofkentny.gov>, Paul Denbaum <pdenbaum@townofkentny.gov>, Jaime McGlasson <jmcglasson@townofkentny.gov>, Chris Ruthven <cruthven@townofkentny.gov>

**Subject:** RE: Kent Materials, LLC, NYS Route 52, Town of Kent, New York, Tax Map No. 12.-1-44

Reply all | Delete Junk |

if you were not expecting this email or if it seems suspicious in any way! REMEMBER: NEVER provide your user ID or password to anyone for any reason!

Shall I send him a letter similar to the one I sent to the school and bond counsel with respect to the Town??s position on schools being exempt from local zoning??? Or should the Planning Board confer with their attorney?

??

A copy of the letter to the school is attached.??

??

---

**From:** Maureen Fleming (mailto:[mfleming@townofkentny.gov](mailto:mfleming@townofkentny.gov))

**Sent:** Friday, May 31, 2019 1:32 PM

**To:** Nancy Tagliaferro <[ntag@hoganandrossi.com](mailto:ntag@hoganandrossi.com)>

**Cc:** Tamara Harrison <[tharrison@townofkentny.gov](mailto:tharrison@townofkentny.gov)>; Bill Huestis <[bhuestis@townofkentny.gov](mailto:bhuestis@townofkentny.gov)>; Paul Denbaum <[pdenbaum@townofkentny.gov](mailto:pdenbaum@townofkentny.gov)>; Jaime McGlasson <[jmcglasson@townofkentny.gov](mailto:jmcglasson@townofkentny.gov)>; Chris Ruthven <[cruthven@townofkentny.gov](mailto:cruthven@townofkentny.gov)>

**Subject:** FW: Kent Materials, LLC, NYS Route 52, Town of Kent, New York, Tax Map No. 12.-1-44

??

??

??

*Maureen Fleming*

Maureen Fleming

Supervisor

Town of Kent

25 Sybil's Crossing

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??

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**From:** Rocco D'Agostino <[rdagost463@aol.com](mailto:rdagost463@aol.com)>

**Date:** Friday, May 31, 2019 at 1:25 PM

**To:** Vera Patterson <[planningkent@townofkentny.gov](mailto:planningkent@townofkentny.gov)>, Maureen Fleming <[mfleming@townofkentny.gov](mailto:mfleming@townofkentny.gov)>, Julie Mangarillo <[JMangarillo@rsaengrs.com](mailto:JMangarillo@rsaengrs.com)>, Elizabeth Axelson <[EAxelson@CPLteam.com](mailto:EAxelson@CPLteam.com)>, Bruce Barber <[barberbruce@yahoo.com](mailto:barberbruce@yahoo.com)>

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**Rocco F. D'Agostino, Esq.**

*Attorney at Law*

445 Hamilton Ave., Suite 607

White Plains, New York 10601

Office Tele.: (914) 682-1993

**HOGAN & ROSSI**

**Attorneys At Law**

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Of Counsel

Nancy Tagliaferro\*  
MaryJane MacCrae  
Scott J. Steiner

May 23, 2019

Carmel Central School District  
81 South Street  
P.O. Box 296  
Patterson, New York 12563

Re: Proposed Purchase of 1264 Route 52, Kent, New York

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2019 MAY 24 PM 3:20  
JH



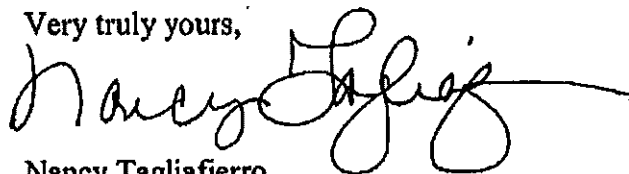
**HOGAN & ROSSI**

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Nancy Tagliafierro

cc: David Shaw, Esq. Bond Counsel to Carmel Central School District  
Lana Cappelli, Town Clerk



**BUILDING INSPECTOR**  
**OF**  
**THE TOWN OF KENT, PUTNAM COUNTY, N.Y. 10512**  
**845-306-5597**

**ORDER TO REMEDY VIOLATION**

Kent Materials LLC  
60 Richbell Rd.  
White Plains, NY 10605

Tax Map #: 12.-1-44

Date: April 4, 2019

Owner: Kent Materials, LLC  
1264 Route 52  
Kent Lakes, NY 10512

Report # SV-19-032

**Complaint: Erosion control site inspection for planning board final**

**Inspections related to this complaint found the following:**

Conducted site inspection for a final erosion control for planning board, found the following violations:  
Sand and stone runoff found in the rip-rap swale on Route 52 from the driveway entrance.  
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**Town of Kent Slope & Erosion Control\66-6K.2 - Approved erosion plan which states At all times during the construction and site work/disturbance, the erosion control plan shall be maintained in compliance with the permit, and the applicant, the owner, and the contractor shall be fully responsible for said maintenance.**

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**Failure to remedy the condition aforesaid and to comply with the applicable provisions of the law may constitute an offense punishable by fine or imprisonment or both.**

**If you have any further questions, please feel free to contact me at 845-225-3900.**



## Cornerstone Associates

---

*Environmental Planning Consultants*  
1770 Central Street  
Yorktown Heights, NY 10598  
Phone: (914)-299-5293

June 11, 2019

To: Planning Board

From: Bruce Barber  
Town of Kent Environmental Consultant

Re: **Kent Self Storage of Putnam Inc. Application**  
Route 311  
Section 22 Block 2 Lot 17

Please be advised that I have conducted a review of the following pertinent documents relative to the above referenced project:

- Comment response memo executed by Joseph Riina, PE of Site Design Consultants dated May 15, 2019, 5 pages.
- Stormwater Pollution Plan report prepared by Site Design Consultants dated May 24, 2019.
- Plans entitled; "Proposed Improvement Plan-Kent Self Storage of Putnam Inc." prepared by Site Design Consultants dated May 2019 (rev.), 17 total sheets: T-1, V-1, C-101, C-102, C-103, C-104, C-105, C-106, C-107, C-301, C-302, C-303, C-401, C-501, C-502, C-503, C-504.
- Architectural Plans prepared by Rayex, 3 sheets.
- Long-form EAF (Part I) prepared by Joseph C. Riina, PE dated 01/22/19.
- Indiana bat fact sheet prepared by US Fish and Wildlife dated March 2018, 4 pages.
- Northern Long-Eared Bat final ruling prepared by US Fish and Wildlife, 6 pages.

### **Summary of Application:**

The applicant proposes to construct 32,308 two-story self-storage buildings which shall include a 2,500 square foot management office and dry retail space and a separate 2,400 storage building on a 2.705 acre parcel in an IOC (industrial-office-commercial) zoning district on the northwest corner of Route 311 and Ludington Court. Associated site improvements consist of an on-site sewage disposal system, well, required parking (23 spaces), utilities, retaining walls and stormwater structures.

### **Summary of Comments:**

1. A NYSDEC classified trout stream (CTs) is located just to south of Route 311. Post-construction stormwater must consider thermal loading to the stream.
2. Tree cutting is restricted to the months of November 15 through April 1.

## **Natural Resource Considerations:**

### A: Wetlands:

The applicant proposes to discharge stormwater with potential thermal and other potential pollutants to a town regulated watercourse/wetland (see below). A wetland permit is required.

### B: Stormwater/Steep Slopes

The applicant has provided a stormwater pollution prevention plan. The subject property stormwater will discharge to Stump Pond Stream which is a regulated NYSDEC watercourse, standard C(T) trout stream and a Town of Kent jurisdictional watercourse.

Section 39A-5(D) of the Town of Kent Town Code requires a wetland permit in order to discharge pollutants such to a jurisdictional watercourse. In addition, NYSDEC requires stormwater design elements to fully consider post-construction thermal discharges to trout streams.

Stormwater from the lower section of the proposed driveway is not currently treated. The applicant should provide treatment of this area.

The applicant has indicated that the post-construction thermal discharge issues are addressed as the stormwater will be treated by an infiltration system. It is requested that the applicant provide a pre and post construction quantitative analysis to ensure there are no post construction pollutants discharging to the stream when compared to pre-construction levels. This is also requested as the Stump Pond Stream directly discharges to Lake Carmel which is an impaired TMDL waterbody.

Due to the substantial steep slopes on the site, it is recommended that a site specific erosion control plan be included in the SWPPP. The erosion and sediment control plan should incorporate only small areas of disturbed site conditions at any time, winter stabilization methods, details directing clean surface water above the site around the work area, maintenance of sediment traps, etc.

### C: Trees:

The applicant has provided plan notes indicated tree cutting restrictions as per US Fish and Wildlife requirements.

Applicant has indicated the trees proposed to be cut on the plans and provided a corresponding table.

### D: EAF;

Review complete.

E:Aditonal:

Please provide the following documents/information:

Complete combined Planning Board application amended to reflect wetland permit application.

Business plan which describes materials to be stored on site, hours of operation, retail operations.

NYSDOT approval.

PCDOH approval.

NYCDEP approval,

Putnam County referral (239-m).

This office will conduct additional review upon receipt of responses to the above review. Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'R' followed by a stylized flourish.

Bruce Barber, PWS Certified Ecologist  
Town of Kent Environmental Consultant



## Cornerstone Associates

---

*Environmental Planning Consultants*  
1770 Central Street  
Yorktown Heights, NY 10598  
Phone: (914)-299-5293

June 10, 2019

To: Planning Board

From: Bruce Barber  
Town of Kent Environmental Consultant

**Re: NYCDEP-Horsepound Ridge Forest Management Project**  
Horsepound Road  
Section 33 Block 1 Lots 44 and 45  
Section 33.6 Block 1 Lot 71  
Town of Kent, New York

Dear Chairman Tolmach and Members of the Planning Board:

Please be advised that the following pertinent documents have been reviewed pursuant to the above referenced application:

- Maps entitled; "Horsepound Ridge Forest Management Project, 2 sheets.
- Memo entitled; "NYCDEP Horsepound Ridge Forest Management Project-Erosion Control Plan dated 11/28/18, 7 pages.

A site inspection was conducted on May 20, 2019.

### **Summary of Application:**

The subject application is a salvage of down trees in a 24 acre area which was damaged due to the action of the micro bursts experienced in the area in 2018 as well as a crown harvest and thinning of approximately 56 acres of the subject site.

The total area of disturbance is greater than 5,000 square feet and as a result, the applicant is requesting approval of an erosion and sediment control permit from the Planning Board.

### **Environmental Review:**

#### Wetlands:

There are Town of Kent and NYSDEC jurisdictional wetlands/wetland buffer on the parcels, The applicant is proposing to cross two, narrow areas of intermittent watercourses by spanning the areas with temporary crossing structures. There is no proposed disturbance to the wetlands and limited disturbance to jurisdictional buffers.

The forest management plan should provide details of the proposed crossings. A Town of Kent wetland permit is not required for the proposed action.

#### Soils and Steep Slopes:

Soils consist predominately of Charlton-Chatfield and Hollis-Rock Outcrop. A substantial area of the site has slopes greater than 15% and there are large areas of exposed rock outcrop. The proposed areas of activity are limited to only small areas of the site in which slopes are greater than 15%. The applicant proposes to use NYSDEC Best Forest Management Planning for erosion and sediment control and also proposes to leave in place erosion measures which will reduce an existing flooding condition. Consultation with the Town Highway Superintendent is suggested. All erosion and sediment control plans and details should be included in the forest management plan.

#### Trees:

The forest management report is incomplete as it does not provide details regarding the type of harvest (clear cutting, stem harvesting, whole length harvesting, etc.), if stumps will be left in place, how the trees will be transported (skid steer, etc.), location of stockpiles, the density of the harvest (how many trees will be cut), how the trees are marked in the field and how the site will be stabilized upon completion.

#### Threatened and Endangered Species:

The applicant has conducted in house surveys to verify the absence of bog turtles on the site. The harvest will be conducted between November 15 and March 31. This information should be documented in the forest management report.

#### Cultural Resources:

Provide information.

#### Other:

Applicant should identify truck sizes/weights, number of truck trips per day, the truck traffic route(s) and hours of operation (include noise control information).

The applicant should meet with the Town Highway Superintendent to discuss truck traffic as it has been indicated that there are plans to pave Horsepound Road in June of 2019.

Applicant should provide baseline information regarding the pre-action condition of the roads, bridges, drainage structures and other town infrastructure that will be used as a result of the proposed action and indicate how damage and repairs will be addressed prior to the completion of work. Referral to the town Highway Superintendent is recommended.

The NYCDEP has issued a negative declaration of environmental significance for the proposed Unlisted Action. Applicant should provide current EAF.

This office defers to the Town Engineer regarding review of the erosion and sediment control plan and proposed engineering issues.

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'B. Barber', with a stylized, cursive-like script.

Bruce Barber, PWS, Certified Ecologist  
Town of Kent Environmental Consultant





## Cornerstone Associates

*Environmental Planning Consultants*  
1770 Central Street  
Yorktown Heights, NY 10598  
Phone: (914)-299-5293

June 10, 2019

To: Planning Board

From: Bruce Barber  
Town of Kent Environmental Consultant

**Re: Zucker Application**  
12 Woodchuck Court  
Section 21.19 Block 1 Lot 5

Please be advised I have reviewed the following documents submitted relative to the above referenced application:

- Comment response memo prepared by John Karell, Jr., PE dated May 16, 2019, 2 pages (unsigned).
- Short-form EAF (Part I) executed by Jonathan Zucker dated May 10, 2019 (revised).
- Letter executed by Andrew Curtis, Interim Manager-Gipsy Trail Club dated April 25, 2019, 1 page.
- Letter from the Putnam County Department of Health (PCDOH) executed by Gene D. Reed dated May 1, 2019, 1 page.
- Erosion Control Cost Estimate prepared by John Karell, JR. PE dated May 22, 2019 (revised).
- Plans entitled; "Jonathan Zucker" prepared by John Karell, Jr, PE dated March 23, 2019, 1 sheet S-1.

### **Summary:**

Application is to construct an addition, a garage with deck, outdoor tub and shower, and screened porch within an existing deck footprint to renovate an existing two bedroom 2,058 square foot single-family residence on a 1.0+/- acre parcel in an R-80 zoning district.

Total site disturbance is indicated as 4,750 square feet. Additions total 2,138 square feet.

### **Environmental Review:**

**Wetlands:** The applicant has delineated wetlands located immediately adjacent to the subject parcel. The wetland buffer from the wetlands is reflected onto the subject property and there is proposed disturbance in the wetland buffer in the amount of 1,617 square feet.

A site inspection was conducted and the delineation was found to be in compliance with Chapter 39A of the Town of Kent Town Code. A Town of Kent wetland permit will be required from the Planning Board.

Additionally, it is indicated that the wetlands are also regulated by the New York State Department of Environmental Conservation (NYSDEC). A NYSDEC wetland permit or a written waiver of permit requirements should be obtained for the proposed action from the NYSDEC.

Trees: The applicant has provided a tree survey and has indicated that one tree is proposed to be cut.

Topography/Soils: Applicant has not provided a soils map. Approximately 658 square feet of the proposed disturbance is located in areas of slope greater than 15%.

Threatened Species: Tree cutting in this area is restricted due to US Fish and Wildlife preservation directives for the Indiana and Long-eared bats.

**Review:**

General: Please provide architectural drawings (elevations and floor plans) of the proposed additions. They were not attached to the packet received by this office.  
Please review Gipsy Trail restrictions regarding setbacks and building stories/height.  
Provide full size hard copies of all plan sheets.

Plans: Sheet S-1: Please provide executed PCDOH approval blocks.  
Connections of the proposed outdoor bathtub and shower to the house piping are not shown. It is unclear if the PCDOH has approved of these connections. The waste water will discharge to the wetland buffer area. Please discuss impacts and mitigation. .  
Provide as-built of the septic system.  
Provide location of a potential 100% expansion area for the septic system outside the wetland buffer area.  
Indicate that the garage area will not be used as living space and that there will not be any plumbing and/or HVAC to the garage on the plans. How will connections to the tub and shower be accomplished. Indicate electrical fixtures and connections. How will the shower water and hot tub water be heated?  
Indicate if there shall be any net changes in the existing number of bedrooms.  
The proposed additions (front addition excepting) are substantially located in the indicated wetland buffer. Provide narrative as to why the additions cannot be located outside the wetland buffer and impacts avoided.

Provide a narrative of current wetland buffer function and a mitigation plan to offset proposed impacts to the wetland and wetland buffer areas. The assertion that there is a stone wall is protecting the wetlands is not a response regarding mitigation. Clearly indicate the limits of disturbance and provide a grading plan and pre and post topography. Indicate if retaining walls will be required.

Provide plan note indicating that trees shall only be cut between November 15 and March 31 of the following year.

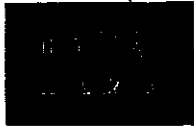
Indicate location of the water supply

This office defers to the Planning Board Engineer regarding site and drainage design.

Sincerely,

A handwritten signature in black ink, appearing to be 'B. Barber', with a stylized, cursive-like script.

Bruce Barber, PWS, Cert. Ecologist  
Town of Kent Environmental Consultant



# Memorandum

**To:** Planning Board  
Town of Kent

**Attn:** Phil Tolmach  
Chairman

**From:** Julie S. Mangarillo, P.E., CPESC

**Subject:** Erosion Control Plan

**Date:** June 12, 2019

**Project:** NYCDEP Horsepound Ridge Forest  
Management  
TM # 33.-1-44, 33.-1-45, 33.6-1-7.1

The following materials were reviewed:

- Combined Application Form signed 3/5/2019, including,
  - Site Plan Checklist
- Forest Management Project Plan Summary, prepared by NYCDEP, February 2019
- Horsepound Ridge Forest Management Project #5098 Project Plan and Environmental Assessment, prepared by NYCDEP, February 2019
- NYCDEP Horsepound Ridge Forest Management Project – Erosion Control Plan, prepared by NYCDEP, dated 12/17/2018
- Drawings, prepared by NYCDEP, including:
  - Horsepound Ridge Forest Management Project Map
  - Horsepound Ridge FMP – Landing Map

The project proposes "...a salvage of a 24 acre area damaged by a microburst in May 2018, as well as a moderate-intensity silvicultural crown thinning of approximately 56 acres..." per NYCDEP Horsepound Ridge Forest Management Project #5098 Project Plan and Environmental Assessment." Total contiguous area controlled by NYCDEP is 143 acres +/-.

The subject Erosion and Sediment Control Plan is not approved. The following comments are provided for the Planning Board's consideration:

1. The proposed project is within the NYCDEP East of Hudson watershed and will disturb more than 5,000 SF of land. A Town of Kent Erosion & Sediment Control Permit is required for the access road and landing area. However coverage under NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-15-002 is not required as NYSDEC considers all silvicultural work exempt from the requirements GP-0-15-002.
2. Per conversation with Richard Othmer, Jr, Highway Superintendent, he is doing a major replacement, repair and repaving of Horsepound Rd this summer. He has requested logging trucks/equipment avoid the use of Horsepound Rd and use Barrett Hill to Route 52. The intersection of Barrett Hill with Route 52 is very steep. Extra precautions will be needed for larger trucks to turn onto Route 52. Extra precautions to be considered

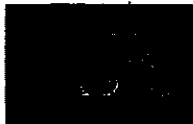
should include, but not limited to, having a flagger to control traffic as needed, providing caution signs on Route 52 to alert drivers and education or signage for the logging truck drivers to be aware of steep road.

3. Provide notes that any sediment that is tracked onto public roads, Rhinebeck Rd and beyond, will be removed.
4. During the Planning Board Workshop, the applicant's representative indicated that some drainage diversion work will be done to reduce runoff flowing onto Rhinebeck Rd. Please provide an updated drawing with the approximate location and notes that the diversion is to remain in place after the timber harvest is complete.
5. An erosion control bond is required. For other projects by NYCDEP in Kent, the Town of Kent has accepted a letter of assurance from NYCDEP in lieu of a cash bond. This was done for the Seven Hills Lake Dam Repair. Please have NYCDEP provide a similar letter for the Planning Board to consider.
6. The applicant is responsible for full payment of actual costs of erosion control inspections. An initial inspection fee deposit of \$1000 is to be paid to the Town in accordance with the Town of Kent Fee Schedule.
7. We defer to the Planning Board's environmental consultant regarding wetland issues.

  
Julie S. Mangarillo, P.E., CPESC

cc: Planning Board via email  
Bill Walters via email  
19-261-248

Bruce Barber via email  
Liz Axelson via email



# Memorandum

To: Planning Board  
Town of Kent

Attn: Philip Tolmach  
Chairman

From: Julie S. Mangarillo, P.E., CPESC

Subject: Erosion Control Plan  
Wetland Permit

Date: June 12, 2019

Project: Zucker ECP Woodchuck Ct  
TM #21.19-1-5

The following materials were reviewed:

- Response Letter prepared by John Karell, Jr., P.E., dated May 16, 2019
- Combined application form, page 1
- Disclosure of Business Interest Form
- Short Environmental Assessment Form (EAF) signed May 10, 2019
- Letter from Gipsy Trail Club, dated April 25, 2019
- Letter from Putnam County Department of Health, dated May 1, 2019
- Erosion Control Cost Estimate, prepared by John Karell, Jr., P.E., dated January 31, 2019, revised May 22, 2019
- Drawings prepared by John Karell, Jr., P.E. dated February 20, 2019, including,
  - S-1 Site and Erosion Control Plan, revised 5/16/2019
  - S-1 Site and Erosion Control Plan, revised 5/23/2019, reduced size only
  - EXG1 Existing Conditions Plan, revised 4/12/2019
- Drawings prepared by Takatina, including:
  - A100 Proposed Plans, last revised 5/16/2019
  - A200 Proposed Elevations, last revised 5/16/2019
  - A001 Proposed Site Plan, last revised 4/1/2019 with Health Dept stamp 5/1/2019
  - A002 Existing and Proposed Plans, last revised 4/1/2019 with Health Dept stamp 5/1/2019
- Drawings not included:
  - S-2 Slope Plan
  - EC-1 Erosion Control & Steep Slope Details/Notes
  - AP-1 Aerial Photo
  - Topographic survey of property prepared for Jonathan Zucker & Una Chae, prepared by David L. O'Dell, P.L.S., dated June 26, 2018

New or supplementary comments are shown in **bold**.

The project proposes construction of an addition and new garage for an existing single family home.

The subject Erosion and Sediment Control Plan is not approved. The following comments are provided for the Planning Board's consideration from a memo dated March 13, 2019:

1. The proposed project is within the NYCDEP East of Hudson watershed, however the current estimate for area of disturbance is less than the threshold of 5,000 SF. As long as the area of disturbance remains less than 5,000 SF then coverage under NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-15-002 is NOT required.

However, since steep slopes will be disturbed and a wetland buffer is expected to be disturbed, a Town of Kent Erosion & Sediment Control Permit is required.

5. Refer to the SWPPP:

- a. Repeat in the conclusion of the SWPPP that as long as the area of disturbance remains under 5,000 SF, coverage under GP-0-15-002 is not required. If during construction the area of disturbance exceeds 5,000 SF, coverage under GP-0-15-002 will be required.
- b. **Revised SWPPP not provided. Please note, estimated limit of disturbance is now 4,924 SF.**

6. Refer to the Drawings:

- a. Drawing S-1, revised 3/5/2019 shows proposed storm tech chambers for infiltration of new garage roof runoff.... While infiltration is typically preferred method for handling additional stormwater runoff from impervious surfaces, it is located within the wetland buffer. We defer to Bruce Barber if an alternative stormwater treatment is preferred in the wetland buffer.
- b. **Another set of Infiltrators are proposed outside the wetland buffer. We defer to Bruce Barber if additional mitigation is required for the wetland buffer disturbance.**

7. A bond estimate of \$520.00 was included with the submittal. We do not recommend this bond estimate be accepted for the bond amount and recommended for approval by the Town Board until additional discussion and analysis is completed.

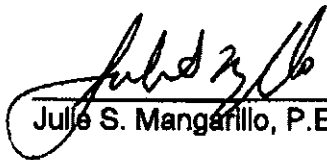
- a. **A revised bond estimate that includes the infiltration systems has been provided for \$2,520.00. The bond estimate indicates 2000 SF of seed and mulch. Based on the areas provided on the drawing, this quantity is to be increased to 3000 SF. Additional wetland mitigation may also require bonding, which could be a separate bond or be added to the erosion control bond. We defer to Bruce Barber regarding potential bonding for wetland buffer disturbance mitigation. At this time, we do not recommend acceptance of the bond amount.**

8. The applicant is responsible for full payment of actual costs of erosion control inspections. An initial inspection fee deposit of \$1000 is to be paid to the Town in accordance with the Town of Kent Fee Schedule. – acknowledged.
9. This house is located within the Gipsy Trail Club. If the applicant can provide that there is no objection to these alterations by the Club, then per §86-6.F, we recommend the public hearing be waived.
  - a. **A letter has been provided by Gipsy Trail Club indicating Gipsy Trail Club has approved the project. Therefore, we recommend the public hearing be waived.**

10. We defer to the Planning Board's environmental consultant regarding wetland issues.

**New Comments:**

1. In future submittals, include all drawings in the set for completeness, or state in response letter which drawings are being omitted.
2. The proposed area of disturbance is 4,924 SF, which is very close to the threshold limit of 5,000 SF. Provide physical demarcation of limits of disturbance in the field where silt fence is not required as well as in the area of the deck replacement to prevent expansion of area of disturbance during construction.



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Julie S. Mangarillo, P.E., CPESC

cc: Planning Board via email  
Bill Walters via email  
19-261-999-166

Bruce Barber via email  
Liz Axelson via email



**JOHN KARELL, JR., P.E.**  
**121 CUSHMAN ROAD**  
**PATTERSON, NEW YORK, 12563**  
845-878-7894 FAX 845 878 4939  
jack4911@yahoo.com

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Zucker  
12 Woodchuck Court  
Kent (T)

**EROSION CONTROL COST ESTIMATE**


ITEM	QUANTITY	COST/UNIT	TOTAL
Silt Fence	100 LF	\$ 4.00	\$400.00
Seed and Mulch	2,000 sf	\$0.06	120.00
Infiltrators	4	500.00	2,000.00
<b>TOTAL</b>			<b>\$2520.00</b>

John Karell, Jr., P.E.  
January 31, 2019, revised May 22, 2019



ARCHITECTURE  
ENGINEERING  
PLANNING  
CPLteam.com

## MEMORANDUM

**TO:** Town of Kent Planning Board  
**CC:** Bill Walters  
Julie Mangarillo  
Bruce Barber  
**FROM:** Liz Axelson, AICP   
**DATE:** June 13, 2019  
**RE:** Zucker Erosion Control Plan and Wetland Permit, 12 Woodchuck Court, Tax Parcel No. 21.19-1-5 / CPL# 14973.00-0010

I reviewed the materials listed at the end of this memorandum. I also reviewed online mapping resources; and the Code of the Town of Kent, Chapters 77, Zoning. Based on my review I offer the following comments for the Board's consideration:

### Summary

1. The proposal involves the erosion control plan for an addition of a garage and deck onto a single-family dwelling, and other improvements to be made to a 43,560 square foot (SF; 1-acre) lot (see tax parcel listed above) in the R-80 (Residential) zoning district.
2. My review is limited to the Zoning Requirements comments below. I defer to the Planning Board's Consulting Engineer and Environmental Consultant for all other aspects of the review.

### SEQRA

3. I have no comments on the Short EAF. The proposal appears to be a Type 2 action under SEQRA.

### Zoning Requirements

4. Add a note to the plans referring to the deed and stating that access was granted over the private right-of-way of Woodchuck Road.

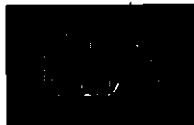
### Recommendation

5. The Planning Board should direct the applicant to:
  - a. address the comments above; and
  - b. provide additional information for a more complete application.
6. The Planning Board may wish to waive the public hearing for the application. Since the application is not be complete, no other action is required by the Planning Board at this time.

If you have any questions please do not hesitate to contact me at 845-454-3411 ext. 21, or e-mail at [eaxelson@CPLteam.com](mailto:eaxelson@CPLteam.com).

### Materials Reviewed

- Response memorandum by John Karell, PE dated May 16, 2019 with attached updated application form; Short EAF;
- Letter from Gypsy Trail Club dated April 25, 2019;
- Putnam County Department of Health letter of May 1, 2019;
- Erosion Control Cost Estimate, prepared by John Karell, PE, dated January 31, 2019, revised May 22, 2019; and
- Site and Erosion Control Plan prepared by John Karell, Jr., P.E., entitled Jonathan Zucker dated February 20, 2019, revised May 23, 2019.



# Memorandum

To: Planning Board  
Town of Kent

Attn: Phillip Tolmach  
Chairman

From: Julie S. Mangarillo, P.E., CPESC

Subject: Site Plan  
Erosion Control Plan

Date: June 13, 2019

Project: Dogward Bound, 461 Richardsville Rd  
TM # 30.12-1-1

The following materials were reviewed:

- Response letters prepared by Charles P. May & Associates, P.C., dated 4/18/2019
- Notice of Intent, signed 4/18/2019
- Drawings prepared by Charles P. May & Associates, P.C., dated 12/12/2018, including
  - CS-1 Cover Sheet, rev 4/9/2019
  - BS-1 Boundary and Topographic Information, rev 4/9/2019
  - DP-1 Demolition Plan, rev 4/9/2019
  - SL-1 Site Layout & Materials Plan, rev 4/9/2019
  - SG-1 Site Grading Plan, rev 4/9/2019
  - EC-1 Erosion Control Plan, updated, but no revision date
  - EC-2 Erosion Control Plan
  - SA-1 Site Analysis Plan
  - FE-1 Elevation Plan
  - FP-1 Ground & Second Floor Plan
  - DE-1 Driveway Entrance Plan, 2/12/2019

The project proposes construction of a pole barn for dog training, an office and storage with a garage for auto and RV parking. Additional site work is also proposed. The parcel received variances for use from the ZBA. There is an existing single family home, dog kennels and fenced dog runs on the property. The project received conditional site plan approval in March 2019.

New or supplementary comments are shown in **bold**.

The subject Erosion and Sediment Control Plan is not approved. The following comments are provided for the Planning Board's consideration from a memo dated August 10, 2017:

1. The proposed project is within the NYCDEP East of Hudson watershed and will disturb more than 5,000 SF of land. A Town of Kent Erosion & Sediment Control Permit is required as well as coverage under NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-15-002.- **Acknowledged.**
10. The applicant is responsible for full payment of actual costs of erosion control inspections. An initial inspection fee deposit of \$1000 is to be paid to the Town in accordance with the Town of Kent Fee Schedule. – **Acknowledged.**

**New Comments:**

1. We recommend the bond estimate of \$1500, prepared by Charles P. May & Associates, P.C. be accepted for the bond amount and recommended for approval by the Town Board.
2. Prior to Planning Board Chairman's signature, Bruce Barber and Liz Axelson will have to indicate if their comments have been satisfactorily addressed.
3. Provide revision date on drawing EC-1.
4. After the erosion control bond is submitted, the MS4 SWPPP Acceptance Form will be provided.
5. If not already done so, prior to Planning Board Chairman's signature of plans, all Planning Board costs and fees including the erosion control bond, initial inspection fee deposit and professional review fees incurred during the review and approval of the application must be paid.

  
Julie S. Mangarillo, P.E., CPESC

cc: Planning Board via email  
Bill Walters via email  
17-261-241

Bruce Barber via email  
Liz Axelson via email