



445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
T 914 761 1300
F 914 761 5372
cuddyfeder.com

Kristen Motel
kmotel@cuddyfeder.com

December 30, 2020

BY HAND DELIVERY & ELECTRONIC SUBMISSION

Chairman Thomas Burt
and Members of the Harbor & Coastal Zone Management Commission
Village of Mamaroneck
169 Mt. Pleasant Avenue
Mamaroneck, NY 10543

Re: Elisabeth & William Fedyna
Supplemental Materials
Harbor & Coastal Zone Management Commission Application
Consistency Review of Wetlands Permit Application
Premises: 1165 Greacen Point Road, Village of Mamaroneck, New York
(Parcel ID: 9-65 -75)

Dear Chairman Burt and Members of the Harbor & Coastal Zone Management Commission:

This letter and enclosed materials are respectfully submitted on behalf Elisabeth and William Fedyna (the "Applicants"), the owners of residential property located at 1165 Greacen Point Road in the Village of Mamaroneck, New York (the "Premises"), in furtherance of the proposed reconstruction of a single-family home, garage and driveway (the "Project").¹

This submission responds to comments made by Commissioners at the November 18th Harbor & Coastal Zone Management Commission ("HCZMC") meeting regarding the Project's consistency with the Village of Mamaroneck Local Waterfront Revitalization Plan ("LWRP").

I. The Project is Consistent with the 44 LWRP Policies

As requested during the November 18th meeting, consistency with LWRP Policies 11, 12 and 17 are discussed below. Consistency with LWRP Policies 7, 7a, 11, 12, 21, 22, 37, 38 and 44 were thoroughly discussed in the Applicants' September 2nd submission and further detailed in the November 4th submission.

LWRP Policies 11² and 12³

¹ The Applicants submitted an application for Consistency Review related to the pending wetlands permit application on April 3, 2020.

² LWRP Policy 11 provides: "Buildings and other structures will be sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion."

³ LWRP Policy 12 provides: "Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features."

LWRP Policies 11 and 12 provide that activities within the coastal area minimize damage to natural resources, property and the potential endangerment of human lives caused by flooding and erosion and require the protection of natural protective features.

The Premises is located within the AE Flood Zone with a Base Flood Elevation (“BFE”) of 13.00. The home and the site are entirely positioned within the 100-year flood plain.

Building Design

In accordance with Policies 11 and 12, the new home will be designed to meet the Village of Mamaroneck Flood Damage Prevention Code (the “Flood Code”) and Federal Emergency Management Agency (“FEMA”) residential construction standards for a residential building within the AE Flood Zone and therefore minimize damage to property and the endangerment of human lives from flooding. To comply with Village and FEMA standards, the finished floor of the proposed home will be at an elevation of 16.00 and the proposed garage will be raised to an elevation of 13.00. This is a significant improvement when compared with the existing residential structure which is not elevated above the BFE and does not meet local or Federal standards for structures within a floodplain.

Since the Applicants’ original submission to the HCZMC on April 3, 2020, the home and garage foundation have been significantly redesigned and reduced in size to eliminate an increase in impervious surface within the wetlands buffer area and to further minimize site disturbance and erosion.

Fill for Replacement of the Existing Septic System

The proposed 420 cubic yards of fill associated with the Project is necessary to remove a failing septic system located partially within the wetland buffer that can leak raw sewage into the wetlands and coastal waters and install a Westchester County Department of Health code-compliant septic system.⁴ As discussed in detail in the attached memorandum prepared by Leonard Jackson, PE (**Exhibit A**), the addition of 420 cubic yards of fill on the Premises will not impact surrounding properties or result in damage to structures or natural resources due to flooding or erosion.

We note that Leonard Jackson has over 47 years of experience in flood control design, reviewing Flood Insurance Studies and managing Flood Control Projects for FEMA, NYSDEC and USACOE. Upon reviewing the Project, Leonard Jackson concluded that:

... the placement of fill at the 1165 Greacen Point site **will not affect the inflow or outflow of tidal flood waters of Long Island Sound, will not affect flood elevations, and neither the dwelling constructed on the site nor any other dwellings will be affected by this placement of fill** within the AE-13 Tidal Flood Zone.

⁴ Replacement of a failing septic system within the wetland buffer furthers LWRP Policies 37 and 38 because it conserves and protects the quality of surface water and minimizes the discharge of excess nutrients and organics into coastal waters.

As detailed in Leonard Jackson's memorandum, the Premises is not situated within a constricting inlet and therefore there is no impact of the fill that can be meaningfully analyzed since the Long Island Sound is an open area. Accordingly, there is no hydrogeology that could be altered, no waves to deflect and no discharge rate to constrict.

We note that there is no LWRP policy expressly prohibiting net fill within a flood zone and, as noted in Leonard Jackson's memorandum, FEMA regulations do not limit the amount of fill placed in a Tidal AE flood zone because the placement of fill in an AE flood zone is usually inconsequential with regard to flood elevations.

Protection of Natural Protective Features

In accordance with Policy 12, the Applicants are proposing to restore and protect natural protective features on the Premises. As demonstrated in the enclosed Landscaping Plan prepared by JMC, PLLC and dated December 29, 2020, the saltmeadow cordgrass, *Spartina patens*, will be replanted along the upper boundary of the salt marsh to help stabilize the shoreline. This restoration and protection of natural features will minimize damage to natural resources and property due to coastal erosion and flooding.⁵ See **Exhibit B** – JMC Erosion Memorandum.

The Village's environmental consultant, Sven Hoeger, Ecologist, Dolph Rotfeld Engineering, P.C., and the Applicants' Wetland and Environmental Expert, Beth Evans, PWS, Evans Associates Environmental Consulting, Inc., have opined that the Project will not result in any negative impacts to natural resources and will actually significantly improve the functional values of the wetlands by restoring portions of the high marsh and salt meadow that are currently maintained as lawn. Moreover, the New York State Department of Environmental Conservation ("NYSDEC") has granted a tidal wetland permit for the Project, finding the proposed activities will not adversely impact natural resources within the wetlands and wetlands buffer area. See **Exhibit R**.

LWRP Policy 17⁶

LWRP Policy 17 provides that non-structural measures be implemented to minimize erosion, flooding and damage to natural resources. The Premises does not currently have any structural measures to prevent erosion or flooding and no seawall or other structural measures are proposed.

Consistent with Policy 17, the Applicants are proposing non-structural measures such as stormwater management and wetland and wetland buffer plantings to minimize erosion and flooding. As further discussed in the enclosed memorandum discussing Policy 17 prepared by JMC, PLLC, dated December 29, 2020 ("Policy 17 Memorandum") (**Exhibit C**), the proposed

⁵ See July 13, 2020 Review Memorandum by Sven Hoeger, Dolph Rotfeld Engineering, P.C., Ecologist for the Village of Mamaroneck and August 31, 2020 Wetland Analysis Narrative prepared by Beth Evans, PWS with Evans Associates Environmental Consulting, Inc.

⁶ LWRP Policy 17 provides: "Non-structural measures to minimize damage to natural resources and property from flooding and erosion shall be used whenever possible."

stormwater management system will reduce runoff during storm events and minimize erosion. Notably, no stormwater management system currently exists at the Premises and the Applicants proposal will markedly improve filtration and reduce runoff. Additionally, the Applicants are not proposing any increase in impervious surface and therefore there will be no increase in stormwater runoff.

Additionally, as depicted in the enclosed Planting Plan (Sheet L-100 of the Site Drawings) prepared by JMC, PLLC, last revised December 29, 2020, wetland plantings and grasses will be planted for additional stabilization to minimize any eroded soils into coastal waters. See the attached memorandum discussing the proposed erosion control from JMC, PLLC, dated December 29, 2020 ("Erosion Control Memorandum") (**Exhibit B**), which demonstrates compliance with the New York State Standards for Erosion Control Planning and Site Management. The Erosion Control Memorandum also includes guidance from the University of Oklahoma Cooperative Extension Services Division of Agricultural Science and Natural Resources that recommends the use of grasses as opposed to trees to prevent erosion.

The addition of erosion resistant wetland plantings such as Salt Meadow (*Spartina Patens*) and Marsh Elder (*IVA Frutescens*), and maintenance of the existing salt grasses will stabilize the Premises and minimize damage to natural resources and property from flooding and erosion.

II. Public Sewer Connection Feasibility

The Commission has requested the Applicants evaluate the feasibility of installing a public sewer line in lieu of replacing the existing septic system. As further detailed in the enclosed Summary of Anticipated Approval Process for the Public Sewer (**Exhibit E**), the installation of a sewer line to be dedicated to the Village is a complex and onerous process that we submit is not commensurate with the proposed redevelopment of one single-family home. As it relates to this Project, such an undertaking has numerous uncertainties given the Village has expressed no interest in accepting control of a new public sewer to date.

Before proposing replacement of the existing septic system, the Applicants spent nearly 2 years evaluating the feasibility of installing a sanitary sewer line and organizing neighborhood interest to install a public sewer. See **Exhibit G-** Timeline of Events on Greacen Point Road.

We respectfully submit that such an undertaking is not practical in this situation for the reasons outlined below.

Abandonment of Existing Private Lines Required

First, as demonstrated on the attached map in **Exhibit H**, there are 11 privately-owned sewer lines below Greacen Point Road (the "Road"). If a public sewer line is installed, all 11 private sewer lines would need to be abandoned and the properties served by said lines would need to connect to the public sewer line. Pursuant to the Village of Mamaroneck Sewer Code ("Sewer Code") Section 282-1:

Every owner of property abutting on any street or avenue containing a sanitary sewer shall connect all plumbing in said premises to said sanitary sewer.

In addition, Westchester County Health Code Section 873.727 requires:

The owner of any habitable building or property used for human occupancy . . . abutting upon any street . . . or right-of-way in which there is located a public sanitary sewer may be **required to install at the expense of such owner suitable toilet facilities therein and to connect such facilities directly with the public sanitary sewer**, in accordance with any local regulations of the municipality owning such sewer, within 90 days after date of an order in writing issued by the commissioner to do so, provided that such sewer is within 100 feet of any property line of such premises and is otherwise accessible. Where a public sanitary sewer is available no new arrangement shall be made other than an individual connection to serve each building site.

These Village and County Code provisions require all property owners on Greacen Point Road connect to a public sewer line, if one becomes available. As such, if the Applicants are required to install a public sewer line, the Village would be tasked with coordinating with each individual property owner on Greacen Point Road served by a private line or a septic system to abandon its private property and connect to the new sewer.

The Supreme Court, Appellate Division, Second Department of New York has held that private sewer lines belonging to private individuals are private property and a municipality cannot take or destroy such private sewers for public use without just compensation. Wright v. City of Mt. Vernon, 60 N.Y.S. 1017, 1019 (2nd Dep't 1899) (**Exhibit S**). Accordingly, if a public sewer line were to be installed on this portion of Greacen Point Road, the Village of Mamaroneck would be required to pay just compensation to the owners of the private lines.

Greacen Point Road Ownership

Additionally, the portion of Greacen Point Road adjacent to the Premises is privately owned by the Greacen Point Road Corporation ("GPRC" or the "Corporation") and is not a public road. In order for the Applicants to install a sewer line, the GPRC must grant approval for the work and ultimately provide the Village with an easement for maintenance and repairs. As such, the Applicants respectfully submit that the ability to install a sewer line is not their decision to make and would require the cooperation of third-party GPRC.

In an effort to pursue a public sewer line before filing this Application, on November 19, 2019, the Applicants presented during a GPRC meeting about the possibility of pursuing a public sanitary line. Based on feedback received at that meeting, as well as more recent discussions with GPRC members in connection with this Application, GPRC members have numerous concerns about such a proposal. These concerns emanate from the GPRC's last experience with installation of a private sewer line in 2006, which resulted in significant road disruption and access issues that occurred for an extended period of time.

Based on recent conversations with the surrounding property owners on the Road, all of whom are voting members of the Corporation, the GPRC would only authorize a sanitary sewer line if it is in the best interest of all GPRC members and does not negatively impact any property owners. Given this, concerns related to the abandonment of private lines, road closure and

excavation are likely to be raised if the GPRC is presented with a proposal for installation of a public sewer line.

Village to Accept Dedication and Assume Operation & Maintenance Costs

Further, pursuant to the Westchester County Department of Health Sanitary Code and Chapter 30 of the 10 States Standards for Wastewater Facilities, discussed in more detail in the enclosed Sewer Memorandum, prepared by JMC, PLLC, dated December 30, 2020 (**Exhibit D**), the Village would be responsible for maintenance and operation of the public sewer after accepting dedication of the line. Despite phone calls, voicemails and emails⁷ from the Applicants and their engineers at JMC, PLLC to the Village Manager to discuss whether the Village would be willing to assume such responsibility and expense, no member of Village staff has responded with interest in a public sewer line on Greacen Point Road. Without the cooperation and interest of the Village, we respectfully submit that it is not feasible for the Applicants to undertake the expense of constructing a sewer line in the hope that the municipality will accept dedication.

Thus, construction and dedication of a public sewer line is not feasible in this case since the owners of the existing private sewer lines would be forced to abandon their property, authorization is required from a third party corporation, and the Village has not expressed an interest in assuming operation and maintenance of the sewer line once it is constructed.

III. Private Sewer Connection Feasibility

The Commission also requested the Applicants evaluate the feasibility of installing an additional private sewer line in lieu of replacing the existing septic system. As further detailed in the enclosed Summary of Anticipated Approval Process for a Private Sewer Line (**Exhibit F**), the installation of a private line is also a complex and burdensome process that creates potential environmental and safety issues.

There are 11 private sewer lines currently underneath Greacen Point Road, along with public utilities such as water, stormwater and gas lines. The 11 sewer lines are privately-owned and therefore the Applicants do not have the ability to connect to this existing infrastructure. See the enclosed Timeline (**Exhibit G**) which demonstrates that the Applicants previously sought approval from the Village Engineer, Village Manager, and Department of Public Works on February 11, 2019 to connect to an existing private sewer line (**Exhibit P**). See the enclosed February 20, 2019 letter from former Village Engineer Hernane De Almeida, P.E., rejecting this request (**Exhibit Q**). Additionally, Westchester County Sanitary Code Section 873.94¹ prohibits more than one residence be connected to a private sewer line.⁸

⁷ Emails were sent from Rich Cordone, JMC, PLLC to Village Manager Barberio on May 14, 2020 and May 26, 2020, copying the Applicants and Brian Hildenbrand, former Village Engineering Consultant.

⁸ By definition, the extension of a sewer line that services more than one lot shall be public. "*Public sewerage system*. The term 'public sewerage system' shall mean a system utilized for the collection and disposal of sewage or other wastes of a liquid nature, including the various devices for the treatment of such wastes serving more than one (1) lot, whether owned by a municipal corporation or private utility."

The Applicants are also providing with this submission a complete record of all documents related to the existing private sewer line and correspondence with the former Village Engineer, Hernane De Almeida. See **Exhibits H–Q**. This documentation was previously provided to the Village’s Engineering Consultant, Brian Hildenbrand, Kellard Sessions, and former Deputy Village Attorney, Christy Mason.

As outlined below, it is respectfully submitted that the installation of a private sewer line is not an environmentally responsible, safe, or practical alternative to the replacement of the existing failing septic system.

Greacen Point Road Ownership

As previously discussed herein, the portion of the Road adjacent to the Premises is privately-owned. Therefore, approval from the GPRC for the road closure, excavation and installation of the private line would be required for the Applicants to install an additional sewer line. Additionally, the GPRC would need to grant the Applicants an easement for maintenance and repairs. As stated above, the feasibility of this option depends on the consent of this third party and based on recent discussions, it is unclear whether the GPRC would authorize such work.

Infrastructure Crowding and Impacts on Safety, the Environment and Future Planning

As further detailed in the attached Sewer Memorandum (**Exhibit D**), it would be considered poor future planning and bad engineering practice to add an additional private line. Given the 11 private sewer lines as well as existing water, stormwater and gas lines, there is limited space underneath the road. Installation of a new private line would limit the amount of space available to public utilities, drainage infrastructure or other future installations.

As discussed in the Sewer Memorandum, a multitude of private sewer lines in close proximity to utility lines increases the risk of accidental damage resulting in a sewer leak that could threaten natural resources in adjacent Long Island Sound and nearby Critical Environmental Areas.

Similarly, operation, maintenance and monitoring responsibilities associated with a private sewer line create additional risk for the environment and can potentially frustrate the Village’s responsibilities related to the public sewer line connection. Each individual owner is responsible for maintenance, monitoring and the sound operation of their private sewer line. This requires each owner to promptly identify and repair any leaks.

As detailed in the Sewer Memorandum, when numerous sewer and utility lines are installed underneath the road, it becomes difficult to identify the owner of the leaking line without damaging the other existing lines. This could potentially create a dangerous situation where the party responsible for a leak cannot be identified and the responsibility for prompt repair and remediation is unknown. To further complicate such a situation, the Village does not have extensive, if any, monitoring ability or control over private sewer lines to prevent such a situation from occurring. The enclosed Sewer Memorandum also discusses how such a situation can impact the Village’s compliance with the requirements of its NYSDEC MS4 permit, as well as the requirements of Westchester County Sanitary Code Sections 824.71-72.

For the reasons previously stated herein, construction of a private sewer line is not feasible in this case as it would contribute to infrastructure overcrowding, environmental and safety issues and requires third party authorization.

IV. Conclusion

The evidence provided herein, as well as previously provided in the Applicants' prior submissions⁹ demonstrate the Project is consistent with the LWRP policies. The Applicants have produced a significant amount of history and data on the feasibility of installing a public or private sewer line and have demonstrated the impracticality and potential environmental and safety concerns associated with those options. It is respectfully submitted that the 420 cubic yards of fill associated with the proposed replacement of the failing septic system will not have any impact on the environment or natural protective features and will not increase the potential for flooding and erosion at the Premises or surrounding properties. We respectfully request that a consistency determination be granted for the Project or, in the alternative, that the Commission issue a determination that the Project is consistent, to the maximum extent practicable, with the policies set forth in the LWRP and will not substantially hinder the achievement of any of those policies.

Materials Enclosed

In support of this application, enclosed please find an electronic copy of the following materials:

- Exhibit A: Leonard Jackson Associates Consulting Engineers' Memorandum, dated December 14, 2020;
- Exhibit B: Memorandum discussing Erosion Control prepared by JMC, PLLC, dated December 29, 2020, including New York State Standards for Erosion Control Planning and Site Management and guidance from the University of Oklahoma Cooperative Extension Services Division of Agricultural Science and Natural Resources Guidance on grass for erosion control and site stabilization;
- Exhibit C: Memorandum discussing compliance with LWRP Policy 17, prepared by JMC, PLLC, dated December 29, 2020;
- Exhibit D: Memorandum discussing sewer feasibility, prepared by JMC, PLLC, dated December 30, 2020;
- Exhibit E: Summary of Anticipated Approval Process for a Public Sewer Line;
- Exhibit F: Summary of Anticipated Approval Process for a Private Sewer Line;
- Exhibit G: Timeline of events on Greacen Point Road related to proposed sewer;
- Exhibit H: A map of properties in the nearby area of Greacen Point Road identifying which lots are served by a private sewer line and the lots served by septic systems;
- Exhibit I: Sewer Pipe Maintenance Agreement dated April 20, 2006 (Control No. 470800136);
- Exhibit J: Manhole Agreement dated April 20, 2006 (Control No. 470800155);
- Exhibit K: Sewer Easement Agreement dated March 11, 2011 (Control No. 510633522);

⁹ See April 3, 2020; July 1, 2020; September 2, 2020 and November 4, 2020 submissions to the HCZMC.



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Exhibit L: Sewer Easement Agreement dated January 27, 1997 (Liber 11693, page 267);
Exhibit M: Westchester Joint Water Works Easement Agreement dated August 8, 2016 (Control No. 562103776);
Exhibit N: As built drawings of the sewer lines, prepared by JA Kirby Engineering & Land Surveying, dated November 23, 2004;
Exhibit O: Survey of Greacen Point Road, prepared by Spinelli Surveying, last updated April 23, 2020;
Exhibit P: Letter from homeowners on Greacen Point Road to Daniel J. Sarnoff, Acting Village Manager, Tony Iacovelli, General Foreman, Mamaroneck Department of Public Works, and Hernane De Almeida, P.E., Village Engineer, dated February 11, 2019;
Exhibit Q: Letter from Hernane De Almeida, P.E., Village Engineer, dated February 20, 2019, responding to Greacen Point Road homeowners' letter;
Exhibit R: DEC permit No. 3-5532-00431/00001, issued November 18, 2020; and
Exhibit S: Wright v. City of Mt. Vernon, 60 N.Y.S. 1017, 1019 (2nd Dep't 1899).

Also enclosed please find copies of the following:

- Engineering drawings, including a landscaping plan (L-100), prepared by JMC, PLLC, dated July 24, 2018 and last updated December 29, 2020.
- Stormwater Pollution Prevention Plan, prepared by JMC, PLLC, dated June 8, 2020 and last updated December 29, 2020.

We look forward to appearing before the HCZMC on January 20th. Should the HCZMC or Village Staff have any questions or comments in the interim, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Kristen Motel', is written over a light blue horizontal line.

Kristen Motel
Enclosures

cc: Frank Tavalacci, Building Inspector
William Long, Village Planner
JMC, PLLC
Beth Evans, Evans Associates Environmental Consulting, Inc.
Anthony B. Gioffre III, Esq.
Client