

THE TOWN OF



GRAND ISLAND

MIKE MADIGAN
COUNCILMAN

2255 BASELINE ROAD
GRAND ISLAND
NEW YORK
14072-1710
OFFICE (716) 773-9600
FAX (716) 773-9618

Dear Jeffrey Palumbo:

I am providing this letter to document the following request as a follow-up to a document request made to you on 19-September 2019 by e-mail regarding the SouthPointe Project Wetlands delineation. The following is a clarification and some details related to this documentation request:

In late July, after reviewing the SouthPointe (SP) Wetlands delineation and reviewing the associated requirements, it was discovered that the SP delineation that was done in July 2014 was close to expiring (delineations are good for 3-5 years). The following actions have been taken and information has been provided since this date:

- * On 7/28/2019 the NY DEC Lisa Czechowicz Deputy Regional Permit Administrator who is assigned to the SP project was contacted and was notified of the expiration of the delineation, and she committed to investigate and respond.
- * On 7/31/2019 Lisa Czechowicz communicated that in order for the DEC to approve the Wetlands delineation the developer had to complete a re-evaluation of the wetland boundaries around the perimeter of the project footprint of wetlands TW-16 and TW-27 and that she had communicated this requirement to your SP team (See attachment 1).
- * On August 22nd I met with Doug Scheid and you regarding Southpointe. At this meeting I inquired about the wetlands delineation and Doug Scheid communicated that the Boundary delineation had already been completed and communicated to the NY DEC with no significant concerns identified and no further action required (see e-mail attachment 2).

On August 26th, at an open public meeting where you and the SouthPointe Development team provided a presentation to both the Town Board and the public providing details related to the project you stated the following (refer to the 55 minute mark of the videoed presentation): <https://www.facebook.com/grandislandnews/videos/2454295291467226/> Jeffrey Palumbo "I would like to respond to the other study you asked about – about the wetlands. The wetlands has been re-delineated and resubmitted to the Core and DEC." (question: When was that?) You stated "The DEC within the last 60 days and the Core was maybe six months ago – the whole thing was re-delineated."

- * On September 10th the Town Board received from you a letter titled "SouthPointe Sewer District Extension and Subdivision Approval". The purpose of the letter was to both request that the Board take action to approve the Sewer District Extension and to Approve the project Concept Plan. In this letter you provided information that was intended to address any remaining concerns the Town Board may have with the project – information the Town Board would presumably use to base their decision on whether to approve or reject the project as

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requested. This letter stated the following (See attachment 3):

* "Additional wetland mitigation was incorporated based on comments from the USACoE and NYDEC and final determinations from both agencies have been received.

* Footnote: "Because the wetland delineation by the NYDEC was completed more than five (5) years ago, the applicant was required to re-evaluate the state jurisdictional wetlands on the property and has submitted a revised delineation to the DEC for approval. The revised delineation is not expected to have any effect on the SouthPointe Project, which impacts only one (1) acre of jurisdictional wetlands.

On September 16, 2019 Lisa Czechowicz from the NY DEC responded to a communication regarding the letter you sent to the Town Board on September 10th 2019, which she was provided, stating she had received no communication or documentation related to the SouthPointe Project addressing her request to re-evaluate the wetland boundaries contrary to what was stated in the letter (See attachment 4).

On September 18, 2019 I called Lisa Czechowicz and she confirmed that she had still not received a response as of September 18th, 2019 from the Developer. She communicated that she would contact the Developer regarding this discrepancy.

On September 19th, 2019 I contacted by e-mail the SP team and requested the referenced wetlands delineation documentation (See attachment 5) and have received no response.

On September 19, 2019 the Developer notified the Town Board that the SP project was temporarily being placed on hold – no reason was provided.

On September 25th, 2019 Lisa Czechowicz was again contacted and she again confirmed that she is the primary contact for this project at the NYDEC and that no response had been received to date addressing her concerns regarding the need to re-evaluate the wetland boundaries.

As you are aware the Town Board must rely on the Developer to provide accurate information – the Board uses the information you provide to make decisions. The above referenced documents are critical to future decisions that the Town will make regarding this project and these documents must be received so we can make fully informed decisions on this project. Please provide the following specific documents:

1. On August 26th you informed the public and the Town Board that within the prior 60 days you had submitted to the NYDEC a wetlands re-delineation of the entire property ("the whole thing was re-delineated"). Please provide the document provided to the NYDEC on or before

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August 26th 2019 showing that the SouthPointe property had been re-delineated (submitted in 2019).

2. On August 26th you informed the Board that within approximately 6 months prior to August 26th 2019 you had submitted to the USACoE a re-delineation of the entire wetlands on the SouthPointe property. Please provide this documentation dated on or before August 26th 2019 (submitted in 2019).

3. On September 10th you provided a letter to the Town Board asking the Board to approve the Concept plan and Sewer District Extension where you stated you submitted a revised delineation to the DEC for approval related to the expiration of the prior delineation. Please provide this document that would be dated after Lisa Czechowicz request to you on 7/31/2019 and on or before September 10th, 2019.

Please be aware that I have reviewed this communication with the current Town Board. Please provide the requested documentation so we can review those documents as part of your request made on January 9th, 2020 (see attachment 6) so we can respond to your request.

Best regards;

Michael Madigan
Town of Grand Island
Councilperson

Attachment 1

Mike Madigan

From: Czechowicz, Lisa M (DEC) <Lisa.Czechowicz@dec.ny.gov>
Sent: Wednesday, July 31, 2019 2:29 PM
To: Mike Madigan
Subject: RE: Southpointe

Hello Mike,

I have had a chance to talk with the wetland biologist who has been involved with the review of the Southpointe project. We have determined that the DEC wetland delineation associated with this project can be extended provided the following condition is met:

*Completion of a re-evaluation of the wetland boundaries around the perimeter of the proposed project footprint and mitigation area to see if the boundaries of Wetlands TW-16 or TW-27 have expanded. This re-evaluation would have to be completed by a wetland consulting firm and verified by the NYSDEC wetland biologist. This re-evaluation would be valid for 5 years or the life of the permit, if a permit is issued within 5 years of the re-evaluation.

We will reach out to the applicant and/or their consultant to let them know of this requirement. Please let me know if you have any other questions. Thanks.

Lisa

-----Original Message-----

From: Mike Madigan <mmadigan@grand-island.ny.us>
Sent: Wednesday, July 31, 2019 9:10 AM
To: Czechowicz, Lisa M (DEC) <Lisa.Czechowicz@dec.ny.gov>
Subject: Re: Southpointe

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Please keep me posted - this project impacts significant wetland areas that have beaver activity throughout. Reading about wetland delineation it seems they are only valid for 3-5 years - that time frame seems to be expired unless I am misunderstanding how this regulation is applied.

Thank you Lisa;

Mike

Sent from my iPhone

On Jul 29, 2019, at 4:13 PM, Czechowicz, Lisa M (DEC)
<Lisa.Czechowicz@dec.ny.govmailto:Lisa.Czechowicz@dec.ny.gov>> wrote:

Hi Mike,

Attachment 2

Mike Madigan

From: Mike Madigan
Sent: Thursday, August 22, 2019 11:54 AM
To: [REDACTED]
Subject: Re: Southpointe

FYI: I have been told the wetlands delineation has already been completed - verified boundaries so that was apparently only a minor hurdle.

Sent from my iPhone

↑
Communicated after
meeting w/SP Developer.

Attachment 3

BARCLAY DAMON ^{LLP}

Jeffery D. Palumbo
Partner

September 10, 2019

VIA REGULAR MAIL & EMAIL

Town of Grand Island Supervisor McMurray
and Councilmembers
2255 Baseline Road
Grand Island, NY 14072

RE: Southpointe Sewer District Extension & Subdivision Approval
("Southpointe Project")

Dear Supervisor McMurray:

We write to request that the Town Board include the proposed Southpointe Project resolutions approving the Sewer District Extension and Revised Development Concept Plan, and re-affirming that the Southpointe Project as amended will result in no adverse environmental impact under SEQRA, on the Town Board's September 16, 2019 agenda. For your information, below is a summary of the actions taken by applicant SRI, LLC in connection with the approvals sought since the Planning Board's July 2013 recommendation of approval. It is respectfully submitted that SRI has complied with all requests of the Town Board and involved agencies to date and the Town Board's consideration and determination of these applications is ripe.

In April of 1998, the Town Board approved the rezoning of 179.57 acres of the 284 acre site to a PUD designation, the creation of Sanitary Sewer District No. 7 and the development's Master Plan (the "Southpointe Master Plan"). At that time, the Town Board, as lead agency under the State Environmental Quality Review Act ("SEQRA") also accepted a Final Supplemental Environmental Impact Statement ("FSEIS") and on June 15, 1998 adopted findings pursuant to SEQRA approving the proposed action with conditions.

Due to subsequent changes to the Zoning Map and the changing wetland and stormwater regulation environment, a Revised Development Concept Plan was submitted to the Town for review in July of 2013. The Revised Development Concept Plan included a revision to the sanitary sewer district physical limits to include the entire 284 +/- acre Site; and revised the Site design to a PDD to better conform to the development currently found within the Town of Grand Island. On July 8, 2013 the Planning Board of the Town of Grand Island recommended a resolution approving the Revised Development Concept Plan.

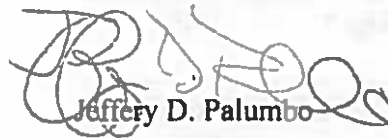
Supervisor McMurray
September 10, 2019
Page 2

At the Town Board's request, the applicant then completed an updated Traffic Study based on the Revised Development Concept Plan, which concluded that the existing transportation network can adequately accommodate the projected traffic volumes and resulting impacts to the area intersections. The applicant also submitted a revised Map and Plan of the Sanitary Sewer District, for which the Town sought comments from the DEC. The DEC requested an advanced downstream sewer capacity analysis including hydraulic modeling to assure capacity, which was completed and reviewed by the DEC in August of 2019. Additional wetland mitigation was incorporated based on comments from the USACoE and NYSDEC and final determinations from both agencies have been received.¹

Applicant's supplemental submissions confirm that the Revised Development Concept Plan results in a lower overall development density, less wetland impact, lower impact on the sanitary sewer system, is better aligned with the market demands, is more in keeping with the surrounding development and character of Grand Island, and complies with the requirements of the zoning regulations. Accordingly, we respectfully request that the Board vote on the pending resolutions in order to move the Southpointe Project forward.

Thank you in advance for your attention to this matter. If you have any questions or concerns regarding, please do not hesitate to contact the undersigned.

Very truly yours,



Jeffery D. Palumbo

cc: Councilmember Michael Madigan
Councilmember Beverly Kinney
Councilmember Paul Marston
Councilmember Jennifer L. Baney
Pattie Frentzel, Town Clerk
Karen Cooney, Deputy Town Clerk
Peter C. Godfrey, Esq.
Robert Westfall, P.E

¹ Because the wetland delineation accepted by the NYSDEC was completed more than five (5) years ago, the applicant was required to re-evaluate the state jurisdictional wetlands on the property and has submitted a revised delineation to the DEC for approval. The revised delineation is not expected to have any effect on the Southpointe Project, which impacts only one (1) acre of jurisdictional wetland.

Attachment 4

Mike Madigan

From: Mike Madigan
Sent: Tuesday, January 14, 2020 5:45 PM
To: Mike Madigan
Subject: September 16th DEC response regarding not receiving updated delineation from SP Developer

Sent from my BlackBerry 10 smartphone on the Sprint network.

From: Czechowicz, Lisa M (DEC)

<Lisa.Czechowicz@dec.ny.gov<<mailto:Lisa.Czechowicz@dec.ny.gov>><<mailto:Lisa.Czechowicz@dec.ny.gov>>>

Sent: Monday, September 16, 2019 3:56 PM ←

Subject: Southpointe - Grand Island

Dave Denk passed your messages along to me as I am the analyst assigned to the Southpointe project. I saw the footnote in Jeff Palumbo's letter regarding submission of an updated wetland delineation, however to my knowledge we have not yet received an updated delineation in response to my August 1, 2019 letter. I will reach out to the Town to let them know this information as well. Thank you for your interest in this matter. Please let me know if you have any additional questions.

Lisa

Lisa Porter Czechowicz

Deputy Regional Permit Administrator, Division of Environmental Permits

New York State Department of Environmental Conservation

270 Michigan Avenue, Buffalo, NY 14203

P: (716) 851-7165 | F: (716) 851-7168 |

lisa.czechowicz@dec.ny.gov<<mailto:lisa.czechowicz@dec.ny.gov>><<mailto:lisa.czechowicz@dec.ny.gov>>

www.dec.ny.gov<<http://www.dec.ny.gov>><<http://www.dec.ny.gov>> |

<image001.png><<https://www.facebook.com/NYSDEC>> | <image002.png><<https://twitter.com/NYSDEC>>

<image002.png>

<image001.png>

Attachment 5

Mike Madigan

From: Mike Madigan
Sent: Thursday, September 19, 2019 11:22 AM
To: Krueger, Claire C.
Cc: Nathan McMurray; Town Board; Pattie Frentzel; Karen Cooney; Peter Godfrey's Internet Address; Robert Westfall; Palumbo, Jeffery D.; Holmes, Elizabeth
Subject: Re: Southpointe Project

Dear Jeffrey Palumbo: Please forward any and all documentation that has been submitted year to date and any associated responses both to the Core of Engineers and to NY DEC relating to the wetlands and or the wetlands delineation for the SouthPointe project.

I would like to review these communication, submissions and associated responses.

Thank you
Mike Madigan
716-812-6027

Sent from my iPhone

On Sep 10, 2019, at 1:26 PM, Krueger, Claire C. <ckrueger@barclaydamon.com> wrote:


Please find attached a letter from Attorney Jeffery Palumbo relative to the Southpointe Project.

Thank you,
Claire C. Krueger
Assistant to Jeffery D. Palumbo, Esq.

From: Krueger, Claire C. [<mailto:ckrueger@barclaydamon.com>]
Sent: Tuesday, September 10, 2019 1:19 PM
To: Krueger, Claire C.
Subject: Southpointe Project

Your Scan File Is Attached

Claire C. Krueger
Legal Secretary


9276 Main Street • Suite 3 • Clarence, NY 14031
D: (716) 858-3737 • F: (716) 768-2737 • E: ckrueger@barclaydamon.com

Attachment 6

BARCLAY DAMON LLP

Jeffery D. Palumbo
Partner

January 8, 2020

VIA REGULAR MAIL & EMAIL

Town of Grand Island Supervisor John Whitney
and Councilmembers
2255 Baseline Road
Grand Island, NY 14072

RE: Southpointe Sewer District Extension & Subdivision Approval
("Southpointe Development")

Dear Supervisor Whitney:

Congratulations on your position and Happy New Year. As you know, we represent SRI, LLC ("SRI") in connection with the proposed Southpointe Development. We are seeking approvals for a Sewer District Extension and Revised Development Concept Plan. In addition, we are asking the Town Board to re-affirm that the Southpointe Development as amended will result in no adverse environmental impact under SEQRA. It is respectfully submitted that SRI has complied with all requests of the Town Board and involved agencies to date. We write to summarize the actions taken by SRI in furtherance of the pending approvals, as well as seek the Town Board's direction for final consideration and determination of these applications.

In April of 1998, the Town Board approved the rezoning of 179.57 acres of the 284 acre site to a PUD designation, the creation of Sanitary Sewer District No. 7 and the development's Master Plan (the "Southpointe Master Plan"). At that time, the Town Board, as lead agency under the State Environmental Quality Review Act ("SEQRA") also accepted a Final Supplemental Environmental Impact Statement ("FSEIS") and on June 15, 1998 adopted findings pursuant to SEQRA approving the proposed action with conditions.

Due to subsequent changes to the Zoning Map and the changing wetland and stormwater regulation environment, a Revised Development Concept Plan was submitted to the Town for review in July of 2013. The Revised Development Concept Plan included a revision to the sanitary sewer district physical limits to include the entire 284 +/- acre Site; the Site design was modified to a PDD to better conform to the development currently found within the Town of Grand Island. On July 8, 2013 the Planning Board of the Town of Grand Island recommended a resolution approving the Revised Development Concept Plan.

Supervisor Whitney
January 8, 2020
Page 2

At the Town Board's request, the applicant then completed an updated Traffic Study by SRF Associates based on the Revised Development Concept Plan. The Study concluded that the existing transportation network can adequately accommodate the projected traffic volumes and resulting impacts to the area intersections. The applicant also submitted a revised Map and Plan of the Sanitary Sewer District, for which the Town sought comments from the DEC. The DEC requested an advanced downstream sewer capacity analysis including hydraulic modeling to assure capacity, which was completed and reviewed by the DEC in August of 2019. Additional wetland mitigation was incorporated based on comments from the USACoE and NYSDEC and final determinations from both agencies have been received.¹ Finally, we have agreed to meet with and address additional concerns of the Town's Traffic Safety Board, which we plan to do at the upcoming January 14, 2020 meeting.

Applicant's supplemental submissions confirm there are no significant environmental impacts that result from the Revised Development Concept Plan. Thus, we believe that the pending applications are now ripe for consideration by the Town Board and respectfully request you move forward with a SEQR determination and move this process forward to final approval.

Thank you in advance for your attention to this matter.

Very truly yours,



Jeffery D. Palumbo

cc: Councilmember Thomas Digati
Councilmember Michael Madigan
Councilmember Paul Marston
Councilmember Jennifer L. Baney
Pattie Frentzel, Town Clerk
Peter C. Godfrey, Esq.
Robert Westfall, P.E.
Harold Schertz
Jordan Williams
Doug Scheid

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¹ Because the wetland delineation accepted by the NYSDEC was completed more than five (5) years ago, the applicant was required to re-evaluate the state jurisdictional wetlands on the property and has submitted a revised delineation to the DEC for approval. The revised delineation is not expected to have any effect on the Southpointe Development, which impacts only one (1) acre of jurisdictional wetland.