

KENNETH SCHMITT
Town Supervisor

ANN SPOFFORD
Town Clerk

SUZANNE MC DONOUGH
Town Councilwoman
Deputy Supervisor

TOWN OF CARMEL
TOWN HALL

KATHLEEN KRAUS
Receiver of Taxes

MICHAEL A. BARILE
Town Councilman
JOHN D. LUPINACCI
Town Councilman
JONATHAN SCHNEIDER
Town Councilman

60 McAlpin Avenue
Mahopac, New York 10541
Tel. (845) 628-1500 • Fax (845) 628-6836
www.carmelny.org

MICHAEL SIMONE
Superintendent of Highways
Tel. (845) 628-7474

TOWN BOARD VOTING MEETING
Wednesday, December 18, 2019 7:00pm

PLEDGE OF ALLEGIANCE - MOMENT OF SILENCE

6:15pm Executive Session:

1. Garbage District – Contractual

PRESENTATION OF PLAQUES TO COUNCILMEN JOHN LUPINACCI AND
JONATHAN SCHNEIDER IN GRATITUDE FOR THEIR EIGHT YEARS OF
DEDICATED SERVICE TO THE TOWN OF CARMEL

Town Board Voting Meeting

- Accept Town Board Minutes, November 20 and December 4, 11, 2019
- 1. Res: Making Probationary Appointment of Police Officer Town of Carmel Police Department
- 2. Res: Making Probationary Appointment of Police Officer Town of Carmel Police Department
- 3. Res: Making Probationary Appointment of Lieutenant in the Town of Carmel Police Department
- 4. Res: Authorizing Budget Modifications Period Ending 11/30/2019 #2019/05
- 5. Res: Authorizing Entry into Advance Payment Agreement with NYSDOT
- 6. Res: Accepting Proposal for Purchase of Police Cameras
- 7. Res: Authorizing Attendance to Training Seminars
- 8. Res: Accepting Proposal for Purchase of Diagnostic Software – Highway Department
- 9. Res: Authorizing Advertising for Bids for Sewer Jetting Carmel Sewer Districts #s 1,2,4,5,6,7
- 10. Res: Accepting Proposal for Aerial Mapping Carmel Water District #2
- 11. Res: Authorizing Payment for Repairs
- 12. Res: Authorizing Advertise for Bids for Dam Rehabilitation Projects – Lake Casse Park District and Lake Teakettle Park District
- 13. Res: Waiving the Notice Requirement in Section 64 of the New York State ABC Law with Respect to a Liquor License for Patlaj, LLC d/b/a Titan Steakhouse, 947 South Lake Blvd., 3-A, Mahopac, NY
- 14. Res: Authorizing Acceptance of Proposal for Workers Compensation Insurance
- 15. Res: Authorizing Acceptance of Proposal for Engineering Services Carmel Water District #2 System Upgrades

16. Res: For Advancement of Government Fund Monies as Temporary Loan from General Fund to Carmel Garbage District – Cluster Pickup
17. Res: Authorizing Signing of Change Order #1 Carmel Garbage District Contract C-239 Collection of Refuse, Garbage, Recyclable Material and Bulk
18. Res: Authorizing Entry into Contract for Collection of Refuse, Garbage, Recyclable Material and Bulk Collection – Cluster Pickup
19. Res:Causing the Town Engineer to Undertake Action to Cap all Connections to Sewer District Number 1 from 825 South Lake Blvd.

- **Public Comment (Three (3) Minutes on Agenda Items Only)**
- **Town Board Member Comments**

Open Forum:

- **Public Comments on New Town Related Business (Three (3) Minutes Maximum for Town Residents, Property Owners & Business Owners Only)**
- **Town Board Member Comments**
- **Adjournment**

RESOLUTION #1

**RESOLUTION MAKING PROBATIONARY APPOINTMENT OF
POLICE OFFICER – TOWN OF CARMEL POLICE DEPARTMENT**

RESOLVED that the Town Board of the Town of Carmel, acting as Commissioners of the Town of Carmel Police Department, hereby appoints Vincent Desantola to the position of Police Officer in the Town of Carmel Police Department, effective January 2, 2020, on a probationary basis, at an annual salary of \$46,939.00 subject to the provisions of Civil Service Law and the Civil Service Rules and Regulations.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #2

**RESOLUTION MAKING PROBATIONARY APPOINTMENT OF
POLICE OFFICER – TOWN OF CARMEL POLICE DEPARTMENT**

RESOLVED that the Town Board of the Town of Carmel, acting as Commissioners of the Town of Carmel Police Department, hereby appoints Arthur Kloskowski to the position of Police Officer in the Town of Carmel Police Department, effective January 2, 2020, on a probationary basis, at an annual salary of \$46,939.00 subject to the provisions of Civil Service Law and the Civil Service Rules and Regulations.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #3

**RESOLUTION MAKING PROBATIONARY PROMOTIONAL APPOINTMENT
OF LIEUTENANT – TOWN OF CARMEL POLICE DEPARTMENT**

RESOLVED that the Town Board of the Town of Carmel, acting as Commissioners of the Police Department hereby appoints Sergeant Stephen Kunze to the position of Lieutenant, effective January 2, 2020, on a promotional probationary basis subject to the provisions of Civil Service Law and the Civil Service Rules and Regulations.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #4

**RESOLUTION AUTHORIZING BUDGET MODIFICATIONS
PERIOD ENDING NOVEMBER 30, 2019**

WHEREAS the Town Comptroller has reviewed the proposed Budget Modifications for the period ending November 30, 2019 with the Town Board which are detailed and explained on the attached Budget Revisions Schedule #2019/05;

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Carmel hereby authorizes and ratifies the Budget Modifications/Revisions for the period ending November 30, 2019, as shown itemized on the schedule #2019/05 attached hereto, incorporated herein and made a part hereof.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

**TOWN OF CARMEL
BUDGET REVISIONS NOVEMBER 2019 #2019/05**

BUDGET REVISION NUMBER	ACCOUNT	ACCOUNT TITLE & TRANSFER DESCRIPTION	INCREASE USES & SOURCES OF FUNDS	DECREASE USES & SOURCES OF FUNDS
GENERAL FUND				
1	100.3120.0012	POLICE STAFF OVERTIME	71,947.42	
	100.3120.0019	POLICE COMPENSATED ABSENCES	144,722.00	
	100.1989.2680	INSURANCE RECOVERY PAYROLL	*	71,947.42
	100.1989.9877	FUND BALANCE FOR COMPENSATED ABSENCES	*	144,722.00
		- PROVIDE FOR POLICE OVERTIME EXPENSE FROM 207C		
		REVENUE RECEIVED AND PAYOUT OF ACCRUED TIME FOR (2) RETIREES		
2	100.1420.0049	MISCELLANEOUS LEGAL EXPENSES	10,000.00	
	100.1420.0049	MISCELLANEOUS LEGAL EXPENSES	77,000.00	
	100.1420.0049	MISCELLANEOUS LEGAL EXPENSES	33,000.00	
	100.1989.9909	APPROPRIATED FUND BALANCE	*	120,000.00
		- PROVIDE FOR OUTSIDE LEGAL COUNSEL INVESTIGATION - PAYMENT OF		
		RETAINER, EXPENSES INCURRED YEAR TO DATE AND ESTIMATED		
		FUTURE CHARGES		
3	100.1010.0045	TOWN BOARD RECORDING SERVICES	7,600.00	
	100.1010.0080	TOWN BOARD EMPLOYEE BENEFITS		7,600.00
		- TRANSFER FOR PAYMENT OF SERVICES IN CONNECTION WITH VIDEO		
		ROOM UPGRADES AS AUTHORIZED BY RESOLUTION		
4	100.1330.0012	TAX RECEIVER STAFF OVERTIME	2,500.00	
	100.1330.0044	TAX RECEIVER TECHNICAL SERVICES		2,500.00
		- TRANSFER FOR TAX RECEIVER STAFF OVERTIME		
5	100.1420.0043	SPECIAL BOARDS COUNSEL	10,000.00	
	100.1420.0044	LABOR LEGAL SERVICES		10,000.00
		- TRANSFER FOR SPECIAL BOARDS COUNSEL		
6	100.1440.0013	ENGINEERING TEMPORARY STAFF	4,000.00	
	100.1440.0080	ENGINEERING EMPLOYEE BENEFITS		4,000.00
		- TRANSFER FOR TEMPORARY STAFF IN ENGINEERING DEPARTMENT		
7	100.1620.0021	BUILDING MOTOR VEHICLES	3,000.00	
	100.1620.0040	BUILDING CONTRACTUAL EXPENSES		3,000.00
		- TRANSFER FOR REPAIRS TO TOWN HALL VEHICLES		
8	100.1670.0045	CENTRAL ADVERTISING EXPENSE	3,200.00	
	100.1670.0049	CENTRAL MAIL EXPENSE	6,000.00	
	100.1620.0080	BUILDING EMPLOYEE BENEFITS		3,200.00
	100.1910.0040	INSURANCE EXPENSE		6,000.00
		- TRANSFER FOR CENTRAL ADVERTISING AND MAIL EXPENSES		
9	100.1680.0040	INFORMATION TECH CONTRACTUAL EXPENSES	2,000.00	
	100.1680.0042	INFORMATION TECH WEB SITE EXPENSES		2,000.00
		- TRANSFER FOR INFORMATION TECH CONTRACTUAL EXPENSES		
10	100.3120.0018	POLICE NIGHT DIFFERENTIAL	13,000.00	
	100.3120.0042	POLICE OFFICE UTILITIES	3,000.00	
	100.3120.0043	POLICE INSURANCE COVERAGE		16,000.00
		- TRANSFER FOR MISCELLANEOUS EXPENSES		
11	100.3620.0012	CODE ENFORCEMENT STAFF OVERTIME	1,500.00	
	100.3620.0013	CODE ENFORCEMENT TEMPORARY STAFF		1,500.00
		- TRANSFER FOR CODE ENFORCEMENT STAFF OVERTIME		
12	100.5132.0040	HIGHWAY GARAGE CONTRACTUAL EXPENSE	2,500.00	
	100.5132.0020	HIGHWAY GARAGE EQUIPMENT		2,500.00
		- TRANSFER FOR HIGHWAY GARAGE CONTRACTUAL EXPENSE		

**TOWN OF CARMEL
BUDGET REVISIONS NOVEMBER 2019 #2019/05**

BUDGET REVISION NUMBER	ACCOUNT	ACCOUNT TITLE & TRANSFER DESCRIPTION	INCREASE USES & SOURCES OF FUNDS	DECREASE USES & SOURCES OF FUNDS
13	100.7020.0012	RECREATION ADMIN STAFF OVERTIME	4,500.00	
	100.7020.0045	RECREATION BUILDING SPECIAL REPAIRS	7,000.00	
	100.7020.0048	RECREATION PUBLICATION EXPENSE	100.00	
	100.7020.0086	RETIREE HEALTH INSURANCE	50.00	
	100.7110.0042	PARK OUT BUILDING UTILITIES	1,000.00	
	100.7113.0042	CHAMBER PARK UTILITY EXPENSE	1,000.00	
	100.7115.0040	AIRPORT PARK CONTRACTUAL EXPENSES	5,000.00	
	100.7118.0040	BALDWIN MEADOWS CONTRACTUAL EXPENSES	500.00	
	100.7310.0040	YOUTH CONTRACTUAL EXPENSES	3,000.00	
	100.7310.0045	YOUTH SELF SUSTAIN PROGRAM	8,000.00	
	100.7610.0040	PROGRAM FOR AGING CONTRACTUAL EXPENSES	1,600.00	
	100.7020.0047	RECREATION STAFF TRAINING		100.00
	100.7020.0080	RECREATION ADMIN EMPLOYEE BENEFITS		50.00
	100.7110.0020	PARK MAINTENANCE EQUIPMENT		4,500.00
	100.7110.0045	PARK MAINTENANCE CONTRACT		5,000.00
	100.7111.0020	SYCAMORE BALLFIELD EQUIPMENT		1,000.00
	100.7112.0020	MCDONOUGH FIELDS EQUIPMENT		1,000.00
	100.7117.0020	CARMADA PARK EQUIPMENT		1,000.00
	100.7118.0020	BALDWIN MEADOWS EQUIPMENT		500.00
	100.7140.0013	PLAYGROUND AND REC TEMPORARY STAFF		2,600.00
	100.7190.0040	SKATING RINK CONTRACTUAL EXPENSES		6,000.00
	100.7310.0046	YOUTH SERVICES CONTRACTS		10,000.00
		- TRANSFER FOR MISCELLANEOUS RECREATION EXPENSES		
14	100.8020.0040	PLANNING BOARD CONTRACTUAL EXPENSES	700.00	
	100.8020.0046	CONSULTING SERVICES - ARCHITECT		700.00
		- TRANSFER FOR PLANNING BOARD CONTRACTUAL EXPENSES		
15	100.8090.0040	RECYCLING CONTRACTUAL EXPENSES	500.00	
	100.8090.0045	RECYCLING TRASH DISPOSAL	13,000.00	
	100.8090.0047	RECYCLING SPECIAL EXPENDITURES	2,000.00	
	100.8090.0048	LANDFILL MONITORING		3,700.00
	100.8090.0080	EMPLOYEE RETIREMENT		4,200.00
	100.8090.0084	HEALTH INSURANCE		700.00
	100.8090.0086	RETIREE HEALTH INSURANCE		6,900.00
		- TRANSFER FOR MISCELLANEOUS RECYCLING EXPENSES INCLUDING E-WASTE DROP OFF AND SHRED IT DAY		
HIGHWAY FUND				
16	500.5110.0012	GENERAL REPAIR LABOR OVERTIME	3,500.00	
	500.5110.0040	GENERAL REPAIR CONTRACTUAL EXPENSES	30,000.00	
	500.5142.0046	CONTRACTUAL SWEEPING		33,500.00
		- TRANSFER FOR GENERAL REPAIR EXPENSES		
17	500.5140.0012	WEEDS AND BRUSH OVERTIME	3,000.00	
	500.5140.0020	WEEDS AND BRUSH TOOLS	1,000.00	
	500.5140.0049	OTHER EXPENDITURES	1,000.00	
	500.5140.0084	HEALTH INSURANCE		5,000.00
		- TRANSFER FOR WEEDS AND BRUSH EXPENSES		
LAKE CASSE PARK DISTRICT				
18	401.7140.0042	UTILITY EXPENSES	3,000.00	
	401.7140.0041	LAKE TREATMENTS		3,000.00
		- TRANSFER FOR LAKE CASSE UTILITY EXPENSES		

**TOWN OF CARMEL
BUDGET REVISIONS NOVEMBER 2019 #2019/05**

BUDGET REVISION NUMBER	ACCOUNT	ACCOUNT TITLE & TRANSFER DESCRIPTION	INCREASE USES & SOURCES OF FUNDS	DECREASE USES & SOURCES OF FUNDS
LAKE SECOR PARK DISTRICT				
19	404.7140.0013	TEMPORARY LABOR	1,000.00	
	404.7140.0046	CONTRACTUAL RENTALS	100.00	
	404.7140.0020	EQUIPMENT		1,000.00
	404.7140.0040	CONTRACTUAL EXPENSES		100.00
		- TRANSFER FOR MISCELLANEOUS EXPENSES		
CARMEL WATER DISTRICT #4				
20	604.8310.0020	EQUIPMENT	10,000.00	
	604.8310.0046	PURCHASE OF WATER	10,000.00	
	604.8310.0047	EMERGENCY REPAIRS		20,000.00
		- TRANSFER FOR EQUIPMENT PURCHASES AND EMERGENCY PURCHASE OF WATER		
CARMEL WATER DISTRICT #5				
21	605.8310.0020	EQUIPMENT	1,000.00	
	605.8310.0047	EMERGENCY REPAIRS	2,000.00	
	605.8310.0099	REPAIR RESERVE		3,000.00
		- TRANSFER FOR MISCELLANEOUS EXPENSES		
CARMEL WATER DISTRICT #6				
22	606.8310.0020	EQUIPMENT	5,000.00	
	606.8310.0099	REPAIR RESERVE		5,000.00
		- TRANSFER FOR EQUIPMENT PURCHASES		
CARMEL WATER DISTRICT #8				
23	608.8310.0047	EMERGENCY REPAIRS	15,000.00	
	608.8310.0099	REPAIR RESERVE		15,000.00
		- TRANSFER FOR EMERGENCY REPAIRS		
CARMEL SEWER DISTRICT #1				
24	701.8130.0040	CONTRACTUAL EXPENSES	15,000.00	
	701.8130.0099	REPAIR RESERVE		15,000.00
		- TRANSFER FOR CONTRACTUAL EXPENSES		
CARMEL SEWER DISTRICT #2				
25	702.8130.0040	CONTRACTUAL EXPENSES	10,000.00	
	702.8130.0140	MICROFILTRATION CONTRACTUAL EXPENSES		10,000.00
		- TRANSFER FOR CONTRACTUAL EXPENSES		
CARMEL SEWER DISTRICT #4				
26	704.8130.0040	CONTRACTUAL EXPENSES	15,000.00	
	704.8130.0020	EQUIPMENT		10,000.00
	704.8130.0140	MICROFILTRATION CONTRACTUAL EXPENSES		5,000.00
		- TRANSFER FOR CONTRACTUAL EXPENSES		

**TOWN OF CARMEL
BUDGET REVISIONS NOVEMBER 2019 #2019/05**

BUDGET REVISION NUMBER	ACCOUNT	ACCOUNT TITLE & TRANSFER DESCRIPTION	INCREASE USES & SOURCES OF FUNDS	DECREASE USES & SOURCES OF FUNDS
CARMEL SEWER DISTRICT #1 EXT#3				
27	713.8130.0020	EQUIPMENT	2,700.00	
	713.8130.0040	CONTRACTUAL EXPENSES - TRANSFER FOR EQUIPMENT PURCHASES		2,700.00
CARMEL LIGHTING DISTRICT				
28	752.5182.0040	CONTRACTUAL EXPENSES	11,524.20	
	752.5182.2681	INSURANCE RECOVERY ASSET - PROVIDE FOR DAMAGAED LIGHT POLE REPAIR FROM INSURANCE CLAIM	* 11,524.20	
CAPITAL DRAINAGE				
29	900.1989.0040	CONTRACTUAL EXPENSES	20,000.00	
	900.1989.0048	OTHER PROJECT EXPENSES		17,000.00
	900.1989.0080	EMPLOYEE BENEFITS - TRANSFER FOR CONTRACTUAL EXPENSES		3,000.00
AIRPORT PARK CAPITAL FUND				
30	910.7140.0040	CONTRACTUAL EXPENSES	150,000.00	
	910.7140.0047	CONTRACTED BUILDING IMPROVEMENTS	100,000.00	
	910.7140.3000	STATE AID - GRANT - PROVIDE FOR CAPITAL PROJECT IMPROVEMENT AT AIRPORT PARK FROM STATE AID RECEIVED	* 250,000.00	
GENERAL FUND				
31	100.9950.0099	TRANSFER TO MACHINERY CAPITAL EXP	10,000.00	
	100.1989.9871	RESERVE FOR EQUIPMENT PURCHASES - PROVIDE FOR TRANSFER TO CAPITAL FUND TOWARDS PURCHASE OF DODGE DURANGO	* 10,000.00	
HIGHWAY MACHINERY CAPITAL PROJECT				
32	951.5130.0024	PURCHASE OF MACHINERY	10,000.00	
	951.5130.5031	INTERFUND TRANSFER - PROVIDE FOR PURCHASE OF DODGE DURANGO FROM GENERAL FUND TRANSFER	* 10,000.00	
CAPITAL FUND - CARMEL WATER DISTRICT #9				
33	969.8310.0045	CONTRACT IMPROVEMENTS	26,500.00	
	969.8310.0044	ENGINEERING EXPENSE - TRANSFER FOR CONTRACT IMPROVEMENTS		26,500.00

RESOLUTION #5

**RESOLUTION AUTHORIZING ENTRY
INTO ADVANCE PAYMENT AGREEMENT WITH NYSDOT**

WHEREAS, the New York State Department of Transportation (NYSDOT) has filed acquisition maps for the condemnation/acquisition of portions of two parcels owned by the Town of Carmel which are both located on NYS Route 6N in Mahopac; and

WHEREAS, NYSDOT has offered the sum of \$6,725.00 to be paid to the Town of Carmel for advance compensation in connection with these acquisitions;

NOW THEREFORE BE IT RESOLVED that the Town Board of the Town of Carmel hereby authorizes entry into the Advance Payment Agreement for initial acceptance of the sum of \$6,725.00 as compensation for said acquisitions, subject to the option of the Town Board to claim additional future compensation; and

BE IT FURTHER RESOLVED that Town Supervisor Kenneth Schmitt is hereby authorized to execute said Advance Payment Agreement for said acquisitions, said agreement to be in form and substance as is on file in the Office of the Town Supervisor.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #6

**RESOLUTION ACCEPTING PROPOSAL
FOR PURCHASE OF POLICE CAMERAS**

RESOLVED that the Town Board of the Town of Carmel, upon the recommendation and request of Chief of Police Michael Cazzari, authorizes the purchase of three (3) license plate recognition cameras and appurtenances from Digital Surveillance Solutions, Buffalo, NY at a cost not to exceed \$5,761.80, under NYS Contract # PT68787; and

BE IT FURTHER RESOLVED that Town Supervisor Kenneth Schmitt is hereby authorized to execute any and all documentation reasonably necessary to effectuate this authorization; and

BE IT FURTHER RESOLVED, that Town Comptroller Mary Ann Maxwell is hereby authorized to make any and all necessary budget transfers or modifications required to fund the cost of this authorization.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #7

RESOLUTION AUTHORIZING ATTENDANCE AT SEMINAR

RESOLVED that the Town Board of the Town of Carmel hereby authorizes Town of Carmel Assistant Building Inspector Edward Spadaro to attend required training seminars offered by the State of New York offered in Dutchess County, NY on March 3 through March 5, 2020; May 12 through May 14, 2020 and June 9 through June 11, 2020; and

BE IT FURTHER RESOLVED that the Town Board of the Town of Carmel authorizes payment of reasonable and necessary expenses incurred in connection therewith upon audit.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #8

**RESOLUTION ACCEPTING PROPOSAL
FOR PURCHASE OF DIAGNOSTIC SOFTWARE EQUIPMENT**

RESOLVED that the Town Board of the Town of Carmel, upon the recommendation and request of Town of Carmel Highway Superintendent Michael Simone, hereby authorizes the purchase of diagnostic software for Town of Carmel Highway vehicles from Gabrielli Truck Sales, Bronx, NY at a cost not to exceed \$6,999.99, in accordance with the invoice dated August 28, 2019; and

BE IT FURTHER RESOLVED that Town Supervisor Kenneth Schmitt is hereby authorized to execute any and all documentation reasonably necessary to effectuate this authorization; and

BE IT FURTHER RESOLVED, that Town Comptroller Mary Ann Maxwell is hereby authorized to make any and all necessary budget transfers or modifications required to fund the cost of this authorization.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #9

**RESOLUTION AUTHORIZING ADVERTISING FOR BIDS
FOR SEWER JETTING CARMEL SEWER DISTRICTS #1, #2, #4, #5, #6, AND #7**

RESOLVED that the Town Board of the Town of Carmel, acting as Commissioners of the various sewer districts within the Town of Carmel, and pursuant to the request of Town Engineer Richard J. Franzetti, P.E., hereby authorizes Town Clerk Ann Spofford, to advertise for bids for institution of a sewer jetting program within the Carmel Sewer Districts #1, #2, #4, #5, #6, and #7 collection systems; and

BE IT FURTHER RESOLVED that the Town Engineer is to furnish detailed specifications for the above to the Town Clerk to be used in conjunction with the Town's general bid conditions and specifications.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #10

**RESOLUTION ACCEPTING PROPOSAL FOR AERIAL MAPPING
CARMEL WATER DISTRICT #2**

RESOLVED that the Town Board of the Town of Carmel, acting as Commissioners of Carmel Water District #2, and upon the recommendation and request of Town of Carmel Engineer Richard J. Franzetti, P.E. authorizes the acceptance of the proposal of Axis Geospatial, Easton, MD for aerial mapping services to be performed in connection with the Carmel Water District #2 distribution system upgrades project at a cost not to exceed \$36,630.00, in accordance with the proposal dated November 25, 2019; and

BE IT FURTHER RESOLVED that Town Supervisor Kenneth Schmitt is hereby authorized to execute any and all documentation reasonably necessary to effectuate this authorization; and

BE IT FURTHER RESOLVED, that Town Comptroller Mary Ann Maxwell is hereby authorized to make any and all necessary budget transfers or modifications required to fund the cost of this authorization.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #11

RESOLUTION AUTHORIZING PAYMENT FOR REPAIRS

RESOLVED, the Town Board of the Town of Carmel, acting as Commissioners of the various water and sewer districts of the Town of Carmel, and upon the recommendation of Town Engineer Richard J. Franzetti, hereby authorizes the following payments for repairs performed within the referenced districts:

Vendor Name	Services Rendered	Authorized Amount
Kuck Excavating, Inc. Carmel, NY	Carmel Water District #2 Hydrant Installation Invoice: November 1, 2019	\$10,728.00
Kuck Excavating, Inc. Carmel, NY	Carmel Water District #9 Valve Repair Invoice: November 22, 2019	\$ 7,063.76
Sueco Fuel Mahopac, NY	Carmel Sewer District #2 Boiler Repairs Invoice: November 13, 2019	\$ 5,865.00
Bee & Jay Plumbing Mahopac, NY	Carmel Water District #5 Booster Station Control Panel Repair Invoice: November 18,2019	\$ 8,829.23
Bee & Jay Plumbing Mahopac, NY	Carmel Water Dist #1,#8,#10 Zebra Mussel Inspection Services Invoice: November 21, 2019	\$11,352.58

BE IT FURTHER RESOLVED, that Town Comptroller Mary Ann Maxwell is hereby authorized to make any and all necessary budget revisions and proportionate budget allocations to the respective districts referenced herein to effect payment for the aforesaid repair authorizations.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #12

**RESOLUTION AUTHORIZING ADVERTISING FOR BIDS
DAM REHABILITATION PROJECTS
LAKE CASSE PARK DISTRICT AND LAKE TEAKETTLE PARK DISTRICT**

RESOLVED that the Town Board of the Town of Carmel, acting as Commissioners of both Lake Casse Park District and Lake Teakettle Park District, and pursuant to the request of Town Engineer Richard J. Franzetti, P.E., hereby authorizes Town Clerk Ann Spofford to advertise for bids for dam rehabilitation projects and services for Lake Casse dam and Upper Lake Teakettle dam and Lower Lake Teakettle dam rehabilitation and repair; and

BE IT FURTHER RESOLVED that the Town Engineer is to furnish detailed specifications for the above to the Town Clerk to be used in conjunction with the Town's general bid conditions and specifications.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #13

RESOLUTION WAIVING THE NOTICE REQUIREMENT OF THE NEW YORK STATE ABC LAW WITH RESPECT TO A LIQUOR LICENSE FOR PATLAJ, LLC d/b/a TITAN STEAKHOUSE

WHEREAS, the representatives and/or proprietors of PATLAJ, LLC, d/b/a “Titan Steakhouse”, 947 South Lake Blvd., Mahopac, New York 10541, have advised of the intention to apply for an on-premises liquor license for which thirty days advance notice of such application must be sent to the municipality, and

WHEREAS, the notice required by Article 5 of the Alcohol Beverage Control Law may be waived by the Town Board, and

WHEREAS, the Town of Carmel Town Board does not intend to comment upon the application referred to herein;

NOW, THEREFORE BE IT RESOLVED, that the Town Board of the Town of Carmel hereby waives the thirty-day notice requirement contained in Article 5 of the Alcoholic and Beverage Control Law, and states that it does not intend to offer any comments regarding said application, for a liquor license at the premises referred to herein; and

BE IT FURTHER RESOLVED that Town Clerk Ann Spofford is hereby authorized to sign a Waiver of Said Notice on behalf of the Town of Carmel.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	YES	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #14

RESOLUTION AUTHORIZING ACCEPTANCE OF PROPOSAL FOR WORKERS COMPENSATION INSURANCE

RESOLVED that the Town Board of the Town of Carmel hereby authorizes the acceptance of the proposal of Public Employer Risk Management Association, Inc. (PERMA) for the provision of workers compensation insurance coverage to the Town of Carmel for fiscal years 2020 and 2021, said proposal in form and substance as is on file in the Office of the Town Supervisor, and

WHEREAS, the Authorized Representative of the Town of Carmel desires to secure the Town of Carmel's obligation to provide volunteer firefighters' benefit law, volunteer ambulance workers' benefit law and workers' compensation benefits, as applicable, through participation in a group self-insurance program of which the Town of Carmel will be a member,

The Authorized Representative of the Town of Carmel, duly convened in regular session, does hereby resolve, pursuant to, and in accordance with the provisions of Section 50 of the New York State Workers Compensation Law and other applicable provisions of law and regulations thereunder, as follows:

Section 1. The Authorized Representative (hereinafter "Representative") of the Town of Carmel does hereby resolve to secure the Town of Carmel's obligation to provide volunteer firefighters' benefit law, volunteer ambulance workers' benefit law and workers' compensation benefits, as applicable, through participation in a group self-insurance plan of which the Town of Carmel will be a member;

Section 2. The Representative of the Town of Carmel does hereby resolve to become a member of Public Employer Risk Management Association, Inc., a workers' compensation group self-insurance program for local governments and other public employers and instrumentalities of the State of New York;

Section 3. In order to effect the Town of Carmel's membership in said group self-insurance program, the authorized officer of the Town of Carmel is hereby authorized to execute and enter into the Public Employer Risk Management Association Workers' Compensation Program Agreement, annexed hereto as Exhibit A, on behalf of the Town of Carmel.

Section 4. This Resolution shall take effect immediately.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	YES	<u>NO</u>
Michael Barile	___	___
Jonathan Schneider	___	___
John Lupinacci	___	___
Suzanne McDonough	___	___
Kenneth Schmitt	___	___

**SECTION 50, SUBDIVISION 4-a OF THE NEW YORK STATE WORKERS' COMPENSATION LAW
AS AMENDED BY CHAPTER 61, LAWS OF 1989, EFFECTIVE APRIL 1, 1989**

A county, city, village, town, school district, fire district or other political subdivision of the state may secure compensation to its employees in accordance with subdivision one or two or three-a of this section, and a public corporation as defined in subdivision one of section sixty of this chapter may also secure such compensation in accordance with article five of this chapter. If compensation is not so secured, a county, city, village, town, school district, fire district or other political subdivision shall be deemed to have elected to secure compensation pursuant to subdivision three of this section and in such case, no proof of financial ability or deposit or securities need be made in compliance with such subdivision. All other requirements prescribed by this chapter for employers so electing shall be complied with and notice of such election shall be filled with the Chair. For failure to file such notice of election, prescribed in form by the Chair, within ten days after the election was made, the treasurer or other financial officer shall be liable to pay to the Chair the sum of one hundred dollars as a penalty, to be transferred to the state treasury.

RESOLUTION #15

**RESOLUTION AUTHORIZING
ACCEPTANCE OF PROPOSAL FOR ENGINEERING SERVICES
CARMEL WATER DISTRICT #2 SYSTEM UPGRADES**

RESOLVED THAT the Town Board of the Town of Carmel, acting as Commissioners of Carmel Water District #2, and in accordance with the recommendation and memorandum of Town Engineer Richard J. Franzetti, P.E., hereby authorizes the acceptance of the amended proposal of J. Robert Folchetti & Associates, LLC, originally received on November 1, 2019, for Preparation of Construction Documents, provide design, permitting, bid assistance and construction engineering services for Water Distribution System Upgrades (relining, valves and installation of new mains) in response to the Request for Proposal issued October 4, 2019, at a cost not to exceed \$591,000.00; and

BE IT FURTHER RESOLVED that Deputy Supervisor Suzanne McDonough is hereby authorized to sign any and all documentation necessary to authorize the actions contained herein; and

BE IT FURTHER RESOLVED, that Town Comptroller May Ann Maxwell is hereby authorized to make any and all necessary budget transfers or modifications required to fund the cost of this authorization.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #16

**RESOLUTION FOR ADVANCEMENT OF GOVERNMENT FUND MONIES
AS TEMPORARY LOAN FROM GENERAL FUND TO CARMEL GARBAGE
DISTRICT – CLUSTER PICKUP**

RESOLVED, that the Town Board of the Town of Carmel, pursuant to Town Law §209-b, hereby authorizes the Temporary Advancement of Cash from the General Fund to Carmel Garbage District – Cluster Pickup at a maximum amount not to exceed \$100,000, to be repaid with the periodic interest rate when revenue sources or debt proceeds are received.

Resolution:

Offered by: _____

Seconded by: _____

<u>Roll Call Vote:</u>	<u>YES</u>	<u>NO</u>
Michael Barile	_____	_____
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Kenneth Schmitt	_____	_____

RESOLUTION #17

**RESOLUTION AUTHORIZING SIGNING OF CHANGE ORDER #1
CARMEL GARBAGE DISTRICT CONTRACT C-239
COLLECTION OF REFUSE, GARBAGE, RECYCLABLE MATERIAL AND BULK**

WHEREAS, the Town of Carmel has previously entered into a contract for the single family/residential collection of refuse, garbage, recyclable material and bulk collection in the Town of Carmel Town-wide Garbage District with AAA Carting and Rubbish Removal, Inc, Cortlandt Manor, NY. contract C-239; and

WHEREAS, on November 6, 2019 the Town Board duly exercised its right to extend said contract for two (2) additional one (1) year periods; commencing January 1, 2020 through December 31, 2020 and January 1, 2021 through December 31, 2021, respectively;

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Carmel, acting as Commissioners of the various water districts within the Town of Carmel, hereby authorizes the Town Supervisor to sign Change Order #1 to the aforementioned contract, resulting in an overall contract price increase of \$25,000 per month, said Change Order to be in form as attached hereto and made a part hereof; and

BE IT FURTHER RESOLVED that upon presentation and review of a performance bond for said contract in form acceptable to Town Counsel for years 2020 and 2021, Town Supervisor Kenneth Schmitt is hereby authorized to countersign said Change Order #1; and

BE IT FURTHER RESOLVED, that Town Comptroller Mary Ann Maxwell is hereby authorized to make any and all necessary budget transfers or modifications required to fund the cost of this authorization.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	YES	<u>NO</u>
Michael Barile	___	___
Jonathan Schneider	___	___
John Lupinacci	___	___
Suzanne McDonough	___	___
Kenneth Schmitt	___	___

CHANGE ORDER

1

No.

**THE COLLECTION OF REFUSE, GARBAGE, RECYCLABLE MATERIALS
AND BULK COLLECTION CONTRACT**

DATE OF ISSUANCE: 12/18/2019

EFFECTIVE DATE 01/01/2020

OWNER The Town of Carmel
OWNER's Contractor No. C239

CONTRACTOR: AAA Carting and Rubbish Removal, Inc

ENGINEER: Carmel Engineering Department

Description: Annual contract compensation is increased by \$300,000.00 per year for 2020 and 2021. Payments to be made monthly (\$25,000.00 per month)

Reason for Change Order: Due to exigent market conditions beyond the control of Contractor and the Town of Carmel, related to a significant increase in the costs of the sale and ultimate disposition of recyclable materials collected by contractor in accordance with the terms of the contract.

Attachments: None

<p>CHANGE IN CONTRACT PRICE: Original Contract Price</p> <p>\$ 2,450,247.20*</p>	<p>CHANGE IN CONTRACT TIMES: Original Contract Times</p> <p>Substantial Completion: <u>N/A</u> Ready for final payment: _____</p>
<p>Net changes from previous Change Orders No. to No. _____</p> <p>\$ <u>0.00</u></p>	<p>Net change from previous Change Orders No. to No. _____</p> <p style="text-align: center;">N/A</p>
<p>Contract Price prior to this Change Order</p> <p>\$ <u>2,450,247.20*</u></p>	<p>Contract Times prior to this Change Order</p> <p>Substantial Completion: <u>N/A</u> Ready for final payment: <u>---</u></p>
<p>Net Increase (decrease) of this Change Order <u>\$300,000.00 per year</u></p> <p>\$ _____</p>	<p>Net Increase of this Change Order Days <u>N/A</u></p>
<p>Contract Price with all approved Change Orders</p> <p>\$ <u>2,750,247.20</u></p>	<p>Contract Times with all approved Change Orders</p> <p>Substantial Completion: <u>N/A</u> Ready for final payment: _____ days or dates</p>

RECOMMENDED:

ACCEPTED:

APPROVED:

By: 
Engineer (Authorized Signature)

By: _____
Contractor (Authorized Signature)

By: _____
Owner (Authorized Signature)

Date: 12/18/19

Date: _____

Date: _____

*This is the 2019 contract price. It will be adjusted for 2020 and 2021 in accordance with the terms of the contract. For the year 2020 the increase change order of \$300,000.00 shall not be adjusted in accordance with the terms of the contract. It shall be added to the contract amount for 2020 after the adjustment is made to the base contract amount. Conversely, for the year 2021, the \$300,000.00 change order amount shall be added to the base amount before the contractual adjustments are made, thus making the \$300,000.00 change order amount, subject to the potential increase in accordance with the terms of the contract.

RESOLUTION #18

RESOLUTION AUTHORIZING ENTRY INTO CONTRACT FOR COLLECTION OF REFUSE, GARBAGE, RECYCLABLE MATERIAL AND BULK COLLECTION – CLUSTER PICKUP

WHEREAS, the Town of Carmel has previously entered into a contract for the cluster/multi-family collection of refuse, garbage, recyclable material and bulk collection with R&S Waste Service, LLC, dated October 31, 2016, contract C-239; and

WHEREAS, on November 6, 2019 the Town Board duly exercised its right to extend said contract for two (2) additional one (1) year periods; commencing January 1, 2020 through December 31, 2020 and January 1, 2021 through December 31, 2021, respectively; and

WHEREAS, written notice of the exercise of the right to said extensions was duly provided by the Town of Carmel Engineering Department to R&S Waste Service, LLC; and

WHEREAS, the Town of Carmel subsequently received written notice from R&S Waste Services, LLC that R&S Waste Services, LLC has in fact refused, declined, and otherwise repudiated its obligations under the referenced contract and will not be performing any of its required contract obligations for refuse, garbage, recyclable material and bulk collection after December 31, 2019; and

WHEREAS, the failure and refusal of R&S Waste Services, LLC to perform its contractual obligations to collect refuse, garbage, recyclable material and bulk materials in the Town of Carmel presents the existence a public emergency affecting the life, health, safety or property of the residents of the Town of Carmel; and

WHEREAS, as a result of said public emergency, the Town of Carmel has requested proposals from other licensed waste- hauling entities to perform the abdicated responsibilities of R&S Waste Services, LLC for the remaining contract period fo January 1, 2020 through December 31, 2021;

NOW THEREFORE BE IT RESOLVED that the Town Board of the Town of Carmel hereby determines that the failure and refusal of R&S Waste Services, LLC to perform its contractual obligations to collect refuse, garbage, recyclable material and bulk materials in the Town of Carmel constitutes a public emergency pursuant to NY General Municipal Law §103(4) which affects the life, health, safety or property of the residents of the Town of Carmel; and

BE IT FURTHER RESOLVED that pursuant to NY General Municipal Law §103(4) the existence of such public emergency requires immediate action which cannot await formal competitive bidding or competitive offering; and

BE IT FURTHER RESOLVED that the Town Board of the Town of Carmel hereby authorizes entry into a contract with Oak Ridge Waste and Recycling of CT, LLC, Danbury Connecticut for years 2020 and 2021 at contract prices of \$439,385.35 and \$459,932.45, respectively; and

BE IT FURTHER RESOLVED that upon presentation and review of a performance bond for said contract in form acceptable to Town Counsel for years 2020 and 2021, Town Supervisor Kenneth Schmitt is hereby authorized to countersign said any and all contract documentation required to carry out this authorization; and

BE IT FURTHER RESOLVED, that Town Comptroller Mary Ann Maxwell is hereby authorized to make any and all necessary budget transfers or modifications required to fund the cost of this authorization.

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	___	___
Jonathan Schneider	___	___
John Lupinacci	___	___
Suzanne McDonough	___	___
Kenneth Schmitt	___	___

RESOLUTION #19

RESOLUTION CAUSING THE TOWN ENGINEER TO UNDERTAKE ACTION TO CAP ALL CONNECTIONS TO SEWER DISTRICT NUMBER 1 FROM 825 SOUTH LAKE BLVD.

WHEREAS, on October 24, 2019, the Superintendent of Carmel Sewer District Number 1 issued a First Notification of Violation and Cease and Desist (hereinafter, "First NOV and Cease and Desist") to Michael Barile and Tommy Boniello ("Property Owners"), the owners of 825 South Lake Blvd. (hereinafter, the "Property") which permitted the interim connection of the Property to Sewer District Number 1 in the event that the Property Owners timely sought and prosecuted all required permits, complied with all NYCDEP testing requirements, and kept the Town apprised of such efforts; and

WHEREAS, the Property Owners failed to comply with the terms and obligations set forth in the First NOV and Cease and Desist; and

WHEREAS, on December 6, 2019, the owners of the Property conducted dye testing which established that the Property is connected to Sewer District Number 1 in a second location that at no point has been disclosed to or approved by the Town nor NYCDEP;

WHEREAS, on December 18, 2019, the Town Engineer withdrew the Town's acknowledgement of the Property's out of district application to NYCDEP as the result of the Property Owner's application having represented that historic engineer's drawings were "as built" for the line but which were inaccurate and misleading and further advised NYCDEP that the Town may reinstate the OOD request at such time that the Property Owners provide accurate as built drawings under the seal of an independent, third party New York professional engineer;

WHEREAS, the Town Engineer determined that the past and continued connection of the Property to Sewer District Number 1 without notice to the Town or NYCDEP constitutes a violation of the Town's Sewer Use Law and a potential violation of the 1938 Agreement between the Town and New York City which governs which properties may be connected to Sewer District Number 1 for the ultimate acceptance and treatment of waste at the NYCDEP's Mahopac Wastewater Treatment Facility; and

WHEREAS, on December 18, 2019, the Town Engineer issued a Second Notification of Violation and Cease and Desist which finds that the additional illicit connection constitutes a violation of the Town Sewer Use Law and requires, among other things, that the owners of the Property forthwith disconnect the connecting line(s) which originate at the Property pending removal of the second line and excavate and cap the second connecting line and cooperating with the capping of the connection in the MCP97 – Clark Place Manhole and to provide advance notice of, coordinate with, and permit the presence of the Town Engineer and its consultants during all such activities; and now therefore, it is hereby

RESOLVED, that the Town Board hereby authorizes the Town Engineer to enter into a contract that provides for services and to henceforth obtain all permits and undertake all such actions necessary in order for the second line which enters the Sewer District Number 1 sewer main somewhere between the MCP97 – Clark Place Manhole and the downstream MCP96 Manhole to be excavated and capped and to cause the current or future Town sewer district maintenance contractor to cap the connecting line which enters Sewer District Number 1 in the MCP97 – Clark Place Manhole; Absent the declaration of a public health or safety emergency as determined by the Town Engineer or any other regulatory authority, such contract to be procured through a request for proposals; and

BE IT FURTHER RESOLVED that in the event that the Property Owners have not taken the necessary steps to cease all outflow from the Property through the connecting line between the MCP97 – Clark Place Manhole and the MCP96 manhole and the connecting line in the MCP97 – Clark Place Manhole prior to February 18, 2020 or otherwise received all permits and approvals required by law to utilize any such connection, the Town Board directs the Town Engineer to complete the capping of all lines which divert wastewater from the Property to Sewer District Number 1 no later than February 18, 2020; and

BE IT FURTHER RESOLVED, that the Town Engineer shall notify the Property owners 7 calendar days prior to the initiation of the work provided for in the foregoing contract that the work provided for in that contract will be performed; and

BE IT FURTHER RESOLVED, that the Town reserves all rights to seek recovery of any payment of all such expenditures authorized by this Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Michael Barile	___	___
Jonathan Schneider	___	___
John Lupinacci	___	___
Suzanne McDonough	___	___
Kenneth Schmitt	___	___

Richard Franzetti, P.E.
Town Engineer



(845) 628-1500
(845) 628-2087
Fax (845) 628-7085

Office of the Town Engineer
60 McAlpin Avenue
Mahopac, New York 10541

Second Notification of Violation and Cease and Order to Cease and Desist

December 18, 2019

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
VIA REGULAR U.S. MAIL
VIA EMAIL AS SET FORTH BELOW**

Mr. Michael Barile and Mr. Tommy Boniello
888 Route 6
Mahopac, NY 10541

Mr. Michael Barile and Mr. Tommy Boniello
825 S. Lake Blvd.
Mahopac, NY 10541

Mr. Michael Barile
336 West Lake Blvd.
Mahopac, NY 10541

Michael Barile and Tommie Boniello
c/o Michael V. Caruso, P.C.
ATTORNEY AND COUNSELLOR AT LAW
3871 Danbury Road Brewster
New York 10509

**RE: Second Notification of Violation and Cease and Desist
825 S. Lake Blvd. TM 75.43.1.22**

Dear Mr. Barile and Mr. Boniello:

This Second Notification of Violation (“NOV”) and Order to Cease and Desist (hereinafter, “Second NOV and Cease and Desist”) are issued pursuant to §§ 120.8, 120.82 and 120-86 of the Town of Carmel Code, (“Sewer Use Law”), and NY CLS Town §§135 and 198, which authorize actions to enforce the Sewer Use Law. As described below, I have determined that real property owned by Michael A. Barile and Tommy A. Boniello (hereinafter, “You” or “Property Owners”) located at 825 South Lake Boulevard, Mahopac, New York (hereinafter, your “Property”) is located outside of the Carmel Sewer District Number 1 (hereinafter “CSD #1”). I hereby notify you of the violations set forth herein of the Sewer Use Law and order you forthwith cease and desist all connections to CSD #1 and that you meet all conditions set forth herein.

Pursuant to §120.8 of the Sewer Use Law, you are required to provide a statement with respect to the violations alleged herein and describe your efforts to comply no later than ten (10) calendar days after your receipt of this Second NOV and Cease and Desist.

Second Notice of Violation and Cease and Desist
825 South Lake Blvd TM 75.43-1-22

Authority

Pursuant to §120-82 of the Sewer Use Law, whenever the Superintendent finds that a person has violated or is violating Chapter 120, or any wastewater discharge permit, order prohibition, limitation, or requirement permitted by Chapter 120, the Superintendent may serve upon such person written notice stating the nature of the violation.

Pursuant to §120-86A of the Sewer Use Law, whenever the Superintendent finds that a user has violated or continues to violate this chapter or any permit or administrative order issued hereunder, the Superintendent may issue an order to cease and desist such violations and direct those persons in noncompliance to (1) comply forthwith; and (2) take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations or terminating the discharge.

Pursuant to §120-5 of the Sewer Use Law, “user” is defined as any person who contributes, causes, or permits the contribution of wastewater into the POTW.

Pursuant to §120-5 of the Sewer Use Law, “Superintendent” is defined as the Town Engineer, who shall be licensed to practice engineering in the state, and otherwise qualified to oversee water treatment and distribution and POTW operations, as well as his authorized deputy, agent or representative.

Pursuant to §120-5 of the Sewer Use Law, “Publicly Owned Treatment Works” or “POTW” is defined as treatment works which is owned by the Town of Carmel Sewer District or the City of New York. This definition includes any sewers and appurtenances that transport wastewater to the POTW treatment plant.

Pursuant to §120-91, the Superintendent has the right in his sole discretion to utilize one or more appropriate administrative remedies.

Findings of Fact and Conclusions

1. I, Richard Franzetti, am currently the Town Engineer and Superintendent of the Town of Carmel’s POTW system and have held that position since November 2013. I am licensed to practice engineering in New York State, and am otherwise qualified to oversee water treatment and distribution and POTW operations.
2. On October 24, 2019, I issued a Notification of Violation and Cease and Desist to the Property Owners (hereinafter, First NOV and Cease and Desist) finding that from at least September 4, 2019 and continuing to the date of issuance, you had connected the Property to and constituted Users of CSD #1, without proper authorization and in violation of the Sewer Use Law. [Exhibit 1]
3. The provisions set forth in the First NOV and Cease and Desist are incorporated by reference here and may be restated in part for ease of reference. In the event of a conflict between the First NOV and Cease and Desist and this Second NOV and Cease and Desist, the provisions set forth herein this Second NOV and Cease and Desist shall be controlling.
4. The First NOV and Cease and Desist found that you were in violation of the Sewer Use Law but did not require you to disconnect the interim connection to CSD #1 so long as you met certain requirements to ensure the timely cure of the ongoing violations and to ensure that all approvals were obtained to lawfully connect to CSD #1 as required by the Sewer Use Law and the longstanding Agreements between the Town of Carmel and the City of New York. The First NOV and Cease and Desist provided you the opportunity to develop a corrective action plan and for the Property to remain connected to CSD #1 on an interim basis while you timely took the steps necessary to bring the connection into compliance with all legal requirements.

Second Notice of Violation and Cease and Desist
825 South Lake Blvd TM 75.43-1-22

5. NYCDEP owns and operates the Mahopac Wastewater Treatment Facility which receives and treats the sewer flow from CSD #1 under an agreement dated September 9, 1938 (hereinafter, "1938 Agreement"). [Exhibit 2]
6. The Mahopac Wastewater Treatment Facility is a POTW as defined herein.
7. The Town file contains a 1991 Out of District agreement which was approved by the Town Board on or around November 11, 1991 (hereinafter, "1991 OOD Agreement") between the Town and the Property owners providing approval of the connection so long as certain conditions were met. [Exhibit 3]
8. The 1991 OOD Agreement required that the Property Owners ". . . agree[] to obtain all necessary permits and approvals from the New York State DOT, DEC, and New York City DEP for the aforesaid connection to the Carmel Sewer District # 1 at their own cost and expense."
9. The 1991 OOD Agreement states that the "Location and type of piping for the sewer main shall be approved by the Town of Carmel Engineering, Building and Fire Enforcement officials."
10. On March 9, 1992, Jeffrey Contelmo, P.E., Insite Engineering and Design, P.C. transmitted a letter to Town Engineer Vincent Soukup, P.E., transmitting preliminary plans, an engineer's report and form PC-1 and that ". . . the project proposes to install a pump pit and force main for the Mahopac Beach which would tie the facility into Carmel Sewer District #1. [Exhibit 4]
11. In the March 9, 1992 Engineering Report which was provided as an attachment to that March 9, 1992 Letter set forth in Paragraph 10, as required by the OOD Agreement, it provided that:

The proposed project includes the installation of a duplex grinder pump put, 2000 gallon overflow tank, and approximately 1400 l.f. of 2" diameter, Schedule 40 pvc low pressure sewer force main. . . It is proposed to install the subject force main prior to road improvements to NYS Route 6N. Actual connection of the subject site to Carmel Sewer District # 1 will not occur until the moratorium on this district is lifted. The Mahopac Beach's existing septic system will be abandoned and *all sewage will be pumped via a new 2" diameter force main to the Carmel Sewer District # 1 manhole located at the intersection of N.Y.S. Route 6N and Clark Place.* [Exhibit 5]
12. To the best of my knowledge, in or around 1993, the Property Owners themselves constructed or authorized and caused to be constructed a force main connecting line(s) from the Property to CSD #1 via a manhole located at the intersection of Clark Place and Route 6N and denominated as MCP97 (hereinafter referred to as "MCP97 – Clark Place Manhole").
13. On September 23, 1994, NYCDEP sent a letter to the Carmel Town Engineer, regarding "Lakeside Restaurant, Carmel CSD#1, Mahopac, (T) Carmel," finding that the Connecting Line constituted an illegal connection and a violation of a number of provisions of the 1938 Agreement between the Town of Carmel and New York City. [Exhibit 6]. DEP's Carl Picha P.E. stated in that letter, "Accordingly, the Town must take whatever actions are appropriate to assure that the aforementioned 4"¹ PVC line is not placed into service. *Please indicate in writing within sixty days of this letter the actions the Town intends to take to preclude the use of this illegal connection.*" (emphasis added²).
14. On October 27, 1994, John Karell, Jr., P.E., then Carmel Town Engineer, sent correspondence to Mr. Picha, "Re: Sewer Connection Lakeside Restaurant (Mahopac Beach) Carmel Sewer District #1 Carmel (T)" which states, "Obviously, approval from all appropriate agencies must be obtained prior to use of the force

¹ To the best of the Town's knowledge, the line is actually a 2" PVC line.

² Unless otherwise noted, the use of italics denotes emphasis added throughout.

Second Notice of Violation and Cease and Desist
825 South Lake Blvd TM 75.43-1-22

main.” Furthermore, in this letter Mr. Karell stated that “[t]he force main discharge line is *capped in the manhole on Route 6N.*” [Exhibit 7]. Mr. Karell states to NYCDEP, “You should be aware that, periodically, Town staff inspect this manhole to assure that the force main is not in use.” Finally, Mr. Karell stated “Based on the above, the Town is prepared to accept sewage from this private service connection upon completion of the reconstruction of the Mahopac STP and upon receipt of all necessary approvals from other agencies, including NYCDEP.”

15. In the October 27, 1994 letter, then Town Engineer Karell states:

The pump chamber has been installed and presently discharges to the existing subsurface sewage disposal system on the restaurant property. *A key valve reportedly exists on the pump chamber discharge line which, when in the closed position, directs sewage to the subsurface sewage disposal system as opposed to the force main.* Id.

16. On September 10, 2015, Town Supervisor Kenneth Schmitt sent me the Town attorney, an outside engineer, and a member of the Town Engineering Department an email, which stated in part, “I just spoke with Mike Barile regarding recent inquiries made by residents/owners as to whether the Terrace Club Restaurant [a predecessor tenant] on Rte. 6N, a Barile owned property was connected via a sewer main that was installed approx. . .20 + years ago, was in fact tapped into the *larger main part of the CSD#1* collection system, he emphatically stated that the. . .Property is absolutely connected to CSD#1 collection system.” [Exhibit 8]
17. Furthermore, in the September 10, 2015 email to me, Town Supervisor Kenneth Schmitt wrote that Mr. Barile stated, “. . . that there are other properties along Rte 6N between Clarke Pl and the Restaurant property that are also tapped into the main that he and his partners paid for and installed, when asked which other properties were connected, he stated he wasn’t sure because it was so long ago.”
18. Supervisor Schmitt requested that I conduct further investigation regarding the Property and others along that section of Rte. 6N. It was my understanding at that time that the connecting line from the Property was via the connecting line which entered CSD#1 at the MCP97 – Clark Place Manhole and at or around the time of Supervisor Schmitt’s 2015 email requesting further inquiry, I personally observed the MCP97 – Clark Place Manhole pipe to be capped and considered that to be sufficient proof that the Property’s connecting line was not in use. I advised Supervisor Schmitt of that fact and he indicated that he was satisfied that the Property was not connected to CSD #1.³
19. On May 29, 2019, Tommy A. Boniello and Michael A. Barile sent correspondence to the Town of Carmel Engineering Department requesting the “activation of the dry sewer line connecting 825 South Lake Boulevard to Carmel Sewer District # 1.” [Exhibit 9] No approvals from any other governmental agencies were included with this request.
20. An inspection of the Property septic area was conducted by NYSDEC and the Putnam County Department of Health (“PCDOH”) on May 31, 2019, at which time, Mr. Barile represented that the Property was using its septic area, that it was pumped out monthly in the summer months and that the records of the same were available. [Exhibit 10]
21. On June 27, 2019, Jack Karell, P.E., now acting as the engineer for the Property Owners, sent a letter to me seeking Town consent to connect on behalf of Michael Barile and stated, “The force main in Route 6N was

³ After this 2015 email became public in 2019, Supervisor Schmitt published a letter in the Putnam Examiner which was published in its June 11-17, 2019 edition and stated that his 2015 reference to the sewer line was the result of a miscommunication and that Mr. Barile had referenced a gas line and not a sewer line. [Exhibit 12]

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installed in 1993 consisting of a 2 inch HDPE pipe from this property to the existing sewer manhole in Route 6N at Clark Place. This line was pressure tested in 1993 and reportedly found [sic] to be pressure tight. This line was retested on June 26, 2019. . . .” [Exhibit 11]

22. On June 29, 2019, in a letter from Roy Fredrickson P.E. to Joseph Paravati, P.E., Mr. Fredrickson wrote:

Please be advised that in the summer of 1993 the writer inspected the construction of approximately 1,370 feet of 2 inch low pressure sewer line in Route 6N from the Mahopac Beach Restaurant property to a manhole in Route 6N at the intersection with Clark Place.

Based upon such inspection it is certified that this sewer line was constructed in accordance with plans approved by the Putnam County Department of Health on February 3, 1993, such plans being prepared by Insite Engineering revised January 29, 1993.

It is further certified that during that summer a pressure test was conducted, witnessed by the writer. This pressure test indicated no pressure drop over a 2 hour period. Actual test result data is not available.

It is noted that at the time the force main was capped in the manhole and was never placed in service and that a certification of construction compliance was not provided to the Health Department in 1993. [Exhibit 13].

23. There is no copy of the alleged 1993 pressure test in the Town file from circa 1993 and no copy of any such pressure testing conducted in or around 1993 has been provided subsequently.
24. In the June 27, 2019 Karell letter, it states that “The force main in Route 6N was installed in 1993 consisting of a 2 inch HDPE pipe from the property to the existing manhole at Route 6N and Clark Place. This line was pressure tested in 1993 and reportedly found to be pressure tight. This line was retested on June 26, 2019. The results are as follows: Start pressure 160 psi, 10 AM. End pressure 160 psi, 2 PM (hereinafter, the “June 26, 2019 Pressure Test”). [Exhibit 11] As discussed below, counsel for the Property owners advised NYCDEP on December 16, 2019 that Mr. Karell has determined it is not possible to conduct a pressure test of the line as configured. See Paragraphs 57 and 63 below.
25. In an email dated August 13, 2019 from Mr. Karell to NYCDEP, Mr. Karell stated, “this is a dry line. . . it is not connected to the pump station. It is capped at the restaurant and in the manhole.” [Exhibit 14]
26. The NYCDEP scheduled a dye test of the septic area to be held on September 4, 2019 for purposes of determining whether releases of sewage from the Property’s septic system was threatening Lake Mahopac. When the NYCDEP personnel arrived, they were advised by Mr. Barile and his engineer, Mr. Karell⁴, that the line had been uncapped at the MCP97 – Clark Place Manhole and the force main was then currently in use. According to a NYCDEP Engineering Division Field Report, “Mr. Barile stated *the cap on the force main* in the manhole at the intersection of 6N and Clark Place, *was removed the previous week.*” As a consequence, no dye test was conducted by NYCDEP at that time. [Exhibit 15]
27. It is my understanding that in the event that a dye test of the Property’s SSTS demonstrated a failing septic system, it would provide a factual basis for NYCDEP to permit the out of district connection to CSD#1. Rather than proceed to the dye test of the septic, the Property Owners elected to uncapped the line at the MCP97 – Clark Place Manhole without prior Town knowledge or authorization of such action.
28. Mr. Barile alleged in his verified Article 78 Petition [Exhibit 16] that “On or about September 3, 2019, believing that NYCDEP was intending to inspect the sewer connection on the Premises, *Petitioners and*

⁴ Mr. Karell had been the Town Engineer and corresponded with NYCDEP on the matter in 1994. He now acts as the Property Owners’ engineer in this matter.

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their engineer uncapped and prepared the existing sewer connection – and not the SSTS – for NYCDEP inspection.” [Article 78 Petition, Paragraph 45].

29. Entry by the Property Owners and their consultants into a Town manhole is not allowed under Town safety protections and constitutes a trespass. Entry into Town manholes and sewer main pipes is governed by confined space safety requirements, among other requirements.
30. NYCDEP inspected the Connecting Line on September 4, 2019 and determined that it was uncapped and connected to CSD #1 located at the intersection of Clark and Route 6N and provided written and photographic evidence to that effect. [Exhibits 15 and 17]
31. On September 19, 2019, in response to the Property Owners’ unauthorized uncapping of the line at the MCP97 - Clark Place Manhole, Paul V. Rush, P.E., Deputy Commissioner, Bureau of Water Supply, NYCDEP sent correspondence to Kenneth Schmitt, Supervisor, Town of Carmel, stating that Property’s unauthorized, out-of-district connection was a violation of the Town of Carmel’s Sewer Use Law and that the connection constituted a violation of the 1938 Agreement between the City of New York and the Town of Carmel, which outlined which properties could connect to the sewer system and under what circumstances they could connect. While a violation, Deputy Commissioner Rush stated, “Given the restaurant’s proximity to Lake Mahopac, which ultimately drains into parts of the New York City reservoir system, it would be reasonable to consider an out-of-district connection to ensure the adequate collection and treatment of wastewater. In the end, this could meet DEP’s chief objective of providing maximum protection for water quality in our reservoirs.” [Exhibit 18]
32. On October 24, 2019, the First NOV and Cease and Desist was issued which provided a pathway for the you to bring the connecting line from the Property to the MCP97 – Clark Place Manhole into compliance, while not prohibiting interim connection.
33. On October 24, 2019, I transmitted a letter to the NYCDEP (with a copy to you and other involved agencies) requesting that NYCDEP move forward with the regulatory review of the connection of the Property to CSD #1. [Exhibit 19]
34. On October 25, 2019, David Warne of the NYCDEP transmitted to the Town the form of application necessary for NYCDEP to consider the request and advised Cozen that it would not consider the application to be administratively complete until it received all technical attachments⁵. [Exhibit 20]
35. On or around October 25, 2019, I provided a copy of the NYCDEP application to Mr. Barile and counsel provided your counsel a copy of the same [Exhibit 21]
36. On October 28, 2019, the Property Owners submitted an application without attachments [Exhibit 22], and, in response, I notified Mr. Barile that my understanding was that NYCDEP would reject the application as administratively incomplete without the required attachments.
37. On October 30, 2019, in a letter to New York City DEP Assistant Commissioner David Warne, Mr. Karell, corresponded with NYCDEP stating that the package included, “The attached construction plans prepared by Insite Engineering for the installation of the sewer force main. The sewer force main was installed generally in accordance with the Insite plan and *are to be considered as the as-built*”. Further, he stated that “The only fitting in the *manhole* is a ninety degree bend in the force main. This fitting is in excellent

⁵ NYCDEP had also previously advised the Town that the Property owners would be required to enter into a payment agreement with NYCDEP, which would have to be approved by the New York City Comptroller’s office providing for the payment of incurred sewage fees to NYCDEP.

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condition.” This 90 degree bend in the force main connects to the connecting line at the Clark Place Manhole. [Exhibit 23].

38. The engineer’s drawings and other documents provided as the “as built” by the Property Owner on October 30, 2019 show the connecting line from the Property only entering CSD#1 at the MCP97 – Clark Place Manhole. *Id.*
39. On November 4, 2019, the Town was served with a petition pursuant to CPLR Article 78 (the “Article 78 Proceeding”) naming the Town of Carmel, NYCDEP, and the Putnam County Department of Health (“the Respondents”). [Exhibit 16]. The relief sought against the Town of Carmel provides that it be compelled to “review and decide Petitioner’s out of district sewer connection to CSD #1,” “take all necessary and appropriate action formally to discharge their nondiscretionary, administrative duties,” and other and further relief.
40. By the time the Article 78 proceeding was served on the town on November 4, 2019, I had already, on October 24, 2019 requested that the NYCDEP proceed and had advised the Property owners on October 29, 2019 that their application lacked the documentation expected to be required by NYCDEP to be included when they first submitted it.
41. On Tuesday, November 5, 2019, the Town consented to the application and so notified NYCDEP. [Exhibit 24]. In so doing, my I acknowledged on behalf of the Town that the out of district request was compliant with the Town’s Sewer Use Law was made in reliance on the representations above made by you and your agents, which I now determine not to be accurate.
42. On November 5, 2019, counsel for the Property Owners granted advance consent to access to the Property to the Town and its consultants to conduct an inspection and testing of the Property’s septic system and sewer line. [Exhibit 25]
43. On November 14, 2019, upon arrival by the Town’s consultants for those investigatory activities, Mr. Barile refused to allow the Town’s consultants onto the Property.
44. Despite being denied access to the Property by the Property Owners, the Town’s consultants conducted from within the public right of way, with NYCDEP and PCDOH representatives present, a video line scoping of the uncapped 2 inch force main line from the MCP97- Clark Place Manhole. The Town’s expert determined that there was a blockage of that line approximately 6 feet from the entry of that pipe into that manhole.
45. In response to the requirement of the Town’s NOV and Cease and Desist, you did not submit a First Compliance Report within the time specified in the NOV and Cease & Desist. After this default was called to the attention of your counsel, a First Compliance Report was provided on November 15, 2019 which committed, in part, that the Property Owners would conduct all necessary tests “in the coming weeks.” [Exhibit 26]
46. On November 19, 2019, NYCDEP advised that it required the following information in order to review the out of district connection application: (1) proof that an identified blockage in the line has been removed; (2) a flow test of the line; and (3) a pressure test of the line. [Exhibit 27] The testing was to be conducted when NYCDEP personnel were present to observe the testing⁶.

⁶ A purported pressure test previously submitted by the Property owners to NYCDEP in June, 2019, was not observed by the NYCDEP.

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47. On November 20, 2019, the Town advised Counsel for the Property Owners that the requirements set forth by NYCDEP must be completed on or before December 6, 2019 given that no date for the same had previously been provided to the Town. [Exhibit 28]
48. On November 21, 2019 counsel for the Property Owners agreed that all such requirements set forth in Paragraph 47 would be completed on December 6, 2019. [Exhibit 29]
49. On December 6, 2019, I arrived at the Property at approximately 11:40 AM [Exhibit 30] and Mr. Barile stated that he would only conduct a dye test that day and would not conduct any other testing.
50. To the best of my knowledge dye was placed into the drains at the Property and water was left running to activate the pump under the direction and observation of NYCDEP (hereinafter, "December 6 Dye Test").
51. I personally observed the Clark Place Manhole and was in a position to observe the flow and presence of dye originating at the Property during the December 6 Dye Test. At no time on December 6 did I observe dye enter CSD #1 via the uncapped connecting pipe in the Clark Place Manhole.
52. During the December 6 Dye Test, I could hear the sound of liquid rushing in the subsurface in the vicinity of the MCP97 – Clark Place Manhole.
53. I, along with representatives of NYCDEP and PCDOH, traveled to the next "down sewer" manhole located at manhole MCP 96, which is approximately 120 feet downstream of the Clark Place Manhole and observed a "wine colored" dye in that location, demonstrating that wastewater from the Property was entering CSD #1, a circumstance not previously known
54. As this dye was not observed in the MCP97 - Clark Place Manhole at any time during the December 6, 2019 dye test but was observed at the manhole at MCP96, I have determined that there is a separate, previously undisclosed, unauthorized connection from the Property into CSD #1 which is currently routing wastewater to CDS #1 from the Property.
55. The Town's consultant thereafter reviewed video taken in 2017 of the sewer main between the MCP97– Clark Place Manhole and MCP 96 and determined that, as of that time, one connection point to the sewer main was present located approximately 50 feet from down sewer from the MCP97 – Clark Place Manhole. [Exhibit 31]
56. The December 6 Dye Test demonstrates that the Property is connected to CSD#1 somewhere along the stretch of sewer main between MCP97 and MCP96, possibly via the connection point identified via analysis of 2017 video (hereinafter, this connection point is referred to as the "Second Connection").
57. Counsel for the Property Owners acknowledged this Second Connection on December 16, 2019, starting in an email to NYCDEP that ". . . Testing revealed wastewater being discharged into Town of Carmel Sewer District No. 1 *at a different location than the Clark/Route 6N manhole.*" [Exhibit 32]
58. Although the exact configuration of this Second Connection has not been confirmed, to the best of my knowledge, it has never been disclosed to the Town or any other applicable regulatory agencies.
59. The manner in which the Second Connection appears to have been configured would allow it to evade detection and regulation.
60. As evidenced in the 1994 Karell letter, the Town's express method of ensuring that the line remained dry was by ensuring a cap was in place on the pipe within the MCP97 – Clark Place Manhole.

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61. Despite the Town's representation to NYCDEP that it would ensure that the connecting line would remain capped and the Town would regularly inspect the cap in the MCP97-Clark Place Manhole to ensure that the line was not in use, by nature of its construction when the road was open and the inaccessibility of it, absent invasive excavation, the Second Connection likely has remained in an uncapped position since its installation in or around 1991.

62. On December 11, 2019, David Warne, Assistant Commissioner of NYCDEP sent me a letter which stated, in relevant part:

As we previously advised, in order to complete our review, we need 1) proof that the identified blockage has been removed from the line; 2) a flow test of the line; and 3) a pressure test of the line. We understood these items would be complete by December 6, 2019. However, during a field inspection on December 6, a dye test revealed that the Property's wastewater connection to the Town collection system *is different from what was previously represented*. Should the Town wish to proceed with its request, NYCDEP will need the flow and pressure tests to be completed on the line that is in use, as well as the previously requested accurate as-built drawings of the sewer line and monthly water usage data from the Property. *Prior as-built drawings received by NYCDEP appear to be inaccurate based on the dye testing performed on December 6.*

In addition to the foregoing, during the dye test, NYCDEP's inspector observed that the 2,000 gallon tank on the Property is full. As such, please clarify whether the tank is currently being used as a septic tank or an overflow tank. If the tank is being used as an overflow tank for the pump pit, please provide documentation of past pump outs, the schedule for future pumps out, and information on how and when the on-site septic system was abandoned. [Exhibit 33]

63. On December 16, 2019, Counsel for the Property Owners acknowledged that this line could not be easily accessed or tested, writing "Mr. Karell further advises that *he cannot pressure test* [which would require capping] the sewer line without digging the road (Route 6N) at an extremely high cost and level of difficulty." [Exhibit 32]

64. This Second Line is incapable of being capped or uncapped without conducting excavation, and there has been no known excavation for that purpose, so this Second Line was uncapped and appears to have been capable of being utilized without detection presumably since its installation when Route 6N was resurfaced in or around 1991.

65. The Second Line and the OOD application included attachments provided by the Property Owner do not represent the subsurface conditions and connecting line configuration as required by NYCDEP.

66. Mr. Barile personally verified under oath a number of statements in the Article 78 Petition which alleged that the Property tied into CSD#1 via the connection at the MCP97 – Clark Place Manhole including:

At that time [1991], Petitioners also ran underground force sewer main piping to the Premises *via an existing sewer manhole nearby Clark Place on Route 6N* under the supervision of the Town, through its engineering department. Petitioners undertook this work to ensure the Premises would have access to sewer equipment in the future should the Premises require additional capacity or if the existing subsurface treatment system became inadequate or incapable of repair. [Article 78 Petition, Paragraph 26];

This sewerage equipment and lateral connection to the sewer line installed in Route 6N *at the Clark Place Manhole* was pressure tested and functioned properly and in 1993 and in 2019" [Article 78 Petition, Paragraph 28].

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On or about September 3, 2019, believing that NYCDEP was intending to inspect the sewer connection on the Premises, *Petitioners and their engineer uncapped and prepared the existing sewer connection* – and not the SSTS – for NYCDEP inspection. [Article 78 Petition, Paragraph 45]; and

Petitioner began utilizing this sewer connection serving the Premises thereafter in lieu of the SSTS. [Article 78 Petition, Paragraph 46].

67. Despite these sworn statements by Mr. Barile in the Article 78 petition referencing the connection in the MCP97 – Clark Place Manhole, as the December 6 Dye Test demonstrates, and by counsel for the Property Owners, sewage from the Property appears to have flowed into CSD #1, in part or in whole through the Second Connection to CSD#1 down sewer from that location.
68. Mr. Barile has admitted on a number of occasions to connecting to Sewer District # 1 at least as of September 4, 2019 and has not obtained all necessary approvals to do so as of this time.
69. At the open Town Board meeting on October 2, 2019, in connection with discussion of whether to engage the law firm of Cozen O'Connor as special counsel in connection with this matter, after the Town's regular outside attorney recused himself, Mr. Barile stated:

What can this law firm find out that the DEC hasn't already found out, and I am done with the DEC, that the DOT hasn't found out, and I am done with the DOT, the Putnam County Board of Health, and I'm done with the PCBOH, *and the Town of Carmel, which I am done with too, I don't need anything from the people to the right of me to hook up to the sewer main.* And interesting part, I never said it publicly, but the file from 25 years ago was lost all during Dr. Suess' articles. It was found maybe about a month ago that showed all of these things.⁷ So the only thing we are waiting for is the DEP."⁸

70. Mr. Barile also appears to have made comparable statements to the press. A story in the September 17, 2019 Examiner News stated:

Barile said it is untrue that he doesn't have permission from the DEP to hook up to the sewer and the only permit he needs now is from the state department of transportation. He said he already had authorization from the town when a resolution was passed in the early 1990s to use the sewer as an outside user.⁹ [Exhibit 34]

71. These statements, including those made from his seat as a member of the Town Board as referenced in Paragraph 69, misrepresented the permitting and approval process, which as described herein included a variety of outstanding regulatory requirements, including that the Town had to initiate an Out of District connection request to NYCDEP, that NYCDEP testing requirements be satisfied, an OOD agreement be executed, and that DOT permitting be completed.¹⁰
72. In my professional opinion, the purported June 26 2019 pressure test, which allegedly demonstrated a line that was "pressure tight" is suspect since the Second Connection was not capped. This conclusion is

⁷ Mr. Barile asserted at an open meeting of the Town Board on September 18, 2019, that all documentation with the various government agencies involved with permitting the sewer line hookup was in his possession and available for inspection. From a visual inspection of the video recording, it appeared that Mr. Barile was in possession of the official Town file.

<https://www.youtube.com/watch?v=kq5X5A9hkD0>

⁸ *Id.*

⁹ <https://www.theexaminernews.com/investigation-called-over-barile-hookup-to-sewer-line/>

¹⁰ This statement appears to have been made to dissuade the Board's from engaging Cozen O'Connor to represent the Town in an investigation of these matters.

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supported by NYCDEP's requirement that an additional pressure test be conducted under NYCDEP's supervision.

73. As noted above, the Property Owners refused access to the Town's technical consultants to the Property on November 12, 2019 for the purpose of conducting a pressure test as agreed to and scheduled by your counsel. Further, you failed to conduct the pressure test under observation by NYCDEP as scheduled by you to be held on December 6, 2019.
74. Pursuant to the First NOV and Cease and Desist, a further progress report setting forth the Property Owners' past and planned actions to come into compliance with the Sewer Use Law was required to be submitted no later than December 16, 2019. You have defaulted in this obligation.
75. You failed to mitigate the further risk associated with the unauthorized connection to CSD #1 by utilizing the on-site SSTS or otherwise disconnecting such connection at the Property. In response to a question as to why you had not reconnected to the septic system, your counsel publicly stated, "That's a good question. I wish I could answer that for you without getting in trouble." [Exhibit 35] Consequently, I find your failure to mitigate potential noncompliance as it relates to the Sewer Use Law and the Town's status under the 1938 Agreement with NYCDEP to have been willful.
76. Please be advised that on December 17, 2019, I sent NYCDEP a letter in which I withdrew the Town's acknowledgement and consent to the Property Owners' out of district request, which I previously acknowledged on behalf of the Town as being compliant with the Sewer Use Law, due to the fact that the you submitted inaccurate "as built" drawings and because all NYCDEP required actions and testing, including pressure testing, had not been completed to the satisfaction of both the Town and NYCDEP on or before the December 6, 2019 deadline. [Exhibit 36] In my December 17, 2019 letter to NYCDEP, I stated, "Based on this information, the Town is withdrawing the attached November 5, 2019 Application to Construct to the New York Sewer System. Consistent with [NYCDEP's]. . . December 11, 2019 letter, the Town may resubmit the application, upon receipt of the additional information requested by the NYCDEP." A copy of such correspondence has been provided to your counsel.
77. As the result of the foregoing, I hereby issue an Notification of Violation pursuant to §120-82 of the Sewer Use Law with respect to the unauthorized out of district connection of the Connecting Line from the Property to Sewer District # 1 through the Second Connection for ultimate unauthorized treatment at the NYCDEP Mahopac Wastewater treatment facility.
78. As the consequence of the foregoing, I hereby order you to Cease and Desist forthwith your unauthorized use of CSD #1 and to disconnect any and all connecting lines from the Property to MCP97 – Clark Place Manhole, as well as the Second Connection by capping all such line(s) at the Property, arranging for the excavation and capping the Second Line at its point of entry into CSD#1, and conduct the capping of the connecting line MCP97 –Clark Place Manhole line in coordination with the Town Engineer and other involved agencies. All such work shall be done only after 48 hours advance written notice to the Town Engineer and with the Town Engineer and any members of the Town Engineering department, of its agents present for purposes of observing all such work.
79. Pursuant to §120-86A of the Sewer Use Law, you are required to submit an adequate 10 day compliance plan as required by §120-82 of the Sewer Use Law.
80. In order to reinstate and pursue an OOD request, you are required to submit:
 - a. True and correct as built under an independent third party engineer's seal;

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- b. In the event that you intend to route sewage through the MCP97 – Clark Place Manhole, proof that the identified blockage in the line has been removed;
 - c. A flow test of the actual line described in the new as built provided pursuant to this Paragraph; and
 - d. A pressure test of the actual line as described in the new as built as provided pursuant to this Paragraph, which pressure shall be observed by NYCDEP personnel and the Town Engineer and my agents.
 - e. The transmittal of all pump pit information requested by NYCDEP in the December 11, 2019 letter from David Warne.
 - f. A certification signed by you and signed and sealed by a New York professional engineer that no other connections not referenced herein from the Property to CSD #1 exist.
 - g. Compliance with any other requirements of NYCDEP, DOT, or PCBOH of which the Town is notified, written notice of which will be provided to you.
81. In the event that you elect to utilize the on-site SSTS, notify the Town, NYCDEP and the PCDOH 48 hours in advance that the septic system is being returned to service, to allow such agencies to conduct any inspection or testing of such septic system located at the Property, and the pump out records that you stated on May 31, 2019 were “available.” [Exhibit 10]. In the event that any such dye test or review demonstrates any adverse impact on Lake Mahopac, immediately notify the Town of Carmel.

With respect to the NOV issued pursuant to §120-82 of the Sewer Use Law, you are required to provide, within 10 calendar days of the date upon which I mailed this notice, to provide the Town of Carmel with an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall be submitted in writing to the Town Engineering Department. You are required to incorporate the requirements set forth in Paragraph 76 through 80 into that plan. Furthermore, you are hereby ordered to pursuant to §120-86A of the Sewer Use Law to take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, which shall include providing a progress report no later than 30 days after submission of the initial 10 day plan to the Town Engineer, with a copy to NYCDEP and Putnam County, and then additional progress reports every 30 days thereafter, describing actions taken during the prior reporting period to comply with the Sewer Use Law, and to take all actions set forth in this NOV and Cease and Desist Letter, as well as all such activities planned for the next 30 calendar day period.

Pursuant to Town Law §135, the violation of the Sewer Use Law also is declared to be a misdemeanor punishable by civil penalty or fine or imprisonment or both, by action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation. Please take further notice that pursuant to § 120-85 of the Town Code, any user who is found to have violated the Town Code shall be fined an amount not to exceed \$1,000 per violation and each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation.

In the event of your failure to comply with the terms of this Second NOV and Cease and Desist in a timely fashion, the Town reserves its right to disconnect your unauthorized use of SD #1 and to factor the cost thereof in its consideration of any fine or penalty to be assessed.

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The Town of Carmel reserves its rights to amend this Second NOV and Cease and Desist Letter, and nothing herein in any way impacts the Town's right to take any additional action and exercise any other right it may have with respect to this matter, including the right to seek any penalties for past and ongoing violations.

If you have questions or concerns, please contact me.

Sincerely,



Richard J. Franzetti, P.E.
Town Engineer

ecc:

Paul V. Rush, P.E., NYCDEP at PRush@dep.nyc.gov
David Warne, NYCDEP at DWarne@dep.nyc.gov
Lorraine Holdridge, NYSDEC at lorraine.holdridge@dec.ny.gov
Joseph Paravati, PCDOH at Joseph.Paravati@putnamcountyny.gov
Kenneth Schmitt, Town of Carmel at ks@ci.carmel.ny.us
Suzanne McDonough, Town of Carmel at sfm@ci.carmel.ny.us
Jonathan Schneider, Town of Carmel at js@ci.carmel.ny.us
John Lupinacci, Town of Carmel at jdl@ci.carmel.ny.us
Michael Caruso via Counsel at JVanOrden@cozen.com

Exhibit 1

Richard Franzetti, P.E.
Town Engineer



(845) 628-1500
(845) 628-2087
Fax (845) 628-7085

Office of the Town Engineer
60 McAlpin Avenue
Mahopac, New York 10541

Notification of Violation and Order to Cease and Desist

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

VIA EMAIL TO MICHAEL BARILE

October 24, 2019

Mr. Michael Barile and Mr. Tommy Boniello
888 Route 6
Mahopac, NY 10541

**Re: Notice of Violation and Cease and Desist
825 South Lake Blvd TM 75.43-1-22**

Dear Mr. Barile and Mr. Boniello:

This Notification of Violation (“NOV”) and Order to Cease and Desist are issued pursuant to §§ 120.8, 120.82 and 120-86 of the Town of Carmel Code, (“Sewer Use Law”), and NY CLS Town §§135 and 198, which authorize actions to enforce the Sewer Use Law. As described below, I have determined that real property owned by Michael A. Barile and Tommy A. Boniello (hereinafter, “You”) located at 825 South Lake Boulevard, Mahopac, New York (hereinafter, your “Property”) is located outside of the Carmel Sewer District Number 1 (hereinafter “CSD #1”). I have further determined that from at least September 4, 2019, and continuing to the present, you have connected your Property to CSD #1 without proper authorization and in violation of the Sewer Use Law. I hereby notify you of the violations set forth herein of the Sewer Use Law and order you immediately to cease and desist the connection to the Carmel sewer main unless and until you meet the conditions set forth herein.

Pursuant to §120.8 of the Sewer Use Law, you are required to provide a statement with respect to the violations alleged herein and describe your efforts to comply no later than ten (10) calendar days after your receipt and to provide a progress report no later than each 30 calendar days thereafter describing the actions taken to comply with this NOV and Order to Cease and Desist. The process set forth herein is intended to timely cure the ongoing violations and ensure that all approvals are obtained as required by the Sewer Use Law and the longstanding Agreements between the Town of Carmel and New York City governing the acceptance and treatment of sanitary sewage from the Town of Carmel by New York City.

Authority

Pursuant to §120-82 of the Sewer Use Law, whenever the Superintendent finds that a person has violated or is violating Chapter 120, or any wastewater discharge permit, order prohibition, limitation, or requirement permitted by Chapter 120, the Superintendent may serve upon such person written notice stating the nature of the violation.

Pursuant to §120-86A of the Sewer Use Law, whenever the Superintendent finds that a user has violated or continues to violate this chapter or any permit or administrative order issued hereunder, the Superintendent may issue an order to cease and desist such violations and direct those persons in noncompliance to (1) comply forthwith;

Notice of Violation and Cease and Desist
825 South Lake Blvd TM 75.43-1-22

and (2) take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations or terminating the discharge.

Pursuant to §120-5 of the Sewer Use Law, “user” is defined as any person who contributes, causes, or permits the contribution of wastewater into the POTW.

Pursuant to §120-5 of the Sewer Use Law, “Superintendent” is defined as the Town Engineer, who shall be licensed to practice engineering in the state, and otherwise qualified to oversee water treatment and distribution and POTW operations, as well as his authorized deputy, agent or representative.

Pursuant to §120-5 of the Sewer Use Law, “Publicly Owned Treatment Works” or “POTW” is defined as treatment works, which is owned by the Town of Carmel Sewer District or the City of New York. This definition includes any sewers and appurtenances that transport wastewater to the POTW treatment plant.

Pursuant to §120-91, the Superintendent has the right in his sole discretion to utilize one or more appropriate administrative remedies.

Pursuant to Town Law §135, the violation of the Sewer Use Law also is declared to be a misdemeanor punishable by civil penalty or fine or imprisonment or both, by action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation.

Findings of Fact and Conclusions

1. I, Richard Franzetti, am currently am the Town Engineer and Superintendent of the Town of Carmel’s POTW system and have held that position since November 2013. I am licensed to practice engineering in New York State, and otherwise qualified to oversee water treatment and distribution and POTW operations.
2. On November 8, 1991, the Town of Carmel entered an “Agreement for Sewer Service Between Carmel Carmel Sewer District #1 and Michael A. Barile and Tommy A. Boniello,” which was executed by and agreed to by Michael Barile and Tommy Boniello and approved by the Town Board, which permitted Michael Barile and Tommy Boniello to connect the Property to CSD #1 only if they met certain conditions in advance of making such connection (hereinafter “1991 Conditional Approval”).
3. Among other things, the 1991 Conditional Approval states that “Michael A. Barile and Tommy A. Boniello agrees [sic] to obtain all necessary permits and approvals from the New York State DOT, DEC and New York City DEP for the aforesaid connection to the Carmel Sewer District # 1 at their own cost and expense.”
4. Among other things, the 1991 Conditional Approval requires that “Until proper permits are received by DEC and N.Y.C. DEP the main will remain dry.”
5. On May 20, 1992, New York City Department of Environmental Protection transmitted correspondence from George Mekenian, P.E., Chief Sources Division, NYCDEP to John Karell, Jr., P.E., Public Health Director, Division of Environmental Health Services, Putnam County of Health, in which the NYCDEP elected not to approve the connecting line, stating:

Sewer service in this area would require an expansion of the sewer district. Such plans are not part of the facility plan for the new Mahopac Wastewater Treatment Plant being designed under Order on Consent.

The proposed new facility has been sized to treat existing sewer district flow. The design flow includes a significant contribution from the presently excessive inflow and infiltration (I&I). This condition must be corrected before the City could entertain the expansion of the sewer district. In addition, a proposal for an expansion of the sewer district would require a study by the Town of

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Carmel to determine the adequacy of existing treatment and the specific areas to be served by the sewer district.

6. On February 3, 1993, John Karell, Jr., P.E., Public Health Director sent a letter to Michael Barile and Tom Boniello regarding "Approval of Plans for Low Pressure Sewer Force Main for Mahopac Beach (T) Carmel" which determined that the Connection Line plans meets the "applicable criteria of the NYS Department of Environmental Conservation and the Putnam County Health Department" and that ". . . the applicant accepts and agrees to abide by and confirm" twelve requirements including, but not limited to, "THAT the facilities receive approval from the New York City Department of Environmental Protection prior to operation of the sewage pumping station."
7. On September 23, 1994, Carl Picha, P.E., East of Hudson District Engineer sent a letter to Vincent L. Soukup, P.E., Carmel Town Engineer, regarding "Lakeside Restaurant, Carmel SD #1, Mahopac, (T) Carmel," finding that the Connecting Line constitutes an illegal connection and constitutes a violation of a number of provisions of the 1938 Agreement between the Town of Carmel and New York City. Carl Picha stated in that letter, "Accordingly, the Town must take whatever actions are appropriate to assure that the aforementioned 4" PVC line is not placed into service. Please indicate in writing within sixty days of this letter the actions the Town intends to take to preclude the use of this illegal connection."
8. On October 27, 1994, John Karell, Jr., P.E., Carmel Town Engineer, sent correspondence to Carl Picha, P.E., NYCDEP "Re: Sewer Connection Lakeside Restaurant (Mahopac Beach) Carmel Sewer District #1 Carmel (T)" which states, "Obviously, approval from all appropriate agencies must be obtained prior to use of the force main." Furthermore, in this letter Mr. Karell states that [t]he force main discharge line is capped in the manhole on Route 6N." Furthermore, in this letter, Mr. Karell states to NYCDEP, "You should be aware that, periodically, Town staff inspect this manhole to assure that the force main is not in use." Finally, in this letter, Mr. Karell states "Based on the above, the Town is prepared to accept sewage from this private service connection upon completion of the reconstruction of the Mahopac STP *and upon receipt of all necessary approvals from other agencies, including NYCDEP.*" [emphasis added].
9. On April 7, 2015, the NYSDEC issued a Notice of Violation to the Town of Carmel alleging that excessive flows from the CSD #1 caused a bypass of the NYCDEP Mahopac Wastewater Treatment Facility in violation of NYS Environmental Conservation Law, Article 17.
10. On May 1, 2015, Paul V. Rush, P.E., Deputy Commissioner, Bureau of Water Supply, NYCDEP issued a Notice of Violation to the Town of Carmel alleging chronic problems in CSD #1 , including inflow and infiltration, deteriorating manholes, and massive grease accumulation. The NOV also alleged an April 21, 2015 sewer spill from a manhole in CSD #1 impacted Lake Mahopac. The Town took corrective action to address the concerns of the NYCDEP's NOV.
11. On May 29, 2019, Tommy A. Boniello and Michael A. Barile sent correspondence to the Town of Carmel Engineering Department requesting the "activation of the dry sewer line connecting 825 South Lake Boulevard to Carmel Sewer District # 1."
12. NYCDEP owns and operates the Mahopac Wastewater Treatment Facility which receives and treats the sewer flow from CSD #1 under an agreement dated September 9, 1938 (hereinafter, "1938 Agreement").
13. The Mahopac Wastewater Treatment Facility is a POTW as defined herein.
14. NYCDEP inspected the Connecting Line on September 4, 2019 and determined that it was uncapped and connected to CSD #1 located at the intersection of Clark and Route 6N and provided me written and photographic evidence to that effect.

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15. Since September 4, 2019, Michael Barile has publicly stated on numerous occasions that the sewer line remains in use and, to the best of my knowledge, the line has not been capped at this time and remains connected to the CSD #1 sewer main.
16. As the result of the proposed connection as set forth in the 1991 Conditional Approval and the actual connection which occurred at on and after September 4, 2019, you constitute a user of a POTW as defined in §120-5 of the Sewer Use Law.
17. On September 19, 2019, Paul V. Rush, P.E., Deputy Commissioner, Bureau of Water Supply, NYCDEP sent correspondence to Kenneth Schmitt, Supervisor, Town of Carmel, stating that the Property's unauthorized, out-of-district connection is a clear violation of the Town of Carmel's Sewer Use Law and that the connection constitutes a violation of the 1938 Agreement between the City of New York and the Town of Carmel, which outlined which properties could connect to the sewer system and under what circumstances they could connect.
18. The unauthorized connection of the Property from September 4, 2019 to CSD #1 via connecting line constitutes a violation of the 1991 Conditional Authorization.
19. The unauthorized connection of the Property from September 4, 2019 to CSD #1 constitutes a violation of the §120-14 of the Code of Carmel which states that the use of the Town public sewers shall be strictly limited and restricted, except as provided in §120-13, to receive and accept the discharge of sewage and other waste, including industrial wastes generated on or discharged from real property within the bounds of the service area of any POTW.
20. The unauthorized connection of the Property from September 4, 2019 to CSD #1 constitutes a violation of §120-15 of the Sewer Use Law which states that the Town Board, on the recommendation of the Superintendent, shall have the authority to enter into agreements allowing the acceptance of sewage and other waste, including industrial wastes, generated or discharged from persons outside the service area of a POTW, *but any such agreement involving the Mahopac Wastewater Treatment plant are not valid without prior written approval from the NYCDEP.* [emphasis added].
21. The unauthorized connection of the Property to CSD #1 constitutes a continuing violation of the 1991 Conditional Authorization and the Code of Carmel.
22. On the date of execution of this NOV/Cease and Desist, I transmitted a letter to NYCDEP requesting that NYCDEP consider for potential approval an Out of District (hereinafter, "OOD Request") connection for the Property which is attached as Attachment 1.
23. As the result of the foregoing, I hereby issue an Notification of Violation pursuant to §120-82 of the Sewer Use Law with respect to the unauthorized out of district connection of the Connecting Line from the Property to Sewer District # 1 for ultimate treatment at the Mahopac Wastewater treatment facility.
24. As the result of the foregoing, I issue a Cease and Desist Order directing you immediately to cease discharge to CSD #1 and revert to the use of the septic system at the Property unless you undertake the following:
 - a. You must obtain and provide for Town of Carmel review all approvals required by the 1991 Conditional Approval, including, but not limited to express written approval of the out-of-district connection of the Property to Sewer District # 1 from NYCDEP. You expressly may rely on past documents to the extent that they demonstrate compliance with the terms of the 1991 Conditional

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Approval and a licensed professional engineer indicates in writing that conditions have not materially changed since the time such documents were created.

- b. You must cooperate with NYCDEP as it relates to the OOD Request including, but not limited to:
 - i. Timely provide NYCDEP all information that it requests in connection with the OOD Request;
 - ii. Conduct any testing or other evaluation required by NYCDEP in connection with the OOD Request. In the event any such testing or other evaluation is required by NYCDEP, you shall provide advanced written notice to the Town so that the Town may elect to observe any such activities;
 - iii. Comply with all NYCDEP requests for access to the Property for the purposes of conducting, observing, or overseeing any inspection or investigatory activities that it deems necessary to consider and timely process the OOD Application;
 - iv. Upon request by NYCDEP, timely enter a written agreement providing for the payment of NYCDEP sewer use fees on and after any approval of the Connecting Line at NYCDEP's subject to terms and conditions approved by NYCDEP;
 - v. Upon request by NYCDEP, timely enter a written agreement with providing for the payment of any NYCDEP back sewer use fees for the pre-approval use of the NYCDEP WWTF subject to terms and conditions approved by NYCDEP.
 - c. Provide a progress report no later than 30 days after submission of the initial 10 day plan to the Town Engineer with a copy to NYCDEP and Putnam County and then every 30 days thereafter, describing actions taken during the prior reporting period to comply with the Sewer Use Law and this NOV and Cease and Desist Letter, as well as the activities planned for the next 30 calendar day period.
25. Pursuant to §120-86A of the Sewer Use Law, you shall immediately cease and desist use of the connecting line in the event that you do not submit an adequate 10 day plan as required by §120-82 of the Sewer Use Law, you do not provide adequate progress reports every 30 days after submission of the 10-day plan, you do not make material progress toward meeting all conditions set forth in the 1991 Conditional Approval and, you receive notification from NYCDEP indicating that the Mahopac Wastewater Treatment Facility does not have adequate capacity to receive any additional sewage as the result of the interim use of the connecting line, or upon written notice from the Town of Carmel requiring that you immediately stop use of the connecting line which, as a discretionary act, is in the Town of Carmel's sole discretion. In the event that there is delay in processing of any approval that is not caused by you but your application remains in good standing, it shall not be deemed to be a breach requirement to make material progress. In the event that you are required to so cease and desist pursuant to this Paragraph 25, you shall timely:
- a. Arrange with the Town in order to have the Town cap the connecting line at the location of the manhole at the intersection of Clark and 6N and provide the Town with a sworn written statement every 90 days thereafter that the Connecting Line remains capped.
 - b. Disable the forced main pump by disabling the electrical supply and provide written proof from a certified engineer and photographic evidence of such action unless such pump is utilized in connection with the Septic System, in which case it may be utilized for that express purpose as so attested to by a certified engineer.

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- c. Notify NYCDEP and the Putnam County Department of Health that the septic system is being returned to service to allow NYSDEP to conduct a dye test of such septic system located at the Property in its discretion. In the event that any such dye test demonstrates any adverse impact on Lake Mahopac, immediately notify the Town of Carmel.

With respect to the NOV issued pursuant to §120-82 of the Sewer Use Law, you are required pursuant to that section to provide, within 10 calendar days of the date upon which the Superintendent mails this notice, to provide the Town of Carmel with an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall be submitted to the Superintendent. You are required to incorporate the requirements set forth in Paragraph 25 and, if necessary, Paragraph 26 above into that plan. Furthermore, you are hereby ordered to pursuant to §120-86A of the Sewer Use Law to take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation which shall include providing a progress report no later than 30 days after submission of the initial 10 day plan to the Town Engineer with a copy to NYCDEP and Putnam County and then additional progress reports every 30 days thereafter, describing actions taken during the prior reporting period to comply with the Sewer Use Law and to take all actions set forth in this NOV and Cease and Desist Letter, as well as all such activities planned for the next 30 calendar day period.

The Town of Carmel reserves its rights to amend this NOV and Cease and Desist Letter, and to take any additional action and exercise any other right it may have with respect to this matter, including the right to seek any penalties for past and ongoing violations. Compliance with the requirements set forth herein in no way relieves you of liability for any violations of law before or after receipt of this NOV and Cease and Desist Letter.

If you have questions or concerns, please contact me.

Sincerely,



Richard J. Franzetti, P.E.
Town Engineer

ecc:

Paul V. Rush, P.E., NYCDEP at PRush@dep.nyc.gov
David Warne, NYCDEP at DWarne@dep.nyc.gov
Lorraine Holdridge, NYSDEC at lorraine.holdridge@dec.ny.gov
Joseph Paravati, PCDOH at Joseph.Paravati@putnamcountyny.gov
Kenneth Schmitt, Town of Carmel at ks@ci.carmel.ny.us
Suzanne McDonough, Town of Carmel at sfm@ci.carmel.ny.us
Jonathan Schneider, Town of Carmel at js@ci.carmel.ny.us
John Lupinacci, Town of Carmel at jdl@ci.carmel.ny.us
Michael Caruso via Counsel at JVanOrden@cozen.com

Richard Franzetti, P.E.
Town Engineer



(845) 628-1500
(845) 628-2087
Fax (845) 628-7085

Office of the Town Engineer
60 McAlpin Avenue
Mahopac, New York 10541

October 24, 2019

Mr. David Warne
Assistant Commissioner
New York City
Department of Environmental Protection
Bureau of Water Supply
465 Columbus Avenue
Valhalla, NY 10595

**Re: Out of District Connection Request
825 South Lake Blvd TM 75.43-1-22**

Dear Mr. Warne:

As you are aware, the Town of Carmel (Town) has received an application for and request to process on Out of District ("OOD") connection of 825 South Lake Blvd., Mahopac, NY (Tax Map 75.43-1-22) to Sewer District Number 1. At this time, the Town requests that New York City Department of Environmental Protection (NYCDEP) proceed with the review and potential approval of this OOD connection. Please advise if you require any information to process this request.

The Town recognizes the concerns raised in Paul Rush's September 19, 2019 Letter to Town Supervisor Kenneth Schmitt and we intend to work with the NYCDEP to timely process this OOD request by providing any information necessary on this OOD request. Further, we recognize the need to ensure compliance with the 1938 Agreement and the Carmel Sewer Use Law and intend to take appropriate action.

Should you require any other information from the Town or if you have any questions or comments, I can be reached at (845) 628 – 1500 ext 181.

Sincerely,

Richard J. Franzetti, P.E.
Town Engineer

ecc:

Paul V. Rush, P.E., NYCDEP at PRush@dep.nyc.gov
Lorraine Holdridge, NYSDEC at lorraine.holdridge@dec.ny.gov
Joseph Paravati, PCDOH at Joseph.Paravati@putnamcountyny.gov
Suzanne McDonough, Town of Carmel at sfm@ci.carmel.ny.us
Michael Barile and Tommy Boniello via Counsel at JVanOrden@cozen.com

Exhibit 2

CARMOEL SEWERAGE SYSTEM ✓

AGREEMENT BETWEEN
TOWN OF CARMEL and
CITY OF NEW YORK

Dated: September 9, 1938. ✓

Returned to [unclear]

Filed
Jan. 24, 1962
John P. Morris
Town Clerk

THIS AGREEMENT made and entered into this 9 th day of September, 1938, by and between THE CITY OF NEW YORK, a municipal corporation (herinafter called The City), acting by and through its Commissioner of Water Supply, Gas & Electricity, party of the first part, and the Town of Carmel, Putnam County, a municipal corporation (herinafter called the Town), acting by and through its Supervisor, party of the second part, witnesseth: ✓

WHEREAS, by section 734 (2)-10.0 of the Administrative Code of the City of New York the said Commissioner is authorized and empowered to enter into a contract or agreement, subject to the approval of the Board of Estimate of The City, with the authorities of the Town to provide for the disposition of the sewage of one or more villages or sewer districts ✓ within said Town in such manner as may be provided for in said agreement, and the said authorities of the Town are likewise authorized and empowered to enter into the agreement aforesaid; and

WHEREAS, the authorities of the Town are authorized and empowered to provide in said contract or agreement, or any modification thereof, that all persons within the area affected, owning buildings on streets where sewers are, or may hereafter be constructed or located shall connect with the sewer system as provided in such contract or agreement; and

WHEREAS, such contract or agreement may authorize or require the construction, operation and maintenance of a sewage disposal plant, equipment and facilities for the disposition of the sewage of one or more villages or sewer

districts in the Town:

Now, THEREFORE, in consideration of the mutual advantages and covenants of the parties hereto, it is agreed that the City, with the approval of its Board of Estimate, and the Town, with the approval of its Town Board, shall provide for the collection and disposal of the sewage of the Town, including all villages and sewer districts entirely embraced therein, in the following manner, namely:

1. The work to be done consists in building a sanitary system of sewerage, including trunk lines and laterals, a pumping station, and house connections to the outside of the foundation walls of buildings (hereinafter called the sewer system), and a disposal plant and appurtenances and a trunk line sewer from a manhole to be located on property owned in fee by the City to such disposal plant (hereinafter called the disposal plant) to take care of the sewage of the said villages and sewer districts, and to collect the sewage from the sewer system and deliver it to the disposal plant, where it will be properly treated so that the effluent may be discharged into a brook, tributary to Croton Falls Reservoir, without polluting the water. ✓
2. The Town agrees at its expense to construct such sewer system and to collect and convey the sewage to the manhole hereinabove mentioned and The City agrees at its expense to convey such sewage from said manhole to the disposal plant, where it will be properly treated

by The City and the resultant effluent discharged into said brook.

3. The Town shall, at its expense, acquire all rights in and over highways, roads, streets and other public property and private property in and about such villages and sewer districts which it may be necessary to acquire in order to build, construct, alter, enlarge, maintain and operate such sewer system.

4. The Town agrees to construct such sewer system in a first-class and workmanlike manner in accordance with plans and specifications prepared by the Hudson Valley Engineering Company of Peekskill, New York, subject to the prior approval of the State Department of Health and the City. Such plans and specifications, as approved by the State Department of Health, the Department of Water Supply, Gas & Electricity, and filed in said Department, are hereby made a part hereof with like effect as if herein set out in full and are described as follows:

Plan and Profile of Sewer District No. 2 Town of Carmel, Putnam County, New York.

Sewage Lift Station Sewer District No. 1, Town of Carmel, Putnam County, New York.

Advertisement, Information to bidders, proposal, Contract, Specifications, and Standard Structures for Constructing Sewerage and Water Works at Lakes Minerva, New York.

5. It is hereby understood and agreed that all costs

of the operation, maintenance, repair, reconstruction and enlargement of such sewer system shall be at the expense of the village or villages and/or sewer district or sewer districts benefited by such sewer system.

6. It is further agreed that should future conditions or construction operations on any of the premises crossed by any part of such sewer system require a change in the original location thereof, said Town shall make such change upon application duly made therefor and approved by The City within ninety (90) days after the approval of such application, the expense of any and all changes to be borne by the village or villages and/or sewer district or sewer districts benefited by such sewer system.

7. The representatives of The City shall be given all necessary facilities to inspect the work on the construction of the sewer system as it progresses, so as to ascertain that it is carried out in accordance with the terms of this agreement and so as to fulfill its intended purposes; and should the representative of The City find that the work is not properly done and report the fact to the Town authorities, the latter will at once take the necessary steps to correct such defects or supply such omissions as may be shown in the reports of the representatives of The City.

8. The City shall build a disposal plant at the expense of The City on lands owned in fee by The City in accordance with plans and profiles of said disposal plant ap-

proved by the State Department of Health. The disposal plant shall consist essentially of primary tank of the sedimentation- digestion type with sludge bed, a dosing tank, six sand filter beds and chlorinating building, with appurtenant piping, manholes, regulating chamber and all necessary appliances. The cost of the operation, maintenance and repair of such disposal plant shall be at the expense of The City. The City reserves the right at any time, subject to the approval of the State Department of Health, to change or enlarge such disposal plant to take advantage of the progress in the art of sewage disposal. The plans and specifications of such disposal plant, as approved by the State Department of Health, are hereby made a part hereof with like effect as if ^e herin set out in full and are described as follows:

Drawing No. 25720-X - Sheet No. 1 - General layout of present and future development for sewage disposal plant at Lake Mahopac, Carmel, New York.

Drawing No. 25721-X - Sheet No. 2 General Plan and Profile of primary units for sewage disposal plant at Lake Mahopac, Carmel, New York.

Drawing No. 25722-X - Sheet No. 3 - Plans and sections of sand filter beds for sewage disposal plant at Lake Mahopac, Carmel, New York.

Drawing No. 25723-X - Sheet No. 4 - Plans and sections of primary tanks and screen chamber for sewage disposal plant at Lake Mahopac, Carmel, New York.

Drawing No. 25724-X - Sheet No. 5 - Plans and sections of sludge bed for sewage disposal plant at Lake Mahopac, Carmel, New York.

Drawing No. 25725-X - Sheet No. 6 - Plans and sections of dosing tank for sewage disposal plant at Lake Mahopac, Carmel, New York.

Drawing No. 25726-X - Sheet No. 7 - Plans and sections of chlorinating building and service building for sewage disposal plant at Lake Mahopac, Carmel, New York.

9. It is further agreed that The City shall construct, maintain and operate the trunk sewer from the manhole at approximately station 60 + 50 on the Croton Falls Road as shown on said plans and specifications through property of The City to the disposal plant.

10. All structures comprising the disposal plant shall become the property of The City immediately upon completion and any improvements or additions made to such disposal plant shall also become the property of the City.

11. The Town agrees that all persons within such Town owning buildings on streets where sanitary sewers are or may be hereafter constructed or located under this agreement, shall connect with the sewer system as provided for in this agreement, and in the event of the failure of any person or persons aforesaid to connect with such sewer system and the failure of the Town to compel such person or persons to connect with the sewer system within sixty (60) days after notice of demand, the City shall have the right to cause such connection

to be made at the expense of the owners so failing or neglecting to connect with said sewer system, which expense may be recovered by The City in a suit in any court having competent jurisdiction thereof. ✓

12. The Town agrees to prescribe and enforce proper plumbing rules and regulations for tapping and connecting with the sewer system and shall perform faithfully all the terms and conditions of this agreement. All house connections are to be made watertight by licensed plumbers.

13. The Town agrees within a reasonable time after the completion of said sewer system to adopt a resolution or ordinance requiring all property owners to connect their premises with such system and to furnish The City a map showing the system, including house connections, and agrees to furnish the City with a record of all future changes or extensions in such system, including house connections. In the event of the failure of any property owner to comply with such resolution or ordinance within thirty days after the adoption and publication thereof, the Town agrees to make such connections and charge the expense thereof to such owner. All laterals installed by any property owner or by the Town shall be rigidly inspected to insure watertightness.

14. No automatic flush tanks shall be installed as part of the sewer system and all flushing of sewers shall be intermittent and manual with water obtained from a local supply of clean water.

15. It is further understood and agreed that the sewer system and disposal plant shall not be used for the reception of manufacturing and trade waste, such as acids, oil, grease, gasoline, or other wastes which would interfere with the proper treatment at the disposal plant, and the discharge from leaders or cellar drains; it being specifically understood and agreed that such sewer system and disposal plant will receive only domestic sanitary sewage.

16. The Town agrees to begin the construction of such sewer system, and The City agrees to begin the construction of the disposal plant as soon as possible after the approval of ^{the} plans therefor by the State Department of Health and it is hereby covenanted and agreed by and between the respective parties hereto that all of the work to be done by them shall be completed on or before June 1st, 1939.

17. The structures comprising such disposal plant, and the lands occupied by them, as more particularly shown on said plans and specifications shall be exempt from all taxes and general and special assessments, or both, and the assessments levied upon said property and ^{paid} paid by The City.

IN WITNESS WHEREOF, The City has caused its corporate seal to be hereunto affixed and duly attested and this agreement in quintuplicate to be signed by its Commissioner of Water Supply, Gas & Electricity, and the Town has caused its corporate seal to be herunt affixed and attested and this agreement in quintuplicate to be signed by its Supervisor, the

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 9th day of September, 1938, before me personally came Joseph Goodman, to me known, who, being by me duly sworn, did depose and say that he resides in the Borough of Manhattan, City of New York; that he is the Commissioner of Water Supply, Gas & Electricity of the City of New York, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by authority of the Board of Estimate of such City pursuant to such law, and that he signed his name thereto by like authority.

William H. Tilly Jr.
Commissioner of Deeds
New York County Clerk's No. 14
Commission Expires March 8, 1940

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

On this 12th day of September, 1938,
before me personally came Orson H. Lyon to me known, who
being by me duly sworn, did depose and say; that he resides
in the Town of Carmel; that he is the Supervisor of the Town
of Carmel, one of the corporations described in and which ex-
ecuted the foregoing instrument; that he knows the seal of
such corporation; that the seal so affixed to said instrument
is such corporate seal; that it was so affixed by authority
of the ~~TOWN~~ Town Board of the Town of Carmel pursuant to the
provisions of such law, and that he signed his name thereto
by like authority.

Bradford Klock
Notary Public
Putnam County.

Exhibit 3

6 NOVEMBER 1991
TOWN BOARD MEETING

Cont.

Resolution

Offered by: Councilman Becker

Seconded by: Councilmen Ravallo and DelCampo

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Bob Ravallo	<u>X</u>	___
Karl Becker	<u>X</u>	___
Doris Stahl	<u>Absent</u>	___
Frank DelCampo	<u>X</u>	___
Richard Othmer	<u>X</u>	___

C.S.D.# 2 - FACILITIES REPORT SUPPLEMENT - AUTHORIZE ADDITIONAL PAYMENT

WHEREAS, by prior resolution the Town Board of the Town of Carmel acting as commissioners of the Carmel Sewer District # 2 has authorized expenditures for a facilities report supplement in an amount not to exceed \$25,000.00; and

WHEREAS, the costs for this supplement as per the annexed itemized statement amount to \$28,095.55;

NOW BE IT THEREFORE RESOLVED that the prior resolution of this Board with respect to this facilities report supplement is hereby amended to increase the amount therein to a total amount of \$28,095.55; and

BE IT FURTHER RESOLVED that the remainder of the resolution shall stand as passed.

RESOLUTION:

Offered By: Supervisor Othmer

Seconded By: Councilman Becker

Roll Call Vote:	YES	NO
Bob Ravallo	<u>X</u>	___
Karl Becker	<u>X</u>	___
Doris Stahl	<u>Absent</u>	___
Frank DelCampo	<u>X</u>	___
Richard Othmer	<u>X</u>	___

C.S.D.# 1 - CONTRACT WITH BARILE AND BONIELLO FOR "OUT OF DISTRICT" HOOK-UP

WHEREAS, the Town Board of the Town of Carmel acting as commissioners of the Carmel Sewer District # 1 has received a proposal from Michael Barile & Thomas Boniello regarding the installation of a sewer main from property located outside of the District to connect into the district main, such installation and material to be at the sole cost and expense of the aforesaid individuals; and

WHEREAS, the Commissioners have reviewed the proposal and the contract therefor and are agreeable to the entry into the aforesaid agreement; and

NOW BE IT THEREFORE RESOLVED that the Supervisor of the Town of Carmel, acting on behalf of the Commissioners of the Carmel Sewer District #1 is hereby authorized to enter into the aforesaid agreement.

6 NOVEMBER 1991
TOWN BOARD MEETING

Cont.

RESOLUTION:

Offered By: Supervisor Othmer
Seconded By: Councilman Becker

Roll Call Vote:	YES	NO
Bob Ravallo	<u>X</u>	---
Karl Becker	<u>X</u>	---
Doris Stahl	<u>Absent</u>	---
Frank DelCampo	<u>X</u>	---
Richard Othmer	<u>X</u>	---

AGREEMENT FOR SEWER SERVICE

BETWEEN

CARMEL SEWER DISTRICT #1

AND

MICHAEL A. BARILE & TOMMY A. BONIELLO

AGREEMENT dated this 8th day of November, 1991, between CARMEL SEWER DISTRICT #1 and MICHAEL A. BARILE & TOMMY A. BONIELLO:

WHEREAS, Carmel Sewer District #1 is a municipal district which provides sewer service to the residences and business located within its geographical boundaries; and

WHEREAS, Michael A. Barile & Tommy A. Boniello are the owners of a commercial property lying adjacent to but outside the boundaries of the Carmel Sewer District #1; and

WHEREAS, the Town Board of the Town of Carmel, acting as Commissioners of the Carmel Sewer District #1 have determined by Resolution dated November 6th, 1991 that it would be in the public interest to permit such tie in on a contract basis to install the aforesaid sewer line which is being offered at no cost or expense to the district;

NOW, in consideration of the mutual promises and commitments made herein, as well as other good and valuable consideration, the parties contract, covenant and agree as follows:

1. Michael A. Barile & Tommy A. Boniello shall construct and install sewer service line from his property to the sewer main of Carmel Sewer District #1 at Clark Place and Route 6N, said sewer service line to be used by the aforesaid property owner, all costs of same to be borne by Michael A. Barile & Tommy A. Boniello.

2. Michael A. Barile & Tommy A. Boniello shall install a sewer meter of the type approved by the Town of Carmel Engineering, Building and Code Enforcement Departments, at his sole cost and expense.

3. Location and type of piping for the sewer main shall be approved by Town of Carmel Engineering, Building and Fire enforcement officials.

4. Michael A. Barile & Tommy A. Boniello shall pay all necessary connection, tap, capital or other costs imposed upon district users as provided by the Town of Carmel Sewer District Regulations and Fees as determined by the Town Comptroller.

6 NOVEMBER 1991
TOWN BOARD MEETING

Cont.

5. All other fees, charges etc. which are imposed upon properties located in the Carmel Sewer District #1 shall be imposed upon Michael A. Barile & Tommy A. Boniello in the same manner as if their property were located within the boundaries of the Carmel Sewer District #1.

6. Carmel Sewer District #1 agrees to provide service pursuant to the terms and conditions of this contract in the same manner as if the property owned by Michael A. Barile & Tommy A. Boniello were located within the physical boundaries of the Carmel Sewer District #1.

7. This contract cannot be changed or modified except in writing.

8. Michael A. Barile & Tommy A. Boniello agrees to obtain all necessary permits and approvals from the New York State DOT, DEC, and New York City DEP for the aforesaid connection to the Carmel Sewer District #1 at their own cost and expense.

9. Until proper permits are received by DEC and N.Y.C. DEP the main will remain dry.

MICHAEL A. BARILE

TOMMY A. BONIELLO

By:

TOWN OF CARMEL SEWER DISTRICT #1

WEST BRANCH ACRES PROPOSED WATER DISTRICT - ENGINEERING PROPOSAL BY INSITE ENG. AND DESIGN - ACCEPT

WHEREAS, by prior resolution the Town Board of the Town of Carmel acting as commissioners of the proposed West Branch Acres Water District has authorized the advertisement of proposals for professional engineering services with respect to the formation of the aforesaid district; and

WHEREAS, certain proposals have been received, the lowest responsible proposal being that of Insite Engineering in the amount of \$2,400.00; and

NOW BE IT THEREFORE RESOLVED that the proposal of Insite Engineering be accepted in an amount not to exceed \$2,400.00; and

BE IT FURTHER RESOLVED that the Supervisor of the Town of Carmel is hereby authorized to sign the aforesaid contract upon approval as to form by the Town Attorney.

RESOLUTION:
Offered By: Supervisor Othmer
Seconded By: Councilman Ravallo

Roll Call Vote:	YES	NO
Bob Ravallo	<u>X</u>	---
Karl Becker	<u>X</u>	---
Doris Stahl	<u>Absent</u>	---
Frank DelCampo	<u>X</u>	---
Richard Othmer	<u>X</u>	---

Exhibit 4

INSITE  *ENGINEERING
& DESIGN, P.C.*

March 9, 1992

Mr. Vincent L. Soukup, P.E.
Town Engineer, Town of Carmel
Carmel Town Hall, McAlpin Avenue
Mahopac, New York 10541

RE: The Mahopac Beach Sewer Improvements
New York State Route 6N
Town of Carmel

Dear Mr. Soukup,

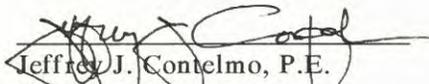
Enclosed please find preliminary plans, and engineer's report, and form PC-1 for the above referenced project. As noted in the engineer's report, the project proposes to install a pump pit and force main for the Mahopac Beach which would tie the facility into Carmel Sewer District # 1.

Should you have any comments or questions concerning this information, please feel free to contact our office.

Very truly yours,

INSITE ENGINEERING AND DESIGN, P.C.

By:


Jeffrey J. Contelmo, P.E.
Principal Engineer

JJC/mth

cc: Mr. Michael Barile

Enclosures

Insite File No. 92106.1



1849, Route 6, Carmel, New York 10512

(914) 225-6200

7 DeLavernge Avenue, Wappingers Falls, New York 12590

(914) 297-1742

Fax: (914) 225-6438

Exhibit 5

ENGINEERING REPORT
Prepared for the
Proposed Pump Pit and Force Main
to service
The Mahopac Beach
N.Y.S. Route 6N
Town of Carmel, New York



March 6, 1992

- 1849, Route 6, Carmel, New York 10512
- 7 DeLaverno Avenue, Wappinger Falls, New York 12590

(914) 225-6200

(914) 297-1742

CONTENTS

	Page
1.0 Introduction	1
2.0 Design Flow Calculation	1
3.0 Pump Pit	2
4.0 Low Pressure Sewer Force Main	3
5.0 Manufacturer's Information	4

I. INTRODUCTION

The proposed project includes the installation of a duplex grinder pump pit, 2000 gallon overflow tank, and approximately 1400 l.f. of 2" diameter, Schedule 40 pvc low pressure sewer force main. This proposed pump pit will service the existing Mahopac Beach Tavern. The Mahopac Beach Tavern is located on N.Y.S. Route 6N approximately 1/4 mile west of Clark Place.

It is proposed to install the subject force main prior to road improvements to NYS Route 6N. Actual connection of the subject site to Carmel Sewer District # 1 will not occur until the moratorium on this district is lifted. The Mahopac Beach's existing septic system will be abandoned and all sewage will be pumped via a new 2" diameter force main to the Carmel Sewer District # 1 manhole located at the intersection of N.Y.S. Route 6N and Clark Place. The proposed force main will have capped wyes for future connections of existing homes along the length of the new force main.

2.0 DESIGN FLOW

The design flow for the proposed force main includes the design flow for the Mahopac Beach and the design flow for future connections along the length of the new force main. The design flow for the Mahopac Beach is used to size the pump pit and overflow tank. The following design flows were calculated referencing the New York State Department of Environmental Conservation Publication, "Design Standards for Wastewater Treatment Works, 1988 Intermediate Sized Sewerage Facilities," and the Putnam County Department of Health regulations.

Mahopac Beach

$$100 \text{ seats} \times 20 \text{ gpd/seat} = 2,000 \text{ gpd}$$

Future Connections

$$15 \text{ homes} \times 600 \text{ gpd/home} = 9,000 \text{ gpd}$$

$$\text{Total design flow for force main} = 11,000 \text{ gpd}$$

3.0 PUMP PIT

It is proposed to install a Grinder Pump, Model Number 214 Series 4 with quick disconnect discharge as manufactured by Environment One Corporation to service the Mahopac Beach. The Model 214 is a duplex pump unit with a 120 gallon fiberglass reinforced polyester tank. The unit comes with all necessary controls built in, including a high level alarm. This unit is designed to handle design flows up to 2000 gpd per discussions with the manufacturer. The maximum capacity of each pump is 11 gpm @ 92 ft. TDH for a total of 22 gpm @ 92 ft. TDH. The peak hourly flow is calculated as follows:

$$\text{Daily Design Flow} = 2000 \text{ gpd}$$

Assume daily flow occurs in 12 hour period therefore average hourly flow

$$= 2000 \text{ gpd}/12 \text{ hrs.}$$

$$= 167 \text{ gal/hr.}$$

$$= 2.8 \text{ gpm}$$

The peak hourly flow is estimated at 6 times the average daily flow

$$= 2.8 \text{ gpm} \times 6 = 16.8 \text{ gpm} < 22 \text{ gpm OK}$$

The pump pit will have a 2000 gallon overflow tank, should both grinder pumps fail to operate. Note that each pump has its own electric circuit so that if one pump shorts out the other will continue to operate. In the event of electric failure, the well pump will not operate therefore the flow of water will be cut off. This 2000 gallon overflow tank will have an access to grade manhole for easy access should it need to be pumped out.

4.0 LOW PRESSURE SEWER FORCE MAIN

The low pressure sewer force main has been sized allowing for future connections of all homes along the length of the force main. The maximum number of homes that could connect to the force main is 15. These 15 homes would add 15 pumps to the system for a total of 17 pumps on the system. Referencing the manufacturer's literature a 17 pump system would have a maximum of 4 pumps operating simultaneously. With four pumps operating simultaneously, the flow in the force main would be approximately 44 gpm (11 gpm/pump) @ 92 feet TDH. The following calculation is a check to ensure that the TDH does not exceed 92 ft.

$$\text{Static Head} = 10'$$

$$C = 150$$

$$d = 2''$$

$$L = 1400'$$

$$\text{GPM} = 44 \text{ gpm}$$

$$\text{Equivalent L (Bend \& Valve Losses)} = 100'$$

$$\text{Total L} = 1500'$$

$$h_l = \frac{10.44(\text{total L})(\text{GPM})^{1.85}}{C^{1.85} d^{4.87}} = 55'$$

$$\text{Total dynamic head (10' + 55')} = 65' < 92' \text{ OK}$$

To conclude, with four pumps operating, the TDH will not exceed 92ft. The actual output of each pump will be slightly more than 11 gpm because the TDH calculated was less than 92 ft.

FEATURES

GP 214 is a duplex model consisting of two identical Grinder Pump cores in a 120 gallon fiberglass reinforced polyester (FRP) tank. With all necessary controls built into the unit, it is ready to connect.

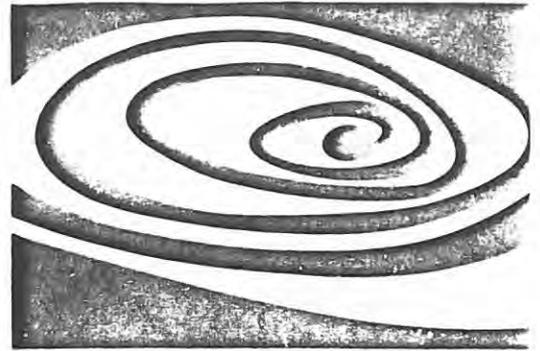
All solids are ground to a particle size fine enough to pass easily through the pump, check valve and small diameter pipe lines . . . even objects which should not be in sewage (plastic, rubber, fiber, wood, etc.). The two 1½ inch discharge connections can be joined requiring only a 1½ inch or 2 inch line. They can be adapted to any piping material which meets local code requirements.

The check valve assembly, integral in each core, is custom designed for non-clog, trouble free operation. The GP 214 has an integral baffle which divides the tank into two equal parts and splits the flow between the pumps.

Complete redundancy results from:

- Independent operation of each pump in response to the level on its side of the baffled tank
- Separate high level indicators for each pump
- Tank compartments interconnect above normal operating level

No alternator is needed . . . reduces cost and simplifies service.



GRINDER PUMP*

MODEL FARRELL 214

GENERAL APPLICATIONS

The GP 214 finds a broad range of applications as result of dual pumps and a 120 gallon tank volume. For instance, one GP 214 can effectively handle the normal flow of domestic wastewater from as many as four single family dwellings, six apartments or eight mot units.

The GP 214 offers added advantages in pressure sew systems for existing areas, as well as new developments. Its ability to handle multiple dwelling reduces the number of units needed in a system, and thereby reduces the cost of the system.



Underwriters
Laboratories
Inc.



National
Sanitation
Foundation



Certified by
Canadian Standards
Association**

OPERATIONAL INFORMATION

Motors:

1 HP, 1725 rpm, high torque, capacitor start, thermally protected, 240 volts 60 hertz, 8 amp, 1 phase

Inlet Connections:

Two 4" PVC closet flanges standard
Compatible with other piping sizes and materials using standard adapters

Discharge Connections:

Pump discharge terminates in 1½ inch NPT male thread. Can easily be adapted to PVC pipe or any other material required by local codes.

Normal Peak Design Pressure:

40 psig (92 ft Head)

Discharge with Both Pumps Running: †

30 gpm at 0 psig
22 gpm at 40 psig

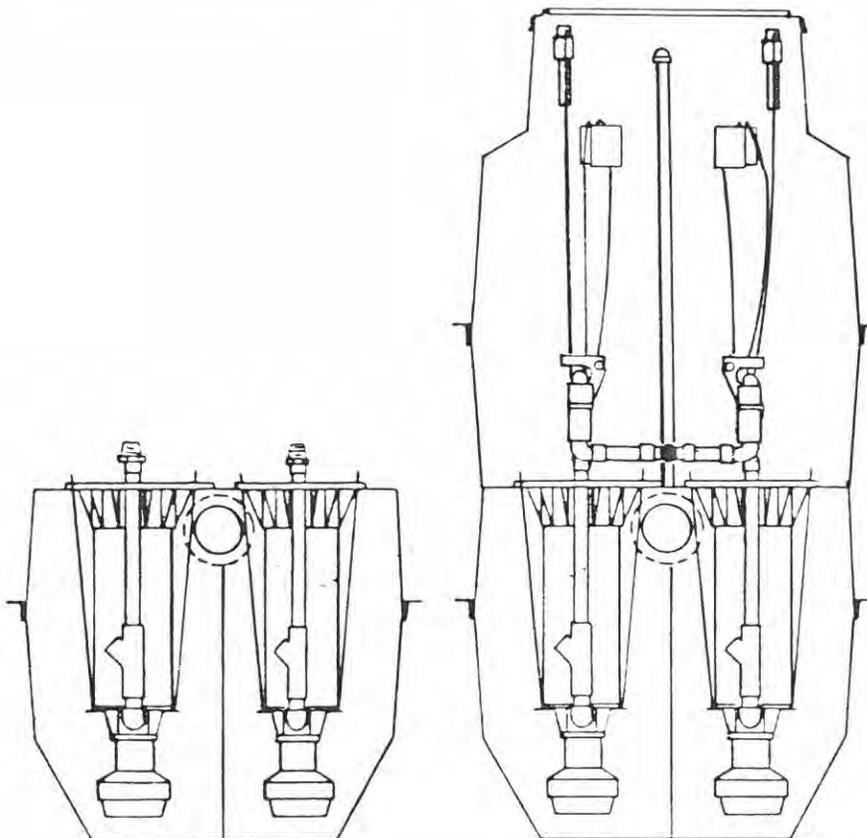
Overload Capacity:

Able to handle temporary peak pressure to 50 psig with no noticeable drop in output. Flow does not drop to zero or "shut off" as centrifugal pumps do. Maximum pressure which pumps can generate is limited by motor characteristics to a value well below the rating of piping and appurtenances. Automatic reset overload protector does not require manual operation following overload.

*U.S. & Foreign Patents Issued & Pending

†Discharge Data Includes Loss Through Check Valve Which Is Minimal

**CSA certification applies only to Grinder Pumps bearing the prefix "C" in the model number



environment | one

CORPORATION

PROTECTING MAN'S ENVIRONMENT

2773 Balltown Road • Schenectady, New York 12309

Exhibit 6



September 23, 1994

Vincent L. Soukup P.E.
Carmel Town Hall
60 McAlpin Ave.
Mahopac, N.Y. 10541

Re: Lakeside Restaurant
Carmel SD #1
Mahopac, (T) Carmel

New York City
Department of
Environmental
Protection

Dear Mr. Soukup:

Bureau of Water
Supply & Wastewater
Collection

It has come to the attention of this department that a 4" PVC pipe has been installed in the bed of Route 6N from the property of the Lakeside Restaurant to, and into, a manhole at Station 12+70 of Carmel Sewer District Number 1 (CSD #1) where the 4" pipe is capped. This manhole is at the intersection of 6N and Clark Place and within the boundaries of CSD #1.

5 Jay Street
Katonah, New York 10536
(914) 232-5171

Since this sewer line serves a property lying outside the sewer district and was supposedly not installed with the permission of the Town of Carmel it constitutes an illegal connection. This connection constitutes violations of the following sections of the September 9, 1938 Agreement between the Town of Carmel and the City:

MARILYN GELBER
Commissioner

Section 1- in that the property served is outside the sewer district and

Section 2- in that the sewer line was not built by the Town or an authorized agent of the Town and

Section 4- in that plans for the construction were not approved by the State Department of Health or by this department and further that such plans were not filed with this department and

Section 7- in that representatives of the City were not given an opportunity to inspect the construction so as to ascertain that it was carried out in accordance with the terms of the agreement and

Section 12- in that the Town did not prescribe or enforce proper plumbing rules and regulations for the tapping and connecting with the sewer system and did not faithfully perform all the terms and conditions of the agreement and

RICHARD D. GAINER, P.E.
Deputy Commissioner

Unauthorized Extension of CSD #1

September 23, 1994

- Section 13- in that the town did not furnish the City with a map of the sewerage system showing the change or extension to the system including the house connection and
- Section 15- in that the sewer system shall not be used for the reception of oil, grease or other wastes which would interfere with the proper treatment at the sewage disposal plant.

Accordingly the Town must undertake whatever actions that are appropriate to assure that the aforementioned 4" PVC line is not placed into service. Please indicate in writing within sixty days of this letter the actions the Town intends to take to preclude the use of this illegal connection.

Our legal department has, by copy of this letter, been informed of the situation.

Very truly yours,



Carl Picha P.E.
East of Hudson
District Engineer

CP:cp

Exhibit 7

FILE

RICHARD T. OTHMER
Supervisor
ALFRED DELLA CIOPPA
Councilman
FRANK J. DEL CAMPO
Councilman
JAMES McDONOUGH
Councilman
ROBERT J. RAVALLLO
Councilman

TOWN OF CARMEL

Town Hall
Mahopac, New York 10541
914/628-1500

VINCENT L. SOUKUP P.E.
Town Engineer
CONSTANCE KING MUNDAY
Town Clerk
MARY KRISTENSEN
Receiver Of Taxes
RONALD J. DE FRANCESCO
Supt. Of Highways
628-7474

October 27, 1994

Carl Picha, P.E.
NYC Dept. of Environmental Protection
5 Jay Street
Katonah, New York 10536

RE: Sewer Connection
Lakeside Restaurant (Mahopac Beach)
Carmel Sewer District #1
Carmel (T)

Dear Mr. Picha:

Receipt of your letter dated September 23, 1994 relative to the installation of a force main to Carmel Sewer District #1 from the Lakeside Restaurant on Route 6N in the Hamlet of Mahopac is hereby acknowledged.

Please be advised that this sewer line was approved for construction on February 3, 1993 by the Putnam County Health Department, subject to the approval of your office. It is noted that Mr. McKenian of your office is copied on the approval letter.

You should be aware that this line is a private force main, serving only the Mahopac Beach Restaurant and, as such, is not an extension of the Town sewer district. As you may know, Route 6N was reconstructed by the State Department of Transportation last year. The DOT advised that once the road was repaved, no work would be allowed in the right-of-way. Therefore, the owner of the restaurant opted to install the force main prior to the repaving and not use it until the Mahopac STP is reconstructed. Obviously, approval from all appropriate agencies must be obtained by the owner prior to use of the force main.

Relative to the construction of the sewer line and appurtenances including the pump chamber, you are advised as follows:

October 27, 1994

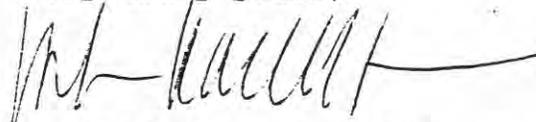
1. The sewer force main was inspected periodically by a representative of the Town Engineering Department. Such inspections indicated that the force main and appurtenances have been installed generally in accordance with the approved plans and all applicable Town regulations.
2. The pump chamber has been installed and presently discharges to the existing subsurface sewage disposal system on the restaurant property. A key valve reportedly exists on the pump chamber discharge line which, when in the closed position, directs sewage to the subsurface sewage disposal system as opposed to the force main.
3. The force main discharge line is capped in the manhole on Route 6N.
4. A 50 gallon grease trap, approved by the Putnam County Health Department, has been installed in the kitchen.

You should be aware that, periodically, Town staff inspect this manhole to assure that the force main is not in use. You may contact this office to arrange a joint inspection with your staff.

Based upon the above, the Town is prepared to accept sewage from this private service connection upon completion of the reconstruction of the Mahopac STP and upon receipt of all necessary approvals from other agencies, including the NYCDEP.

If you have any questions, please call the writer of this letter at 628-2087.

Very truly yours,



John Karell, Jr., P.E.
Town Engineer

/tsh

cc: Richard Othmer, Town Supervisor
Joseph Cerreto, Town Counsel
Thomas Costello, Town Attorney

Exhibit 8

I located the attached 1993 Putnam County Department of Health approval for this force main (as signed by J Karell PE, Public Health Director) in the Building Department file.

Based on the attached I have made a foil request with the County to see if they can provide any reports, drawings, plans, specifications and application for a low pressure sewer force main at this address. This information should be available early next week.

In addition, there is a Planning Department file from the early 1990's which I have requested from archives. These files should be here in house by Wednesday of next week.

Once we have had a chance to review this additional information is "in-house" we can provide the next step in this evaluation.

Richard J. Franzetti. P.E, BCEE, LEED ^{AP}
Town Engineer
60 McAlpin Avenue
Mahopac, New York 10541
Phone - (845) 628-1500 ext 181
Fax – (845) 628-7085
Cell – (914) 843-4704
rjf@ci.carmel.ny.us

This communication may be confidential and is intended for the sole use of the addressee(s). No use or reproduction of the information provided is permitted without the written consent of the Town of Carmel. If you are not the intended recipient, you should not copy, disclose or take any action in reliance on this communication. If you have received this communication in error, please notify the sender by reply e-mail and delete the message and any attached documents.

From: Schmitt, Kenneth
Sent: Thursday, September 10, 2015 2:22 PM
To: Franzetti, Richard; John Folchetti (John.Folchetti@jrfa.com); Vara, Rob
Cc: gfolchetti@aol.com
Subject: Terrace Club Restaurant Sewer District 1 connection

All:

I just spoke with Mike Barile regarding the recent inquiries made by residents/property owners as to whether the Terrace Club Restaurant on Rte. 6N, a Barile owned property was connected via a sewer main that was installed approx. 20 + years ago, was in fact tapped into a larger main part of the SD #1 collection system, he emphatically stated that the Terrace Club Rest. Property is absolutely connected to SD # 1 collection system.

He also stated that there are other properties along Rte. 6N between Clarke Pl and the Restaurant property that are also tapped into the main that he and his partners paid for and installed, when asked which other properties were connected he stated that he wasn't sure since it was so long ago.

Rich, please investigate this further to determine if this information is true , and which properties along this section of Rte. 6N are in fact tapped into SD #1 collection system, any properties that are connected and currently are not paying capital/O&M to SD # 1 should be.

Let's please look into this and take the appropriate action.

Thanks,
Kenny

Kenneth Schmitt,
Town of Carmel Supervisor
60 McAlpin Avenue
Carmel, NY 10541
phone 845.628-1500
fax 845.628.6837

Exhibit 9

Tommy A. Boniello
Michael A. Barile
888 Route Six
Mahopac, New York 10541
(845)621-1317

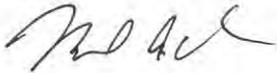
May 29, 2019

Town of Carmel Engineering Department
McAlpin Ave
Mahopac, NY 10541

To whom it may concern,

We respectfully request to activate the dry sewer line connecting 825 South Lake Boulevard (k/a Blu Restaurant) and Carmel Sewer District 1. Please advise how to proceed.

Thank you,



Tommy Boniello & Michael Barile

Exhibit 10



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 DIVISION OF WATER
WASTEWATER FACILITY INSPECTION REPORT - SITE VISIT

Purpose of Inspection Recon		DEC Region 3	Date of Inspection 2019-05-31
SPDES Number Unpermitted	Facility Name Blu at the Lakehouse		Location (C,T,V) Carmel (T)
County Putnam	Name of Inspector Eric Kim		Type of Industry P/C/I
Summary Rating:			
Weather Conditions:			
Rating Codes: S = Satisfactory U = Unsatisfactory M = Marginal NI = Not Inspected NA = Not Applicable			
<p>Comments:</p> <p>Owner/Partner: Michael Barile present for inspection Lorraine Holdridge, NYSDEC R3 Regional Water Engineer, and Michael Budzinsky, Putnam County DOH, present for inspection</p> <p>Facility seats 86 people and has a maximum occupancy of 120 people.</p> <p>Wastewater from the facility is treated by a septic tank and leach field system. The leach field is located underneath the parking lot and is approximately 50 to 80 feet from Lake Mahopac. Michael Barile stated that the septic tank is pumped out monthly during the summer months and that records are available.</p>			
Signature of Inspector: 		Title: Assistant Engineer	Date: 6/6/19
Name of Facility Representative: Michael Barile		Title: Owner	Date: 5/31/19

Exhibit 11

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

June 27, 2019

Richard Franzetti, P.E.
Town of Carmel Engineering Department
Town Hall, McAlpin Avenue
Mahopac, New York, 10541

Re: Michael Barile - Out of District Sewer Connection
Carmel Sewer District # 1, Extension # 3
Blu Restaurant, South Lake Boulevard
Carmel (T); TM #

Dear Mr. Franzetti”:

Attached herewith please find plans and supporting documents in an application for approval of an “Out of District” Sewer Connection as follows:

- Two sets of plans
- Application form

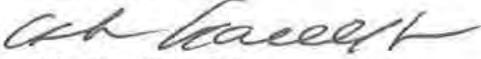
The following should be noted relative to this application

1. Matt Burd, representing the NYCDEP, by email dated May 15, 2019, has been contacted relative to their approval of the out of district connection.
2. The calculation of back capital charges from the Town Comptroller is attached. It is intended to pay such charge immediately prior to the Town’s approval of the connection.
3. The existing use of the property is a restaurant with approximately 86 seats..
4. The anticipated sewerage discharge is 858 gallons per day, based upon actual water usage as determined utilizing a water meter. The water meter was installed on June 13, 2019 with a reading of 2 gallons, on June 25, 201, twelve (12) days later the meter reading was 10,300 gallons. This is an average daily usage, of 858 gallons. It should be noted that some amount of water is consumed and therefore the average daily usage would be slightly less, maybe 100 gallons per day. We will continue to monitor water usage going forward.
5. A sewerage pumping station is required to pump sewage from the restaurant to the manhole due to the difference in elevation. The plans show the sewage pumping station.
6. This property will continue to be served by a drilled well.
7. The force main in Route 6N was installed in 1993 consisting of a 2 inch HDPE pipe from this property to the existing sewer manhole in Route 6N at Clark Place. This line was pressure tested in 1993 and reportedly found to be pressure tight. This line was retested on June 26,2019. The results are as follows:
 - Start pressure 160 psi, 10 AM
 - End pressure 160 psi, 2 PMZero drop in pressure indicates a watertight pipe.

8. With respect to outside agencies:

- Town or State Highway approval – not required. No work is proposed in the State right of way.
- NYSDEC - not believed to be required.
- NYCDEP – see item # 1 above

Very truly yours,

A handwritten signature in black ink, appearing to read "John Karell, Jr.", written in a cursive style.

John Karell, Jr., P.E.

Exhibit 12



Government

Allegations Plague Barile Again

By BOB DUMAS

June 13, 2019 at 9:34 AM



By BOB DUMAS

June 13, 2019 at 9:34 AM

MAHOPAC, N.Y. - Town Councilman Michael Barile has once again found himself in the crosshairs of a Journal News column. This one looks at whether commercial property owned by the councilman, a former developer, was ever connected to the town's sewer system and also claims some of the permitting processes was skirted.

In question is the sewer disposal system at Blu Restaurant on Route 6N—property owned by Barile and his partner, Tommy Boniello.

Three decades ago, the business was known as Mahopac Beach, a hamburger stand, which Barile and Boniello purchased and remodeled into an upscale restaurant.

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In 1993, while the state was conducting roadwork on Route 6N, a sewer line was extended from the restaurant under the highway and capped so it could be connected to the main in Sewer District No. 1 should the restaurant expand and more

capacity was needed. The line was never actually connected to the main, however, and in the Journal News piece, the author, David McKay Wilson said he was given the opportunity to look under the manhole cover and see that the restaurant connection is indeed capped-off and not hooked into the town system.

Barile said he was reluctant to discuss Wilson's column in too much detail—Barile has said on several occasions he is consulting with attorneys over a possible lawsuit against the Journal News over a previous column Wilson penned about the purchase of Swan Cove—but did answer a few questions.

To Wilson's accusation that the restaurant lacks a discharge permit from the state Department of Environmental Conservation (DEC), Barile said it was because it was "pre-existing and nonconforming," and noted that many restaurants don't have such permits.

"This is why I got out of developing," Barile lamented. "It's because of all the regulatory agencies that got involved in the watershed area back in the '90s."

The JN column also contends that the restaurant's septic system has not been inspected in eight years, which is a town code violation.

"I have never really heard of anything like that, so I can't really comment," Barile said. "We have other buildings where nothing gets inspected for the septic. I don't know where [Wilson] got that from."

Wilson's piece also contends that neither the town nor the New York City Department of Environmental Protection (DEP) approved the connection to Sewer District No. 1. But Barile pointed out that since the line was never actually connected to the sewer district main, as Wilson saw when the manhole cover was removed, no permit was needed.

The lynchpin for Wilson's allegation of impropriety is a September 2015 email that Supervisor Ken Schmitt sent to other town officials regarding the work being done on the restaurant property. In his column, Wilson describes that email and writes, "Carmel Town Supervisor Ken Schmitt [wrote] that Barile told him that the restaurant was 'absolutely connected' to the sewer district." In that scenario, Barile comes off looking disingenuous because the sewer line was never actually connected, although that email makes it seem as though he was claiming it had been.

However, in a statement Schmitt gave to Mahopac News, the supervisor said he accidentally misquoted Barile in that email because he misunderstood what Barile was referring to when they talked. He said Barile was talking to him about gas lines, not sewer lines, but he didn't realize it.

"I wrote in that email that Mike Barile told me that the restaurant is connected to the sewer district along with other properties along 6N, which are connected to the same line," Schmitt wrote in his statement. "This was an incorrect statement and a result of a miscommunication between Mike Barile and me. The gas line is connected to the Blu Restaurant property, along with other properties to the south of Clark Place."

Schmitt said that he made Wilson aware of the mistake in the email, and even facilitated Wilson's inspection of the capped-off sewer line under 6N hoping that would put the issue to rest. It did not.

Here is what Schmitt had to say about it:

"David Wilson has launched a fusillade against Barile, ending in his most recent persecution regarding the dry sewer force main drain installed in the shoulder of Route 6N from Blue Restaurant," Schmitt's statement said. "This property is not in the sewer district. The line was installed in 1993. At that time, the [state Department of Transportation] had 6N...closed for a major construction project. As such, the installation of that line was relatively easy."

"So, Barile and his then partner, with the permission of NYSDOT and the Town of Carmel, installed a 'dry' line with the idea that in the future, if the restaurant was ever expanded, they could apply to the town for an out-of-district connection. Out-of-district connections are common in the town of Carmel, as there are currently 23 between water and sewer. The dry sewer force main was tied into the sewer manhole and was capped. The capped line has been inspected over the last 23 years to verify it has remained capped."

"Indeed, the most recent inspection was conducted about two weeks ago by David Wilson on the notion that a Doubting Thomas must see for himself. What he saw was a capped line, which he photographed."

Barile told Mahopac News that representatives from the state and county will inspect the restaurant's dry line this week, which could pave the way for hooking it into the sewer district's main.

Several months ago, Wilson wrote a column criticizing the town's purchase of Swan Cove and Barile's involvement in it. Wilson contended, among other things, that Barile, one of the property's former owners, claimed that the necessary permits for the land were in place, when they actually were not, thus inflating the property's value and causing the town to pay more than it should have. The town purchased the land for \$1 million and plans to construct a small lakeside park.

Barile has called that column grossly inaccurate and libelous and said he has been consulting with attorneys over a possible lawsuit.

Exhibit 13

June 29, 2019

Joseph Paravati, P.E.
Putnam County Department of Health
Geneva Road
Brewster, New York, 10509

Re: **Blue Restaurant (formerly Mahopac Beach)**
Route 6N, Carmel (T), hamlet of Mahopac
TM # 75.43-1-42

Dear Mr. Paravati:

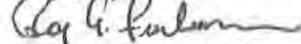
Please be advised that in the summer of 1993 the writer inspected the construction of approximately 1,370 feet of 2 inch low pressure sewer line in Route 6N from the Mahopac Beach Restaurant property to a manhole in Route 6N at the intersection with Clark Place.

Based upon such inspection it is certified that this sewer line was constructed in accordance with plans approved by the Putnam County Department of Health on February 3, 1993 such plans being prepared by Insite Engineering revised January 29, 1993.

It is further certified that during that summer a pressure test was conducted, witnessed by the writer. This pressure test indicated no pressure drop over a 2 hour period. Actual test result data is not available.

It is noted that at that time the force main was capped in the manhole and to my knowledge was never placed in service and that a certification of construction compliance was not provided to the Health Department in 1993.

Very truly yours



Roy Fredrickson, P.E.



Exhibit 14

From: john karell

Sent: Tuesday, August 13, 2019 10:19 AM

To: Shedlo, Daniel ; Lynlil Associates

Subject: Re: BLU Inspection – Connection

Dan, this is a dry line > it is not connected to the pump station. it is capped at the restaurant and in the manhole. It was pressure tested last month by Bee & Jay Plumbing, witnessed by me. i guess if you want to verify that the line is connected we can set up a portable pump or something, but why. If you give the approval, we hook it up and we can dye test to verify it goes to the manhole at that time.

Exhibit 15



ENGINEERING DIVISION FIELD REPORT

Project	Report
SubProjectLog # : 2019-AM-0415-CN.1	Date: 9/9/2019
Name: Blu Restaurant	Type: Investigation
Type: Sewer Connection (CN)	Observer: Alderisio, Dave
Address: 825 South Lake Blvd	Time: 10:00 AM
Town: Town of Carmel	Weather: Sunny
County: Putnam	Temperature: 70
Basin: Amawalk	
Tax Map #: 75.43-1-22	

Telephone:

Interviewee: Michael Barile, Jack Karell, P.E.

Project History

Findings

9/4/2019 -DEP performed a site inspection with property owner Michael Barile and engineer Jack Karell. Reason for the site inspection was to perform a dye test on existing SSTS only and not existing force main. Both the property owner and engineer stated the force main for the restaurant (installed 1993) was on-line/operational at the time of the site inspection. Mr. Barile stated the cap on the force main in the manhole at the intersection of 6N and Clark Place, was removed the previous week. The existing SSTS was not dye tested at this time.

In addition, kitchen wastewater was observed on the ground at the back door of the kitchen migrating onto adjacent property. Photos taken. PCDOH was notified.

Exhibit 16

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

In the Matter of the Application of

MICHAEL A. BARILE and TOMMY A. BONIELLO,

Petitioners,

-against-

PUTNAM COUNTY DEPARTMENT OF HEALTH,
TOWN OF CARMEL, and NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondents,

For an Order pursuant to New York Civ. Prac. L. & R.
Article 7803(1).

Index No.

HAND DELIVERED

NOTICE OF PETITION



PLEASE TAKE NOTICE, that upon the annexed verified petition, sworn to on October 22, 2019, and accompanying affirmation, affidavit, and exhibits made a part thereof, and all of the pleadings and proceedings heretofore had herein, an application will be made to the Supreme Court of the State of New York, Putnam County to be held at the Putnam County Courthouse located at 20 County Center, Carmel, New York 105012 on November 26, 2019 at 9:30 a.m., or as soon thereafter as counsel can be heard, for a judgment pursuant to New York Civ. Prac. L. & R. (“CPLR”) § 7803(1):

- (a) Directing respondents to discharge their nondiscretionary duties to review and decide petitioners’ application to connect sewerage equipment on their real property to Town of Carmel Sewer District Number One;
- (b) Directing respondents, to the extent the same is necessary pursuant to all applicable laws, rules, and/or regulations, to take all necessary and appropriate action formally to discharge each of their respective nondiscretionary, administrative duties as prescribed under all applicable laws, rules, and/or regulations;

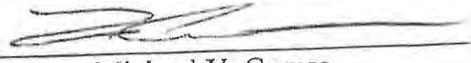
- (c) awarding Petitioners reasonable attorney's fees, costs and disbursements of this proceeding; and
- (d) for such other and further relief as this Court deems just, proper and equitable.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR § 7804(e), your answer and a certified transcript of the record of proceedings, if any, before Respondent is required to be served and filed with the Clerk of the Court; and

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR § 7804(c), your answer, supporting affidavits and memoranda of law, if any, are required to be served at least five (5) days before the return date hereof.

Dated: Brewster, New York
October 29, 2019

MICHAEL V. CARUSO, P.C.

By: 

Michael V. Caruso

3871 Danbury Road
Brewster, New York 10509
mvcarusolaw@gmail.com
Tel: (845) 207-5452
Fax: (845) 251-0002

Attorneys for petitioners

To: Putnam County Department of Health
1 Geneva Road
Brewster, New York 10509

Town of Carmel
60 McAlpin Avneue
Mahopac, New York 10541

New York City Department of Environmental Protection
59-17 Junction Boulevard
Flushing, New York 11373

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

In the Matter of the Application of

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Index No.

VERIFIED PETITION

Petitioners, by their attorneys, Michael V. Caruso, P.C., alleges as follows:

NATURE OF THIS SPECIAL PROCEEDING

1. This is a special proceeding pursuant to New York Civ. Prac. L. & R. ("CPLR") § 7803(1) for relief in the nature of a writ of mandamus to compel respondents to discharge their nondiscretionary duties to review and decide petitioners', Michael A Barile and Tommy A. Boniello, (collectively, the "Petitioners"), application to connect out of district sewerage equipment to Town of Carmel Sewer District Number One.

2. Respondents have a clear legal duty to review and decide Petitioners' application for a sewer connection to the Premises as developed below.

3. Petitioners have a clear legal right to the relief requested herein.

4. Petitioners have exhausted all other avenues of relief; yet, respondents refuse to discharge their duties leaving Petitioners no alternative than a writ of mandamus from the Court compelling respondents to review and decide his sewer connection application.

5. The grant of authority to respondents to discharge their duties as required by law is nondiscretionary and unambiguous.

6. Pursuant to CPLR § 271 this special proceeding is timely.

7. No prior application for the relief sought herein has been sought from this Court or any other court of competent jurisdiction.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over Respondents in this action.

9. This Court has personal jurisdiction over Respondents pursuant to CPLR § 7803(1) due to their failure to perform a duty enjoined upon them by law and their failure to perform the same.

10. This Court has personal jurisdiction over Respondents pursuant to CPLR §§ 301 and 302.

11. Venue in this Court is proper pursuant to CPLR §§ 506(b) and 7804(b).

THE PARTIES

12. Petitioners are the record owners in fee simple of real property known as 825 South Lake Boulevard, Mahopac, New York 10541, which is identified on the tax map of the Town of Carmel as 75.43-1-22 (the "Premises").

13. Upon information and belief, respondent Putnam County Department of Health ("PCDOH") is a department within the County of Putnam responsible for enforcing New York State and Putnam County Sanitary Codes and all applicable laws, rules and regulations insofar as they regulate water quality standards, sewage treatment plants, sewage disposal systems, and solid waste facilities throughout Putnam County.

14. Upon information and belief, PCDOH's principal office is located at 1 Geneva Road, Brewster, New York 10509.

15. Upon information and belief, respondent Town of Carmel (the "Town") is a municipal corporation organized and existing under the laws of the State of New York with its principal office located at 60 McAlpin Avenue, Mahopac, New York 10541.

16. The Town, as a municipality, its departments, bureaus and officers thereof, is empowered and responsible to perform and exercise all powers, duties, privileges and immunities granted to it by the United States Constitution, the New York State Constitution and other applicable provisions of law.

17. Upon information and belief, respondent New York City Department of Environmental Protection ("NYCDEP") is an administrative agency within the City of New York charged with, *inter alia*, implementing regulatory procedures affecting municipalities within the County of Putnam to prevent the discharge of pollutants and ensure the highest water quality standards.

18. Upon information and belief, NYCDEP administers permitting for the installation, maintenance, and compliance of sewer connections to certain wastewater treatment equipment owned by the City of New York and installed throughout municipalities including the Town.

19. Upon information and belief, at all relevant times herein, PCDOH, the Town, and NYCDEP, through their employees, officers, and agents, discharge their duties acting under color of state law and the rights, duties, privileges and immunities secured to them by the United States Constitution, the New York State Constitution, and other applicable provisions of law.

FACTUAL BACKGROUND

A. The Premises

20. Petitioners are the record owners of the Premises.
21. The Premises fronts along Lake Mahopac and is improved by a restaurant now known as "Blu on the Lake."
22. The Premises is also improved by a subsurface treatment system for waste water and sewage consisting of a septic tank and leaching field that has been in operation since 1991 (the "SSTS").
23. Both the restaurant on the Premises and the SSTS are within one hundred (100) feet of Lake Mahopac.
24. Due to its proximity to Lake Mahopac and an available force sewer main connection, the Premises is best served by activating this connection to Town of Carmel Sewer District Number One ("Sewer District 1").

B. Force Sewer Main Connection to the Premises

25. In 1991, New York State Department of Transportation undertook a capital improvement project along major public roadways throughout the Town including Route 6N, which provides frontage for the Premises.
26. At that time, Petitioners also ran underground force sewer main piping to the Premises via an existing sewer manhole nearby Clark Place on Route 6N under the supervision of the Town, through its engineering department. Petitioners undertook this work to ensure the Premises would have access to sewer equipment in the future should the Premises require additional capacity or if the existing subsurface treatment system became inadequate or incapable of repair or upgrade.

27. Additional sewer equipment was installed on the Premises including a pump station to transfer waste from the restaurant on the Premises in case of future need.

28. This sewerage equipment and lateral connection to the sewer line installed in Route 6N at the Clark Place manhole was pressure tested and functioned properly both in 1993 and in 2019 at the request of PCDOH.

29. The Premises is outside the geographic boundaries of Sewer District 1.

30. On February 2, 1993, PCDOH conditionally approved Petitioners' application to connect to the Town's low-pressure sewer force main (the "1993 Approval"). A true and correct copy of the 1993 Approval is annexed hereto as Exhibit "A".

31. Despite receiving the 1993 Approval, Petitioners did not activate this sewer connection and continued to utilize the SSTS insofar as it functioned and served the required capacity for the restaurant on the Premises.

C. Town Sewer Connection Application

32. On May 29, 2019, Petitioners filed a written request with the Town to activate the sewer connection to the Premises at the direction of NYSDEC. A true and correct copy of this correspondence is annexed hereto as Exhibit "B".

33. On May 31, 2019, the Town, through its engineer Richard Franzetti, PE, identified capital taxes owed and unpaid from 1991 to the present totaling \$6,471.14 attributable to the out-of-district sewer connection serving the Premises, which were required to be paid before the Town would process Petitioners' application to connect to Sewer District 1. A true and correct copy of this correspondence is annexed hereto as Exhibit "C".

34. On June 4, 2019, Petitioners filed, and the Town accepted and stamped, his application for a sanitary sewer connection permit with the Town for the Premises. A true and correct copy of this application is annexed hereto as Exhibit "D".

35. The next day, Petitioners appeared at Town Hall ready, willing, and able to pay the outstanding capital taxes owed totaling \$6,471.14 attributable to the Premises.

36. The Town, however, refused to accept Petitioners' tender of \$6,471.14 and instead directed that he: (i) prepare and file a technical report for the out-of-district connection; (ii) perform pressure testing through a licensed engineer; and (iii) contact NYCDEP to evaluate and approve the ability for Sewer District 1 (and its related equipment) to accommodate projected sewer demands due to this connection.

37. NYSDEC then issued a notice of violation to Petitioners, dated June 6, 2019, which had been prompted by an earlier site inspection, identifying that the Premises--specifically, the SSTS--was required to have a permit under NY ECL § 17-0701, *et seq.*, for discharge flows that exceeded one thousand (1,000) gallons per day (commonly referred to as a "SPDES Permit").

38. NSYDEC¹ inspected the SSTS on the Premises with a PCDOH representative (Michael Budzinski) also present to inspect the septic tank and leaching fields.

39. NYSDEC has withheld from enforcing any violation relating to the Premises provided the sewerage equipment and connection to Sewer District 1 continues to be utilized in lieu of the SSTS.

40. From June 20-21, 2019, Petitioners' engineer (John Karell, Jr., P.E.) communicated with Matthew Burd of NYCDEP to coordinate an application and requisite

¹ At all relevant times herein, NYSDEC acted through Lorraine A. Holdridge, a Region 3 Water Engineer.

submissions for NYCDEP review of Petitioners' sewer connection application to the Town. True and correct copies of these emails are annexed hereto as Exhibit "E".

41. NYCDEP separate inspected the components of the SSTS.

42. On June 20, 2019, Mr. Karrell inquired as to obtaining a "no objection letter" from NYCDEP to Petitioners' sewer connection application with the Town. (Ex. E at 1). The next day, NYCDEP, through Mr. Burde, responded that: "I can issue such an approval," and then instructed Petitioners' engineer to take the following course of action:

"Please have Town of Carmel send a request with the name address and section block and lot, and the reason an OOD property was, or is being connected. Alternatively, send me a copy of your request to them with their assent to the OOD connection with the aforementioned information. I should be able to respond quickly."

(Ex. E at 1).

43. On June 27, 2019, Petitioners' engineer supplied engineering analysis (i.e. flows, periodic calculations, et al) and materials to the Town in support of Petitioners' out of district sewer connection application. A true and correct copy of the cover letter accompanying this application is annexed hereto as Exhibit "F".

D. PCDOH Enforcement Action

44. On or about September 3, 2019, believing that NYCDEP was intending the inspect the sewer connection to the Premises, Petitioners and their engineer uncapped and prepared the existing sewer connection--and not the SSTS--for NYCDEP inspection.

45. Petitioner began utilizing this sewer connection serving the Premises thereafter in lieu of the SSTS.

46. On September 4, 2019, NYCDEP representatives arrived at the Premises evidently intending to perform a dye test on the SSTS, and as such no testing of the sewer connection or SSTS was performed.²

47. The next day, Petitioners advised the Town that the sewerage equipment on the Premises had been connected to Sewer District 1.

48. Despite Petitioners' multiple attempts to contact NYCDEP to resolve this apparent discrepancy, NYCDEP did not respond.

49. Two days later, the Town Engineer requested that NYCDEP suspend Petitioners' pending connection request application while the Town pursued its own investigation of the facts and circumstances relating to the existing connection between the Premises and Sewer District 1.

50. On September 16, 2019, PCDOH issued a "Notice of Non-Compliance" to Petitioners citing an alleged violation of Putnam County Sanitary Code § 8.3B identifying lack of construction compliance for Petitioners' sewer connection, lack of NYCDEP approval, and the purported failure to comply with Condition No. 8 of the 1993 Approval requiring that "the facilities [Petitioners'] receive approval from the New York City Department of Environmental Protection prior to any operation of the sewage pumping station" (the "PCDOH Non-Compliance Notice"). A true and correct copy of the is annexed his notice of noncompliance is annexed hereto as Exhibit "G".

51. On September 19, 2019, NYCDEP issued correspondence to the Town identifying that Petitioners' sewer connection for the Premises was alleged to be an "unauthorized, out of

² The arrival of NYCDEP officials on the Premises to inspect the SSTS defied logic because NYCDEP has delegated the administration of Section 18-38 of the Watershed Regulations to PCDOH with respect to reviewing and approving new, altered, modified, and remediated SSTS authority to inspect and enforce subsurface sewage treatment systems including the SSTS to PCDOH. Similarly, none of exceptions to this delegate review authority apply as set forth in Appendix B of the Putnam County Department of Health, Division of Environmental and Health Services Procedures and Policies for Sewage System Repair Permits Bulletin (RP-1), which was promulgated in July, 2007.

district connection” in violation of the Town’s sewer use law. A true and correct copy of this correspondence is annexed hereto as Exhibit “H”.

52. In the same correspondence, NYCDEP acknowledged receiving Petitioners’ application to connect to Sewer District 1, that certain engineering drawings and plans need to be reviewed, and advised that it could not consider the application until “the proper steps are taken, and until a number of town and county investigations and alleged violations are brought to a satisfactory conclusion.”

53. On October 1, 2019, PCDOH advised Petitioners that it was ready to issue a construction compliance approval for his sewer equipment on the Premises and connection to Sewer District 1 upon: (i) NYCDEP granting operational approval for the pump station on the Premises; and (ii) the Town issuing corresponding approval for Petitioners. A true and correct copy of this correspondence is annexed hereto as Exhibit “I”.

54. On October 24, 2019, the Town, again through its Engineer, issued a notice of violation to Petitioners directing it to secure all necessary approvals from NYCDEP for the existing sewer connection to the Premises as an out-of-district connection to Sewer District 1. A true and correct copy of notice of violation is annexed hereto as Exhibit “J”.

55. To date, despite PCDOH’s statement of readiness, neither PCDOH, NYCDEP nor the Town have reviewed and decided Petitioners’ application to connect to Sewer District 1.

APPLICABLE LAW AND REGULATIONS

56. The Watershed Regulations³ were promulgated to establish a comprehensive protection program for the New York City’s drinking water by implementing regulatory procedures to prevent the discharge of pollutants and ensure the highest water quality standards.

³ Reference is made throughout to the Rules and Regulations for the Protection From Contamination, Degradation, and Protection of the New York City Water Supply and its Sources, which became effective on May 1, 1997, and as amended as of April 4, 2010, et al. (the “Watershed Regulations”).

This mandate includes monitoring the installation, maintenance, and compliance of connections to wastewater treatment equipment installed throughout municipalities including the Town.

57. Subchapter A, Section 18-14(a)(7) of Watershed Regulations defines regulated activities including, but not limited to the “[d]esign, construction and operation of sewer systems and service connections.”

58. Section 18-23 of the Watershed Regulations entitled “Application Procedures and Requirements” compels an applicant seeking to legalize regulated activities to submit a full application outlining the proposed (regulated) activities.

59. Section 18-23(d)(1) and (2) of the Watershed Regulations entitled “Review and Approval Procedures” requires an applicant to submit a completed application that, in turn, compels NYCDEP to issue a completeness determination within fixed time constraints.

60. Section 18-23(d)(6)(i) of the Watershed Regulations then provides:

If the Department fails to notify the applicant of its decision within ten (10) business days of the receipt of such notice, *the application shall be deemed approved subject to the standard terms and conditions applicable to such an approval.* (emphasis supplied).

61. Section 18-16(a)(72) of Watershed Regulations defines “New” as “any regulated activity undertaken, constructed, installed, or implemented after May 1, 1997.”

62. Subsection 99 within this Subchapter further defines “Sewer connection or lateral” as “the connection between a building, residence, or other structure and a sewer system except that any connection designed and intended to convey 2,500 gallons per day or more of residential sewage shall be considered a sewer extension.”

63. Subchapter C of the Watershed Regulations classifies those “Regulated Activities” that fall within the purview of agency discretion and review authority. Section 18-37 entitled “Sewer Systems, Service Connections and Discharges to Sewer Systems” identifies the

application requirements to connect to a regulated sewer system for both new connections and those seeking to alter or modify sewer connections.

64. Petitioners' sewer equipment on the Premises and its connection to Sewer District 1, which was completed in 1993, predates these regulations.

65. Accordingly, Petitioners' sewer equipment on the Premises and its connection to Sewer District 1 are not regulated as a "new" sewer connection or lateral as defined under Watershed Regulations.

66. Despite multiple demands over the course of the ensuing months to review and decide his out of district connection filed with the Town, neither the Town nor NYCDEP have discharge these nondiscretionary duties.

67. Respondents' failure to discharge their legal responsibilities as identified in detail herein have and continue to impart significant economic harm and irreparable damage to Petitioners because the sewer connection to the Premises has been installed, tested, and all associated engineering supplied and capital taxes tendered to enable Respondents to approve the same.

AS AND FOR A FIRST CAUSE OF ACTION
(Mandamus to Compel)

68. Petitioners incorporate by reference all prior paragraphs.

69. The Watershed Regulations invest NYCDEP with discretion to approve applications by out of district property owners to connect to sewer equipment owned by NYCDEP and regulated by municipalities including the Town.

70. Petitioners' sewer equipment and connection to Sewer District 1 is both authorized and exempt under the Watershed Regulations.

71. Similarly, Petitioners' out of district sewer connection application to Sewer District 1 is not subject to NYCDEP's discretionary review authority or joint review protocol with municipalities including the Town, which were first promulgated in 1997 after issuance of the 1993 Approval.

72. Pursuant to Section 120-15 of the Town's Sewer Use Law, the Town may grant a property owner an out of district sewer connection to Sewer District 1 upon receiving NYCDEP's written consent.

73. NYCDEP has already consented to such an application despite that its review is not legally required in this instance.

74. The Town was without legal authority to "suspend" review of Petitioners' application to connect to Sewer District 1, which was filed in June, 2019.

75. Similarly, the Town was without legal authority to issue its notice of violation, dated October 24, 2019, to Petitioners. (Ex. J).

76. Consequently, to the extent it has joint review authority, PCDOH must now grant to Petitioners a certificate of construction compliance relating to Petitioners' out of district connection application to the Town and rescind its PCDOH Non-Compliance Notice.

77. The Town has a ministerial and nondiscretionary authority to take all steps necessary to review and decide Petitioners' application for an out of district connection to Sewer District 1.

78. The nature of those functions to be performed by NYCDEP, the Town, and PCDOH at issue herein are ministerial and nondiscretionary by nature.

79. Mandamus relief to compel is appropriate because respondents have violated a clear, ministerial, nondiscretionary, statutory duty by failing to review and decide Petitioners' application to connect to Sewer District 1 despite his repeated demands for the same.

80. CPLR § 7803(1), *et seq.* provides a right of action against governmental officers and entities that have "failed to perform a duty enjoined upon [them] by law."

81. As record owners of the Premises, Petitioners have a clear legal right to the review and approval of his application to connection to Sewer District 1.

82. Respondents have the ability to perform the above-described ministerial duties

83. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of the law other than the issuance by this Court of a writ of mandamus to compel and directing respondents to review and decide Petitioners' application for an out of district sewer connection for the Premises without delay.

84. Petitioners are now compelled to seek this judicial remedy of mandamus directing and compelling Respondents to review and decide Petitioners' application for an out of district sewer connection to Sewer District 1 in accordance with their legal duties.

85. Petitioners have no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION
(Equal Protection Violation)

86. Petitioners incorporate by reference all prior paragraphs.

87. Respondents' failure and refusal to review and decide Petitioners' application for an out of district sewer connection for the Premises without delay violates Petitioners' equal protection rights as provided in the 14th Amendment to the United States Constitution and Section 11, Article 1 of the New York State Constitution.

WHEREFORE, Petitioners respectfully demand Judgment pursuant to CPLR § 7803(1):

- (a) Directing respondents to review and decide Petitioners' applications to connect to Sewer District 1, and all related applications, without delay;
- (b) Directing respondents to take all necessary and appropriate action formally to discharge their nondiscretionary, administrative duties in keeping with their oaths of office and as prescribed by law;
- (c) Awarding Petitioners' reasonable attorney's fees, costs and disbursements of this proceeding; and
- (d) Granting such other and further relief as this Court deems just and proper.

Dated: Brewster, New York
October 28, 2019

MICHAEL V. CARUSO, P.C.

By: 

Michael V. Caruso

3871 Danbury Road
Brewster, New York 10509
Tel: (845) 207-5452
Fax: (845) 251-0002

Attorneys for petitioners



RECEIVED NYSCEF: 10/29/2019

JOHN KARELL Jr., P.E., M.S.
Public Health Director

DEPARTMENT OF HEALTH
Division Of Environmental Health Services
4 Geneva Road, Brewster, New York 10509
(914) 278-6130

February 3, 1993

Michael Barile
Tom Boniello
16 West Lake Blvd.
Mahopac, NY 10541

Re: Approval of Plans for Low Pressure Sewer
Force Main for Mahopac Beach
(T) Carmel

TM# 75.43-1-22

99-9-14 → 94-1-15

Dear Sirs:

Our office has received the application, engineering report, plans and specifications for the wastewater facilities for the above-noted project. Upon review, it has been determined that the submission meets the applicable criteria of the NYS Department of Environmental Conservation and the Putnam County Health Department.

Our approval of plans is issued under provisions of Article 17 of the Environmental Conservation Law and 6 NYCRR 652, and is issued for plans consisting of 2 B/W sheets prepared by Jeffrey Contelmo, P.E. and dated March 3, 1992 with the with the latest revision date of January 29, 1993. A copy of this letter of approval of plans and a set of the approved plans should be filed with the appropriate office of The Mahopac Beach.

This letter shall serve as record of approval and, by initiating construction of the project covered by this approval of plans, the applicant accepts and agrees to abide by and conform to the following:

THAT this approval letter shall be maintained on file by the applicant.

THAT the approval is revocable or subject to modification or change pursuant to Article VIII of the Putnam County Sanitary Code and Article 17 of the Environmental Conservation Law.

THAT the facilities shall be fully constructed and completed in compliance with the engineering report, plans, and specifications as approved. The Putnam County Health Department must be notified when construction commences on the sewer collection system and provided with a construction schedule.

THAT the construction of the facilities shall be under the supervision of a person or firm qualified to practice professional engineering in the State of New York under the Education Law of the State of New York, which supervision is the responsibility of the applicant.

That the professional engineer supervising such construction shall certify to the Department in writing, that the constructed facilities have been under his supervision and that the works have been fully completed in accordance with the approved engineering reports, plans, specifications and approval of plans.

THAT the certification, including acceptable results of leakage testing of the completed work, and "as-built" plans shall be forwarded to the Putnam County Department of Health after completion of construction and at least within thirty (30) days thereof.

THAT the facilities shall not be placed in operation until construction has been completed and the Department has accepted, in writing, the certification of construction and results of leakage testing.

THAT the facilities receive approval from the New York City Department of Environmental Protection prior to any operation of the sewage pumping station.

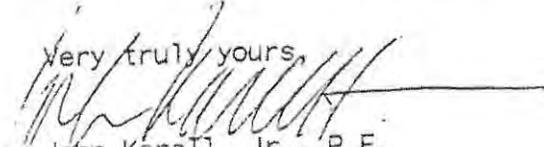
THAT construction conforms with applicable ordinances of the Town of Carmel.

The wastewater facilities are to receive sanitary wastes only. The Putnam County Health Department shall be promptly notified in the event that any wastes other than strictly domestic sanitary wastes are produced at this facility.

The facilities shall be constructed and completed in compliance with the engineering report, plans, and specifications as approved by this Department. Any modifications to the approved plans and specifications shall require prior approval by this Division.

This approval does not authorize any reconstruction or expansion of the restaurant facility. Any such reconstruction or expansion of the restaurant facility must receive the prior authorization from the Putnam County Department Health.

is approval of plans is issued for approximately 1370 LF of two (2) inch low pressure force main and appurtenances and is issued for State Commissioner of Environmental Conservation.

Very truly yours,

John Karell, Jr., P.E.
Public Health Director

MJB/jp

V. Soukup (T) Engineer
N. Molle, (BI) (T)
G. Mekenian, NYCDEP
RS

EXHIBIT B

Tommy A. Boniello
Michael A. Barile
888 Route Six
Mahopac, New York 10541
(845)621-1317

May 29, 2019

Town of Carmel Engineering Department
McAlpin Ave
Mahopac, NY 10541

To whom it may concern,

We respectfully request to activate the dry sewer line connecting 825 South Lake Boulevard (k/a Blu Restaurant) and Carmel Sewer District 1. Please advise how to proceed.

Thank you,



Tommy Boniello & Michael Barile

Franzetti, Richard <rjf@ci.carmel.ny.us>

Fri 5/31/2019 2:57 PM

To: Mike Barile <mike@lynll.com>; 'mb10541@comcast.net' <mb10541@comcast.net>

Cc: Vara, Rob <rjv2@ci.carmel.ny.us>; Esteves, Donna <de@ci.carmel.ny.us>

1 attachments (111 KB)

05-29-19 Request to connect.pdf;

Councilman Barile,

As per the attached Out of District (OOD) connection request, I requested that the Town Comptroller determine the back capital taxes for the property.

Once the Comptroller provides this information, I will forward to your attention. If you still would like to pursue the OOD sewer connection you will have to provide a technical report which includes the following information:

- Proposed use (i.e., residential, commercial)
- Anticipated sewer discharge, and
- Identification of outside agency permitting required. This is the New York City Department of Environmental Protection (NYCDEP)

As the sanitary line is already in place, pressure testing of the existing line will need to be performed. This test should be performed by your licensed engineer and witnessed by the a representative of the Engineering Department. The results are to be included in the above report.

Once this information is provided your engineer will need to contact the NYCDEP to evaluate and approve the ability of the district's facilities to accommodate the expected increased sewer demands imposed by the OOD connection. If you have any correspondence that your existing system is failing, this should be provided to the NYCDEP as backup.

If acceptable, the Engineering Department will develop a memorandum for presentation to the Town Board summarizing the findings and recommending the OOD connection.

Please note that you will have to formally file an application for connection to the Water or Sewer system. The applicable fees assessed for the connection is - \$1,000.00 for "out of district" application fee.

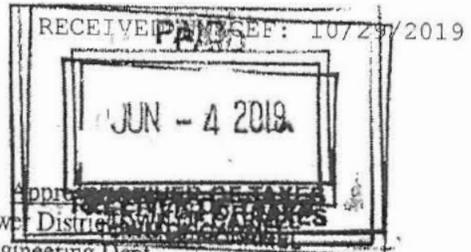
If the Town Board approves the OOD connection, the final approval shall include the following:

- Resolution of the TOC Town Board
- Payment of back capital fees
- OOD User Agreement
- Approved Permit
- All permits required by other regulatory agencies.

Hopes this helps. Call with any questions.

Richard J. Franzetti. P.E, BCEE
Town Engineer

ESCEP DOC. NO. 5
 ENGINEERING DEPARTMENT
 APPROVED BY [Signature]
 TOWN ENGINEER
 DATE 6/4/19



APPLICATION FOR A SANITARY SEWER CONNECTION PERMIT

CARMEL SEWER DISTRICT NO. 1
 Town of Carmel
 Town Hall
 McAlpin Avenue
 Mahopac, New York 10541
OUT OF DISTRICT

Sewer District
 Engineering Dept.
 Fees
 Appl./Insp. \$250.00 (res.) \$500.00 (com)
 Construction Est. \$
 Total Fee \$ 4,000.00
6/4 20 19
 (date)

 Application is hereby made for the use of Carmel Sewer District No. 1 By:

NAME OF OWNER TOMMY BONIELLO & MICHAEL BARILE
 ADDRESS OF OWNER 888 RT 6 MAHOPAC NY 10541 PHONE # 845 621 1317
 LOCATION OF PROPERTY 825 S.L.K. BLVD T.M.# 75.43-1-22
 TYPE OF CONNECTION:
 Single Family _____ Multi. Family X Commercial _____ Industrial _____
 Other _____ Explain: RESTAURANT + DOCKS

By signing this form, the applicant acknowledges that the construction fee shown hereon is an estimate and that the applicant hereby agrees to pay any and all construction costs for the installation of the sewer lateral to the property line. THE CHARGE FOR THE USE OF THE SEWER SYSTEM (O&M CHARGE) WILL BE EFFECTIVE ON THE DATE OF PERMIT ISSUANCE.

[Signature]
 Owners Signature

A) INSTRUCTION

1. Obtain application from Town Engineer's Office.
2. Applicant's plumber should fill out the General Information section below and prepare a plan pursuant to Sections B & C below.
3. The completed form must be signed and dated by the operator of the District. The applicant must call the operator to arrange a meeting to review and sign the form. See attached sheet for a list of District operators and phone numbers.
4. The sewer fee is \$ 1000 payable to Receiver of Taxes.

B) GENERAL INFORMATION

PLUMBERS NAME BOB & JAY P.H
 ADDRESS 719 RT 6 MAHOPAC PHONE # 845 628-3924
 PUT. CO. LICENSE # _____

Size and Type of Connection: 2" FORCED MAIN

C) PLAN

NOTE: An accurate plan with full particulars and accurate measurements is required. The plan can either be shown on a separate sheet of paper or on the reverse side of this form. A cleanout will be installed on the property line. It is the owner's responsibility to identify the same.

DISTRIBUTION: ORIGINAL (CLERK); ASSESSOR; BLDG. DEPT.; ENGINEERING; APPLICANT;
 OPERATOR DISTRICT, COMPTROLLERS DEPT. REC. OF TAXES

THE APPLICANT FOR THIS PERMIT SHOULD BE AWARE THAT CERTIFICATES OF OCCUPANCY WILL NOT BE ISSUED UNTIL THE TOWN FORMALLY TAKES OVER THE SEWER FACILITIES.



Fw: Blu Restaurant, South Lake Blvd., Carmel (Mahopac)

john karell <jack4911@yahoo.com>
Reply-To: john karell <jack4911@yahoo.com>
To: Michael Caruso <mvcarusolaw@gmail.com>

Fri, Oct 25, 2019 at 4:54 PM

here is the email string along with my letter June 27, 2019 to Franzetti.

----- Forwarded Message -----

From: john karell <jack4911@yahoo.com>
To: LynLiL@hotmail.com <lynlil@hotmail.com>; Richard Franzetti <rjf@ci.carmel.ny.us>
Sent: Friday, June 21, 2019, 09:43:34 AM EDT
Subject: Fw: Blu Restaurant, South Lake Blvd., Carmel (Mahopac)

Rich, can you take care of this. I think he just wants something from the Town that you will allow connection as an out of district user.

----- Forwarded Message -----

From: Burd, Matthew <BurdM@dep.nyc.gov>
To: john karell <jack4911@yahoo.com>
Sent: Friday, June 21, 2019, 09:30:43 AM EDT
Subject: RE: Blu Restaurant, South Lake Blvd., Carmel (Mahopac)

Jack,

I can issue such an approval. First I am hearing of it outside the newspapers and pne phone call so I lack details.

Please have Town of Carmel send a request with the name address and section block and lot, and the reason an OOD property was, or is being connected. Alternately, send me a copy of your request to them with their assent to the OOD connection with the aforementioned information. I should be able to respond quickly.

From: john karell <jack4911@yahoo.com>
Sent: Thursday, June 20, 2019 6:57 PM
To: Burd, Matthew <BurdM@dep.nyc.gov>
Subject: Blu Restaurant, South Lake Blvd., Carmel (Mahopac)

who do i have to contact to get a no objection letter from the DEP to connect this restaurant to the Carmel SD # 1, Ext. # 3 as an out of district user.

 **Barile June doc.doc**
45K

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

June 27, 2019

Richard Franzetti, P.E.
Town of Carmel Engineering Department
Town Hall, McAlpin Avenue
Mahopac, New York, 10541

Re: Michael Barile - Out of District Sewer Connection
Carmel Sewer District # 1, Extension # 3
Blu Restaurant, South Lake Boulevard
Carmel (T); TM #

Dear Mr. Franzetti:

Attached herewith please find plans and supporting documents in an application for approval of an "Out of District" Sewer Connection as follows:

- Two sets of plans
- Application form

The following should be noted relative to this application

1. Matt Burd, representing the NYCDEP, by email dated May 15, 2019, has been contacted relative to their approval of the out of district connection.
2. The calculation of back capital charges from the Town Comptroller is attached. It is intended to pay such charge immediately prior to the Town's approval of the connection.
3. The existing use of the property is a restaurant with approximately 86 seats..
4. The anticipated sewerage discharge is 858 gallons per day, based upon actual water usage as determined utilizing a water meter. The water meter was installed on June 13, 2019 with a reading of 2 gallons, on June 25, 201, twelve (12) days later the meter reading was 10,300 gallons. This is an average daily usage, of 858 gallons. It should be noted that some amount of water is consumed and therefore the average daily usage would be slightly less, maybe 100 gallons per day. We will continue to monitor water usage going forward.
5. A sewerage pumping station is required to pump sewage from the restaurant to the manhole due to the difference in elevation. The plans show the sewerage pumping station.
6. This property will continue to be served by a drilled well.
7. The force main in Route 6N was installed in 1993 consisting of a 2 inch HDPE pipe from this property to the existing sewer manhole in Route 6N at Clark Place. This line was pressure tested in 1993 and reportedly found to be pressure tight. This line was retested in the past week. The results are attached and indicate that the line is still pressure tight.
8. With respect to outside agencies:
 - Town or State Highway approval – not required. No work is proposed in the State right of way.
 - NYSDEC - not believed to be required.
 - NYCDEP – see item # 1 above

Very truly yours,
John Karell, Jr., P.E.

EXHIBIT G



PUTNAM COUNTY DEPARTMENT OF HEALTH
 NO. 8
 1 Geneva Road, Brewster, NY 10509 ■ 845-808-1390
 www.putnamcountyny.gov/health
 A PHAB-ACCREDITED HEALTH DEPARTMENT

RECEIVED NISCEF: 10/29/2019
 Mary Ellen Odell
 COUNTY EXECUTIVE

Michael J. Nesheiwat, MD
 COMMISSIONER OF HEALTH

CERTIFIED RETURN RECEIPT REQUESTED

TO: Michael Barile
 888 Route 6
 Mahopac, NY 10541

PLEASE REFER CORRESPONDENCE TO:
 NAME: Joseph S. Paravati, Jr. P.E.
 TITLE: Public Health Engineer
 PHONE: 845-808-1390 EXT 43157
 DATE: 9/16/19

OFFICIAL NOTICE OF NON-COMPLIANCE

YOU ARE HEREBY NOTIFIED that non-compliance with Article VIII, Section 8.3B of the Putnam County Sanitary Code as stated below:

8.3B -
 The owner, his agent, or person in control, or the lessee of tenant who shall be in responsible charge of such property for which an approval of plans* required herein shall have been issued, shall not use or permit the use of such system or facilities until construction of the same shall have been completed in accordance with the conditions of the approval of plans* and specifications approved by the Department and a construction compliance* for central wastewater systems is issued by the Commissioner/*Director or his/her duly authorized representative and a copy is filed in the Department*

Specifically:

Connection to the Carmel Sewer District #1 WWTP without the issuance of construction compliance by the PCDF, connection without approval from the NYCDEP (Approval Condition# 8), and connection without proof of compliance with the applicable Town of Carmel ordinances (Approval condition #9) (As stated in the NYCDEP field report dated 9/9/19).

HAVE IT / GO TO BUDINZKI

If the violation(s) is/are not corrected by 10/15/19 an Official Notice of Hearing may be issued. This could make you liable for additional penalties provided by law, including prosecution on a charge of committing a violation. This violation may lead to an enforcement hearing and subsequent fines.

It is sincerely hoped that the above-mentioned further action will not be necessary and that you will cooperate by securing the correction of this condition. If you believe the above notification is incorrect, please notify this office immediately.

For the Commissioner of Health

Very truly yours,

Michael Nesheiwat, M.D.
 Commissioner of Health

By:
 Joseph S. Paravati, Jr., P.E.
 Public Health Engineer



Incent Sapienza, P.E.
Commissioner

Paul V. Rush, P.E.
Deputy Commissioner
Bureau of Water Supply
rush@dep.nyc.gov

P.O. Box 358
Carmahamsville, NY 12740
(845)340-7800
(845)334-7175

RECEIVED Supervisor 9/23/2019

Councilman ✓
McDonagh
Councilman ✓
Lupinacci
Councilman ✓
Schneider

September 19, 2019

9/23/19
②

Kenneth Schmitt
Supervisor
Town of Carmel
60 McAlpin Avenue
Mahopac, NY 10541

Dear Supervisor Schmitt:

Our engineers and inspectors at the New York City Department of Environmental Protection (DEP) have spent several weeks reviewing the Town of Carmel's initial request to allow an out-of-district sewer connection for the business at 825 South Lake Blvd., known as Blu at the Lakehouse. The town's request came to us this summer after this restaurant received a violation notice for an unpermitted septic system from the state Department of Environmental Conservation (DEC).

After receiving the town's request to connect this out-of-district business, DEP took a number of rudimentary steps to examine whether the restaurant met our requirements to connect to the town sewage system, which ultimately feeds the New York City-owned Mahopac Wastewater Treatment Plant. Importantly, DEP policy generally prohibits out-of-district connections to collection systems that feed City-owned wastewater treatment plants. Limited exceptions, on a case-by-case basis, have been made in the past to protect water quality.

Our review of this particular request required an on-site inspection of the property's existing septic system. To examine the septic system, a DEP inspector visited the property on Sept. 4 to perform a dye test. However, our staff found that a cap had been removed from the sewer lateral that connects the Blu at the Lakehouse to Carmel Sewer District #1; as such, no dye test of the septic system was performed. This cap was in place, effectively blocking a connection between the restaurant and the sewer system, when DEP visited the site one week prior.

In our view, the unauthorized, out-of-district connection is a clear violation of the Town of Carmel's Sewer Use Law (SUL). The SUL states that the town board can accept sewage from outside the district boundaries, but any "such agreements involving the Mahopac Wastewater treatment plant are not valid without prior written approval from the NYCDEP." DEP has never provided written approval for the lateral that is serving Blu at the Lakehouse. We believe the connection also violates a

RECEIVED
SEP 23 2019
SUPERVISOR'S OFFICE
TOWN OF CARMEL

1938 agreement between the City of New York and the Town of Carmel, which outlined which properties could connect to the sewer system and under what circumstances they could connect.

We also understand that the property has been issued a notice of non-compliance this week by the Putnam County Department of Health (PCDOH) for the sewer connection. On Sept. 16, we received a note from your town engineer, asking DEP to put the connection request on hold while the town investigates the facts related to the sewer connection at this property.

In addition to these facts, our staff at DEP continue to have concerns about whether the proper as-built drawings for the force main were filed with the PCDOH, and the possibility that a fitting in the manhole could be broken. These are important questions that have not been answered and require more investigation.

Given the restaurant's proximity to Lake Mahopac, which ultimately drains into parts of the New York City reservoir system, it would be reasonable to consider an out-of-district connection to ensure the adequate collection and treatment of wastewater. In the end, this could meet DEP's chief objective of providing maximum protection for water quality in our reservoirs. However, we cannot consider such a request until the correct documents are filed, the proper steps are taken, and until a number of town and county investigations and alleged violations are brought to a satisfactory conclusion.

I have directed my staff to work with all the appropriate parties to ensure this matter is resolved in accordance with our regulations, and in a manner that is most protective of our water supply system.

Sincerely,



Paul V. Rush, P.E.
Deputy Commissioner
Bureau of Water Supply

Please see the email below that the engineer for the owner of the Blu Restaurant received from the Putnam County Department of Health. Please advise as to the next steps with the NYCDEP so that the owner can finalize this matter. Thank you.

Anthony R. Molé, Esq.
HERODES & MOLÉ, P.C.
888 Route Six
Mahopac, New York 10541
Tel: 845-628-1100
Fax: 845-628-1110
am@herodesmole.com

www.herodesmole.com

This electronic mail transmission contains information that may be confidential or privileged from the law firm of Herodes & Molé, P.C. The information contained herein is intended solely for the use of the individual or entity named above. Please note that if you are not the intended recipient, any dissemination, disclosure, distribution or copying of the contents of this information is prohibited. If you have received this electronic transmission in error, please contact us by telephone (845-628-1100) or by electronic mail by replying to this electronic mail message. Thank you.

----- Forwarded Message -----

From: Joseph Paravati <Joseph.Paravati@putnamcountyny.gov>
To: 'jack4911@yahoo.com' <jack4911@yahoo.com>
Cc: Shawn Rogan <Shawn.Rogan@putnamcountyny.gov>; Michael Nesheiwat <michael.nesheiwat@putnamcountyny.gov>; Erin Pascaretti <Erin.Pascaretti@putnamcountyny.gov>
Sent: Tuesday, October 1, 2019, 10:51:24 AM EDT
Subject: BLU Restaurant

Jack,

Per your request,

This Department has received and reviewed all required documents and plans required to issue the completed works (compliance) for the service connection to the Town of Carmel collection system and the NYCDEP owned and operated Mahopac WWTP.

This Department is **ready to issue the compliance** pending NYCDEP granting operational approval for the pump station and the Town of Carmel granting approval to use the existing collection system.

Please let us know if you have any further questions.

Thank you,

Joe

Joseph S. Paravati Jr., P.E.

Public Health Engineer (Acting Supervisor of Engineering)

Putnam County Department of Health

1 Geneva Road

Brewster, NY 10509

(845)808-1390 x43157

joseph.paravati@putnamcountyny.gov

Richard Franzetti, P.E.
Town Engineer



(845) 628-1500
(845) 628-2087
Fax (845) 628-7085

Office of the Town Engineer
60 McAlpin Avenue
Mahopac, New York 10541

Notification of Violation and Order to Cease and Desist

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
VIA EMAIL TO MICHAEL BARILE

October 24, 2019

Mr. Michael Barile and Mr. Tommy Boniello
888 Route 6
Mahopac, NY 10541

**Re: Notice of Violation and Cease and Desist
825 South Lake Blvd TM 75.43-1-22**

Dear Mr. Barile and Mr. Boniello:

This Notification of Violation ("NOV") and Order to Cease and Desist are issued pursuant to §§ 120.8, 120.82 and 120-86 of the Town of Carmel Code, ("Sewer Use Law"), and NY CLS Town §§135 and 198, which authorize actions to enforce the Sewer Use Law. As described below, I have determined that real property owned by Michael A. Barile and Tommy A. Boniello (hereinafter, "You") located at 825 South Lake Boulevard, Mahopac, New York (hereinafter, your "Property") is located outside of the Carmel Sewer District Number 1 (hereinafter "CSD #1"). I have further determined that from at least September 4, 2019, and continuing to the present, you have connected your Property to CSD #1 without proper authorization and in violation of the Sewer Use Law. I hereby notify you of the violations set forth herein of the Sewer Use Law and order you immediately to cease and desist the connection to the Carmel sewer main unless and until you meet the conditions set forth herein.

Pursuant to §120.8 of the Sewer Use Law, you are required to provide a statement with respect to the violations alleged herein and describe your efforts to comply no later than ten (10) calendar days after your receipt and to provide a progress report no later than each 30 calendar days thereafter describing the actions taken to comply with this NOV and Order to Cease and Desist. The process set forth herein is intended to timely cure the ongoing violations and ensure that all approvals are obtained as required by the Sewer Use Law and the longstanding Agreements between the Town of Carmel and New York City governing the acceptance and treatment of sanitary sewage from the Town of Carmel by New York City.

Authority

Pursuant to §120-82 of the Sewer Use Law, whenever the Superintendent finds that a person has violated or is violating Chapter 120, or any wastewater discharge permit, order prohibition, limitation, or requirement permitted by Chapter 120, the Superintendent may serve upon such person written notice stating the nature of the violation.

Pursuant to §120-86A of the Sewer Use Law, whenever the Superintendent finds that a user has violated or continues to violate this chapter or any permit or administrative order issued hereunder, the Superintendent may issue an order to cease and desist such violations and direct those persons in noncompliance to (1) comply forthwith;

Mr. Michael Barile and Mr. Tommy Boniello
 October 24, 2019
 Page 2

Notice of Violation and Cease and Desist
 825 South Lake Blvd TM 75.43-1-22

and (2) take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations or terminating the discharge.

Pursuant to §120-5 of the Sewer Use Law, "user" is defined as any person who contributes, causes, or permits the contribution of wastewater into the POTW.

Pursuant to §120-5 of the Sewer Use Law, "Superintendent" is defined as the Town Engineer, who shall be licensed to practice engineering in the state, and otherwise qualified to oversee water treatment and distribution and POTW operations, as well as his authorized deputy, agent or representative.

Pursuant to §120-5 of the Sewer Use Law, "Publicly Owned Treatment Works" or "POTW" is defined as treatment works, which is owned by the Town of Carmel Sewer District or the City of New York. This definition includes any sewers and appurtenances that transport wastewater to the POTW treatment plant.

Pursuant to §120-91, the Superintendent has the right in his sole discretion to utilize one or more appropriate administrative remedies.

Pursuant to Town Law §135, the violation of the Sewer Use Law also is declared to be a misdemeanor punishable by civil penalty or fine or imprisonment or both, by action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation.

Findings of Fact and Conclusions

1. I, Richard Franzetti, am currently am the Town Engineer and Superintendent of the Town of Carmel's POTW system and have held that position since November 2013. I am licensed to practice engineering in New York State, and otherwise qualified to oversee water treatment and distribution and POTW operations.
2. On November 8, 1991, the Town of Carmel entered an "Agreement for Sewer Service Between Carmel Carmel Sewer District #1 and Michael A. Barile and Tommy A. Boniello," which was executed by and agreed to by Michael Barile and Tommy Boniello and approved by the Town Board, which permitted Michael Barile and Tommy Boniello to connect the Property to CSD #1 only if they met certain conditions in advance of making such connection (hereinafter "1991 Conditional Approval").
3. Among other things, the 1991 Conditional Approval states that "Michael A. Barile and Tommy A. Boniello agrees [sic] to obtain all necessary permits and approvals from the New York State DOT, DEC and New York City DEP for the aforesaid connection to the Carmel Sewer District # 1 at their own cost and expense."
4. Among other things, the 1991 Conditional Approval requires that "Until proper permits are received by DEC and N.Y.C. DEP the main will remain dry."
5. On May 20, 1992, New York City Department of Environmental Protection transmitted correspondence from George Mekenian, P.E., Chief Sources Division, NYCDEP to John Karell, Jr., P.E., Public Health Director, Division of Environmental Health Services, Putnam County of Health, in which the NYCDEP elected not to approve the connecting line, stating:

Sewer service in this area would require an expansion of the sewer district. Such plans are not part of the facility plan for the new Mahopac Wastewater Treatment Plant being designed under Order on Consent.

The proposed new facility has been sized to treat existing sewer district flow. The design flow includes a significant contribution from the presently excessive inflow and infiltration (I&I). This condition must be corrected before the City could entertain the expansion of the sewer district. In addition, a proposal for an expansion of the sewer district would require a study by the Town of

Mr. Michael Barile and Mr. Tommy Boniello

October 24, 2019

Page 3

Notice of Violation and Cease and Desist
825 South Lake Blvd TM 75.43-1-22

Carmel to determine the adequacy of existing treatment and the specific areas to be served by the sewer district.

6. On February 3, 1993, John Karell, Jr., P.E., Public Health Director sent a letter to Michael Barile and Tom Boniello regarding "Approval of Plans for Low Pressure Sewer Force Main for Mahopac Beach (T) Carmel" which determined that the Connection Line plans meets the "applicable criteria of the NYS Department of Environmental Conservation and the Putnam County Health Department" and that "... the applicant accepts and agrees to abide by and confirm" twelve requirements including, but not limited to, "THAT the facilities receive approval from the New York City Department of Environmental Protection prior to operation of the sewage pumping station."
7. On September 23, 1994, Carl Picha, P.E., East of Hudson District Engineer sent a letter to Vincent L. Soukup, P.E., Carmel Town Engineer, regarding "Lakeside Restaurant, Carmel SD #1, Mahopac, (T) Carmel," finding that the Connecting Line constitutes an illegal connection and constitutes a violation of a number of provisions of the 1938 Agreement between the Town of Carmel and New York City. Carl Picha stated in that letter, "Accordingly, the Town must take whatever actions are appropriate to assure that the aforementioned 4" PVC line is not placed into service. Please indicate in writing within sixty days of this letter the actions the Town intends to take to preclude the use of this illegal connection."
8. On October 27, 1994, John Karell, Jr., P.E., Carmel Town Engineer, sent correspondence to Carl Picha, P.E., NYCDEP "Re: Sewer Connection Lakeside Restaurant (Mahopac Beach) Carmel Sewer District #1 Carmel (T)" which states, "Obviously, approval from all appropriate agencies must be obtained prior to use of the force main." Furthermore, in this letter Mr. Karell states that [t]he force main discharge line is capped in the manhole on Route 6N." Furthermore, in this letter, Mr. Karell states to NYCDEP, "You should be aware that, periodically, Town staff inspect this manhole to assure that the force main is not in use." Finally, in this letter, Mr. Karell states "Based on the above, the Town is prepared to accept sewage from this private service connection upon completion of the reconstruction of the Mahopac STP *and upon receipt of all necessary approvals from other agencies, including NYCDEP.*" [emphasis added].
9. On April 7, 2015, the NYSDEC issued a Notice of Violation to the Town of Carmel alleging that excessive flows from the CSD #1 caused a bypass of the NYCDEP Mahopac Wastewater Treatment Facility in violation of NYS Environmental Conservation Law, Article 17.
10. On May 1, 2015, Paul V. Rush, P.E., Deputy Commissioner, Bureau of Water Supply, NYCDEP issued a Notice of Violation to the Town of Carmel alleging chronic problems in CSD #1, including inflow and infiltration, deteriorating manholes, and massive grease accumulation. The NOV also alleged an April 21, 2015 sewer spill from a manhole in CSD #1 impacted Lake Mahopac. The Town took corrective action to address the concerns of the NYCDEP's NOV.
11. On May 29, 2019, Tommy A. Boniello and Michael A. Barile sent correspondence to the Town of Carmel Engineering Department requesting the "activation of the dry sewer line connecting 825 South Lake Boulevard to Carmel Sewer District # 1."
12. NYCDEP owns and operates the Mahopac Wastewater Treatment Facility which receives and treats the sewer flow from CSD #1 under an agreement dated September 9, 1938 (hereinafter, "1938 Agreement").
13. The Mahopac Wastewater Treatment Facility is a POTW as defined herein.
14. NYCDEP inspected the Connecting Line on September 4, 2019 and determined that it was uncapped and connected to CSD #1 located at the intersection of Clark and Route 6N and provided me written and photographic evidence to that effect.

Notice of Violation and Cease and Desist
825 South Lake Blvd TM 75.43-1-22

Approval and a licensed professional engineer indicates in writing that conditions have not materially changed since the time such documents were created.

- b. You must cooperate with NYCDEP as it relates to the OOD Request including, but not limited to:
- i. Timely provide NYCDEP all information that it requests in connection with the OOD Request;
 - ii. Conduct any testing or other evaluation required by NYCDEP in connection with the OOD Request. In the event any such testing or other evaluation is required by NYCDEP, you shall provide advanced written notice to the Town so that the Town may elect to observe any such activities;
 - iii. Comply with all NYCDEP requests for access to the Property for the purposes of conducting, observing, or overseeing any inspection or investigatory activities that it deems necessary to consider and timely process the OOD Application;
 - iv. Upon request by NYCDEP, timely enter a written agreement providing for the payment of NYCDEP sewer use fees on and after any approval of the Connecting Line at NYCDEP's subject to terms and conditions approved by NYCDEP;
 - v. Upon request by NYCDEP, timely enter a written agreement with providing for the payment of any NYCDEP back sewer use fees for the pre-approval use of the NYCDEP WWTF subject to terms and conditions approved by NYCDEP.
- c. Provide a progress report no later than 30 days after submission of the initial 10 day plan to the Town Engineer with a copy to NYCDEP and Putnam County and then every 30 days thereafter, describing actions taken during the prior reporting period to comply with the Sewer Use Law and this NOV and Cease and Desist Letter, as well as the activities planned for the next 30 calendar day period.
25. Pursuant to §120-86A of the Sewer Use Law, you shall immediately cease and desist use of the connecting line in the event that you do not submit an adequate 10 day plan as required by §120-82 of the Sewer Use Law, you do not provide adequate progress reports every 30 days after submission of the 10-day plan, you do not make material progress toward meeting all conditions set forth in the 1991 Conditional Approval and, you receive notification from NYCDEP indicating that the Mahopac Wastewater Treatment Facility does not have adequate capacity to receive any additional sewage as the result of the interim use of the connecting line, or upon written notice from the Town of Carmel requiring that you immediately stop use of the connecting line which, as a discretionary act, is in the Town of Carmel's sole discretion. In the event that there is delay in processing of any approval that is not caused by you but your application remains in good standing, it shall not be deemed to be a breach requirement to make material progress. In the event that you are required to so cease and desist pursuant to this Paragraph 25, you shall timely:
- a. Arrange with the Town in order to have the Town cap the connecting line at the location of the manhole at the intersection of Clark and 6N and provide the Town with a sworn written statement every 90 days thereafter that the Connecting Line remains capped.
 - b. Disable the forced main pump by disabling the electrical supply and provide written proof from a certified engineer and photographic evidence of such action unless such pump is utilized in connection with the Septic System, in which case it may be utilized for that express purpose as so attested to by a certified engineer.

Mr. Michael Barile and Mr. Tommy Boniello

October 24, 2019

Page 6

Notice of Violation and Cease and Desist
825 South Lake Blvd TM 75.43-1-22

- c. Notify NYCDEP and the Putnam County Department of Health that the septic system is being returned to service to allow NYSDEP to conduct a dye test of such septic system located at the Property in its discretion. In the event that any such dye test demonstrates any adverse impact on Lake Mahopac, immediately notify the Town of Carmel.

With respect to the NOV issued pursuant to §120-82 of the Sewer Use Law, you are required pursuant to that section to provide, within 10 calendar days of the date upon which the Superintendent mails this notice, to provide the Town of Carmel with an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall be submitted to the Superintendent. You are required to incorporate the requirements set forth in Paragraph 25 and, if necessary, Paragraph 26 above into that plan. Furthermore, you are hereby ordered to pursuant to §120-86A of the Sewer Use Law to take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation which shall include providing a progress report no later than 30 days after submission of the initial 10 day plan to the Town Engineer with a copy to NYCDEP and Putnam County and then additional progress reports every 30 days thereafter, describing actions taken during the prior reporting period to comply with the Sewer Use Law and to take all actions set forth in this NOV and Cease and Desist Letter, as well as all such activities planned for the next 30 calendar day period.

The Town of Carmel reserves its rights to amend this NOV and Cease and Desist Letter, and to take any additional action and exercise any other right it may have with respect to this matter, including the right to seek any penalties for past and ongoing violations. Compliance with the requirements set forth herein in no way relieves you of liability for any violations of law before or after receipt of this NOV and Cease and Desist Letter.

If you have questions or concerns, please contact me.

Sincerely,



Richard J. Franzetti, P.E.
Town Engineer

cc:

Paul V. Rush, P.E., NYCDEP at PRush@dep.nyc.gov
David Warne, NYCDEP at DWarne@dep.nyc.gov
Lorraine Holdridge, NYSDEC at lorraine.holdridge@dec.ny.gov
Joseph Paravati, PCDOH at Joseph.Paravati@putnamcountyny.gov
Kenneth Schmitt, Town of Carmel at ks@ci.carmel.ny.us
Suzanne McDonough, Town of Carmel at sfm@ci.carmel.ny.us
Jonathan Schneider, Town of Carmel at js@ci.carmel.ny.us
John Lupinacci, Town of Carmel at jdl@ci.carmel.ny.us
Michael Caruso via Counsel at JVanOrden@cozen.com



REQUEST FOR JUDICIAL INTERVENTION

RECEIVED NYSCEF: 10/29/2019

UCS-840
(rev. 07/29/2019)

Putnam Supreme COURT, COUNTY OF Putnam

Index No: _____

Date Index Issued: _____

CAPTION Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

Michael A. Barile, Tommy A. Boniello

For Court Use Only:

IAS Entry Date

Judge Assigned

RJI Filed Date

against:

Putnam County Department of Health, Town of Carmel, New York City Department of Environmental Protection

Plaintiff(s)/Petitioner(s)

Defendant(s)/Respondent(s)

NATURE OF ACTION OR PROCEEDING: Check only one box and specify where indicated.

COMMERCIAL

- Business Entity (Includes corporations, partnerships, LLCs, LLPs, etc.)
- Contract
- Insurance (where insurance company is a party, except arbitration)
- UCC (includes sales and negotiable instruments)
- Other Commercial (specify): _____

NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the **COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C)**.

REAL PROPERTY: Specify how many properties the application includes: _____

- Condemnation
- Mortgage Foreclosure (specify): Residential Commercial

Property Address: _____

NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the **FORECLOSURE RJI ADDENDUM (UCS-840F)**.

- Tax Certiorari - Section: _____ Block: _____ Lot: _____
- Tax Foreclosure
- Other Real Property (specify): _____

OTHER MATTERS

- Certificate of Incorporation/Dissolution [see **NOTE** in **COMMERCIAL** section]
- Emergency Medical Treatment
- Habeas Corpus
- Local Court Appeal
- Mechanic's Lien
- Name Change
- Pistol Permit Revocation Hearing
- Sale or Finance of Religious/Not-for-Profit Property
- Other (specify): _____

MATRIMONIAL

- Contested

NOTE: If there are children under the age of 18, complete and attach the **MATRIMONIAL RJI Addendum (UCS-840M)**.

For Uncontested Matrimonial actions, use the Uncontested Divorce RJI (**UD-13**).

TORTS

- Asbestos
- Child Victims Act
- Environmental (specify): _____
- Medical, Dental, or Podiatric Malpractice
- Motor Vehicle
- Products Liability (specify): _____
- Other Negligence (specify): _____
- Other Professional Malpractice (specify): _____
- Other Tort (specify): _____

SPECIAL PROCEEDINGS

- CPLR Article 75 (Arbitration) [see **NOTE** in **COMMERCIAL** section]
- CPLR Article 78 (Body or Officer)
- Election Law
- Extreme Risk Protection Order
- MHL Article 9.60 (Kendra's Law)
- MHL Article 10 (Sex Offender Confinement-Initial)
- MHL Article 10 (Sex Offender Confinement-Review)
- MHL Article 81 (Guardianship)
- Other Mental Hygiene (specify): _____
- Other Special Proceeding (specify): _____

STATUS OF ACTION OR PROCEEDING: Answer YES or NO for every question and enter additional information where indicated.

- | | YES | NO | |
|---|--------------------------|-------------------------------------|------------------------------|
| Has a summons and complaint or summons with notice been filed? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | If yes, date filed: _____ |
| Has a summons and complaint or summons with notice been served? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | If yes, date served: _____ |
| Is this action/proceeding being filed post-judgment? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | If yes, judgment date: _____ |

NATURE OF JUDICIAL INTERVENTION: Check one box only and enter additional information where indicated.

- Infant's Compromise
 - Extreme Risk Protection Order Application
 - Note of Issue/Certificate of Readiness
 - Notice of Medical, Dental, or Podiatric Malpractice
 - Notice of Motion
 - Notice of Petition
 - Order to Show Cause
 - Other Ex Parte Application
 - Poor Person Application
 - Request for Preliminary Conference
 - Residential Mortgage Foreclosure Settlement Conference
 - Writ of Habeas Corpus
 - Other (specify): _____
- | | |
|---|--------------------------------|
| Date Issue Joined: _____ | Return Date: _____ |
| Relief Requested: _____ | Return Date: <u>11/26/2019</u> |
| Relief Requested: <u>Article 78 (Body or Officer)</u> | Return Date: _____ |
| Relief Requested: _____ | Return Date: _____ |
| Relief Requested: _____ | |

If required, complete and attach the **RJI Addendum (UCS-840A)**. If none, leave blank. If additional space is required, complete and attach the **RJI Addendum (UCS-840A)**. RECEIVED NYSCEF: 10/29/2019

Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

PARTIES: For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the **RJI Addendum (UCS-840A)**.

Un-Rep	Parties	Attorneys and/or Unrepresented Litigants	Issue Joined	Insurance Carriers
	List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant; 3 rd party plaintiff, etc.)	For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	For each defendant, indicate if issue has been joined.	For each defendant, indicate insurance carrier, if applicable.
<input type="checkbox"/>	Name: Barile, Michael A. Role(s): Plaintiff/Petitioner	MICHAEL CARUSO, Michael V. Caruso, P.C., 3871 Danbury Road, Brewster, NY 10509, (845) 207-5452, mvcarusolaw@gmail.com	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Boniello, Tommy A. Role(s): Plaintiff/Petitioner	MICHAEL CARUSO, Michael V. Caruso, P.C., 3871 Danbury Road, Brewster, NY 10509, (845) 207-5452, mvcarusolaw@gmail.com	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<input checked="" type="checkbox"/>	Name: Putnam County Department of Health Role(s): Defendant/Respondent	1 Geneva Road, Brewster, NY 10509	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input checked="" type="checkbox"/>	Name: Town of Carmel Role(s): Defendant/Respondent	60 McAlpin Avneue, Mahopac, NY 10541	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input checked="" type="checkbox"/>	Name: New York City Department of Environmental Protection Role(s): Defendant/Respondent	59-17 Junction Boulevard, Flushing, NY 11373	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
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<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

dated: 10/29/2019

MICHAEL V. CARUSO
Signature

4595070
Attorney Registration Number

MICHAEL V. CARUSO
Print Name

In the matter of the application of
MICHAEL A. BARILE and TOMMY A. BONIELLO, Petitioners,

-against-

PUTNAM COUNTY DEPARTMENT OF HEALTH, TOWN OF CARMEL, and NEW YORK
CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, Respondents

For an Order pursuant to New York Civ. Prac. L. & R. Article 7803(1)

NOTICE OF PETITION, VERIFIED PETITION, AND EXHIBITS

Pursuant to NYCRR Rule 130-1.1-a, the undersigned, an attorney admitted to practice in the State of New York certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed paper(s) are not frivolous.

Michael V. Caruso, P.C.
Attorneys for Petitioners
3871 Danbury Road
Brewster, New York 10509
Tel: (845) 207-5452
Fax: (845) 251-0002

To:
Attorney(s) for

Service of a copy of the within

is hereby admitted.

Attorneys for

Dated, _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

HAND DELIVERED

In the Matter of the Application of

MICHAEL A. BARILE and TOMMY A. BONIELLO,

Petitioners,

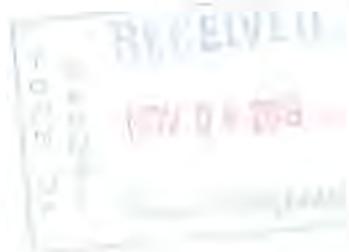
-against-

PUTNAM COUNTY DEPARTMENT OF HEALTH,
TOWN OF CARMEL, and NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Index No.

Respondents,

For an Order pursuant to New York Civ. Prac. L. & R.
Article 7803(1).



MEMORANDUM OF LAW
IN SUPPORT OF VERIFIED PETITION

MICHAEL V. CARUSO, P.C.
3871 Danbury Road
Brewster, New York 10509
mvcarusolaw@gmail.com
Telephone: (845) 207-5452
Facsimile: (845) 251-0002

Attorneys for petitioners

October 29, 2019

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EXPLANATION OF CITATION FORMS

The following citation forms are used in this memorandum:

- “Code” for reference to the Code of the Town of Carmel, as amended.
- “CPLR” for reference to New York Civ. Prac. L. & R.
- “Ex. []” for reference to the exhibits to the Petition.
- “Petition” for reference to the accompanying Verified Petition, sworn to on October 22, 2019.
- “Premises” for reference to real property known as 825 South Lake Boulevard, Mahopac, New York 10541, which is identified on the tax map of the Town of Carmel as 75.43-1-22.
- “Sewer District 1” for reference to Town of Carmel Sewer District Number One.
- “Watershed Regulations” for reference to the Rules and Regulations for the Protection From Contamination, Degradation, and Protection of the New York City Water Supply and its Sources, which became effective on May 1, 1997, and as amended as of April 4, 2010, et al.

The Parties:

- “NYCDEP” for reference to respondent New York City Department of Environmental Protection
- “PCDOH” for reference to respondent Putnam County Department of Health
- “Petitioners” for collective reference to petitioners Michael Barile and Tommy A. Boniello.
- “Town” for reference to respondent Town of Carmel

Petitioners submit this memorandum of law in support of its accompanying verified petition seeking mandamus relief pursuant to CPLR § 7803(1).

PRELIMINARY STATEMENT

This special proceeding in mandamus seeks to compel Respondents to perform their non-discretionary, ministerial acts of reviewing and deciding Petitioners' application to connect its sewerage equipment on the Premises to Sewer District 1. Petitioners' sewerage equipment was installed and tested on the Premises and then granted conditional approval by PCDOH in 1993. (Ex. __, Petition). Petitioners installed this equipment at that time to the Premises would be served by another means of wastewater and sewage disposal should the existing subsurface sewage treatment system on the Premises (the "SSTS") fail or become outmoded or insufficient in the future. (Petition, ¶¶ __).

The Town's recent efforts to enforce a purported violation of its Sewer Use Law against Petitioners for connecting their sewerage equipment to Sewer District 1 is without basis in law. Similarly, PCDOH is without legal authority to regulate and enforce violations of the Putnam County Sanitary Code as they relate to Petitioners' sewerage equipment, which is not within its delegated authority under the Watershed Regulations. Finally, NYCDEP has been in receipt of Petitioners' application and engineering data in support of connecting to Sewer District 1. Application materials with sufficient detail were supplied months ago, and must not only be decided but granted by NYCDEP to the extent it has any review authority whatsoever.

Respondents must communicate and engage in inter-agency coordination to review and decide Petitioners' application without delay. Absent this ministerial relief, Petitioners cannot make any reasonable use of the Premises and pending violations and enforcement actions by the Town and PCDOH will continue without a lawful basis. Respondents' unexplained non-

responsiveness has become crippling to Petitioners and continues to deprive them of the use of sewerage equipment installed, tested, and approved for use on the Premises dating back more than twenty-five years.

Respondents have failed to act upon Petitioners' applications despite numerous requests to do so and inspections, which directly contravenes their duties. Respondents are not vested with discretion to abstain from discharging these duties, which is a purely ministerial function by nature.

STATEMENT OF THE FACTS

Petitioner respectfully refers the Court to the Petition and accompanying exhibits for a full and complete exposition of the relevant facts.

ARGUMENT

POINT I

MANDAMUS LIES TO COMPEL RESPONDENTS TO DISCHARGE THEIR NON-DISCRETIONARY, MINISTERIAL DUTIES

Mandamus to compel is a judicial command directing a public body or officer to perform an act they are obligated by law to perform. *See Matter of Hamptons Hosp. & Med. Ctr. v. Moore*, 52 N.Y.2d 88, 99 (1980). Success in a proceeding in the nature of mandamus requires a showing of "a clear legal right" to the relief sought. *Assoc. of Surrogates and Supreme Court Reporters within the City of New York et al. v. Richard J. Bartlett, as State Administrator of the Admin. Bd. of the Judicial Conference of the State of N.Y.*, 40 N.Y.2d 571, 574 (1976), *citing*, *Matter of Pruzan v Valentine*, 282 N.Y. 498 (1940).

The distinction between ministerial and judicial acts is that where the law prescribes the rule to be followed so as to leave nothing to the exercise of judgment or discretion, the act is a ministerial act. *Matter of Gross v. Albany Co. Bd. of Elections*, 3 N.Y.3d 251, 263, 785 N.Y.S.2d

729 (2004), citing, *Wicksel v. Cohen*, 262 N.Y. 446, 187 N.E. 634 (1944). By contrast, “where the act involves the exercise of judgment or discretion in determining whether the duty exists, the act is judicial in character. *Id.* As developed below, reviewing and deciding Petitioners’ application to connect to Sewer District 1 leaves nothing to the exercise of respondents’ judgment. It is binary; either the application is complete and may be decided, or it is not. It is that simple.

Ministerial acts, which do not involve the exercise of judgment or discretion, are within the ambit mandamus to compel. See *Matter of Gimprich v Board of Educ. of City of N.Y.*, 306 N.Y. 401, 406 (1954). Where an officer or agency failed or refused to conduct a hearing or decide a particular matter where there was a mandatory, non-discretionary duty to do so, mandamus is appropriate to compel performance of the required duty. *Matter of Davidson v. LaGrange Fire District*, 82 A.D.3d 1227, 1229 (2d Dep’t 2011). Such is the case here.

A. NYCDEP

NYCDEP has not rejected the application or submissions by Petitioners’ engineer on June 27, 2019. (Ex. F, Petition). To the contrary, NYCDEP, through Matthew Burd, responded to Petitioners’ application by stating: “I can issue such an approval.” (Ex. E at 1, Petition). Although NYCDEP then directed further administrative action by the Town in furtherance of this application, Mr. Burd responded to Petitioners that upon receipt of the Town’s administrative request for information on the Premises, “I should be able to respond quickly.” (Ex. E at 1, Petition).

NYCDEP’s actions reflect its receipt, review, and acceptance of Petitioners’ application to connect to Sewer District 1. Since Petitioners supplied the application and supporting

engineering information back in June, 2019, NYCDEP that's certainly not objected to the information or its completeness in the four ensuing months.

Section 18-23(d)(6)(i) of the Watershed Regulations provides:

"If the Department fails to notify the applicant of its decision within ten (10) business days of the receipt of such notice, *the application shall be deemed approved subject to the standard terms and conditions applicable to such an approval.* (emphasis supplied).

Far more than ten business days have elapsed since Petitioners filed their application and supporting engineering analysis for its sewerage equipment with NYCDEP. (Ex. F, Petition). As such, NYCDEP is left with no discretion other than to deem Petitioners' connection application as complete and approved.

Notwithstanding the above, Petitioners' sewerage equipment on the Premises, having been installed and tested in 1993, predates the Watershed Regulations themselves, which were promulgated in 1997. As set forth more fully in Paragraphs 61-65 of the Petition, the sewerage equipment at issue is not a "new" sewer connection, which falls outside the scope of those regulated activities that would otherwise require a permit pursuant to Section 18-16(a)(72) of Watershed Regulations and Section 18-23(d)(1) and (2) entitled "Review and Approval Procedures. Thus, even assuming *arguendo* that NYCDEP has the authority to review and decide Petitioners' application, Petitioners' equipment predates these regulatory mandates and permit requirements.

B. The Town

The Town's notice of violation, dated October 24, 2019, is without basis in the Code and is otherwise legally insufficient. (Ex. J, Petition). While the discretion to enforce the Town's Sewer Use Law (codified in Article III of the Code, Chapter 120) may confer broad discretion on

the Town for prosecuting violations, the Town's October 24, 2019 purported violation letter to Petitioners (the "NOV").

Code § 120-17 entitled "Basis of sewer use law" provides that:

"All requirements, directives, and orders calling for mandatory use of the sewers within the service area of the POTW for the proper discharge of sewage and other wastes, including industrial wastes, shall be established and given by the Town Board or NYSDEC and, in the case of discharges to the Mahopac Wastewater Treatment plant, the NYCDEP."

The Code clearly delegates certain regulatory authority to NYCDEP for facilities that it owns including the Mahopac Wastewater Treatment plant, which receives waste from Sewer District 1. In doing so, the Code takes away from the Town any discretionary functions relating to out-of-district sewer connections that the Town could conceivably decide. These decisions fall within the exclusive purview of NYCDEP. There is no alternative construction.

The NOV's findings section cites, among other things, that Petitioners allegedly did not obtain all conditional approvals as required by the 1993 Approval; specifically, Paragraph 8 conditioning 1993 Approval "*upon receipt of all necessary approvals from other agencies, including NYCDEP.*" (emphasis in original); (Ex. J at 3-4, Petition). Then, the NOV orders petitioner's to comply with NYCDEP insofar as it requires submissions and communication the process a request for an out of district sewer connection. (Ex. J at 5, Petition). The NOV is based on false premises.

First, the NOV completely overlooks that Petitioners' installed and tested sewerage equipment predates, and is thus exempt from, the later-adopted requirement in the Watershed Regulations regulating "new" sewer connections discussed in Point I.A, above. As such, this fundamental element of the NOV is incorrect. Secondly, the NOV ignores that NYCDEP has already accepted Petitioners' application materials and submissions from its engineer, and

indicated its willingness to approve the out of district connection application through Matthew Burd. Again, this point was developed more fully in Point I.A, above. As such, the NOV is critically deficient and of no legal import. This is critical to petitioner's application for relief in mandamus because it presumably underlies the Town's basis for suspending its review of Petitioners' application for sanitary sewer connection permit, which was received and filed by the town on June 4, 2019. (Ex. D, Petition).

Based on the above, the town neither had nor has any legal authority to suspend indefinitely this application. It has a nondiscretionary and ministerial duty to mark the application is received and complete and accept the payment of outstanding capital taxes that Petitioners proffered in June, 2019. (Petition, ¶¶ 33-36).

C. PCDOH

PCDOH, through its Policies for Sewage System Repair Permits Bulletin (RP-1) promulgated in July, 2007, assumed responsibility for administering NYCDEP's Watershed Regulations as they pertain to subsurface sewage treatment systems; specifically, Section 18-38 of the Watershed Regulations entitled "Subsurface Sewage Treatment Systems." NYCDEP delegated the administration of Section 18-38 of the Watershed Regulations to PCDOH with respect to reviewing and approving new, altered, modified, and remediated SSTS authority to inspect and enforce subsurface sewage treatment systems including the SSTS to PCDOH.

Accordingly, PCDOH has no review authority whatsoever as it relates to sewer connections or sewer equipment as its sole province is to regulate and enforce standards relating to subsurface sewer treatment systems. As such, PCDOH has no discretionary or administrative review authority with respect to Petitioners' application to NYCDEP and the Town for an out of district connection to Sewer District 1. Even assuming, *arguendo*, that PCDOH has any such

review authority, it can only be administrative and ministerial in nature as it has no substantive review authority or joint review authority with either NYCDEP or the Town.

Under these circumstances, Respondents must now be compelled to review and decide Petitioners' application to NYCDEP and the Town for an out of district connection to Sewer District 1 without any further delay. Thus, mandamus lies to compel Respondents to perform these non-discretionary, ministerial duties.

CONCLUSION

Petitioners respectfully request the Court enter an Order pursuant to CPLR § 7803(1) for the relief set forth in the accompanying verified petition, and for such other and further relief as to this Court seems just, proper, and equitable.

Dated: Brewster, New York
October 29, 2019

Respectfully submitted,

MICHAEL V. CARUSO, P.C.

By: /s/ Michael V. Caruso
MICHAEL V. CARUSO, P.C.
3871 Danbury Road
Brewster, New York 10509
Tel: (845) 207-5452
Fax: (845) 251-0002

In the matter of the application of
MICHAEL A. BARILE and TOMMY A. BONIELLO, Petitioners,

-against-

PUTNAM COUNTY DEPARTMENT OF HEALTH, TOWN OF CARMEL, and NEW YORK
CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, Respondents

For an Order pursuant to New York Civ. Prac. L. & R. Article 7803(1)

MEMORANDUM OF LAW

Pursuant to NYCRR Rule 130-1.1-a, the undersigned, an attorney admitted to practice in the State of New York certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed paper(s) are not frivolous.

Michael V. Caruso, P.C.
Attorneys for Petitioners
3871 Danbury Road
Brewster, New York 10509
Tel: (845) 207-5452
Fax: (845) 251-0002

To:
Attorney(s) for

Service of a copy of the within _____ is hereby admitted.

Attorneys for

Dated, _____

Exhibit 17



Exhibit 18



Vincent Sapienza, P.E.
Commissioner

Paul V. Rush, P.E.
Deputy Commissioner
Bureau of Water Supply
prush@dep.nyc.gov

P.O. Box 358
Grahamsville, NY 12740
T: (845)340-7800
F: (845)334-7175

September 19, 2019

Kenneth Schmitt
Supervisor
Town of Carmel
60 McAlpin Avenue
Mahopac, NY 10541

Dear Supervisor Schmitt:

Our engineers and inspectors at the New York City Department of Environmental Protection (DEP) have spent several weeks reviewing the Town of Carmel's initial request to allow an out-of-district sewer connection for the business at 825 South Lake Blvd., known as Blu at the Lakehouse. The town's request came to us this summer after this restaurant received a violation notice for an unpermitted septic system from the state Department of Environmental Conservation (DEC).

After receiving the town's request to connect this out-of-district business, DEP took a number of rudimentary steps to examine whether the restaurant met our requirements to connect to the town sewage system, which ultimately feeds the New York City-owned Mahopac Wastewater Treatment Plant. Importantly, DEP policy generally prohibits out-of-district connections to collection systems that feed City-owned wastewater treatment plants. Limited exceptions, on a case-by-case basis, have been made in the past to protect water quality.

Our review of this particular request required an on-site inspection of the property's existing septic system. To examine the septic system, a DEP inspector visited the property on Sept. 4 to perform a dye test. However, our staff found that a cap had been removed from the sewer lateral that connects the Blu at the Lakehouse to Carmel Sewer District #1; as such, no dye test of the septic system was performed. This cap was in place, effectively blocking a connection between the restaurant and the sewer system, when DEP visited the site one week prior.

In our view, the unauthorized, out-of-district connection is a clear violation of the Town of Carmel's Sewer Use Law (SUL). The SUL states that the town board can accept sewage from outside the district boundaries, but any "such agreements involving the Mahopac Wastewater treatment plant are not valid without prior written approval from the NYCDEP." DEP has never provided written approval for the lateral that is serving Blu at the Lakehouse. We believe the connection also violates a

1938 agreement between the City of New York and the Town of Carmel, which outlined which properties could connect to the sewer system and under what circumstances they could connect.

We also understand that the property has been issued a notice of non-compliance this week by the Putnam County Department of Health (PCDOH) for the sewer connection. On Sept. 16, we received a note from your town engineer, asking DEP to put the connection request on hold while the town investigates the facts related to the sewer connection at this property.

In addition to these facts, our staff at DEP continue to have concerns about whether the proper as-built drawings for the force main were filed with the PCDOH, and the possibility that a fitting in the manhole could be broken. These are important questions that have not been answered and require more investigation.

Given the restaurant's proximity to Lake Mahopac, which ultimately drains into parts of the New York City reservoir system, it would be reasonable to consider an out-of-district connection to ensure the adequate collection and treatment of wastewater. In the end, this could meet DEP's chief objective of providing maximum protection for water quality in our reservoirs. However, we cannot consider such a request until the correct documents are filed, the proper steps are taken, and until a number of town and county investigations and alleged violations are brought to a satisfactory conclusion.

I have directed my staff to work with all the appropriate parties to ensure this matter is resolved in accordance with our regulations, and in a manner that is most protective of our water supply system.

Sincerely,



Paul V. Rush, P.E.
Deputy Commissioner
Bureau of Water Supply

Exhibit 19

Richard Franzetti, P.E.
Town Engineer



(845) 628-1500
(845) 628-2087
Fax (845) 628-7085

Office of the Town Engineer
60 McAlpin Avenue
Mahopac, New York 10541

October 24, 2019

Mr. David Warne
Assistant Commissioner
New York City
Department of Environmental Protection
Bureau of Water Supply
465 Columbus Avenue
Valhalla, NY 10595

**Re: Out of District Connection Request
825 South Lake Blvd TM 75.43-1-22**

Dear Mr. Warne:

As you are aware, the Town of Carmel (Town) has received an application for and request to process on Out of District ("OOD") connection of 825 South Lake Blvd., Mahopac, NY (Tax Map 75.43-1-22) to Sewer District Number 1. At this time, the Town requests that New York City Department of Environmental Protection (NYCDEP) proceed with the review and potential approval of this OOD connection. Please advise if you require any information to process this request.

The Town recognizes the concerns raised in Paul Rush's September 19, 2019 Letter to Town Supervisor Kenneth Schmitt and we intend to work with the NYCDEP to timely process this OOD request by providing any information necessary on this OOD request. Further, we recognize the need to ensure compliance with the 1938 Agreement and the Carmel Sewer Use Law and intend to take appropriate action.

Should you require any other information from the Town or if you have any questions or comments, I can be reached at (845) 628 – 1500 ext 181.

Sincerely,

Richard J. Franzetti, P.E.
Town Engineer

ecc:

Paul V. Rush, P.E., NYCDEP at PRush@dep.nyc.gov
Lorraine Holdridge, NYSDEC at lorraine.holdridge@dec.ny.gov
Joseph Paravati, PCDOH at Joseph.Paravati@putnamcountyny.gov
Suzanne McDonough, Town of Carmel at sfm@ci.carmel.ny.us
Michael Barile and Tommy Boniello via Counsel at JVanOrden@cozen.com

Exhibit 20



New York City Department of Environmental Protection Application to Construct to the New York Sewer System



7870 Route 42, PO Box 358, Grahamsville, NY 12740

Applicant Information

Owner's Name: _____
 Current Address: _____
 Daytime Phone: _____
 Contact Person (Engineer) _____ Phone # _____

Property Location and Description

Connection Address _____

Tax Map Number: _____ Section: _____ Block: _____ Lot: _____
 Type of Construction Residential/Comm _____
 Proposed Flow (GPD) per unit _____
 Nearest Manhole/Distance _____
 Upstream Manhole/Distance _____
 Downstream Manhole/Distance _____

Proposed Start of construction: _____ End: _____
 Property Owner's Signature I, _____ *Certify that I*

understand and will abide by all local sewer use ordinances.

- Please Site plan with building locations, distance to watercourses, proposed connection layout
 Include: Narrative describing proposal to connect, including flow data

Official Use Only Required Approvals

Signature _____ Date: _____
 Town/Village Representative

* The Town/Village acknowledges this as an acceptable project within the Town or Village and confirms that .
 the connection request complies with local sewer use law.



New York City Department of Environmental Protection



Pre -Application Status: **CONSTRUCTION SHALL NOT START:**

- 1) Complete, The plant can accept the flow, proceed to step 2.
- Denied, the plant can not accept the flow.

Design Review Status:

- 2) Complete, Proceed to construction per attached documentation.
- Denied for the following: _____

Tracking Number: _____ Reviewer's initials _____ Date _____

Please allow 30 days for the Department to review the application for completeness.

Exhibit 21

Van Orden, James

From: Van Orden, James
Sent: Friday, October 25, 2019 5:20 PM
To: mvcarusolaw@gmail.com
Cc: Regis-Hallinan, Linda; Franzetti, Richard
Subject: FW: Mahopac WWTP - Out of District Connection Request 825 South Lake Blvd (TM 75.43-1-22)
Attachments: Sewer application Nov2007.pdf; 10.25.19 NYC DEP to TOC re. 825 South Lake Boulevard.pdf

Dear Mr. Caruso:

Please see the attached letter just received from NYCDEP in response to the Town's OOD connection request letter dated 10/24/2019. It also includes the sewer application that NYCDEP is requiring the Town to submit. The Town will review the attached application and we will identify any items that we do not have, but will need from Mr. Barile and Mr. Boniello, to submit a complete application.

I hope that you have a nice weekend.

Best,
James



James F. Van Orden
Member | Cozen O'Connor

Philadelphia

One Liberty Place, 1650 Market Street Suite 2800 | Philadelphia, PA 19103
P: [215-665-4625](tel:215-665-4625) F: [215-372-2350](tel:215-372-2350)

Pronouns: he, him, his
[Email](#) | [Map](#) | cozen.com



New York City Department of Environmental Protection Application to Construct to the New York Sewer System



7870 Route 42, PO Box 358, Grahamsville, NY 12740

Applicant Information

Owner's Name: _____
 Current Address: _____
 Daytime Phone: _____
 Contact Person (Engineer) _____ Phone # _____

Property Location and Description

Connection Address _____

Tax Map Number: _____ Section: _____ Block: _____ Lot: _____
 Type of Construction Residential/Comm _____
 Proposed Flow (GPD) per unit _____
 Nearest Manhole/Distance _____
 Upstream Manhole/Distance _____
 Downstream Manhole/Distance _____

Proposed Start of construction: _____ End: _____
 Property Owner's Signature I, _____ *Certify that I*

understand and will abide by all local sewer use ordinances.

- Please Site plan with building locations, distance to watercourses, proposed connection layout
 Include: Narrative describing proposal to connect, including flow data

Official Use Only Required Approvals

Signature _____ Date: _____
 Town/Village Representative

* The Town/Village acknowledges this as an acceptable project within the Town or Village and confirms that .
 the connection request complies with local sewer use law.



New York City Department of Environmental Protection



Pre -Application Status: **CONSTRUCTION SHALL NOT START:**

- 1) Complete, The plant can accept the flow, proceed to step 2.
- Denied, the plant can not accept the flow.

Design Review Status:

- 2) Complete, Proceed to construction per attached documentation.
- Denied for the following: _____

Tracking Number: _____ Reviewer's initials _____ Date _____

Please allow 30 days for the Department to review the application for completeness.



Vincent Sapienza, P.E.
Commissioner

Paul V. Rush, P.E.
Deputy Commissioner
Bureau of Water Supply
prush@dep.nyc.gov

465 Columbus Ave
Valhalla, NY 10595

T: (845) 340-7800
F: (845) 334-7175

October 25, 2019

Richard J. Franzetti, P.E.
Town Engineer
Town of Carmel
60 McAlpin Avenue
Mahopac, NY 10541

RE: Mahopac Wastewater Treatment Plant
Out of District Connection Request
825 South Lake Boulevard

Dear Mr. Franzetti,

The New York City Department of Environmental Protection (NYCDEP) is in receipt of your October 24, 2019 Out of District Connection Request for the above-referenced property (the "Property").

As your request recognizes, allowing the Property to connect to NYCDEP's Mahopac Wastewater Treatment Plant is beyond the scope of NYCDEP's obligations under our 1938 Agreement with the Town of Carmel and, pursuant to the Carmel Sewer Use Law Section 120-15, such connection is only permitted with the written consent of the NYCDEP and subject to the terms and conditions set by the NYCDEP.

Although NYCDEP had commenced a review of the appropriateness of this connection during the summer, we put the review on hold pursuant to the request of the Town Engineer due to a pending Putnam County Department of Health investigation. In order for NYCDEP to proceed with the review process, please complete and return the enclosed application form. In addition, as mentioned in Deputy Commissioner Rush's September 19, 2019 letter, we are requesting as-built drawings of the sewer line, information on the condition of fittings in the manhole, as well as monthly water usage data from the Property.

Should the request be granted, we expect to require that the owner of the Property enter into an agreement with NYCDEP documenting the terms and conditions of the connection.

We continue to believe that allowing this Out of District Connection may be possible given the potential water quality benefits and look forward to working with you to conduct an expeditious review.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David S. Warne', with a long horizontal flourish extending to the right.

David S. Warne
Assistant Commissioner

cc: Paul V. Rush, P.E., NYCDEP Deputy Commissioner
Lisa Sofio, NYCDEP Bureau of Legal Affairs
Linda Geary, New York City Law Department
Lorraine Holdridge, NYSDEC
Joseph Paravati, PCDOH
Suzanne McDonough, Town of Carmel
Michael Barile and Tommy Boniello via Counsel

Exhibit 22



**New York City Department of Environmental Protection
Application to Construct to the New York Sewer System**



7870 Route 42, PO Box 358, Grahamsville, NY 12740

Applicant Information

Owner's Name: MICHAEL BARILE + TOMMY A BONICELLO
 Current Address: [REDACTED] MAHOPAC N.Y.
 Daytime Phone: [REDACTED]
 Contact Person (Engineer) JACK KARELL Phone # [REDACTED]

Property Location and Description

Connection Address 825 SOUTH LAKE BLVD
MAHOPAC N.Y. 10541
 Tax Map Number: _____ Section: 75.43 Block: 1 Lot: 22
 Type of Construction Residential/Comm Comm
 Proposed Flow (GPD) per unit 800 GPD
 Nearest Manhole/Distance _____
 Upstream Manhole/Distance _____
 Downstream Manhole/Distance _____
 Proposed Start of construction: 1992 End: 2019
 Property Owner's Signature [Signature] Certify that I
understand and will abide by all local sewer use ordinances.
 Please Site plan with building locations, distance to watercourses, proposed connection layout
 Include: Narrative describing proposal to connect, including flow data

***Official Use Only* Required Approvals**

Signature _____ Date: _____
 Town/Village Representative

* The Town/Village acknowledges this as an acceptable project within the Town or Village and confirms that the connection request complies with local sewer use law.



New York City Department of Environmental Protection



Pre -Application Status: CONSTRUCTION SHALL NOT START:

- 1) Complete, The plant can accept the flow, proceed to step 2.
- Denied, the plant can not accept the flow.

Design Review Status:

- 2) Complete, Proceed to construction per attached documentation.
- Denied for the following: _____

Tracking Number: _____ Reviewer's initials _____ Date _____

Please allow 30 days for the Department to review the application for completeness.

Exhibit 23

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

October 30, 2019

David Warne, Assistant Commissioner
New York City DEP
465 Columbus Avenue
Valhalla, NY, 10595

Re: Michael Barile & Tommy Boniello - Out of District Sewer Connection
Carmel Sewer District # 1, Extension # 3
Blu Restaurant, South Lake Boulevard
Carmel (T); TM # 75.43-1-42

Dear Mr. Warne::

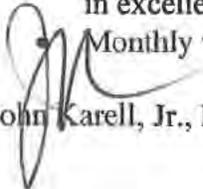
In accordance with your letter dated October 25, 2019, attached herewith please find plans and supporting documents in an application for approval of an "Out of District" Sewer Connection as follows:

- Two sets of plans
- Application form
- Letter to Joseph Paravati, P.E. dated July 10, 2019
- Letter to Richard Franzetti, P.E. dated June 27, 2019
- Certification from Roy Fredrickson, P.E., dated June 29, 2019
- Pressure test result dated June 26, 2019
- Grease Trap information dated July 15, 2019
- Water usage summary

Relative to your request in paragraph three of the captioned letter please be advised as follows:

- The attached construction plans prepared by Insite Engineering for the installation of the sewer force main. The sewer force main was installed generally in accordance with the Insite plan and are to be considered the "as-built" plan.
- The only fitting in the manhole is a ninety degree bend on the force main. This fitting is in excellent condition.

• Monthly water usage is tabulated in the attached document.


John Karell, Jr., P.E.

Applicant Information

Owner's Name: MICHAEL BARILE & TOMMY A BONIBELLO
 Current Address: [REDACTED] MAHARAC N.Y.
 Daytime Phone: [REDACTED]
 Contact Person (Engineer) JACK KARELL Phone # [REDACTED]

Property Location and Description

Connection Address 825 SOUTH LAKE BLVD
MAHARAC N.Y. 10541
 Tax Map Number: Section: 75,43 Block: 1 Lot: 22
 Type of Construction Residential Comm
 Proposed Flow (GPD) per unit 800 GPD
 Nearest Manhole/Distance _____
 Upstream Manhole/Distance _____
 Downstream Manhole/Distance _____
 Proposed Start of construction: 1997 End: 2019
 Property Owner's Signature [Signature] Certify that I
understand and will abide by all local sewer use ordinances.

- Please Site plan with building locations, distance to watercourses, proposed connection layout
 Include: Narrative describing proposal to connect, including flow data

***Official Use Only* Required Approvals**

Signature _____ Date: _____
 Town/Village Representative

* The Town/Village acknowledges this as an acceptable project within the Town or Village and confirms that the connection request complies with local sewer use law.

New York City Department of Environmental Protection

Pre -Application Status: CONSTRUCTION SHALL NOT START:

1) Complete, The plant can accept the flow, proceed to step 2.
 Denied, the plant can not accept the flow.

Design Review Status:

2) Complete, Proceed to construction per attached documentation.
 Denied for the following: _____

Tracking Number: _____ Reviewer's initials _____ Date _____

Please allow 30 days for the Department to review the application for completeness

Date		Meter Read	Approx use per day	Total Usage
14-Jun	Fri	0.02	900	2700
15-Jun	Sat		900	
16-Jun	Sun		900	
17-Jun	Mon	2.7	700	2800
18-Jun	Tues		700	
19-Jun	Wed		700	
20-Jun	Thurs		700	
21-Jun	Fri	5.5	900	2700
22-Jun	Sat		900	
23-Jun	Sun		900	
24-Jun	Mon	8.2	675	2700
25-Jun	Tues		675	
26-Jun	Wed		675	
27-Jun	Thurs		675	
28-Jun	Fri	10.8	933	2799
29-Jun	Sat		933	
30-Jun	Sun		933	
1-Jul	Mon	13.7	650	3050
2-Jul	Tues	14.35	760	
3-Jul	Wed	15.1	800	
4-Jul	Thurs	15.9	840	
5-Jul	Fri	16.75	900	2680
6-Jul	Sat	17.65	920	
7-Jul	Sun	18.5	860	
8-Jul	Mon	19.4		
			Total:	19429
			Daily Average:	809.54

Date	Meter Read
9-Jul	20.1
16-Jul	26.6
23-Jul	32.3
17-Aug	50.7
25-Aug	59.2
9-Sep	73.2
19-Sep	79.5
27-Oct	99.3

June	17 Days
July	31 Days
August	31 Days
September	30 Days
October	<u>27 Days</u>
Total: 136 Days	
- 5 Closed Days	
$99300 \div 131 \text{ Days} = 758$	

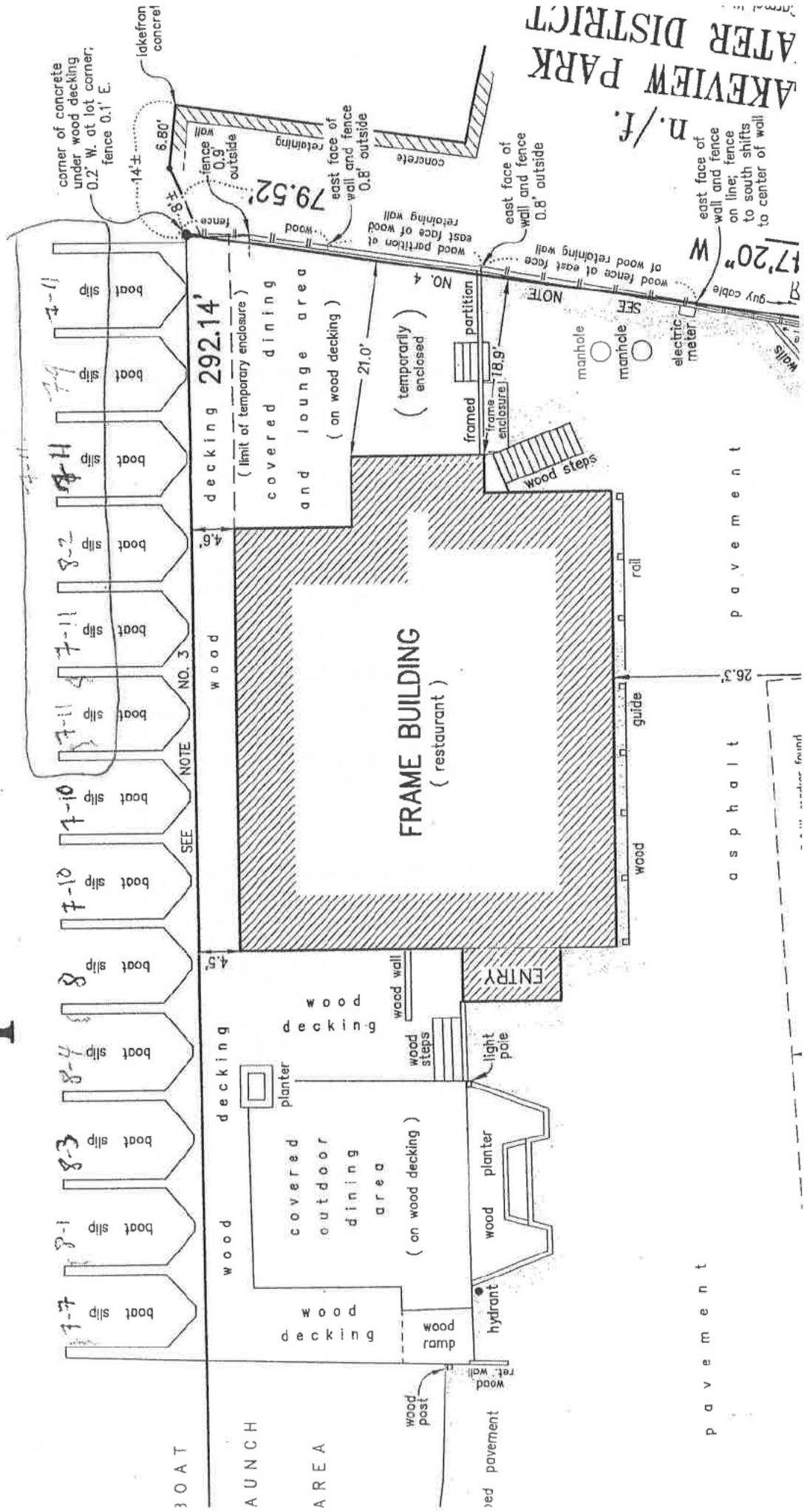
Closed 2-3 weeks in January/February
 Closed 2 days per week in March
 Closed 1 day per week in April
 In Season 5/25 - 9/5
 Closed 1 day per week in October
 Closed 2 days per week November-March

$73200 \div 88$ in season use days (6/17-9/9)
831 daily

$26100 \div 44$ off season use days (9/9-10/27)
593 daily

Average over 1 year expected at 700 daily (tops)

ahopac



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

July 10, 2019

Joe Paravati, P.E.
Putnam County Department of Health
Geneva Road
Brewster, NY, 10509

Re: Force Main Installation
Blu Restaurant
South Lake Blvd.
Carmel (T), Mahopac Hamlet
TM # 75.43-1-42

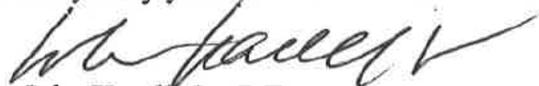
Dear Mr. Paravati:

Attached herewith please find a copy of Mr. Fredrickson's certification of the captioned force main for your records in accordance with the Putnam County Health Department approval dated February 3, 1993.

Attached is a copy of the recent pressure testing of the force main on June 26, 2019. It is noted that the force main was installed generally in accordance with the plans prepared by Insite Engineering dated March 4, 1992, revised January 29, 1993. The force main pressure test indicated that the main is watertight.

If you have any questions please call me at 845 721 0455.

Very truly yours,


John Karell, Jr., P.E.

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

June 27, 2019

Richard Franzetti, P.E.
Town of Carmel Engineering Department
Town Hall, McAlpin Avenue
Mahopac, New York, 10541

Re: Michael Barile - Out of District Sewer Connection
Carmel Sewer District # 1, Extension # 3
Blu Restaurant, South Lake Boulevard
Carmel (T); TM #

Dear Mr. Franzetti”:

Attached herewith please find plans and supporting documents in an application for approval of an “Out of District” Sewer Connection as follows:

- Two sets of plans
- Application form

The following should be noted relative to this application

1. Matt Burd, representing the NYCDEP, by email dated May 15, 2019, has been contacted relative to their approval of the out of district connection.
2. The calculation of back capital charges from the Town Comptroller is attached. It is intended to pay such charge immediately prior to the Town’s approval of the connection.
3. The existing use of the property is a restaurant with approximately 86 seats..
4. The anticipated sewerage discharge is 858 gallons per day, based upon actual water usage as determined utilizing a water meter. The water meter was installed on June 13, 2019 with a reading of 2 gallons, on June 25, 201, twelve (12) days later the meter reading was 10,300 gallons. This is an average daily usage, of 858 gallons. It should be noted that some amount of water is consumed and therefore the average daily usage would be slightly less, maybe 100 gallons per day. We will continue to monitor water usage going forward.
5. A sewerage pumping station is required to pump sewage from the restaurant to the manhole due to the difference in elevation. The plans show the sewage pumping station.
6. This property will continue to be served by a drilled well.
7. The force main in Route 6N was installed in 1993 consisting of a 2 inch HDPE pipe from this property to the existing sewer manhole in Route 6N at Clark Place. This line was pressure tested in 1993 and reportedly found to be pressure tight. This line was retested on June 26,2019. The results are as follows:
 - Start pressure 160 psi, 10 AM
 - End pressure 160 psi, 2 PMZero drop in pressure indicates a watertight pipe.

8. With respect to outside agencies:

- Town or State Highway approval – not required. No work is proposed in the State right of way.
- NYSDEC - not believed to be required.
- NYCDEP – see item # 1 above

Very truly yours,



John Karell, Jr., P.E.

June 29, 2019

Joseph Paravati, P.E.
Putnam County Department of Health
Geneva Road
Brewster, New York, 10509

Re: **Blue Restaurant (formerly Mahopac Beach)**
Route 6N, Carmel (T), hamlet of Mahopac
TM # 75.43-1-42

Dear Mr. Paravati:

Please be advised that in the summer of 1993 the writer inspected the construction of approximately 1,370 feet of 2 inch low pressure sewer line in Route 6N from the Mahopac Beach Restaurant property to a manhole in Route 6N at the intersection with Clark Place.

Based upon such inspection it is certified that this sewer line was constructed in accordance with plans approved by the Putnam County Department of Health on February 3, 1993 such plans being prepared by Insite Engineering revised January 29, 1993.

It is further certified that during that summer a pressure test was conducted, witnessed by the writer. This pressure test indicated no pressure drop over a 2 hour period. Actual test result data is not available.

It is noted that at that time the force main was capped in the manhole and to my knowledge was never placed in service and that a certification of construction compliance was not provided to the Health Department in 1993.

Very truly yours



Roy Fredrickson, P.E.



WATER PRESSURE TEST

LOCATION: Rte 6 N DATE: 6/26/19
 DESCRIPTION: SEWER FORCE MAIN - LOW PRESSURE
 CONTRACTOR: B & J PLUMBING
 SECTION TESTED: FROM BLU RESTAURANT TO EX-SEWER MH RTE 6 @ CLARK PLACE
(sta) (sta)
 LENGTH TESTED: 1370 LF PIPE DIAMETER: 2" HDPE
 TYPE PIPE: HDPE TYPE JOINTS: _____
 DURATION OF TEST: 4 HRS *MINIMUM OF 2 HOURS

TYPE OF APPURTENANCES ON TESTED SECTION (list):
NONE

W = 40 WHERE W = WORKING PRESSURE (LB/IN²)
 L = 0.16 WHERE L = ALLOWABLE LOSS IN (GAL/HR)
 N = 1370 WHERE N = LENGTH OF PIPE BEING TESTED (FT)
 D = 2 WHERE D = DIAMETER OF PIPE IN (INCHES)
 P = 160 P = AVERAGE TEST PRESSURE IN (LB/IN²)

FORMULA: $L = \frac{ND\sqrt{P}}{133,200}$ P = 1.25 x W 1.25(40) = 60

*TEST	TIME	PRESSURE (PSI)
START <u>10 AM</u>	<u>10 AM</u>	<u>160</u>
STOP <u>2 PM</u>		<u>160</u>

PRESSURE DROP LB/IN² : 0
 WATER ADDED GAL/HR : 0
 ALLOWABLE LOSS GAL/HR : 0.16

ACTUAL < ALLOWABLE % : 100 PASS FAIL

REMARKS:	 Certified
----------	--

Initials: JB JB
 Professional Engineer Date: 6/26/19

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

July 15, 2019

EXISTING GREASE TRAP SIZE

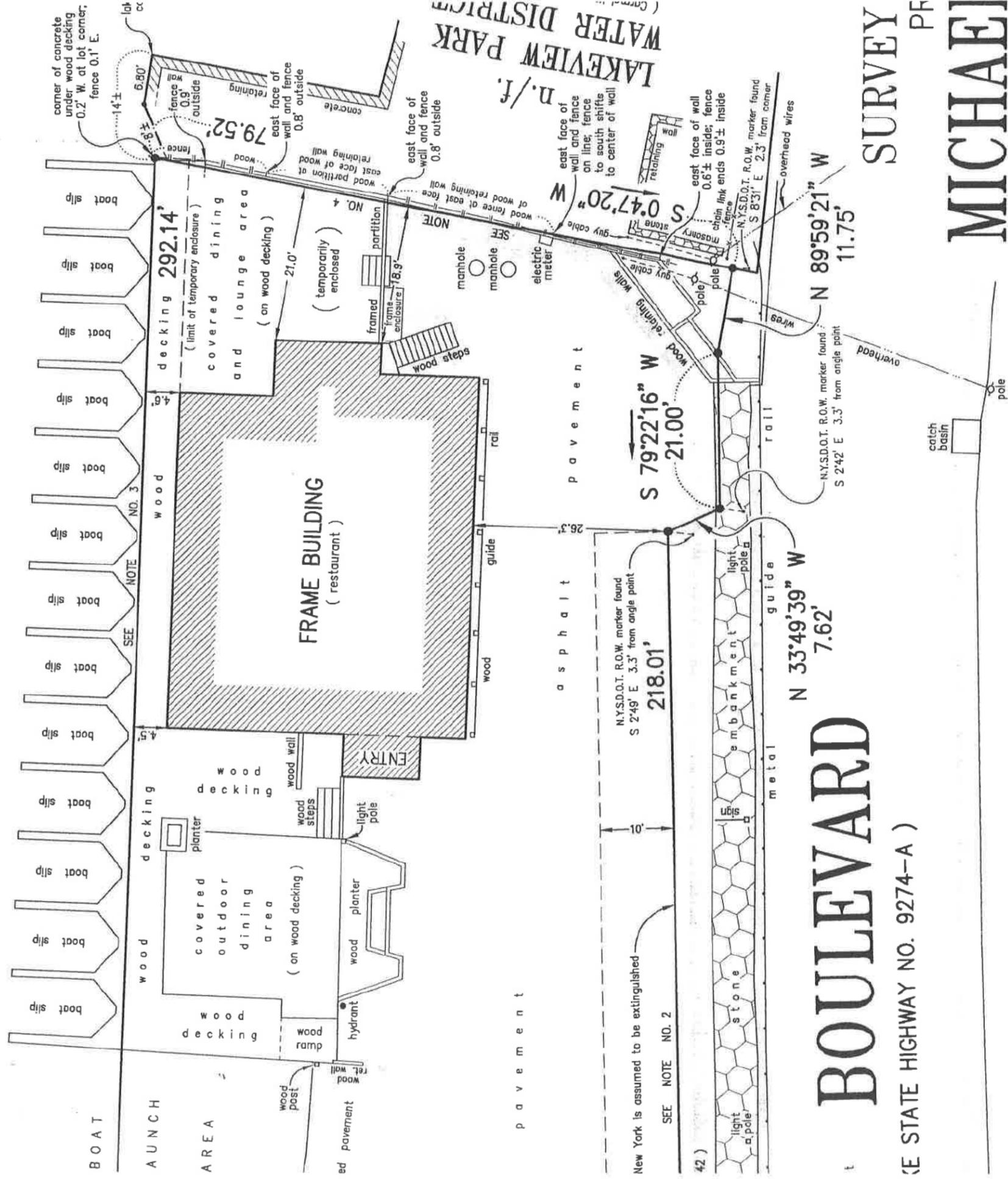
There are three grease traps within the restaurant kitchen. All waste water that contains any measure of grease flows into the first screened above ground grease trap (#1) then into a second screened above ground grease trap, (#2) then into a sub surface grease trap under the floor under the sink (#3). Grease trap # 3 also has a screen. Grease trap sizes are as follows:

- # 1 14" x 20" x 8" = 1 cubic foot
- # 2 15" x 22" x 14" = 2.6 cubic feet
- # 3 18" x 30" x 24" = 7.5 cubic feet

Each trap is emptied once per week on Thursday.

John Karell, Jr., P.E.

ahopac



SURVEY
TOMMY MICHAEL
 PROPI
TOWN
COUNTY
STATE

SC
 DA

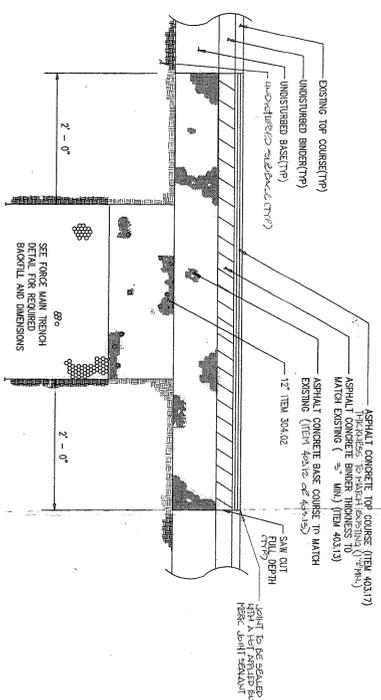
(E STATE HIGHWAY NO. 9274-A)

Only copies of the original of this survey map marked with both this surveyor's embossed seal and his signature in red ink shall be considered as valid true copies.

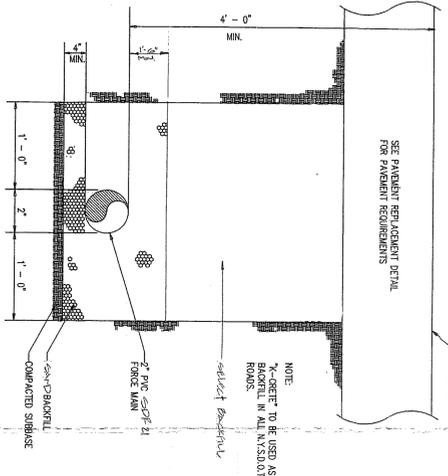
Underground improvements, structures, utilities or encroachments, and any easements related thereto, are not shown hereon unless otherwise noted.

Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of Section 7209, Sub-Division 2 of the New York State Education Law.

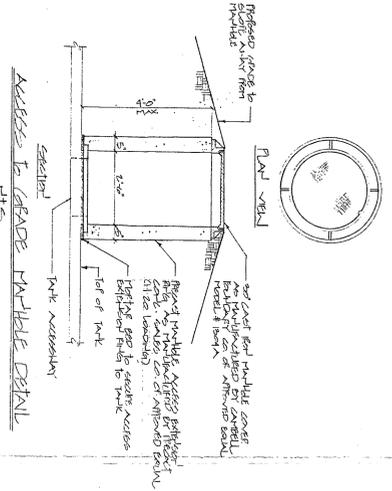
The premises shown hereon may be affected by easements, rights of way, covenants, restrictions and conveyances not specifically referenced or recited in documents furnished to this surveyor and, therefore, not reflected hereon. It is hereby advised that any parties with a current or potential interest in this property obtain proper assurances as to quality of title and access, permitted uses and pertinent environmental factors, if any, affecting this property prior to conveyance, design work and/or construction.



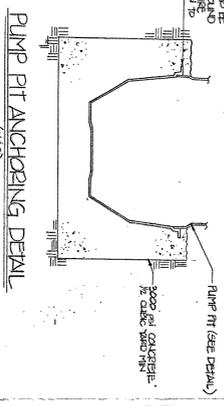
PAVEMENT REPLACEMENT DETAIL



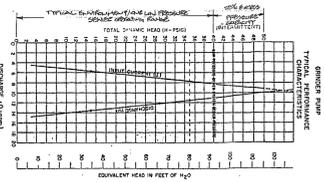
FORCE MAIN TRENCH DETAIL



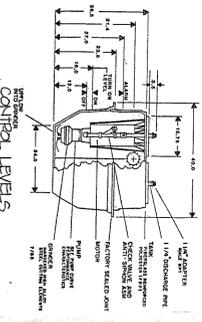
ACCESS TO GRADE MANHOLE DETAIL



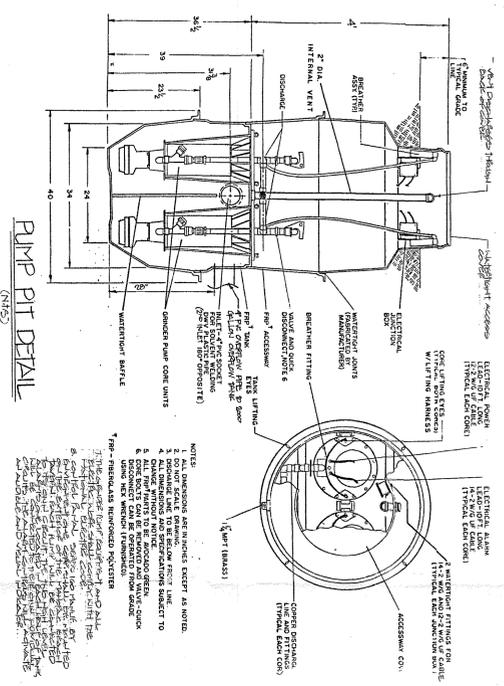
PUMP PIT ANCHORING DETAIL



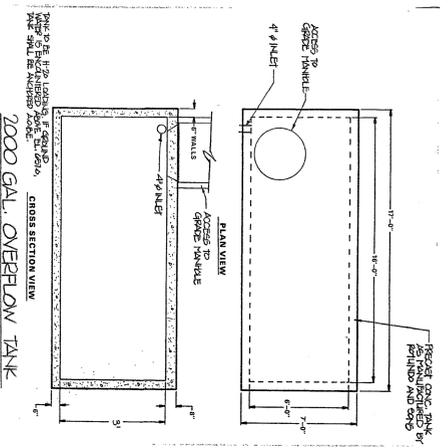
PUMP CURVE



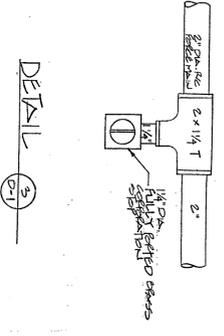
CONTROL LEVELS



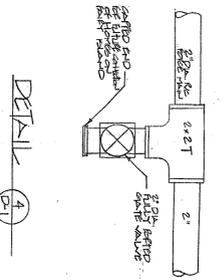
PUMP PIT DETAIL



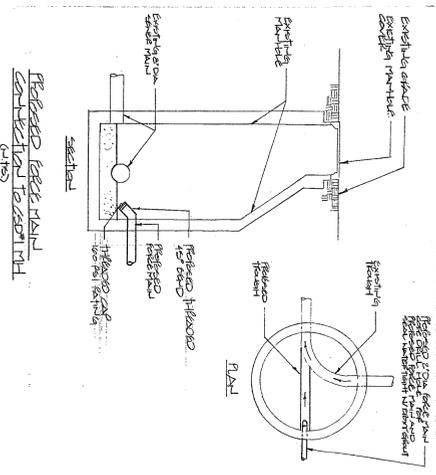
2000 GAL. OVERFLOW TANK



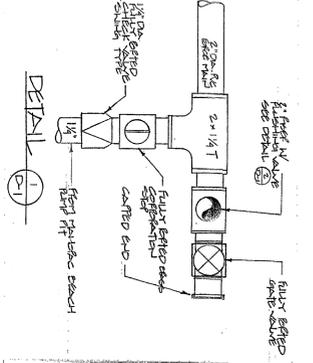
DETAIL 3



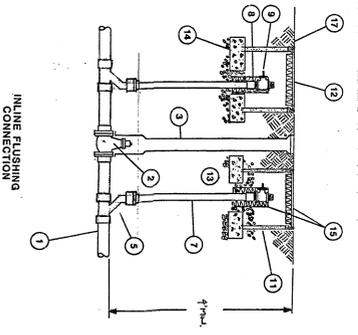
DETAIL 4



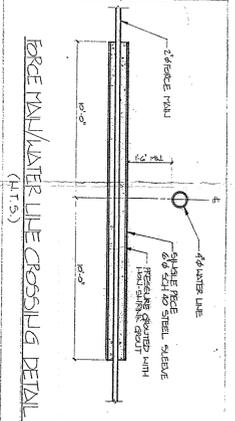
REARWARD LABEL MAIN



DETAIL 1

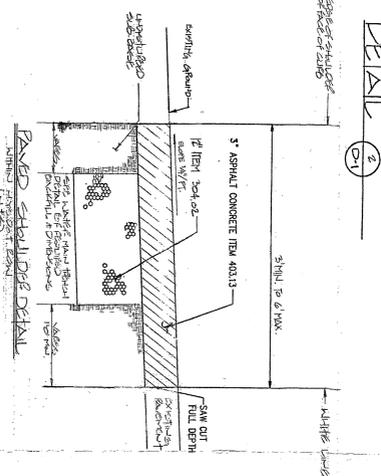


IN-LINE FLUSHING CONNECTION



FORCE MAIN/WATER LINE CROSSING DETAIL

- FLUSHING CONNECTIONS**
1. LOW PRESSURE SEWER SYSTEM (LSS) MAIN
 2. GATE VALVE - fully opened size of LSS main.
 3. GATE VALVE - fully closed size of LSS main.
 4. GATE VALVE - fully closed size of LSS main.
 5. LUTE - size of LSS main.
 6. 2\"/>
 - 7. 2\"/>
 - 8. THREADED ADAPTER
 - 9. 2\"/>
 - 10. FINISHED GRADE
 - 11. 2\"/>
 - 12. GATE VALVE - fully closed size of LSS main.
 - 13. GATE VALVE - fully closed size of LSS main.
 - 14. GRAVEL BEDDING.
 - 15. INSULATION
 - 16. CONCRETE PAD.
 - 17. FINISHED GRADE



PAVED SHOULDER DETAIL

PULASKI COUNTY HEALTH DEPARTMENT NOTES

1. Pulaski County Health Department certification is based on the information provided by the applicant. The applicant's food and drawings as shown on the approved drawings are subject to have prior Pulaski County Health Department approval.
2. Unapproved modifications made to this drawing after the date of Pulaski County Health Department approval voids said approval. Pulaski County Health Department approval voids said approval. A major change shall be required and daily readings furnished to the Pulaski County Health Department each month.
3. The pump pit is to receive sanitary wastes only. The discharge of substances other than sanitary wastes, or other discharges of sanitary wastes, shall be prohibited. The applicant shall be responsible for obtaining all necessary permits from the Pulaski County Health Department to ensure compliance with these requirements.
4. Pulaski County Health Department shall be promptly notified in the event that any wastes other than sanitary domestic sanitary wastes are discharged into this facility.
5. The conditions noted on the Pulaski County Department of Health Department approval are an integral part of this approval and compliance is required.
6. The existing SSOS is to be permanently abandoned and any damage is to be detected, cranked, and filled with suitable fill.

NO.	DATE	BY	REVISION
1	1/19/16	JK	ISSUED FOR PERMITS
2	1/17/16	JK	REVISED PER COMMENTS
3	1/17/16	JK	REVISED PER COMMENTS
4	1/17/16	JK	REVISED PER COMMENTS
5	1/17/16	JK	REVISED PER COMMENTS
6	1/17/16	JK	REVISED PER COMMENTS

INSITTE ENGINEERING & DESIGN, P.C.
70 HERBERT AVE., COLUMBIA, NEW YORK 10512 (516) 255-4800

PROJECT: THE MAHOPAC BEACH

SCALE: DETAILS

DATE: 3-4-02

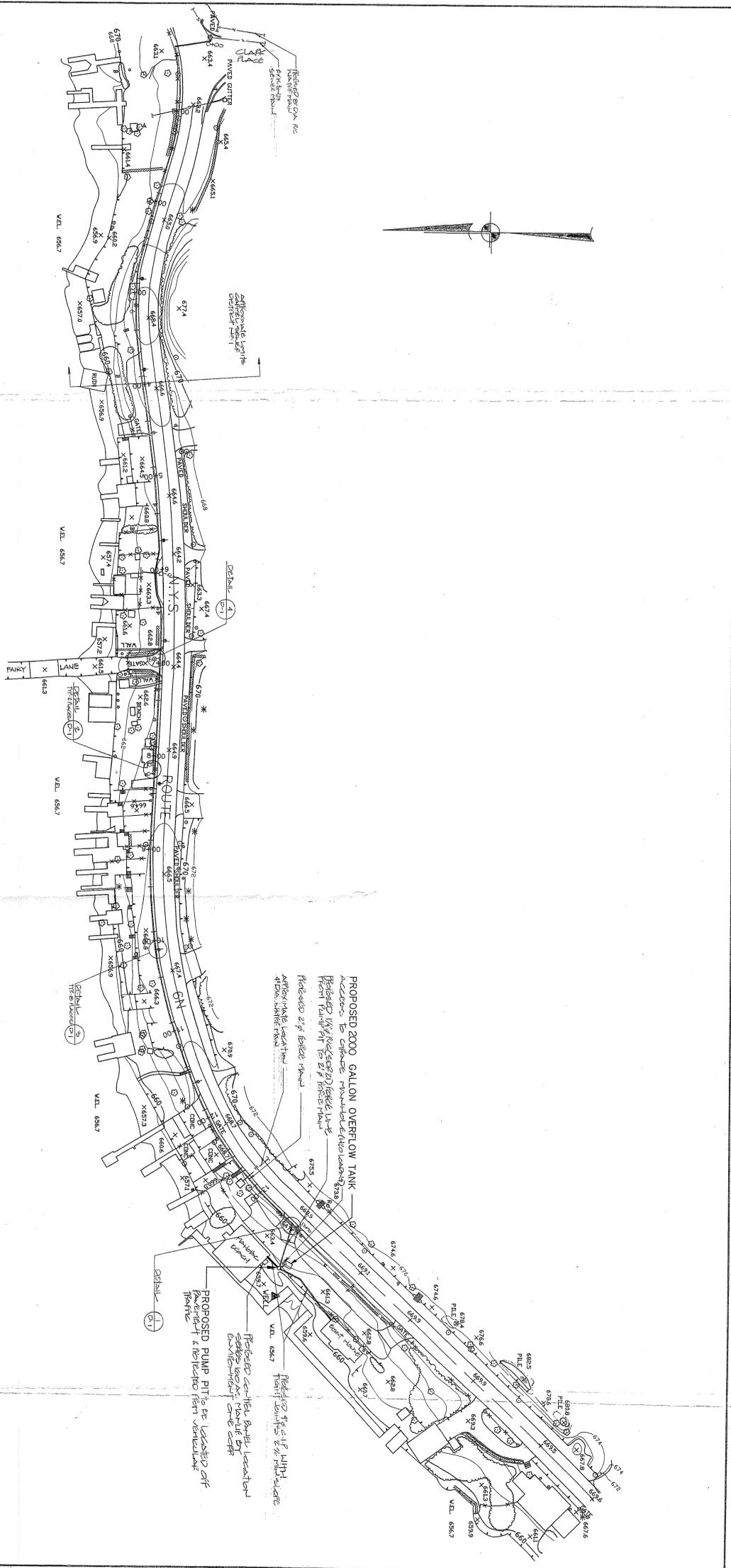
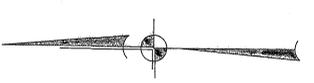
BY: MFB

APPROVED: JJC

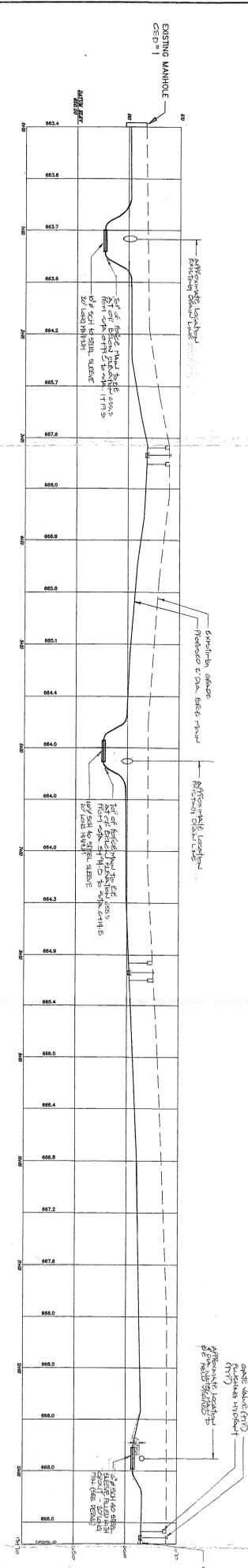
PROJECT NO.: 92106

DRAWING NO.: D-1

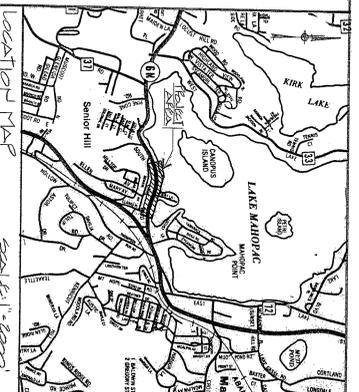
SHEET: 2



LAKE MAHOPAC
PLAN
SCALE 1"=50'



PROFILE 2'-0" DIA. TRENCH MAN
SCALE 1"=10'



LOCATION MAP
SCALE 1"=2000'

BLAZED OUTER
MICHAEL BAULE
TOWN ENGINEER
300 WEST LANE BLDG
MADISON, MISSOURI 65201
TOWN OF CARMEL
RUSHMAN COUNTY, MISSOURI

- GENERAL NOTES:
1. The proposed force main will connect into Grand Street District No. 1.
 2. The proposed force main is designed to accommodate future hook up of an empty island.
 3. The force main is a low pressure sewer line utilizing individual ejector pumps as manufactured by Environment One Corporation or approved equal.
 4. Future connections into the proposed force main will require installation of individual ejector pumps to prevent the system as a low pressure sewer. The proposed force main is designed to accommodate future hook up of an empty island. The proposed force main is designed to accommodate future hook up of an empty island.
 5. Topography shown hereon was compiled photographically from aerial photography dated November 14, 1991.
 6. The Mahopac Beach will pay for the installation and maintenance of the force main.
 7. Elevation conform to the National Oceanic Standard Vertical Datum of 1989, contour interval of 2'.
 8. The proposed force main shall be SDR 21 which has a pressure rating of 150 psi.
 9. All sewer meter flow data supplied to the Putnam County Health Department shall be supplied to the Town of Carmel.
 10. The Town of Carmel reserves the right of inspection of the premises to insure compliance with these specifications.
 11. The proposed force main connections to the existing SDR 21 at a manhole located at the intersection of the proposed force main and the existing force main shall be approved by the Town of Carmel.
 12. THE DESIGN OF THE SYSTEM APPROVAL SHALL BE DEMANDED.

NO.	DATE	REVISION	BY
1	07/12	REVIEW AND SET COMMENTS	JJK
2	07/12	REVIEW AND SET COMMENTS	JJK
3	07/12	REVIEW AND SET COMMENTS	JJK
4	07/12	REVIEW AND SET COMMENTS	JJK
5	07/12	REVIEW AND SET COMMENTS	JJK
6	07/12	REVIEW AND SET COMMENTS	JJK

PROJECT: THE MAHOPAC BEACH

INSITE ENGINEERING & DESIGN P.C.
76 BERKSHIRE AVE. CARMEL, NEW YORK 10912 (914) 283-4200

DATE: 3-4-92

SCALE: AS NOTED

PROJECT NO: 92106

DESIGNER: JJC

CHECKER: MRB

ISSUE NO: P-1

SHEET: 1

TOTAL SHEETS: 2

Exhibit 24



**New York City Department of Environmental Protection
Application to Construct to the New York Sewer System**



7870 Route 42, PO Box 358, Grahamsville, NY 12740

Applicant Information

Owner's Name: MICHAEL BARILE + TOMMY A BONIELLO
 Current Address: [REDACTED] MAHARAC N.Y.
 Daytime Phone: [REDACTED]
 Contact Person (Engineer) JACK KARELL Phone # [REDACTED]

Property Location and Description

Connection Address 825 SOUTH LAKE BLVD
MAHARAC N.Y. 10541
 Tax Map Number: _____ Section: 75.43 Block: 1 Lot: 22
 Type of Construction Residential/Comm Comm
 Proposed Flow (GPD) per unit 800 GPD
 Nearest Manhole/Distance _____
 Upstream Manhole/Distance _____
 Downstream Manhole/Distance _____
 Proposed Start of construction: 1992 End: 2019
 Property Owner's Signature [Signature] Certify that I
understand and will abide by all local sewer use ordinances.
 Please Site plan with building locations, distance to watercourses, proposed connection layout
 Include: Narrative describing proposal to connect, including flow data

Official Use Only Required Approvals	
Signature <u>Richard J. [Signature]</u>	Date: <u>11-05-19</u>
Town/Village Representative	
* The Town/Village acknowledges this as an acceptable project within the Town or Village and confirms that the connection request complies with local sewer use law.	
New York City Department of Environmental Protection	
Pre -Application Status: CONSTRUCTION SHALL NOT START:	
1) <input type="checkbox"/> Complete, The plant can accept the flow, proceed to step 2. <input type="checkbox"/> Denied, the plant can not accept the flow.	
Design Review Status:	
2) <input type="checkbox"/> Complete, Proceed to construction per attached documentation. <input type="checkbox"/> Denied for the following: _____	
Tracking Number: _____	Reviewer's initials _____ Date _____

Please allow 30 days for the Department to review the application for completeness.

Exhibit 25

Van Orden, James

From: Michael Caruso <mvcarusolaw@gmail.com>
Sent: Tuesday, November 5, 2019 12:11 PM
To: Van Orden, James
Cc: Regis-Hallinan, Linda
Subject: Re: FW: 10-29-19 - NYCDEP Applicaiton Request for Additinal inforamtion

****EXTERNAL SENDER****

Thanks, James. Michael Barile should be the contact person for granting access to the premises on 11/12 at 9am.

Regards,
Mike

On Tue, Nov 5, 2019 at 12:09 PM Van Orden, James <JVanOrden@cozen.com> wrote:

Hi Mike:

Given your email below, as no attorney for the town or the property owner will be attending, I believe we are on the same page. Please advise who the (non-counsel) contact person will be for access to the premises on Nov. 12th at 9 AM. The inspection lead for the Town will be Town Engineer Rich Franzetti. I will be advising DEP, DEC, and DOH and any technical contractor support that things are in place for the inspection on the 12th at this time. When I do that, I will make it clear that no attorneys are to be present (doubt it would be an issue, but I will confirm that given your concerns).

Best,

James



James F. Van Orden
Member | Cozen O'Connor

Philadelphia

One Liberty Place, [1650 Market Street Suite 2800](#) | Philadelphia, PA 19103
P: [215-665-4625](tel:215-665-4625) F: [215-372-2350](tel:215-372-2350)

Pronouns: he, him, his
[Email](#) | [Map](#) | cozen.com

From: Michael Caruso <mvcarusolaw@gmail.com>
Sent: Tuesday, November 5, 2019 10:39 AM
To: Van Orden, James <JVanOrden@cozen.com>
Cc: Regis-Hallinan, Linda <LRegis-Hallinan@cozen.com>
Subject: Re: FW: 10-29-19 - NYCDEP Applicaiton Request for Additinal inforamtion

****EXTERNAL SENDER****

James:

I will not be in attendance and I am on aware of any other attorneys representing my client who would attend either. I can confirm that I will not be contacting town departments directly relating to this matter.

With respect to the third paragraph of your responsive email, in ordinary circumstances there would be no need for legal counsel for the town, or any of its constituent departments, to attend a site inspection attendant to the issuance of an administrative permit. Obviously, I am aware that your firm is outside counsel to the town pursuant to an ongoing investigation. I am not privy to the details of your firm's engagement or the scope of your representation and what it specifically encompasses (or the Town attorney may have delegated). Nor have I been provided any information other than what is available in the news identifying the specific terms and conditions of your firm's representation of the Town.

So, in view of that, I cannot consent to legal counsel entering on the premises when the purpose of the inspection and visit should be purely administrative to determine whether the sewer apparatus functions and is connected properly such that a permit can issue.

Again, my goal is simply to allow the interested agencies and departments to perform their administrative functions as they need to without simultaneously constraining your firm's responsibilities to the Town. In my capacity, my firm represents a private landowner seeking to resolve a matter of interagency administrative review and approval.

Regards,

Mike

On Tue, Nov 5, 2019 at 9:22 AM Van Orden, James <JVanOrden@cozen.com> wrote:

Hi Mike:

I can confirm that no one from Cozen O'Connor will be in attendance and I am not aware that anyone other than non-legal personnel from the Town, DEP, DOH, DEC and any technical consultants that will be there in support.

Please note that we do not give our consent to any direct communications between Town personnel and yourself in our absence, and would appreciate your confirming that you or other counsel for Mr. Barile will not be attending as well.

I'm not sure on what basis you assert that this is, "a matter that should be strictly held within reviewing agency purview and not outside legal counsel," and we do not waive the right of Town officials to consult with us or to use the results of the inspections in the course of their official duties.

Please confirm in writing by 2 PM today that your client has consented to access by the Town to proceed on the 12th with the understanding that the regulatory agencies above also intend to attend and participate.

Also, can you please advise who will be at the Property on Nov. 12th in order to provide access to the building, etc. if that is necessary?

Best,

James

James F. Van Orden
Member | Cozen O'Connor



Philadelphia
One Liberty Place, [1650 Market Street Suite 2800](#) | [Philadelphia, PA 19103](#)
P: [215-665-4625](#) F: [215-372-2350](#)

Pronouns: he, him, his
[Email](#) | [Map](#) | [cozen.com](#)

From: Michael Caruso <mvcarusolaw@gmail.com>
Sent: Monday, November 4, 2019 3:50 PM
To: Van Orden, James <JVanOrden@cozen.com>
Cc: Regis-Hallinan, Linda <LRegis-Hallinan@cozen.com>
Subject: Re: FW: 10-29-19 - NYCDEP Applicaiton Request for Additinal inforamtion

****EXTERNAL SENDER****

James:

My client consents to the interested agencies (NYSDEP, PCDOH, and, if necessary, NYSDEC) and agency personnel to attend any scheduled inspection(s). My client does not consent to counsel attending. This is a matter that should be strictly held within reviewing agency purview and not outside legal counsel. Again, I'm aware of your firm's role with the Town at this time and my intentions, of course, are not to be obstructive in that respect (please correct me or qualify if you feel differently), but this permit review and inspection process should not be a part of a broader investigation. Again, please correct me if you disagree, but that is the scope of authority I have on behalf of my client at this time.

Regards,

Mike

On Mon, Nov 4, 2019 at 9:23 AM Van Orden, James <JVanOrden@cozen.com> wrote:

Good morning, Mike:

I am following up on access for the Town of Carmel inspection of [825 South Lake Blvd](#). Can you please confirm whether we have access to conduct an onsite inspection starting at 9 AM on Tuesday, November 12 in accordance with the details in our emails in the chain below. We expect NYCDEP and NYSDEC to attend and still have not received word from Putman County on their intentions regarding their participation. Please advise whether your client will consent to access for that inspection no later than 5 PM today, November 4, 2019, so that we are aware of your client's position in time to have things in place for the inspection.

Thanks very much.

Best,

James



James F. Van Orden
Member | Cozen O'Connor

Philadelphia

One Liberty Place, [1650 Market Street Suite 2800](#) | Philadelphia, PA 19103
P: [215-665-4625](#) F: [215-372-2350](#)

Pronouns: he, him, his
[Email](#) | [Map](#) | [cozen.com](#)

From: Van Orden, James
Sent: Wednesday, October 30, 2019 11:57 AM
To: 'Michael Caruso' <mvcarusolaw@gmail.com>
Cc: Regis-Hallinan, Linda <LRegis-Hallinan@cozen.com>
Subject: RE: FW: 10-29-19 - NYCDEP Application Request for Additional Information

Hi Mike:

Thanks for your message. I wanted to confirm that you do not have an objection to NYCDEP, NYSDEC, Putnam County (if they elect to attend) and Town personnel and any consultants utilized by any of those agencies or the Town to conduct the inspection of the sewer and SSTS. I do not see a need for attorneys to be present. Please advise and confirm that your client is granting access in accordance with this message.

Best,

James

James F. Van Orden
Member | Cozen O'Connor

Philadelphia

One Liberty Place, [1650 Market Street Suite 2800](#) | Philadelphia, PA 19103
P: [215-665-4625](#) F: [215-372-2350](#)

Pronouns: he, him, his
[Email](#) | [Map](#) | [cozen.com](#)



From: Michael Caruso <mvcarusolaw@gmail.com>
Sent: Wednesday, October 30, 2019 11:19 AM

To: Van Orden, James <JVanOrden@cozen.com>
Cc: Regis-Hallinan, Linda <LRegis-Hallinan@cozen.com>
Subject: Re: FW: 10-29-19 - NYCDEP Applicaiton Request for Additinal inforamtion

****EXTERNAL SENDER****

James:

I've spoken with my client, which has no objection to NYCDEP and/or NYSDEC inspecting the sewer equipment on the premises as they have already done in the past. I do not think it is appropriate for anyone other than agency officials performing the inspection to be present on-site. I understand your office's engagement by the Town and the broad mandate, but I do not believe anyone other than agency officials need to be on site.

Regards,

Mike

On Tue, Oct 29, 2019 at 1:32 PM Van Orden, James <JVanOrden@cozen.com> wrote:

Dear Mr. Caruso:

Please see the message below and the attached application from Mr. Franzetti to your clients, Michael Barile and Tommy Boniello. I wanted to also advise that NYSDEC has indicated that it wishes to be present for the November 12 inspection in addition to NYCDEP. Please advise on where things stand with respect to your clients' consent to access as we had required a response by COB yesterday.

Best,

James



James F. Van Orden
Member | Cozen O'Connor

Philadelphia
One Liberty Place, [1650 Market Street Suite 2800](#) | Philadelphia, PA 19103
P: [215-665-4625](tel:215-665-4625) F: [215-372-2350](tel:215-372-2350)

Pronouns: he, him, his
[Email](#) | [Map](#) | cozen.com

From: Franzetti, Richard <rjf@ci.carmel.ny.us>
Sent: Tuesday, October 29, 2019 12:09 PM
To: 'mb10541@comcast.net' <mb10541@comcast.net>; 'Michael Barile' <mike@lynlil.com>
Cc: McDonough, Suzanne <sfm@ci.carmel.ny.us>; Schmitt, Kenneth <ks@ci.carmel.ny.us>;
Schneider, Jonathan <js@ci.carmel.ny.us>; Lupinacci, John <jdl@ci.carmel.ny.us>; Van Orden, James
<JVanOrden@cozen.com>
Subject: 10-29-19 - NYCDEP Applicaiton Request for Additinal inforamtion

****EXTERNAL SENDER****

Mr. Barile and Mr. Boniello

The attached application to connect into Carmel Sewer District 1 (CSD 1) has been received by my office. Please note that the New York Department of Environmental Protection (NYCDEP) has advised that it will require the following two (2) attachments to be included as part of the application

1. Site plan and
2. Narrative describing proposal to connect with flow data.

It is our understanding that without that information, the NYCDEP would likely reject the application as administratively incomplete, which could cause delay. We wanted to bring this to your attention immediately and ask that you provide those attachments so the Town will be in a position to review and forward to the NYCDEP.

Please let me know when you expect to have those attachments submitted to the Town so we can advise DEP and be prepared to move forward.

In addition please note that a copy of this email will be provided through counsel to your attorney.

Richard J. Franzetti. P.E, BCEE

Town Engineer

[60 McAlpin Avenue](#)

[Mahopac, New York 10541](#)

Phone - (845) 628-1500 ext 181

Fax – (845) 628-7085

Cell – (914) 843-4704

rjf@ci.carmel.ny.us

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--

Michael V. Caruso, P.C.
Attorney and Counsellor at Law

[3871 Danbury Road](#)

[Brewster, New York 10509](http://www.mvcarusolaw.com)

Tel: (845) 207-5452

Fax: (845) 251-0002

www.mvcarusolaw.com

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--

Michael V. Caruso, P.C.
Attorney and Counsellor at Law

[3871 Danbury Road](http://www.mvcarusolaw.com)

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--

Sent from Gmail Mobile

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--

Sent from Gmail Mobile

Exhibit 26

MICHAEL V. CARUSO, P.C.
ATTORNEY AND COUNSELLOR AT LAW

3871 Danbury Road
Brewster, New York 10509
mvcarusolaw@gmail.com
Tel: (845) 207-5452
Fax: (845) 251-0002

November 15, 2019

Richard J. Franzetti, PE, Town Engineer
Town of Carmel
c/o James F. Van Orden, Esq.
Kenneth Fisher, Esq.
Cozen O'Connor
One Liberty Place
1650 Market Street Suite 2800
Philadelphia, Pennsylvania 19103

Re. Notice of Violation and Cease and Desist, dated October 24, 2019
(the "NOV")

Dear Attorneys Van Orden and Fisher:

My firm represents Michael Barile, as record owner of the Premises.¹ This shall serve as a ten-day plan for the satisfactory correction and prevention of violation(s) consistent with Section 120-86A of the Town's Sewer Use Law.

On May 29, 2019, my client filed a written request with the Town to activate the sewer connection to the Premises. Two days later, the Town Engineer advised that certain capital taxes were owed and unpaid from 1991 to the present totaling \$6,471.14 attributable to the out-of-district sewer connection serving the Premises. On June 4, 2019, Mr. Barile and Tommy Bonniello filed an application for a sanitary sewer connection permit with the Town for the Premises.

From June 20-21, 2019, my client's engineer (John Karell, Jr., P.E.) communicated with NYCDEP to coordinate an application for review of the existing sewer connection application to the Town. On June 27, 2019, Mr. Karell supplied engineering analysis (i.e. flows, periodic calculations, et al) and supporting materials to the Town to support the out of district sewer connection application.

On September 16, 2019, PCDOH issued a "Notice of Non-Compliance" to Mr. Barile and Tommy Bonniello citing an alleged violation of Putnam County Sanitary Code § 8.3B identifying lack of construction compliance for the sewer connection, lack of NYCDEP approval, and the purported failure to comply with Condition No. 8 of the 1993

¹ Reference is made throughout to real property known as 825 South Lake Boulevard, Mahopac, New York 10541, which is identified on the tax map of the Town of Carmel as 75.43-1-22 (the "Premises").

Approval requiring that “the facilities receive approval from the New York City Department of Environmental Protection prior to any operation of the sewage pumping station.” On November 6, 2019, I appeared at a scheduled hearing before PCDOH to address this charge without entering an admission or denial thereof. The matter is adjourned to December 4, 2019 for further proceedings and in contemplation of my client resolving the underlying basis for PCDOH issuing its Notice of Non-Compliance. I am advised that PCDOH stands ready to issue a compliance order upon the Town and/or NYCDEP certifying the sewer equipment and connection to the Premises.

Mr. Barile has obtained the required use and occupancy permit from New York State Department of Transportation in connection with the installed sewer equipment and connection for the Premises. A copy of the approval and supporting documents are attached.

My office has been advised through New York City Corporation Counsel’s office (Linda Geary, Esq.) that NYCDEP requires that the installed sewer equipment must first have an existing blockage removed, and then be flow tested and pressure tested. My client is willing to perform these tests as soon as possible. Ms. Geary will be providing further specificity on the legal basis for NYCDEP requiring the above-referenced testing. My client stands ready, willing, and able to perform this testing either at his own expense or through NYCDEP. He understands that NYCDEP must be present to observe the testing.

In summary, the only remaining inspection, testing, and approval lies with NYCDEP. I am advised that this phase of inspection and testing can be performed within the coming weeks. Should this timeframe, or the scope of inspection and approval materially change, then I will promptly advise the Town Engineer through your office. Please do not hesitate to contact me with any questions or comments.

Very truly yours,

By: /s/ Michael V. Caruso

Enc.

cc: Michael Barile



Bank Check
Mahopac Branch

DATE November 08, 2019

**** Eight Hundred and 00/100****

\$ 800.00

PAY TO THE ORDER OF NYS DEPT OF TRANSPORTATION

REMITTER: MICHAEL BARILE



Maureen Ferraro
AUTHORIZED SIGNATURE



**ADDITIONAL INSURED — STATE OR GOVERNMENTAL
AGENCY OR SUBDIVISION OR POLITICAL
SUBDIVISION — PERMITS OR AUTHORIZATIONS**

POLICY NUMBER: s 2069985

COMMERCIAL GENERAL LIABILITY
CG 20 12 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

THE PEOPLE OF THE STATE OF NEW YORK
C/O NYS DOT
50 WOLF ROAD
ALBANY, NY 12232

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II — Who Is An Insured is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III — Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



Department of
Transportation

ANDREW M. CUOMO
Governor

MARIE THERESE DOMINGUEZ
Commissioner

LANCE MacMILLAN, P.E.
Regional Director

November 4, 2019

Michael Barile & Tommy Boniello
888 Route 6
Mahopac, NY 10541

RE: Use and Occupancy Permit No. 82658

Dear Mr. Barile & Mr. Boniello:

Enclosed please find two copies of a New York State Department of Transportation Office of Real Estate Permit for Use of State-Owned Property issued to Michael Barile and Tommy Boniello for the use of State-owned land to accommodate a 1,200± L.F. 2" sewer force main.

Please complete the two copies of the permits as indicated on Page 5 and return them to: **4 Burnett Boulevard, Poughkeepsie, NY 12603** as soon as possible. Your attention is directed to Item 6, which declares the State's right to collect a security deposit. When the signed permits are returned, a check must be submitted in the amount of \$800.00 made payable to the "New York State Department of Transportation" to fulfill this requirement. If the permit is cancelled by either party, the security deposit may be refunded if there is no outstanding payment due.

Please note the insurance requirement under Item 8 on Page 2 of the Permit. Please have the insurance carrier provide me with a certificate of general liability insurance in the amount of \$2,000,000.00 (two million dollars) per occurrence listing The People of the State of New York as an additional insured. I will be unable to process the permit for approval if the insurance certificate is not provided. This certificate must be updated annually.

Once the permits have been countersigned in our Regional and Main Offices, a fully conformed copy will be sent to you.

Please feel free to call me at (845) 437-3381 if you have any questions. Thank you for your assistance.

Sincerely,

Christine Ghiotti
Real Estate Specialist 1

Enclosures

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION
OFFICE OF RIGHT OF WAY
PERMIT FOR USE OF STATE-OWNED PROPERTY**

PIN: 8804.56.201

Property Location: Adjacent to 825 South Lake Blvd, running east under north shoulder of Route 6N for 1,200± L.F., to Clark Place, crossing beneath Route 6N and connecting to existing sewer on SE corner of Clark Place and Route 6N

Project: S.H. 9274-A; Ocseola Lake – Mahopac Lake, Part 2

Map No(s): 35 Parcel No(s): 42, 43

County: Putnam Town/City/Village: Hamlet of Mahopac

THIS PERMIT, made this _____ day of _____, 20____ between:

**Michael Barile & Tommy Boniello
888 Route 6
Mahopac, NY 10541**

hereinafter referred to as "Permittee", and the COMMISSIONER OF TRANSPORTATION FOR THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as "the State",

WITNESSETH:

WHEREAS the State is the owner of or has maintenance and jurisdiction over the above identified property, hereinafter referred to as "property" or as "premises"; and

WHEREAS the Permittee wishes to use and occupy said property;

NOW, THEREFORE, the State hereby grants this permit to the Permittee, subject to the following covenants and conditions:

1. Property description and use: 1,200± L.F. of 2" sewer force main as depicted on the sketch attached hereto and made a part hereof. The property covered by this permit shall be used only for above described use and for no other purpose whatsoever.
2. The fee to be charged shall be: **\$800.00 per year beginning December 1, 2019.**
3. Payment of fee is due on the first of the month unless otherwise stated. Fee must be paid by check, bank cashier's check or money order payable to "Department of Transportation" and mailed or delivered to:

New York State Department of Transportation
Revenue Unit, POD 5-2
50 Wolf Road
Albany, NY 12232

4. The Permittee understands and agrees that if the full amount of the fee as stated herein is not paid within thirty (30) days from the date billed as indicated on the billing invoice, interest penalties and collection fees will be imposed under the provisions of Section 18 of State Finance Law.
5. The Permittee understands and agrees that the fee charged by the State may periodically be updated to reflect fair market value and the Permittee will enter into a new permit for the new fee if

the Permittee wishes to remain in occupancy. Failure to execute a new permit will require Permittee to immediately vacate the premises.

6. The Permittee acknowledges the State's right to collect a security deposit. This sum will be retained as security to ensure faithful performance of the permit and compliance with all terms by the Permittee. The State hereby acknowledges receipt of check number _____ in the amount of \$800.00 received on _____ by _____.
7. This permit supersedes the permit numbered n/a issued to n/a in the amount of \$n/a per n/a and approved by the Director, Office of Right of Way on n/a.
8. Permittee, at the Permittee's expense and for the term of the permit, shall furnish and show evidence of General Liability Insurance coverage issued by an insurance carrier licensed to do business in the State of New York for the protection of the State of New York and Permittee against any claims, suits, demands or judgments by reason of bodily injury, including death, and for any claims resulting in property damage occurring on or in proximity to the permit area.

Such General Liability Insurance shall be in the amount no less than \$2,000,000.00 (combined property damage and/or bodily injury, including death) single limit per occurrence, and shall name the People of the State of New York as an additional insured.

The Permittee will furnish the State with a certificate of insurance, with a thirty (30) day(s) prior written notice of any cancellation or major change in the policy conditions. The Permit shall be voided if insurance is cancelled, modified or lapses.

Approval of this permit shall be contingent upon receipt, by the State, of a copy of a properly executed insurance certificate.

9. Permittee is responsible for any repairs, improvements or maintenance work of any kind on the property at Permittee's expense. The State may, at any time, periodically inspect the premises to determine whether same is in good repair and maintenance, structurally sound, and that no unsafe, hazardous, unsanitary, or defective conditions exist.
10. Permittee hereby agrees to admit State representatives and prospective purchasers or Permittees to examine these premises during reasonable business hours.
11. Permittee shall not place or store, or allow others to place or store, any flammable, explosive, hazardous, toxic or corrosive materials, debris of any description, garbage or any materials commonly referred to as "junk" within the permit area, except fuel kept in the fuel tanks of legally parked vehicles allowed under the terms of this permit. Failure to comply with this provision may result in a ten (10) days written notice of cancellation of the permit in accordance with Provision 16 of the permit. The Permittee is responsible for the removal of these materials and/or all expenses incurred in their removal.
12. All arrangements of services for utilities, removal of garbage, rubbish, litter, snow and ice will be made by the Permittee at the Permittee's expense, unless hereafter specified. The State shall have no responsibility to provide any services not specifically set forth in writing herein. Permittee shall comply with all local and State building standards/codes in the installation or repair of any utilities including but not limited to electricity and plumbing. Permittee is responsible for keeping and maintaining the premises in a safe and clean condition, for the regular and prompt removal of garbage, rubbish, litter, snow and ice. Permittee shall be responsible for preventing damages to the plumbing system and premises caused by lack of heat or water damage from leaks.
13. Permittee is responsible to maintain the occupancy in compliance with any and all applicable local, State, and Federal laws, ordinances, codes, rules and regulations affecting the use of the property.

Permittee shall not conduct or allow any use or activity on the premises inconsistent with law and shall not conduct or allow any use or activity on the premises which may require a permit or other approval by a government agency without having lawfully obtained such permit or approval.

14. The parties acknowledge that this instrument is not a lease but is merely a permit to occupy and use, and therefore a landlord-tenant relationship is not hereby created; and further, that since this is not a lease, Section 5-321 of the General Obligations Law does not apply to this permit to the extent permitted by law.
15. The State shall have no responsibility whatever for the loss or destruction of any improvements made by the Permittee or for personal property stored or being used on the premises.
16. This permit shall be renewed automatically for successive terms of one month each unless canceled by either party. Cancellation by the State requires thirty (30) days written notice, except for cause, in which event cancellation can be effected on ten (10) days written notice. Permittee may cancel this permit by giving thirty (30) days written notice.
17. Permittee shall not sublet the premises nor assign or transfer the permit to any other parties in part or in whole without the prior written consent of the State. Failure to comply with this provision may result in ten (10) days written notice of cancellation of the permit by the State, and the State may immediately take possession and terminate all rights of the Permittee as of such moment.
18. It is understood and agreed by and between the parties that the Permittee will () will not (X) be entitled to any relocation benefits provided under State and Federal law.
19. Permittee agrees and understands that the State is under no obligation to sell the property to the Permittee and that no commitment, express or implied, is made by the State to give the Permittee any preemptive right of purchase.
20. Upon cancellation of the permit by either party, the permit area must be restored to its original condition and should the permittee fail to restore the site, the Permittee shall reimburse the State for any and all costs incurred by the State for the restoration of the permit area. This provision may be waived or modified with prior written consent from the State.
21. The Permittee shall not place advertising or sponsorship signs in the permit area without the express written consent of the New York State Department of Transportation.
22. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the permittee will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Neither shall the Permittee discriminate in the use of this premises or any access thereto if such premises is used as a public accommodation or in connection with a public service.
23. The Permittee for his/her self, and/or the Permittee's personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, that in the event improvements are made over or under such land and the furnishing of services thereon and/or facilities are constructed, maintained, or otherwise operated on the said property described in Item 1 of this permit for a purpose for which a New York State Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Permittee shall construct such improvements and maintain and operate such facilities and services such that (1) no person on the ground of race, color, or national origin, sex, age, and disability/handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person

on the grounds of race, color, or national origin, sex, age, and disability/handicap, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Permittee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964; and to Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes - Implementation and Review Procedures; and further as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the State shall have the right to terminate the permit and to re-enter and repossess said land and the facilities thereon, and hold the same as if said permit had never been made or issued.

24. Permittee agrees that, in addition to any protection afforded to State under any available insurance, State shall not be liable for any damage or injury to the Permittee, its agents, employees, or to any other person, or to any property, occurring on the site or in any way associated with Permittee's activities or operations; whether undertaken by Permittee's own forces or by contractor or other agents working on Permittee's behalf. To the fullest extent permitted by law, the Permittee agrees to defend, indemnify and hold harmless the State of New York, State and their agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of any claim, including but not limited to claims for personal injuries, property damage or wrongful death and/or environmental claims, in any way associated with the Permittee's activities or operations, no matter how caused.
25. If any of the provisions of this permit are held invalid, such invalidity shall not affect or impair other provisions herein which can be given effect without the invalid provisions, and to this end the provisions of this permit are severable.
26. This permit shall not be effective unless accepted and approved in writing by the State.
27. A Highway Work Permit must be obtained, in advance, for each entry on NYS right-of-way, including that portion covered by this permit, for the purpose of erection, removal, modification, repair, replacement, or maintenance of any surface and subsurface improvement. Before a Highway Work Permit is issued, the Regional Permit Engineer is required to assure himself that the individual(s) proposing to perform work within the right-of-way has the expertise and equipment necessary to complete the work in a professional manner so as not to present a potential hazard to the public or subject New York State right-of-way to potential damage. The Permittee is responsible for the payment of any fees required to provide insurance coverage necessary in conjunction with the issuance of the Highway Work Permit. This Use and Occupancy Permit is immediately revocable if any stipulations and/or requirements listed in the Highway Work Permit are not adhered to by the Permittee, his agents, employees, contractors, or subcontractors.
28. Additional provisions to permit: See Rider (Page 6)

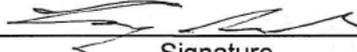
ACCEPTANCE:

In consideration of the granting of the permit, the undersigned accepts all of the above terms, conditions and provisions.

Soc. Sec. No.: 

By: 
Signature
MICHAEL BARILE
Print Name and Title

Soc. Sec. No.: 

By: 
Signature
TOMMY A BONIELLO
Print Name

RECOMMENDED: _____ Date _____
Regional Real Estate Officer

ACCEPTED AND APPROVED: Commissioner of Transportation for the People of the State of New York

By: _____ Date _____
Director, Office of Right of Way

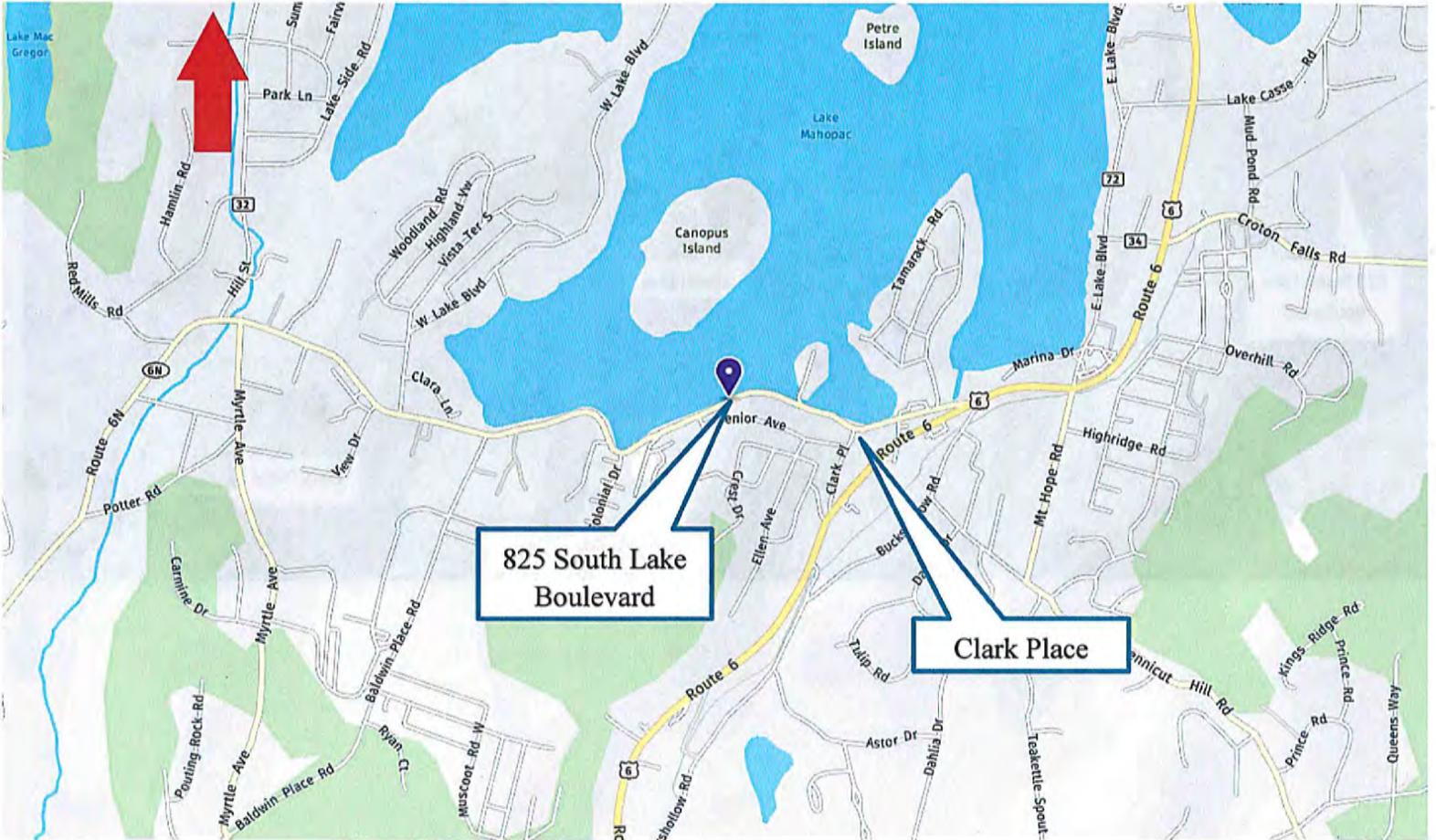
RIDER TO USE AND OCCUPANCY PERMIT #82658

29. All applicable sections of "Rules and Regulations Governing the Accommodation of Utilities within the State Highway Right-of-Way" as filed with the Secretary of State governing the issuance and operation of the permit agreement, are incorporated herein.
30. Permittee understands that the property included in this agreement is an estimate based on Department of Transportation right-of-way record plans and contract data; surveys, site plans, and other documentation submitted by the Permittee, if any; and public records. It is also understood that unless otherwise indicated, the State has not performed a survey for the purpose of precisely determining the extent of any right-of-way use or encroachment by the Permittee.

Both parties hereby agree that in the event the permit area is determined to be incorrectly or imprecisely identified or calculated, rental adjustments, credits, or refunds, due from or creditable to either the Department or the Permittee, will not predate the term of this Permit.

31. Permittee agrees that acceptance by the State of any payment that is less than the permit fee indicated in this agreement or any subsequent fee update is a partial payment only, insufficient to satisfy, and is not accepted by the State as satisfaction of, the Permittee's obligation to pay the entire fee, and any interest, penalties, and collection charges or assessments, in full and waives any right to assert otherwise.
32. The Permittee bears full responsibility for any and all repairs to the force main and roadway in the event of any need to repair the force main or appurtenances.
33. The Permittee will move or protect the force main, if necessary, to accommodate any necessary future state highway or drainage improvements.

**USE & OCCUPANCY PERMIT NO. 82658
MICHAEL BARILE & TOMMY BONIELLO
HAMLET OF MAHOPAC, PUTNAM COUNTY**



USE & OCCUPANCY PERMIT NO. 82658
MICHAEL BARILE & TOMMY BONIELLO
HAMLET OF MAHOPAC, PUTNAM COUNTY



Exhibit 27

Van Orden, James

From: Geary, Linda (Law) <lgeary@law.nyc.gov>
Sent: Tuesday, November 19, 2019 12:14 PM
To: Fisher, Kenneth; Van Orden, James
Cc: 'Sofio, Lisa'
Subject: Out of district proposed connection

****EXTERNAL SENDER****

Dear James and Ken-

Following up on our conversation last Friday, the New York City Department of Environmental Protection (DEP) needs additional information in order to review the Town of Carmel's (Town) application to DEP for the Blu restaurant out of district connection. Specifically, DEP needs the following:

1. Proof that the identified blockage in the line has been removed;
2. A flow test of the line; and
3. A pressure test of the line.

The above testing needs to be performed during normal business hours when DEP is present and DEP requires 48 hours notice before the tests. As we discussed, the property owner has stated they are ready and willing to do these tests, though we understand inquiry has been made into the legal basis for the requirements. The tests are not required by any specific regulation or law, but are necessary for DEP to properly analyze the impact of the out of district connection on the Mahopac WWTP which will inform whether or not DEP approves the out of district connection. Once these requirements are fulfilled, we will then complete our review of the Town's application and advise of what additional terms and conditions we will require from the Property owner and/or the Town.

Please let me know if you have any questions or would like to discuss further.

Best regards,

Linda

Linda Geary, Senior Counsel
Environmental Law Division
New York City Law Department
71 Smith Avenue
Kingston, NY 12401
845-340-7208 (o) / 914-645-0871 (m)
lgeary@law.nyc.gov



New York City

Law Department

Exhibit 28

On Wed, Nov 20, 2019 at 8:36 AM Van Orden, James <JVanOrden@cozen.com> wrote:

Dear Mike:

The Town has reviewed your client's 10-day plan report and has further conferred with NYCDEP on the status of the out of district connection application. By email dated November 19, 2019, NYCDEP has advised that it requires additional information from the property owner. NYCDEP specifically has stated that it "needs the following:

1. Proof that the identified blockage in the line has been removed;
2. A flow test of the line; and
3. A pressure test of the line."

Further, NYCDEP has advised that this testing must be conducted with NYCDEP present and with at least 48 hours advance notice prior to the tests. Based on our discussions with NYCDEP, we understand that NYCDEP is unlikely to approve the Town's Out of District Connection request in the absence of these tests being conducted to the satisfaction of NYCDEP. Please confirm that your client is willing to conduct these tests with NYCDEP present and with 48 hours advance notice to NYCDEP. We will forward this confirmation to NYCDEP together with any additional information or documentation that you wish to include in the application at this time.

In the 10-day plan dated November 15, 2019, you stated "My client is willing to perform these tests as soon as possible." Given that your client has been using the Town sewer system without approval for nearly three months, as per your client's public statements, such an open ended horizon is problematic. The Town is requiring that your client commit to conduct these tests by a date certain as soon as practicable but in no event later than close of business on Friday, December 6. We would hope that your client would want to advance the application expeditiously in an effort to avoid further legal exposure.

The Town is committed to working with your client to provide access to the connecting line from the manhole at Clark and 6N since that is the area of the observed grease blockage and such access may be required in connection with the other testing (in the discretion of the technical experts). Like NYCDEP, we will need 48 hours advance notice of the actual date(s) of the above required actions so we are prepared to provide that access. It is our understanding that private residents are not permitted to access Town sewer district manholes and that there are safety concerns (confined space, etc.) that arise, so we want to be sure that access and work is done properly via the Town's normal procedures.

Please advise no later than COB Thursday, November 21, 2019 whether your client agrees to satisfying these NYCDEP requirements on or before December 6. Please be advised that the Town reserves all rights and claims, and that failure to progress the application to NYCDEP will result in such further action by the Town as may be necessary. If you have questions or concerns, please do not hesitate to contact us.

Best,

James



James F. Van Orden
Member | Cozen O'Connor

Philadelphia

One Liberty Place, 1650 Market Street Suite 2800 | Philadelphia, PA 19103

P: [215-665-4625](tel:215-665-4625) F: [215-372-2350](tel:215-372-2350)

[Email](#) | [Map](#) | cozen.com

Exhibit 29

From: Michael Caruso <mvcarusolaw@gmail.com>
Sent: Thursday, November 21, 2019 4:30 PM
To: Van Orden, James <JVanOrden@cozen.com>
Cc: Fisher, Kenneth <KFisher@cozen.com>
Subject: Re: Article 78 withdrawal request and NOV 10 day letter

****EXTERNAL SENDER****

James and Ken:

I have conformed with my client that he will satisfy the above-described NYCDEP requirements for blockage removal, flow testing, and pressure testing on or before C.O.B. December 6, 2019. The requisite 48-hour notices to NYCDEP and your office will be supplied. I look forward to resolving this administrative issue.

Regards,

Mike Caruso

Exhibit 30

**MEMO from Town Engineer, Richard Franzetti
December 6, 2019**

Summary of Blue test field investigation of 12-6-19

Onsite:

Applicant: Michael Barile (MB); Jack Karell (JK) ; Joe Scollan (JS); Tommy Boniello (TB1)

NYCDEP: Dave Alderisio (DA); Patrick Frawley (PF); One additional person

PCDOH: Anthony Fricchione (AF)

Town: Richard Franzetti (RF), Tom Brann (TB)

- RF met with TB at Clark and 6N at 10:30 AM;
- Went to BLU restaurant at ~11:40 AM;
- Met with MB, TB1, JS and DA;
- Was informed that the dye (purple) was dumped at 11:30 AM and water was left to run in bathroom sink and kitchen;
- Went back to Clark place manhole TB opened manhole at this location and the next downstream manhole , in front of 908 Route 6N;
- All present waited dye to appear;
- Site attendees thought that a phosphorescent dye would be better suited (purple is not normally used)
- Additional green dye (as provided by PCDOH) was added to the toilet at BLU by JS as witnessed by RF;
- There was a false positive meaning a purple color came from upstream of Clark place, however it contained a large amount of suds. Picture attached;
- All present thought it was from BLU. RF and DA investigate manhole further up on Clark.
- RF could not access manhole on Clark however investigate manhole on Senior in front of Miele property (18 Senior) see picture
- Every ~20-25 minutes a rush/burst of water was heard in the Clark Place manhole, downstream of the manhole.;
- ~ 2-3 minutes later a rush/burst of sewer water was seen at the downstream manhole (in front of 908 Route 6N);
- The first burst of flow had a strong septic smell which gradually diminished over the next two bursts;
- Purple dye was witnessed at the burst that occurred at ~1:00 PM and then two additional times after that. Picture is attached. **Video to large to email will be shared via dropbox.**
- Due to a large circular patch all present thought that maybe an additional manhole existing at intersection. A metal detector was used and it did not show that a manhole existed
- RF left site a~1:50 PM

RF was asked by JK and MB if there were any videos on this line. RF stated that the following:

- NYCDEP provided a video in ~2010 however per RF recollection the video did not go down Route 6n (from Clark to in front of 908 route 6n)
- The Town, as part of the relining project, had the CSD1 (along with CSD 3) system videoed. However RF did not recall if there was an issue in this area.

Additional conversations:

- DA asked which line was pressure tested in June. JK said the 2" line in the manhole.;
- MB mentioned that others may be connected (Fairy Island, Miele Property and others)

Findings:

- Dye placed into BLU restaurant to test the system was witnessed in the CSD 1 collection system sewer;
- BLU is connected to CSD 1 sewer downstream of the Manhole at the intersection of Clark and 6N
- It is not connected the 2" line in the Clark Street/6N manhole









Exhibit 31

From: Levine, Joshua <LevineJ@liro.com>
Sent: Monday, December 9, 2019 4:11 PM
To: Van Orden, James <JVanOrden@cozen.com>; Fisher, Kenneth <KFisher@cozen.com>; Regis-Hallinan, Linda <LRegis-Hallinan@cozen.com>; McDonough, Suzanne <sfm@ci.carmel.ny.us>
Cc: Fontaine, Peter <PFontaine@cozen.com>; Gerbasi, Peter <GerbasiP@liro.com>
Subject: RE: 12-6-19 BLU resturant dye test invetigation summary

****EXTERNAL SENDER****

James,

Based on the attached photo of the dye shown in the downstream manhole located in front of the Big Wave Sporting goods store, we can confirm the dye is travelling inline in the sanitary sewer from a point upstream of that manhole, and is not coming from the pipe that taps into the downstream manhole (at 10 o'clock shown top left inside manhole just above ladder).

This downstream manhole located in front of Big Wave sporting goods is identified as Sanitary manhole (SMH) MCP 96 on page 5 of the attached design drawing. The upstream manhole at the corner of Route 6N and Clark is identified as SMH MCP 97 on same page 5 of attached PDF. MCP 96 is located 120 feet downstream of MCP 97 on attached design drawing.

According to the dye test summary on Friday 12/6/19, purple dye was not observed in upstream MCP97, but was observed in downstream MCP 96.

The video you previously provided entitled "71_1_1_01012008_002054.MPG" (160MB too large to email), shows a 2017 video inspection of the sanitary sewer extending from MCP97 to MCP96. There is only one pipe tapped into the sanitary sewer between MCP 97 and MCP96, located 50 feet downstream of MCP 97. It is shown in the video at the 2 min 30 sec mark and labelled accordingly. This pipe is not shown on the attached PDF design drawing at 0+50 (same location; engineering notation for 50' past the manhole MCP97). This pipe tapped into the sewer could be a potential source of dye entry into the sanitary sewer between MCP97 and MCP96.

Josh

Joshua Levine, P.E.

Senior Associate Vice President



Program/Construction Managers | Engineers | Architects
100 Duffy Avenue, Suite 402 | Hicksville, New York | 11801
516-595-2908 [T] | 631-304-5065 [M] | www.liro.com
<https://www.linkedin.com/in/joshua-levine-p-e-7822267/>

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Exhibit 32

From: Geary, Linda [<mailto:GearyL@dep.nyc.gov>]
Sent: Monday, December 16, 2019 3:24 PM
To: Geary, Linda (Law)
Subject: FW: Article 78 Barile, et al v. Putnam County Department of Health, et al.

From: Michael Caruso <mvcarusolaw@gmail.com>
Sent: Wednesday, December 11, 2019 2:40 PM
To: Shedlo, Daniel <DShedlo@dep.nyc.gov>; Giannetta, Matthew <MGiannetta@dep.nyc.gov>; Alderisio, David <DAlderisio@dep.nyc.gov>; Vickers, John <JVickers@dep.nyc.gov>; Sofio, Lisa <LSofio@dep.nyc.gov>; Geary, Linda <GearyL@dep.nyc.gov>
Cc: john karell <jack4911@yahoo.com>; Lynlil Associates <lynlil@hotmail.com>; nicole@lynlil.com
Subject: Re: Article 78 Barile, et al v. Putnam County Department of Health, et al.

Good Afternoon:

On Friday, December 6, 2019, my client and his engineer, Jack Karell, PE--along with NYCDEP and Town consultants--conducted flow and dye testing of the existing sewer connection serving the Premises (825 South Lake Blvd., Mahopac, NY). I am advised the testing revealed wastewater being discharged into Town of Carmel Sewer District No. 1 at a different location than the Clark/Route 6N manhole. While the exact outflow cannot yet be determined and isolated, my client's engineer advised that the connection flows.

Mr. Karell further advises that he cannot pressure test the sewer line without digging the road (Route 6N) at an extremely high cost and level of difficulty. He further advises that it would be unlikely that a 20-year old force main with joints at 100 foot intervals would leak when compared to in-stream laterals and piping in the same sewer collection system, which are over 70 years old with joints at 10 or 20 foot intervals. It appears that pressure testing is unnecessary at this time. Please confirm.

Regards,
Mike Caruso

Michael V. Caruso, P.C.
Attorney and Counsellor at Law
3871 Danbury Road
Brewster, New York 10509
Tel: (845) 207-5452
Fax: (845) 251-0002
www.mvcarusolaw.com

Exhibit 33



Vincent Sapienza, P.E.
Commissioner

Paul V. Rush, P.E.
Deputy Commissioner
Bureau of Water Supply
prush@dep.nyc.gov

465 Columbus Ave
Valhalla, NY 10595

T: (845) 340-7800
F: (845) 334-7175

December 11, 2019

Richard J. Franzetti, P.E.
Town Engineer
Town of Carmel
60 McAlpin Avenue
Mahopac, NY 10541

RE: Mahopac Wastewater Treatment Plant
Out of District Connection Request
825 South Lake Boulevard

Dear Mr. Franzetti,

As you are aware, the New York City Department of Environmental Protection ("NYCDEP") is reviewing the Town of Carmel's ("Town") October 24, 2019 Out of District Connection Request for the above-referenced property (the "Property").

As we previously advised, in order to complete our review, we need 1) proof that the identified blockage has been removed from the line; 2) a flow test of the line; and 3) a pressure test of the line. We understood these items would be complete by December 6, 2019. However, during a field inspection on December 6, a dye test revealed that the Property's wastewater connection to the Town collection system is different from what was previously represented. Should the Town wish to proceed with its request, NYCDEP will need the flow and pressure tests to be completed on the line that is in use, as well as the previously requested accurate as-built drawings of the sewer line and monthly water usage data from the Property. Prior as-built drawings received by NYCDEP appear to be inaccurate based on the dye testing performed on December 6.

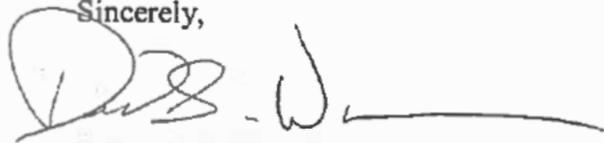
In addition to the foregoing, during the dye test, NYCDEP's inspector observed that the 2,000 gallon tank on the Property is full. As such, please clarify whether the tank is currently being used as a septic tank or an overflow tank. If the tank is being used as an overflow tank for the pump pit, please provide documentation of past pump outs, the schedule for future pumps out, and information on how and when the on-site septic system was abandoned.

Finally, as a reminder, should NYCDEP grant your request, we will expect the owner of the Property to enter into an agreement with NYCDEP

documenting the terms and conditions of the connection and in order to finalize such agreement, we need to understand who will be owning the line.

We look forward to continuing to expeditiously process the Town's request, should the Town wish to proceed.

Sincerely,

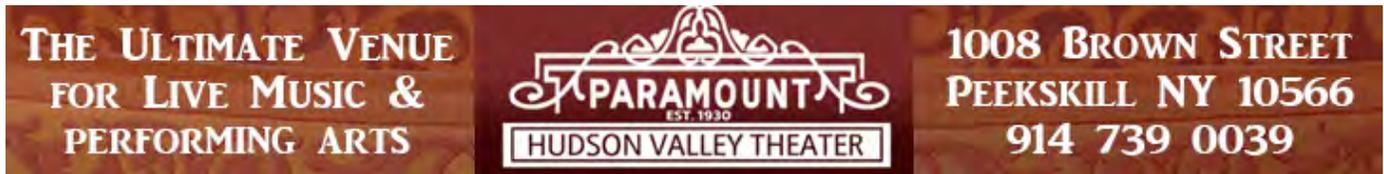
A handwritten signature in black ink, appearing to read "D. S. Warne", with a long horizontal flourish extending to the right.

David S. Warne
Assistant Commissioner

cc: Paul V. Rush, P.E., NYCDEP Deputy Commissioner
Lorraine Holdridge, NYSDEC
Joseph Paravati, PCDOH
Suzanne McDonough, Town of Carmel
James Van Orden, Cozen O'Connor
Michael Barile and Tommy Boniello via Counsel

Exhibit 34

HOME	ADVERTISING	DISTRIBUTION AREAS	NEWSPAPER ARCHIVES	ABOUT US
CONTACT US	PUZZLES	TESTIMONIALS	E-BLAST	



THE EXAMINER	WHITE PLAINS EXAMINER	NORTHERN WESTCHESTER EXAMINER	PUTNAM EXAMINER
BUSINESS PROFILES	COLUMNS	SPORTS	

Investigation Called Over Barile Hookup to Sewer Line

SEPTEMBER 17, 2019 BY [DAVID PROPPER](#)

As Carmel town board members call for an investigation into a sewer hookup on a property owned by Councilman Michael Barile, the bombastic businessman remained defiant that the connection was not a problem.

Barile is facing heat after it was revealed in a letter from the New York City Department of Protection that his property where Blu at the Lakehouse is located was connected to sewer and not a using septic system after Barile had said earlier this year the property used septic. The DEP visited the site on Sept. 4 to conduct a dye test on the existing septic field, but DEP officials wrote in a letter to the town that the force main for Blu Restaurant was online. Barile

told the DEP the cap on the force main in the manhole at the intersection of Route 6N and Clark Place was removed the previous week.

That has led to questions over how long the sewer has been hooked up to Blu and if Barile did so without the proper approvals. According to The Journal News, the town engineering department said there was no authorization to make a connection and the DEP has also not approved the sewer connection.

Barile's property was hit with a violation from the Putnam County Department of Health late Monday. The notice of non-compliance comes after The Journal News emailed the county a copy of a county permit from 26 years ago connected to Blu and detailed how Barile didn't comply with the conditions on the permit.

"A review of the matter was conducted and it has been determined that a violation of the Putnam County Sanitary Code and the 1993 approvals has occurred," the county wrote to Barile, according to The Journal News. "As such, a notice of non-compliance is being issued to the property owners by the Putnam County Department of Health."

Barile, in an interview, said on Sept. 3 he disconnected from his septic field and connected to the sewer for the purpose of the DEP performing a test because officials from the agency told him they wanted to inspect the manhole and sewer line. The town engineering department is aware of the sewer hookup, Barile said.

Three applications have been submitted to the town over the past three months and Barile has attempted to pay the fees, to the tune of \$4,000, and \$6,471 in back capital charges, he said. On Monday when he went in to give in the checks, the engineering department refused to take them. He left them on the counter, but it's unknown if or when the checks will be deposited.

Town engineer Richard Franzetti could not comment on the sewer line at Blu at the direction of the town board.

Barile said it is untrue that he doesn't have permission from the DEP to hook up to the sewer and the only permit he needs now is from the state department of transportation. He said he already had authorization from the town when a resolution was passed in the early 1990s to use the sewer as an outside user.

As the DEP continues to investigate the matter, Barile said he is waiting for further instructions. He said he, his engineer and his attorney have called the DEP multiple times for

further guidance and has yet to hear back the agency. Calls to the DEP were not returned to The Putnam Examiner.

"We did what the DEP wanted and now we're waiting for an answer," Barile said, adding the criticism he is facing is "insane."

But Barile's colleagues on the town board aren't coming to his defense.

Supervisor Kenny Schmitt said Barile told him and the engineering department on Sept. 10 that the force main to Blu was connected and operational. Schmitt said the town board would seek advice from outside legal counsel that has not been determined yet.

According to a resolution from the early 1990s granting the Blu Restaurant property out of district use, it is contingent on conditions that need to be met first in order to hook up, Schmitt said.

"To the best of my knowledge they haven't been met yet," Schmitt said. "If you're asking if he should've been tapped into the

main without first obtained those permits, my answer is yes, he should've received those permits first."

When asked if he thought Barile has done anything wrong, Schmitt demurred and said he didn't want to comment at this time.

Schmitt had publicly defended Barile countless times before and even last week said he believed Barile has done a fine job overall as a councilman.

"We're going to look into it and hopefully we're going to have more answers with what's going happen going forward," Schmitt said, adding the town hasn't determined who removed the cap to hook up to the sewer line.

Councilman John Lupinacci echoed Schmitt's words and said the town board needs to hire outside counsel regarding Barile and the sewer connection because town attorney Greg Folchetti has recused himself. Lupinacci said his recusal is because Folchetti works for every town board member as town counsel.

"If (Barile) did anything right or wrong, that is to be determined," Lupinacci said. "We're at the early stage at realizing what our options are and what can be done and what should be

done.”

While Lupiacci stressed he wants to wait for all the facts to come out, he noted Barile is not supposed to connect because he lacks certain approvals. Further investigation will hopefully reveal when and why Barile connected to the sewer line, Lupinacci said.

In addition to outside counsel, there could be talks with the Putnam County District

Attorney’s Office and New York State Comptroller’s Office, Lupinacci said.

“If he hooked up a week ago, it changes things,” Lupinacci said. “If he hooked up 28 years ago, it’s a different story. We have to figure this out.”

Councilwoman Suzi McDonough has also called for an investigation, according to The Journal News.

Barile said people should wait until all the information comes out before casting judgment.

Putnam Democratic Committee chair Scott Reing, who is a Carmel resident, said he believes if Barile was hooked up without the correct authorization, even for just a day, he should resign from the town board. Hooking up to the sewer without proper permits could be a theft of services, Reing said.

“If we had a board member steal \$100 bill from a lockbox in town hall, we would demand that they resign and this is the same thing,” Reing said. “If it was true he was hooked up and he wasn’t paying the sewer and sewer tax then I think it’s a reason to resign.”

“Any town employee who steals assets or services from the town should not be employed by the town,” Reing added.

Barile scoffed at the suggestion he step down and that there was possible theft of services, stressing everything was paid appropriately.

“If you’re asking me if I’m going to resign, oh no, definitely not,” Barile said. “It gets me madder, it makes me work harder.”

Exhibit 35

Blu: DEP, DOT, Putnam violations loom at Barile's Mahopac restaurant

David McKay Wilson, Rockland/Westchester Journal News Published 6:00 a.m. ET Nov. 19, 2019 | Updated 7:07 a.m. ET Nov. 19, 2019

Tax Watch columnist David McKay Wilson has the latest on Mike Barile's sewer line.

Carmel Town Board member Mike Barile, who claims that Carmel lacks the authority to issue a violation for his unauthorized connection to the town sewer main, continues to face legal challenges surrounding the sewer connection at Blu at the Lake House, his restaurant on Lake Mahopac.

Barile faces violations from the town he serves and the Putnam County Health Department. The New York state Department of Transportation and the New York City Department of Environmental Protection must also decide whether to grant permits for the sewer line.



The town's investigators with a Long Island company left the restaurant site on Lake Mahopac not long after arriving. (Photo: David McKay Wilson)

Barile, and his partner, Tommy Boniello, installed it in 1993, but were not allowed to connect it to the town sewer main until they won approval from the DEP, which runs the Mahopac sewage plant. Though such approval has yet to be granted, Barile's engineer, John Karell, has said the connection was made on Sept. 3.

The issues Barile faces at 825 South Lake Blvd. include:

- Ongoing violations of the town's Sewer Use Law (<https://www.documentcloud.org/documents/6548784-TownViolationNotice.html>) for connecting the sewer line from Blu restaurant without NYC DEP approval.
 - A violation of the Putnam County sanitary code (<https://www.documentcloud.org/documents/6548783-PCViolationNotice.html>) for failure to
- get DEP approval and the sewer line's installation under Route 6N in 1993 was not certified

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- The need for State DOT approval for a permit to allow the line to be buried under Route 6N.

Seeking to make legal the unauthorized sewer connection, Barile and Boniello filed a lawsuit in late October against the town, Putnam County and New York City, demanding speedy action to approve his application.

"The Article 78 basically said to the Board of Health, DEP and town of Carmel, 'Quit playing games with us and tell us what's going on.' It's that simple," Barile said at a Nov. 13 town board meeting.



Carmel Town Board member Mike Barile in October sued the town, saying it lacked the authority to charge him with violating the town's sewer law. (Photo: David McKay Wilson)

Investigators descend

The probe into Barile's unauthorized sewer connection intensified last week when officials from DEP, Putnam County and the town of Carmel descended on his Lake Mahopac restaurant.

The team included three vans from a Long Island company, XRayLocating.com, which has technology that can peer inside sewer lines with camera probes and a radar-enabled device that can provide images of underground equipment.

A sketch on file with the Putnam Health Department places Blu's septic leaching field under the paved parking lot by the restaurant's dock.

It remains unclear whether XRayLocating actually conducted tests at the restaurant site. Not long after the vans arrived, they departed.

A violation of Carmel's sewer law is a misdemeanor crime, according to the violation notice.

The inspection Nov. 12 came as the town's special counsel — the Manhattan law firm Cozen O'Connor — continues its inquiry into Barile's sewer line, which runs about one-quarter mile under state Route 6N from Clarke Place to the restaurant, Blu at the Lakehouse.



Investigators from New York City Department of Environmental Conservation and a town contractor arrived at Blu on Nov. 12. (Photo: David McKay Wilson)

Barile fights back

Barile has fought back against the regulatory agencies.

On Oct. 29, the [Town Board member filed suit in state Supreme Court](https://www.documentcloud.org/documents/6548785-LawsuitTownCountyCity.html) (<https://www.documentcloud.org/documents/6548785-LawsuitTownCountyCity.html>), against the town, county and New York City. He argued that neither the town nor Putnam County had the authority to cite him for making an unauthorized connection to the town's sewer system.

In the lawsuit, he demands that New York City act swiftly to approve the connection, which he acknowledges he made without city permission in early September.

"Application materials with sufficient detail were supplied months ago, and must not only be decided but granted by NYC DEP to the extent it has any review authority whatsoever," the lawsuit stated.

The legal proceedings have developed five months after [a Tax Watch investigation raised questions](#) ([/story/money/personal-finance/taxes/david-mckay-wilson/2019/06/05/lake-mahopac-blu-restaurant-sewer-line/1192610001/](#)) about the treatment of wastewater there. It explored whether Barile's restaurant used an unauthorized sewer connection or had an on-site septic system on the shore of the drinking water supply for 450 Mahopac families.

On Wednesday, the Town Board extended Cozen O'Connor's contract to include representation against Barile's lawsuit. Supervisor Ken Schmitt voted against hiring the law firm, saying it would be too costly for Carmel taxpayers.

Barile urged the Town Board to seek proposals from Putnam County lawyers, who he predicted could defend the town from his lawsuit for between \$2,500 to \$7,500.



Deputy Supervisor Suzi McDonough said the best way to save tax dollars was for Barile to withdraw his lawsuit against the town.

"To defend it is a waste of taxpayer resources," she said.

Barile, however, said he wanted the town, county and Health Department to tell a state judge why the agencies had stalled their review of his application to connect the sewer line in the weeks after he acknowledged the line was connected before the review was complete.

Earlier this year, state, county and town officials had accepted Barile's contention that he had used the septic system. They touted the system's excellent performance, noting Barile's septic had worked flawlessly for 25 years. Barile filed a lawsuit against the town in November, claiming the town was liable for his lawsuit.

member Mike Barile to deliver a report on his unauthorized sewer line. (Photo: David McKay Wilson)

Barile's engineer told a New York City investigator that he made the unauthorized connection in early September when the investigator arrived to conduct a dye test of his septic field, as part of its review of his sewer line application.

The \$64,000 question

On Nov. 6, Tax Watch asked Barile's attorney, Michael Caruso, why his client didn't reconnect the wastewater line to the high-performing septic field while Barile defended himself on the violations for his unauthorized connection.

After all, doing so would spare him possible fines of up to \$1,000 a day for violating the town's sewer law.

The interview took place in Southeast, outside the Putnam County Health Department offices, following the adjournment until December of the hearing on Barile's county sanitary code violations.

"That's a good question," said Caruso. "I wish I could answer that for you without getting in trouble. That's the \$64,000 question."

Possible penalties

The town's Oct. 24 violation notice required Barile to file a report on the sewer connection's status within 10 days or face disconnection of the line. The town allowed the Town Board member an extra 10 days to comply, with Barile submitting it on Nov. 15, which was 10 days past the deadline.

The penalties for violating town of Carmel regulations are clear — fines of up to \$1,000 a day, with each day a new violation. Yet to be determined is just how long Barile has had the illegal hook-up.

That's what the investigations are hoping to determine.

Barile's engineer said the connection was made on Sept. 3. However, two current and former members of the Lake Mahopac Lake Park District Advisory Board, Ed Barnett and Jimmy Maxwell, told Tax Watch they believed the connection was made many years ago.



Jimmy Maxwell, a member of the Lake Mahopac Park District Advisory Board, said he believed Mike Barile's sewer line has been connected to the sewer main for many years. (Photo: David McKay Wilson)

If he connected on Sept. 3, Barile would be liable for fines of up to \$72,000 by Nov. 15.

But what if Barile's private sewer line was connected for 26 years — ever since he and Boniello opened the restaurant?

Maximum fines since 1993 would be \$365,000 a year for 26 years — that's \$9.5 million, according to town code.

Follow Tax Watch columnist David McKay Wilson on Facebook or Twitter @davidmckay415.

More Tax Watch

[SEPTIC OR SEWER: A Tax Watch investigation looks into Blu restaurant and Mike Barile](https://www.lohud.com/story/money/personal-finance/taxes/david-mckay-wilson/2019/06/05/lake-mahopac-blu-restaurant-sewer-line/1192610001/)

[\(/story/money/personal-finance/taxes/david-mckay-wilson/2019/06/05/lake-mahopac-blu-restaurant-sewer-line/1192610001/\)](https://www.lohud.com/story/money/personal-finance/taxes/david-mckay-wilson/2019/06/05/lake-mahopac-blu-restaurant-sewer-line/1192610001/)

[VIOLATION: County cites Barile for sewer line](https://www.lohud.com/story/money/personal-finance/taxes/tax-watch/2019/09/16/mike-barile-sewer-violation/2346977001/) **[\(/story/money/personal-finance/taxes/tax-watch/2019/09/16/mike-barile-sewer-violation/2346977001/\)](https://www.lohud.com/story/money/personal-finance/taxes/tax-watch/2019/09/16/mike-barile-sewer-violation/2346977001/)**

[CONNECTED: NYC DEP report on Barile's unauthorized connection](https://www.documentcloud.org/documents/6407572-Blu-Restaurant-Field-Report.html) **[\(https://www.documentcloud.org/documents/6407572-Blu-Restaurant-Field-Report.html\)](https://www.documentcloud.org/documents/6407572-Blu-Restaurant-Field-Report.html)**

Read or Share this story: <https://www.lohud.com/story/money/personal-finance/taxes/tax-watch/2019/11/19/lake-mahopac-sewer-line-probe/2581789001/>

Exhibit 36

Richard Franzetti, P.E.
Town Engineer



(845) 628-1500
(845) 628-2087
Fax (845) 628-7085

Office of the Town Engineer
60 McAlpin Avenue
Mahopac, New York 10541

December 18, 2019

**Re: Out of District Connection Request
825 South Lake Blvd TM 75.43-1-22
Withdrawal of Application**

Dear Mr. Barile and Mr. Boniello:

The New York City Department of Environmental Protections (NYCDEP) in their December 11, 2019 letter from Mr. David Warne, Assistant Commissioner, to the Town of Carmel (Town) stated:

“As we previously advised, in order to complete our review, we need 1) proof that the identified blockage has been removed from the line; 2) a flow test of the line; and 3) a pressure test of the line. We understood these items would be complete by December 6, 2019. However, during a field inspection on December 6, a dye test revealed that the Property's wastewater connection to the Town collection system is different from what was previously represented. Should the Town wish to proceed with its request, NYCDEP will need the flow and pressure tests to be completed on the line that is in use, as well as the previously requested accurate as-built drawings of the sewer line and monthly water usage data from the Property. Prior as-built drawings received by NYCDEP appear to be inaccurate based on the dye testing performed on December 6.”

Based on this information, the Town is withdrawing the attached November 5, 2019 Application to Construct to the New York Sewer System. Consistent with your December 11, 2019 letter, the Town may resubmit the application, upon receipt of the additional information requested by the NYCDEP.

The Town recognizes the concerns raised in Paul Rush's September 19, 2019 Letter to Town Supervisor Kenneth Schmitt and further, we recognize the need to ensure compliance with the 1938 Agreement and the Carmel Sewer Use Law and intends to take appropriate action.

Should you require any other information from the Town or if you have any questions or comments, I can be reached at (845) 628 – 1500 ext 181.

Sincerely,

Richard J. Franzetti, P.E.
Town Engineer

ecc:

Paul V. Rush, P.E., NYCDEP at PRush@dep.nyc.gov
Lorraine Holdridge, NYSDEC at lorraine.holdridge@dec.ny.gov
Joseph Paravati, PCDOH at Joseph.Paravati@putnamcountyny.gov
Suzanne McDonough, Town of Carmel at sfm@ci.carmel.ny.us
Michael Barile and Tommy Boniello via Counsel at JVanOrden@cozen.com



Vincent Sapienza, P.E.
Commissioner

Paul V. Rush, P.E.
Deputy Commissioner
Bureau of Water Supply
prush@dep.nyc.gov

465 Columbus Ave
Valhalla, NY 10595

T: (845) 340-7800
F: (845) 334-7175

December 11, 2019

Richard J. Franzetti, P.E.
Town Engineer
Town of Carmel
60 McAlpin Avenue
Mahopac, NY 10541

RE: Mahopac Wastewater Treatment Plant
Out of District Connection Request
825 South Lake Boulevard

Dear Mr. Franzetti,

As you are aware, the New York City Department of Environmental Protection ("NYCDEP") is reviewing the Town of Carmel's ("Town") October 24, 2019 Out of District Connection Request for the above-referenced property (the "Property").

As we previously advised, in order to complete our review, we need 1) proof that the identified blockage has been removed from the line; 2) a flow test of the line; and 3) a pressure test of the line. We understood these items would be complete by December 6, 2019. However, during a field inspection on December 6, a dye test revealed that the Property's wastewater connection to the Town collection system is different from what was previously represented. Should the Town wish to proceed with its request, NYCDEP will need the flow and pressure tests to be completed on the line that is in use, as well as the previously requested accurate as-built drawings of the sewer line and monthly water usage data from the Property. Prior as-built drawings received by NYCDEP appear to be inaccurate based on the dye testing performed on December 6.

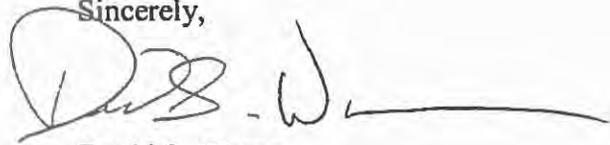
In addition to the foregoing, during the dye test, NYCDEP's inspector observed that the 2,000 gallon tank on the Property is full. As such, please clarify whether the tank is currently being used as a septic tank or an overflow tank. If the tank is being used as an overflow tank for the pump pit, please provide documentation of past pump outs, the schedule for future pumps out, and information on how and when the on-site septic system was abandoned.

Finally, as a reminder, should NYCDEP grant your request, we will expect the owner of the Property to enter into an agreement with NYCDEP

documenting the terms and conditions of the connection and in order to finalize such agreement, we need to understand who will be owning the line.

We look forward to continuing to expeditiously process the Town's request, should the Town wish to proceed.

Sincerely,

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

David S. Warne
Assistant Commissioner

cc: Paul V. Rush, P.E., NYCDEP Deputy Commissioner
Lorraine Holdridge, NYSDEC
Joseph Paravati, PCDOH
Suzanne McDonough, Town of Carmel
James Van Orden, Cozen O'Connor
Michael Barile and Tommy Boniello via Counsel



**New York City Department of Environmental Protection
Application to Construct to the New York Sewer System**



7870 Route 42, PO Box 358, Grahamsville, NY 12740

Applicant Information

Owner's Name: MICHAEL BARILE + TOMMY A BONIELLO
 Current Address: [REDACTED] MAHOPAC N.Y.
 Daytime Phone: [REDACTED]
 Contact Person (Engineer) JACK KARELL Phone # [REDACTED]

Property Location and Description

Connection Address 825 SOUTH LAKE BLVD
MAHOPAC N.Y. 10541
 Tax Map Number: _____ Section: 75.43 Block: 1 Lot: 22
 Type of Construction Residential/Comm Comm
 Proposed Flow (GPD) per unit 800 GPD
 Nearest Manhole/Distance _____
 Upstream Manhole/Distance _____
 Downstream Manhole/Distance _____
 Proposed Start of construction: 1997 End: 2019
 Property Owner's Signature [Signature] Certify that I
understand and will abide by all local sewer use ordinances.
 Please Site plan with building locations, distance to watercourses, proposed connection layout
 Include: Narrative describing proposal to connect, including flow data

***Official Use Only* Required Approvals**

Signature [Signature] Date: 11-05-19
 Town/Village Representative

* The Town/Village acknowledges this as an acceptable project within the Town or Village and confirms that .
 the connection request complies with local sewer use law.



New York City Department of Environmental Protection



Pre -Application Status: CONSTRUCTION SHALL NOT START:

- 1) Complete, The plant can accept the flow, proceed to step 2.
- Denied, the plant can not accept the flow.

Design Review Status:

- 2) Complete, Proceed to construction per attached documentation.
- Denied for the following: _____

Tracking Number: _____ Reviewer's initials _____ Date _____

Please allow 30 days for the Department to review the application for completeness.