August 24, 2012

Via Email and Regular Mail

New York State Fresh Water
Wetlands Appeals Board
625 Broadway, Room 145
Albany, NY 12233-1070
Attention: Docket Clerk

Re: Alpert v. DEC
FWAB #87-100

Dear Docket Clerk:

I am enclosing a signed Stipulation of Settlement between Charles and Joseph Alpert and the New York State Department of Environmental Conservation in the above matter. The Stipulation calls for the appeal to be discontinued and for the matter to be settled in accordance with its terms.

Please enter the appropriate order in this matter.

Thank you for your cooperation.

Very truly yours,

Charles S. Warren

CSW:ls
Enclosure
cc: Louis Oliva, Esq. (NYSDEC – Region 2)
    Udo Drescher, Esq. (NYSDEC – Region 2)
    Ilse Gilbert, Esq. (NYSDEC – Albany)
    Hilary Meltzer, Esq. (NYC Law Dep’t)
    Peter A. Schwartz (Graubard Miller)
STATE OF NEW YORK
FRESHWATER WETLANDS APPEAL BOARD

CHARLES AND JOSEPH ALPERT,

Appellants,

v.

THOMAS JORLING as COMMISSIONER of the
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

Respondent.

............................................. X

STIPULATION OF SETTLEMENT

THIS STIPULATION OF SETTLEMENT (the “Stipulation”) is made as of June 29, 2012, by and between appellants, CHARLES and JOSEPH ALPERT (“appellants”), and JOSEPH MARTENS as COMMISSIONER of the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (“DEC”), successor to named respondent Thomas Jorling.

WHEREAS, appellants are the owners of real property (the “Property”) situated in the County of Richmond, City and State of New York, which property is designated as Tax Block 1707, Lots 1 and 5 on the tax map maintained by the City of New York, and bordered by Morrow Street to the west, Forest Avenue, Dwarf Street and Wemple Street to the north and South Avenue to the east;

WHEREAS, appellants acquired Lot 1 of the Property on March 8, 1977, pursuant to a purchase agreement dated February 25, 1976;
WHEREAS, appellants acquired Lot 5 of the Property on November 12, 1984;

WHEREAS, the Property was not designated as a freshwater wetland on the tentative freshwater wetlands map, prepared pursuant to ECL § 24-0301(2), which was filed in Richmond County in 1981;

WHEREAS, on September 1, 1987, DEC promulgated the final freshwater wetlands map for Richmond County pursuant to ECL § 24-0301(5), designating portions of the Property as freshwater wetlands and, consequently, creating regulated freshwater wetlands adjacent areas, subjecting the Property to DEC jurisdiction;

WHEREAS, on December 9, 1987, appellants filed this appeal (the “Appeal”) challenging the freshwater wetlands designation of their property and seeking relief under the hardship provisions of Environmental Conservation Law § 24-1104, which before it expired on June 30, 1992 provided a particular appeals process for certain private landowners on Staten Island who prior to January 1, 1987 had acquired parcels that were not on the 1981 tentative wetlands map but were included on the final wetlands map promulgated on September 1, 1987;

WHEREAS, DEC has contested the Appeal;

WHEREAS, a portion of lot 1 is mapped as formerly connected tidal wetland (“FC”) on the official tidal wetlands map 570-496, thus rendering that portion of lot 1 and an area measuring 150 linear feet from the wetlands boundary subject to the DEC’s jurisdiction under the Tidal Wetlands Act (ECL Article 25) and the regulations promulgated thereunder in 6 NYCRR Part 661 over tidal wetlands and areas adjacent thereto;

WHEREAS, appellants delineated the freshwater wetlands and tidal wetlands on the Property and DEC has reviewed and concurred with such delineations;
WHEREAS, in an effort to settle the Appeal, appellants have presented to DEC a proposed site plan, identified as “Site Plan,” *Forest Avenue – Forest Avenue Wetland Delineation*, Sheet SP-1, prepared by Carpenter Environmental Associates, Inc., dated 02/05/08, last revised 8/16/12 for development of the Property (the “Site Plan”), which is annexed hereto as Exhibit A and is incorporated into this Stipulation. The Site Plan shows a tentative wetland enhancement area in the bed of Morrow Street. The Appellants do not own Morrow Street and will request that it be de-mapped in connection with development of the property. If the street bed is de-mapped, it will become part of the wetland enhancement area.

WHEREAS, DEC has determined that the Site Plan in combination with this Stipulation constitutes an acceptable proposal to address and resolve the issues raised in the Appeal;

NOW, THEREFORE, the parties agree as follows:

1. DEC has determined, and Appellants agree, in accordance with ECL § 24-0301(7) and ECL § 25-0201(6), that the freshwater wetlands and tidal wetlands on the Property are delineated as set forth on the Site Plan.

2. Appellants agree that the Property will be developed in substantial accordance with the Site Plan, subject to the requisite permits by the DEC and in accordance with otherwise applicable laws and regulations and approvals by other agencies with jurisdiction.

3. DEC has determined that the only individual permit required by the Site Plan is a freshwater wetlands permit, except that an individual SPDES permit may also be required if discharges occur other than those covered by the SPDES General Permit for Discharges from Construction Activity Permit No. GP-0-10-001 (or any successor permit) or if DEC in a reasonable exercise of its discretion pursuant to Part VII.K or Part VII. O of said
general permit and supporting statutes and regulations determines that an individual permit is required for discharges from the project site.

4. The parties are aware and agree that the Freshwater Wetlands permit process is subject to the requirements of the State Environmental Quality Review Act ("SEQRA").

5. Appellants have submitted an application, under the name Josif A LLC, for a freshwater wetlands permit that comports with the Site Plan and Stipulation, which application is attached hereto as Exhibit B, and DEC has found such application meets all completeness requirements set forth at 6 NYCRR Part 621.3(a) except for the requirements set forth at 6 NYCRR Part 621.3(a)(7)-(9).

6. DEC will expeditiously process that application and, by executing this Stipulation, attests that it has tentatively concluded that such a permit application would meet the applicable standards for permit issuance pursuant to ECL article 24 as well as 6 NYCRR Part 663.

7. Unless the SEQRA process or public review raise substantive and significant issues concerning the permissibility of the project, DEC agrees to issue a freshwater wetlands permit based on the Application and Site Plan (or a site plan in substantial accordance with such Plan) within sixty (60) days of the completion of the SEQRA process. Before the completion of the SEQRA process, a site plan which depicts sanitary and stormwater piping, utility lines and similar details shall be submitted to DEC.

8. Appellants agree that the development and construction of the Property requires coverage under SPDES general permit GP-0-10-001 (or any successor permit) for discharges associated with construction activities and will obtain such coverage by filing of a
Notice of Intent and preparing a Stormwater Pollution Prevention Plan in compliance with the requirements of the general permit and applicable regulations and standards.

9. Within thirty (30) days of issuance of the freshwater wetlands permit for the Site Plan, Appellants shall cause a deed restriction, based on a template that has been provided by DEC, to be recorded in the property records for the Property to ensure that the Wetland Enhancement Area and the Buffer Planting Area, as designated on the Site Plan, will be kept as Natural Areas and not become subject to development. In addition, if Appellants obtain an ownership interest in the area designated on the Site Plan as the Tentative Wetland Enhancement Area, or any portion thereof, the deed restriction must be amended to include that area or portion as a Natural Area not subject to development.

10. The Appeal is hereby discontinued with prejudice and without costs, except that the Freshwater Wetlands Appeal Board shall retain jurisdiction of the Appeal for the purpose of enforcing this Stipulation. However, in the event that the Freshwater Wetlands Appeal Board ceases to exist, and a successor board or agency has not been appointed, DEC and appellants shall each have the right to enforce this Stipulation.

11. This Stipulation shall be governed by and construed in accordance with the laws of the State of New York.

12. This Stipulation may not be changed, modified or terminated except by a writing executed by both of the parties hereto or their respective attorneys.

13. This Stipulation shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
14. The parties hereto agree and confirm that in the negotiation and drafting of this Stipulation each of them was represented by counsel of its own choosing, that the two sides are equally responsible for the drafting of this Stipulation, and that in the event of a dispute between them each of them shall be regarded as having played an equal role in the drafting of the relevant provisions and no portion of this Stipulation shall be interpreted on the basis of a theory that it was drafted by one side or the other.

15. This Stipulation may be executed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, appellants and DEC have caused their respective attorneys to execute this Stipulation as of the date hereinafter written.

Dated: New York, New York

8/3/2012

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: Charles S. Warren

Attorneys for Appellants
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: Louis Oliva

Regional Attorney
NYSDEC Region 2
One Hunters Point Plaza
47-40 21st Street
Long Island City, New York 11101-5407
Exhibit A
Applicant proposes to construct a commercial development with four retail buildings, accessory structures, roadways, parking areas, and a stormwater basin. Retail Buildings 'A' & 'B' will be 15,000 sq. ft. each, Retail Building 'C' will be 31,800 sq. ft., and Retail Building 'D' will be 70,000 sq. ft. Approximately 18 acres of the 27.80 acre vacant undeveloped parcel is proposed to be developed. As part of the proposed project, the applicant has provided for wetland enhancement and buffer planting areas totaling approximately 4.5 acres comprised of 1,889 trees and 7,533 native shrubs.
New York State
Department of Environmental Conservation

PERMISSION TO INSPECT PROPERTY

By signing this permission form for submission with an application for a permit(s) to the Department of Environmental Conservation ("DEC"), the signer consents to inspection by DEC staff of the project site or facility for which a permit is sought and, to the extent necessary, areas adjacent to the project site or facility. This consent allows DEC staff to enter upon and pass through such property in order to inspect the project site or facility, without prior notice, between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday. If DEC staff should wish to conduct an inspection at any other times, DEC staff will notify the applicant and will obtain a separate consent for such an inspection.

Inspections may take place as part of the application review prior to a decision to grant or deny the permit(s) sought. By signing this consent form, the signer agrees that this consent remains in effect as long as the application is pending, and is effective regardless of whether the signer, applicant or an agent is present at the time of the inspection. In the event that the project site or facility is posted with any form of "posted" or "keep out" notices, or fenced in with an unlocked gate, this permission authorizes DEC staff to disregard such notices or unlocked gates at the time of inspection.

The signer further agrees that during an inspection, DEC staff may, among other things, take measurements, may analyze physical characteristics of the site including, but not limited to, soils and vegetation (taking samples for analysis), and may make drawings and take photographs.

Failure to grant consent for an inspection is grounds for, and may result in, denial of the permit(s) sought by the application.

Permission is granted for inspection of property located at the following address(es):

Bordered by Forest Avenue, South Avenue, Asaador Street and Norrow Street, Staten Island, NY 10303

By signing this form, I affirm under penalty of perjury that I am authorized to give consent to entry by DEC staff as described above. I understand that false statements made herein are punishable as a Class A misdemeanor pursuant to Section 170.45 of the Penal Law."

Charles Ajmpety, Member [Signature] 6/29/2012

Print Name and Title

*This signer of this form must be an individual or authorized representative of a legal entity that:
- owns the site and is in possession of the property identified above;
- holds a lease whereby the person has the right to possess the property through a lease, rental agreement or other legally binding agreement; or
- is provided permission to enter on behalf of an individual or legal entity possessing the site or other possessory interest in the property for the purpose of conducting inspection of such property.

Permission to Inspect Property Application Supplement 12/68