
In the Matter of the Application
of BLACKMAN PLUMBING SUPPLY CO., INC.
for a Wild, Scenic and Recreational
Rivers Permit pursuant to Environmental
Conservation Law article 15, title 27
and part 666 of title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York

SUMMARY REPORT
AND ORDER OF
DISPOSITION

DEC Application No.
1-4730-01349/00001

February 2, 2010

In 2006, Blackman Plumbing Supply Co., Inc. (the Applicant), 120 Hicksville Road, Bethpage, New York, 11714, submitted an application to the New York State Department of Environmental Conservation (DEC or Department) for a permit pursuant to article 15, title 27 of the Environmental Conservation Law (ECL), which is the Wild, Scenic and Recreational Rivers System Act. Part 666 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR part 666) governs administration of this Act in New York State excepting private land in river areas within the Adirondack Park.

The application is for construction of a new 40,000 square foot building to include a warehouse, office and showroom for a plumbing supply facility. The site of the project is 940 West Main Street, Town of Riverhead, Suffolk County. The property is located in the Peconic River Corridor.

The project is an unlisted action under the State Environmental Quality Review Act (SEQRA, ECL article 8 and 6 NYCRR part 617). The Town of Riverhead Planning Board, as lead agency for the SEQRA review, issued a negative declaration on August 22, 2008 stating that no environmental impact statement needed to be prepared.

On September 24, 2008, DEC Staff determined that the application was complete. On October 9, 2008, DEC Staff denied the application. The letter of denial stated that DEC Staff had notified the Applicant's engineer in December 2006 that the proposed commercial expansion was prohibited in the river corridor pursuant to 6 NYCRR 666.13(K)(3) Notes (i) and (xi). The letter stated that Dr. R.W. Abrams, of Dru Associates, Inc., submitted a request for variances in July 2007, seeking both a use variance and an area variance. DEC Staff denied the variance requests and the permit application, for reasons stated

in the letter. On November 3, 2008, the Applicant requested a hearing. The hearing is subject to the DEC permit hearing procedures (6 NYCRR part 624).

The Applicant is represented in this matter by Frank A. Isler, Esq., of Smith, Finkelstein, Lundberg, Isler and Yakaboski, LLP, Riverhead. DEC Staff is represented by Kari Wilkinson, Esq., Assistant Regional Attorney, DEC Region 1, Stony Brook.

The case was scheduled for the Region 1 hearings calendar call on January 21, 2009. At that time, Administrative Law Judge (ALJ) Richard R. Wissler scheduled the hearing to take place on July 21 and 22, 2009. On April 29, 2009, the Applicant requested an adjournment due to the possibility that the matter might be resolved between the Applicant and DEC Staff. DEC Staff agreed with this request. The hearing was later rescheduled for November 4, 2009.

The notice of hearing was published in the *Riverhead News-Review* on October 8, 2009 and in the Department's Environmental Notice Bulletin on October 7, 2009. The hearing convened as scheduled on November 4, 2009 at the Riverhead Town Hall before ALJ Susan J. DuBois (the undersigned).

No persons submitted petitions for party status to participate in the adjudicatory hearing, and no persons requested party status at the hearing. No written comments about the project were received by the DEC Office of Hearings and Mediation Services, and no persons other than the representatives of the parties, the ALJ and the stenographer attended the hearing. The Town of Riverhead had submitted an October 8, 2008 letter in response to the notice of complete application, supporting the project.

The parties to the hearing are the Applicant and DEC Staff. DEC Staff stated that the denial letter identifies the issues to be decided. The Applicant agreed that the letter "frames the basis for the Department's action" but stated that, if the hearing were to go forward, the Applicant would contest legal conclusions reached by DEC Staff in the letter and would present a more formal framing of the issues. The Applicant noted, however, that an application was pending before the Commissioner of Environmental Conservation for a change in the designation of the portion of the river corridor that includes the project site. The Town of Riverhead had proposed that the area be designated as a "Community," as that term is used in the Wild,

Scenic and Recreational Rivers program (see, 6 NYCRR 666.3[m], 666.6[b]; ECL 15-2709[2][c]). The Applicant stated that this change would permit the land use sought by the Applicant, and the Applicant asked to mediate the area variance issue.

Prior to the hearing, the parties had proposed using a portion of the time set aside for the hearing to mediate the area variance issue. Following the initial discussion on the record at the hearing, the parties and the ALJ had a discussion, off the record, concerning possible modifications to the project. The outcome of this mediation, as of November 4, 2009, was that the Applicant would submit a revised conceptual design, a revised calculation of land coverage, and a planting plan. These documents were to be submitted to DEC Staff by November 16, 2009. DEC Staff would provide a response to the Applicant by November 30, 2009. A conference call among the parties and the ALJ was scheduled for December 10, 2009.

On December 10, 2009, the parties stated they would prepare a stipulation about the revised proposal. As of that date, the decision about the Community designation had not yet been made. The hearing was adjourned to an additional conference call on January 25, 2010.

On January 12, 2010, Commissioner Alexander B. Grannis issued a decision concerning two proposed Community designations within the recreational segment of the Peconic River Corridor. The two proposals were submitted by the Town of Riverhead and the County of Suffolk, respectively.

The site of the Applicant's project, 940 West Main Street, Town of Riverhead, is also described as tax lots SCTM 0600-124-3-1 through 5 (see, Town of Riverhead Planning Board's August 22, 2008 SEQRA determination, and January 31, 2006 Joint Application for a Permit, documents included with the hearing request). With regard to the Town of Riverhead's proposed Community designation, the Commissioner's Decision and Order adopted the recommendation of the hearing report prepared by Roy A. Jacobson, Jr. of the DEC Division of Fish, Wildlife and Marine Resources. The report recommended that the Town of Riverhead's proposal be modified by excluding seven larger undeveloped or residential lots, some of which contain wetlands, and that this modified proposal be adopted. The five lots that together are the site of the Applicant's proposed project are among the 93 lots proposed by DEC staff for inclusion in a modified Community designation (Matter of Proposed "Community"

Designations [Peconic River], Commissioner's Decision and Order, January 12, 2010, adopting Hearing Report, Appendix A).

On January 25, 2010, a telephone conference call took place among Ms. Wilkinson, Mr. Isler, and me. Ms. Wilkinson stated that DEC Staff had received a draft of the Applicant's revised plans for its project and expected that the plans would be approvable, after one minor change to be made by the Applicant's consultant. Mr. Isler stated that the Applicant had prepared detailed plans rather than conceptual plans. The parties stated they would prepare and sign a stipulation and forward it to me.

Ms. Wilkinson and Mr. Isler signed a stipulation on February 1, 2010 and transmitted the stipulation to me on that date. The stipulation stated that DEC Staff reviewed the plans submitted by the Applicant, drawn by Young & Young and dated January 26, 2010. The stipulation stated that the plans are approvable by DEC Staff and resolve all outstanding issues between the parties. The stipulation also provided a brief description of the project as currently proposed.

Because no petitions for party status were received and the two parties to the hearing have reached an agreement that resolves all issues concerning the project's compliance with the standards for issuing a Wild, Scenic and Recreational Rivers permit, no issues for adjudication remain to be considered and no further hearing is required.

Consistent with Organization and Delegation Memorandum 94-13 (Effect of Stipulations on Decision-Making in Permit and Enforcement Hearings), the parties to this proceeding have resolved all issues by stipulation (see, 6 NYCRR 624.13[d]). Accordingly, the matter is remanded to DEC staff for issuance of a permit consistent with the stipulation. The hearing record in this matter is closed.

Albany, New York
February 2, 2010

_____/s/_____
Susan J. DuBois
Administrative Law Judge

TO: Frank A. Isler, Esq.
Kari Wilkinson, Esq.