

Hamilton Township Department of Law

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Lindsay L. Burbage, Esquire, Director
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October 21, 2013

Via Email and Regular Mail

Kevin Schick, Bureau Chief
New Jersey Department of Environmental Protection
Mail Code 401-04M
P.O. Box 420
Trenton, New Jersey 08625

Re: Italian American Sportsmen's Club, Inc.
2275 Kuser Road, Block 2575; Lot 47.01
Hamilton Township, New Jersey

Dear Mr. Schick:

I am writing to you concerning the above referenced matter. I am enclosing a copy of a letter from Italian American Sportsmen's Club ("IASC") attorney, Robert P. Avolio, Esquire, dated October 8, 2013. As you can see from Mr. Avolio's letter, the IASC wishes to move forward with the site remediation as detailed in the Remedial Action Workplan ("RAW") submitted to the New Jersey Department of Environmental Protection ("NJDEP") on May 28, 2013.

As I am sure you are aware, the RAW that was submitted to NJDEP proposed to immediately remediate only that portion of the property that is subject to an approved housing development and not the adjoining property. The Township of Hamilton has previously expressed objection to this plan (see July 5, 2013 letter from Hamilton Township Engineer Richard Williams, copy attached). Also, the owner of a portion of the original IASC property likewise strenuously objects to this piecemeal remediation (see letter from Daniel J. Sheridan, Esquire, to the ELM Group dated June 18, 2013, copy attached).

At the October 15, 2013 Hamilton Township Council Meeting, residents from adjoining properties to the above referenced property voiced their strong objections to what they feel have been less than forthright remediation efforts. It should be noted that these neighbors have been quite vocal for the last four years concerning this project and its clean up. During their testimony some Council members were surprised to hear that the proposed development will sit, in part, on a small abandoned dump/landfill. This "dump" has not been addressed as to potential clean up.

At the same October 15, 2013 Council meeting, a member of the Delaware River Keepers appeared and testified, as did Mr. Michael J. Meriney, P.G., LSRP. They both gave a very insightful presentation as to what they felt was a rather woefully inefficient testing procedure and subsequent RAW. Mr. Meriney will be submitting his report and findings directly to you in the near future.

Kevin Schick, Bureau Chief
New Jersey Department of Environmental Protection
Italian American Sportsmen's Club, Inc.
October 21, 2013
Page 2

Based on all of the aforementioned, it is Hamilton Township Council and Hamilton Township administration's request that the NJDEP compel the IASC to clean up the entire site and to perform additional tests to determine the extent of the lead and PAH contamination on the site as well as additional tests to discern what contamination, if any, may exist from the abandoned dump site.

Thanking you for your attention and cooperation.

Very truly yours,



Lindsay L. Burbage, Esquire
Director, Department of Law

LLB:amb

enclosures

cc: *via email only:*

Mayor Kelly A. Yaede (w/ encl.)
Council President Edward R. Gore (w/ encl.)
Council Vice President David J. Kenny (w/ encl.)
Councilman Kevin J. Meara (w/ encl.)
Councilman Dennis A. Pone (w/ encl.)
Councilwoman Ileana Schirmer (w/ encl.)
John F. Ricci, Business Administrator (w/ encl.)
Richard Williams, PE, PP, CME, Director, Dept. of CP&C (w/ encl.)
Michael Guhanick, Land Use Coordinator (w/ encl.)
Robert P. Avolio, Esquire (w/ encl.)
Dino Spadaccini, Esquire (w/ encl.)
Daniel J. Sheridan, Esquire (w/ encl.)
Michael H. Magee, Esquire (w/ encl.)
Tom Troy, Sharbell Development Company (w/ encl.)
Craig Wilkinson, NJDEP, Site Remediation Program (w/ encl.)
Michael J. Meriney, P.G., LSRP, EXCEL Environmental Resources, Inc. (w/ encl.)

John Ricci

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FACSIMILE TRANSMISSION COVER SHEET

DATE: October 8, 2013

TO: Michael J. Gubanick, Land Use Coordinator – 609-890-3537
Richard S. Williams, Twp. Engineer – 609-890-3537

FROM: Robert P. Avolio, Esq. – 609-219-1812

RE: Italian American Sportsmen's Club, Inc.

MESSAGE:

Pages including cover: 3

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AVOLIO & HANLON, P.C.

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October 8, 2013

† NJ & FL Board Certified Civil Trial Attorney
 * NJ Bar
 † FL Bar
 ** NJ & PA Bars
 * FL & NY Bars
 † NJ, PA, NY, FL & D.C. Bars
 † PA Bar

VIA FAX AND REGULAR MAIL

Michael J. Guhanick, Land Use Coordinator
 The Township of Hamilton
 2090 Greenwood Avenue
 P.O. Box 00150
 Hamilton, New Jersey 08650

**RE: Application No.: 10-06-028A
 Block 2575; Lot 47.01 (the "Property")
 Property Owner: Italian American Sportsmen's Club, Inc. ("IASC")
 Applicant: Sharbell Building Co.**

Dear Mr. Guhanick:

We represent the IASC in connection with the referenced matter.

On February 11, 2013, the IASC's Licensed Site Remediation Professional ("LSRP"), Jeffrey S. Fehr, PG, LSRP of The ELM Group, Inc., provided the Township of Hamilton with an update regarding the status of the investigation/remediation at the Property. The purpose of this letter is to supplement that letter and in particular, further address General Site Comment Nos. 1 and 2 included in the Memorandum dated September 25, 2013 from Richard S. Williams, Director of CP&C and Township Engineer, to your attention.

Initially, kindly note that after completion of additional delineation sampling, the Remedial Investigation Addendum and Remedial Action Workplan ("RAW") for the Property –

AVOLIO & HANLON, P.C.

RE: Italian American Sportsmen's Club, Inc.

Page 2

prepared and approved by the IASC's LSRP -- was submitted to the State of New Jersey, Department of Environmental Protection ("NJDEP") on May 28, 2013. A copy of the RAW was also provided to the Township at that time. The RAW estimated that the remedial action activities would be completed within six (6) months of the start of the remedial action.

In light of the transformation of site remediation in New Jersey under the Site Remediation Reform Act ("SRRA"), the LSRP now stands in the shoes of the NJDEP to approve and oversee remediation. NJDEP approval of an RAW is no longer required prior to implementation. SRRA's accompanying regulations require the LSRP to submit the RAW to the NJDEP at least sixty (60) days before implementing the remediation. See N.J.A.C. 7:26E-5.5(a). In this case, that sixty (60) day time period has expired and the IASC's LSRP is in the process of finalizing the schedule for implementation. At this time, the IASC has been advised that the remedial action activities will commence before the end of November, 2013 and will be completed in less than six (6) months.

In light of the foregoing, the RAW previously submitted to the Township shall be considered approved for purposes of the Township's execution of the subdivision mylars.

Should you have any questions in this regard, please do not hesitate to contact me. In the interim, we will continue to provide the Township with any further developments in this regard.

Very truly yours,

AVOLIO & HANLON, P.C.

BY: 

Robert P. Avolio, Esq.

RPA:jt

cc: Richard S. Williams, P.E., P.P., C.M.E., Township Engineer (via fax)
The ELM Group, Inc. (via e-mail)
Italian American Sportsmen's Club, Inc. (via e-mail)
Frank Petrino, Esq. (via e-mail)
Sharbell Development Co. (via e-mail)



The Township of Hamilton

Kelly A. Yaede
Mayor

July 5, 2013

Mr. Kevin Schick, Bureau Chief
NJ Department of Environmental Protection
Mail Code 401-04M
P. O. Box 420
Trenton, New Jersey 08625

RE: Italian American Sportsman Club
2275 Kuser Road, Block: 2575; Lot: 47.01
Application No. 10-06-028A
Remedial Action Workplan

2013 JUL -5 A 9:57

RECEIVED
TOWNSHIP OF HAMILTON
JUL 5 2013

Dear Mr. Schick:

I am writing in regard to the Remedial Action Workplan submitted to NJDEP and prepared by ELM Group, Environmental Engineers and Licensed Site Remediation Professional for the Italian American Sportsman Club (Block: 2575; Lot: 47.01) 2275 Kuser Road. Upon review of the RAW, it is noted that the LSRP is not recommending remediation of the neighboring property (Block: 2575; Lot: 161) which contains the majority of the contamination in the area caused by the shooting range activity that occurred on the Italian American Sportsman Club property.

There is an approved subdivision and site plan to construct homes on a portion of the Italian American Sportsman Club property; in addition, there are several existing homes that border 2575 Kuser Road (IASC property). The Township of Hamilton is extremely concerned that the entire site, including the adjoining parking lot area, is not being remediated. We find this totally unacceptable and respectfully request that the New Jersey Department of Environmental Protection mandates this entire clean-up.

Should you have any questions, please do not hesitate to contact me at 609-890-3636.

Very truly yours,

Richard S. Williams, P.E., P.P., C.M.E.
Director of CP&C & Township Engineer

RSW/jv

c: Mayor Kelly A. Yaede
John F. Ricci
Hamilton Township Council
Lindsay L. Burbage, Esquire
Michael J. Guhanick
Robert Poppert
File (Appl.# 10-06-028A)

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WWW.STARK-STARK.COM

June 18, 2013

Via E-Mail

The ELM Group, Inc.
343 Wall Street
Princeton, New Jersey 08540

Attn: Jeffrey S. Fehr

Re: Italian American Sportsman's Club – RIR Addendum and RAW

Dear Mr. Fehr:

I am counsel for Kuser Road Properties LLC ("KRP"), owner of a parcel of property designated as Lot 161, Block 3575 on the tax map of Hamilton Township, Mercer County, New Jersey (the "KRP Property"). The KRP Property is adjacent to the property owned by the Italian American Sportsman's Club ("IASC") designated as Lot 47.01, Block 2575 on the Hamilton Township tax map (the "IASC Property").

Robert Avolio provided to me a copy of the Remedial Investigation Report Addendum and Remedial Action Workplan dated May 24, 2013 prepared by ELM relating to the IASC Property (the "ELM RIR Addendum and RAW"). Although the original Remedial Investigation Report prepared by Dynamic Earth in March 2012 included the KRP Property within its scope, the RIR Addendum and RAW do not. The justification for excluding the KRP Property appears in Section 2.1.1 of ELM RIR Addendum and RAW, as follows:

Prior to meeting with the NJDEP on April 8, 2013, ELM recommended collecting a limited number of additional soil samples beneath the asphalt parking area on the Spadaccini property to delineate lead and/or PAH's, and confirm the general adequacy of [Dynamic Earth's] sampling. Counsel for the IASC requested access to the property from the owner; to date, *counsel for the owner has not permitted access*. ELM has been informed that there is no agreement in place between the parties as to the responsibility for investigating and remediating the Spadaccini property. In light of this and other considerations, ELM has prepared the RIRA/RAW focusing only on the Property in order to expedite the remediation of the Property following submission of this RIRA/RAW to the NJDEP. (emphasis added)

This statement significantly distorts the facts, and since it is now a matter of public record, the record must be corrected. The following is a chronology and summary of communications between me and Amie Kalac, Esq., counsel to IASC, concerning IASC's request for access and KPR's response:

The ELM Group, Inc.
June 18, 2013
Page 2

1. On January 23, 2013, Ms. Kalac sent a letter to Dino Spadaccini, who was then representing KRP, together with a proposed form of Access Agreement. In the letter, Ms. Kalac stated that sampling activities were scheduled to commence during the week of February 4.
2. On February 1, 2013, I sent a letter to Ms. Kalac in which I advised her that I had just been retained by KRP and was reviewing the background documents as well as the access request. In that letter, I stated that no access should be made onto the KRP Property absent an agreement.
3. On February 7, 2013, Ms. Kalac sent a letter requesting that I "please expedite" my review of the background materials.
4. Following my review of the background documents, on February 13, 2013, I called Ms. Kalac to discuss the scope of proposed access request. At that time, Ms. Kalac advised me that it was her understanding that "access is no longer necessary", but did not elaborate on the reasons. She advised me that she would consult with ELM to determine if access was still necessary.
5. In a letter to me of March 1, 2013, Ms. Kalac advised me that in light of the fact that KRP did not provide access "at the time ELM mobilized to conduct additional sampling, no sampling is proposed for the property at this time."
6. Following my review of your correspondence to Richard Williams of February 11, 2013, I wrote to Ms. Kalac on March 13, 2013, strongly suggesting that KRP be advised of, and given an opportunity to comment upon, the proposed RAW prior to its submission. I never received a response to that letter.

In sum, access was never refused by KRP. IASC's initial request was merely conditioned upon execution of an appropriate form of access agreement – a topic on which my client has been willing to engage since February 13, 2013. KRP previously granted access to Dynamic Earth. It had no reason to deny access to ELM. In my review of the ELM RIW Addendum, I noted that ELM did in fact mobilize at the site on February 7, 2013 (the date upon which Ms. Kalac wrote to me and requested that my client "expedite" its review). It again mobilized at the site on April 5, 2013. No effort was made by IASC or its counsel to arrange for access during that latter sampling event. In fact, it appears that IASC and its counsel, with your tacit cooperation, have gone to great lengths to construct an (entirely false) narrative and justification for excluding the KRP Property from the scope of the RAW.

For the record, my client is willing to grant access to the KRP Property for remediation to unrestricted use standards/screening levels, consistent with the remediation proposed for the IASC Property, subject only to reasonable coordination of activities to avoid undue interference with the business operations of KRP's tenant. Furthermore, on the subject of absence of an agreement regarding "responsibility for investigating and remediating the Spadaccini property", KRP is willing to grant such access subject to a full reservation of all parties' rights, claims and defenses concerning liability for remediation expenses. I do note, however, that the contamination on the KRP Property clearly resulted from IASC's activities, and clearly pre-dated IASC's sale in 1989 of the KRP Property to Anthony Spadaccini and Frank Borromeo.

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The ELM Group, Inc.
June 18, 2013
Page 3

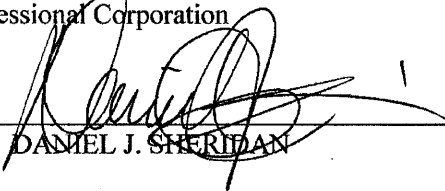
As the LSRP of record, I believe you now have sufficient information in your possession to amend the ELM RIR Addendum and RAW to include the KRP Property within the scope of the remediation activities consistent with your obligations under both the Administrative and Technical Requirements for Remediation of Contaminated Sites.

Please contact me with any questions.

Very truly yours,

STARK & STARK
A Professional Corporation

By: _____


DANIEL J. SHERIDAN

DJS/bmc

c via email: Dino Spadaccini, Esq.
 Robert Avolio, Esq.
 Amie Kalac, Esq.
 Frank J. Petrino, Esq.
 Michael H. Magee, Esq.
 Lindsay Burbage, Esq.
 Hamilton Twp. Council Members
 Tom Troy, Sharbell Dev. Company
 Richard Williams, P.E., P.P., C.M.E.
 ✓ Kevin Schick, NJDEP
 ✓ Myrna Campion, NJDEP
 Hon. Kelly Yaede, Mayor