

CROSSGATES GROUP

208

Executive Park Tower
Albany, New York 12203
(518) 482-8951

October 18, 1978

Mr. Carl J. Walters
Town Supervisor
Guilderland Town Hall
Route 20
Guilderland, New York 12084

Dear Mr. Walters:

Our environmental consultants, Jason M. Cortell and Associates, have advised us that the water classification for the Krum Kill drainage basin directly adjacent to the Crossgates site is "A". It is our understanding that the reason this drainage basin is classified "A" is because the McKownville water district has designated this area as a potable water source. This designation is in direct conflict to the zoning and the master planning for this area in that commercial development is not feasible unless parking lot run off can be discharged directly into the drainage basin.

Our consultants have also advised us that it is doubtful that any type development of some magnitude could take place in the general area unless the water classification were changed to at least "CT", and preferably to "D". We, therefore, request that the Town Board of the Town of Guilderland take the appropriate action to reclassify the Krum Kill drainage basin to a "D" classification so that the highest and best use of the land may take place.

We recognize that in accomplishing this reclassification the McKownville reservoir adjacent to Stuyvesant Plaza must be abandoned as a water source. We feel that the McKownville reservoir has unique potential for the Town of Guilderland, and we are in favor of turning this reservoir into a recreational area and ice skating park. We have reviewed the annual costs associated with operating this type recreational area, and we are willing to enter into a contractual agreement with the Town of Guilderland which assures that the operating costs of this facility are funded by Crossgates. We would prefer that the Town of Guilderland assume responsibility for the administration of this park and that the town bill us directly for the costs associated with operation. In lieu of this, we would be willing to use our mall management staff to operate the park if necessary.

To support our request that the Town Board reclassify the drainage basin, we attach the following documents:

1. Procedure necessary to accomplish the reclassification.
2. Letter from the Albany County Health Department addressing the question of the use of this drainage basin as a valid potable water source.

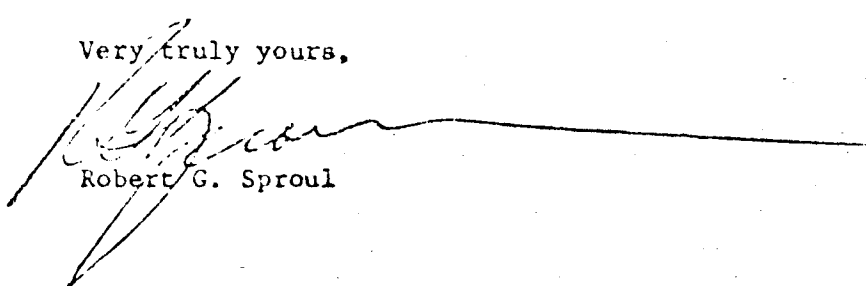
Mr. Carl J. Walters

Page 2

October 18, 1978

3. Report from J. K. Fraser, consultants, concerning the use of this drainage basin as a potable water source.
4. Letter and memorandum from Jason M. Cortell and Associates, Inc., consultants, concerning McKownville Reservoir and Krum Kill drainage basin.
5. Estimate of operating costs associated with developing the McKownville Reservoir into a recreational area.

Very truly yours,



Robert G. Sproul

RGS/jlc

Attachments

MEMORANDUM RE: RECLASSIFICATION OF, AND PARK ON THE KRUM KILL

This memo sets out the necessary steps and legal requirements in order to be able to accomplish the following goals:

- (1) To secure D.E.C. approval of a suitable water supply source for the McKownville-Birchmont Water District.
- (2) To allow the Town of Guilderland and Crossgates to discharge storm water into the Krum Kill.
- (3) To allow the McKownville-Birchmont Water District property to be developed into a recreational park.

The first major step to the realization of these goals is the reclassification of the Krum Kill from an "A" stream to a "D" stream. The Krum Kill is classified "A" at present because D.E.C. still has it officially listed as the water supply source for the McKownville-Birchmont Water District. Therefore, the first sub-step is the "de-designation" of this stream as a water source.

The New York State Environmental Conservation Law, in Section 15-1501 (1) requires that:

"No person or public corporation . . . shall have any power to do the following until such person or public corporation has first submitted the maps and plans therefor to the Department of Environmental Conservation as hereinafter provided, and until the department shall have approved the same

(a) To acquire or take a water supply or an additional water supply from an existing approved source "

The only approved source at present for the McKownville-Birchmont Water District is the McKownville Reservoir and the Krum Kill as originally approved in 1948 and modified from time to time. The McKownville Water District and the Town of Guilderland is therefore presently in violation of Section 15-1501 because it is presently getting its water from the Westmere Water District, a source not approved for the McKownville-Birchmont Water District.

Section 15-1503 specifies the procedure for making application to the Department of Environmental Conservation for approval of an additional water source. It specifies among other things that the application shall be accompanied by proof of adequate authorization for project, the maps and plans of the proposal, if any, a statement of the need for the particular source requested, the reasons therefor, the appropriateness of the particular source in consideration of other sources of supply which are or may become available, the adequacy of the supply and such proof as the department shall require about the character and purity of the water supply proposed.

Subsection (2) of 15-1503 specifies the Department's procedure upon receiving an application. It states that the D.E.C. shall call for a public hearing on the application and publish and mail certain notices of this public hearing.

One of the necessary elements of the required application is proof of the adequate authorization of the proposal. The authorization referred to is specified in Section 196 of the Town Law, and Part 601.4 of the New York Code of Rules and Regulations. Section 196 states that: "When the Town Board shall have established a . . . water district and adopted a plan . . . for such district, such plan shall not be modified by the board . . . except after public notice . . . of intention to modify the same".

The same section said that the notice must be published in the official newspaper and shall state the particulars of the proposed modification, and the time and place when the Board will consider any objections to such proposed modification. This "Objection day" shall be not less than 10 nor more than 20 days after the first publication of the notice.

If, after meeting, hearing any objections, and deliberating on the proposal, the Board desires to adopt a resolution changing the water district plan, then Section 196 of the Town Law says that a revised or additional map and profile shall be made showing the change, and such maps must be kept in the Town Clerk's Office and open to public inspection.

It is this resolution adopting a change in the water district plan to which Section 15-1503 refers when requiring that the application to D.E.C. be accompanied by proof of adequate authorization for the project.

Unlike a resolution to consolidate two water districts, which pursuant to Town Law §206 is subject to a permissive referendum, a resolution modifying the plan of a water district under §196 is not subject to referendum, permissive or otherwise. The only unusual prerequisite to a resolution under §196 is that notice of the proposal must be given as specified above.

When the D.E.C. has approved a new source of supply for the McKownville-Birchmont District, and has "de-designated" the Krum Kill as such source, the way is clear to apply to D.E.C. for reclassification of the Krum Kill. This step is necessary to permit storm water discharge, and to facilitate the construction of the park.

Reclassification procedures are specified in Part 609 of Volume 6A of the Codes, Rules & Regulations of the State of New York (6A, N.Y.C.R.R. 609).

The application can be made by the Town of Guilderland by verified petition accompanied by supporting exhibits and documents. Upon receipt of an acceptable application, D.E.C. will call a public hearing as soon as practicable on not more than 30 nor less than 20 days notice. Only persons who file a Notice of Appearance prior to

the hearing, which notice states the specific grounds for objection, can be heard at the hearing. After the hearing, D.E.C. will render its decision on the reclassification and will advise the applicant.

SUMMATION

To accomplish the goals stated above, the following steps are necessary:

... DEVELOP THE PLAN.

1. Publication of a notice stating the Town of Guilderland's intent to modify the McKownville-Birchmont Water District Plan to provide for a new source of water supply.
2. The adoption of a resolution modifying such plan subject to D.E.C. approval, and authorizing an engineer to prepare new maps and plans showing the modification.
3. The filing of these new plans in the Town Clerk's office.
4. The filing of an appropriate application to D.E.C. requesting approval of the modified plans and "de-designation" of the Krum Kill.
5. Publication by the Town of Guilderland of a notice of public hearing in such manner as the Commission will determine not exceeding four weeks.
6. Participation by the Town of Guilderland as petitioner in E.C. hearing.
7. Receipt of D.E.C. decision on designation of new source and "de-designation" of the Krum Kill.
8. Petition by the Town of Guilderland to D.E.C. for reclassification of the Krum Kill.
9. The publication of, and mailing to designated persons of a notice of public hearing on the reclassification.
10. Participation by the Town of Guilderland as petitioner in D.E.C.'s hearing.
11. Receipt of D.E.C.'s decision on reclassification.

Respectfully submitted,

GRAHAM AND EGLESTON

By

Scott F. Chatfield
Scott F. Chatfield