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HOCHERMAN TORTORELLA & WEKSTEIN, LLP
CLIENT-CENTERED ♦ SOLUTION-ORIENTED

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Geraldine N. Tortorella
Adam L. Wekstein
Noelle C. Wolfson

Henry M. Hocherman, Retired

September 9, 2021

Via Federal Express and Electronic Mail

Town of Washington
c/o Hon. Mary Alex, Town Clerk
Town of Washington Town Hall
10 Reservoir Drive
Millbrook, New York 12545

Re: Response to Request For Proposals – 2021 Comprehensive Plan Review Committee

Dear Ms. Alex:

Enclosed are one original and seven bound copies of the proposal of Hocherman Tortorella & Wekstein, LLP, submitted in response to the Request for Proposals From the Town of Washington Comprehensive Plan Review Committee. An electronic copy of the proposal is being forwarded to you via e-mail.

Very truly yours,

Hocherman Tortorella & Wekstein, LLP

By: 

Adam L. Wekstein

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**RESPONSE OF
HOCHERMAN TORTORELLA & WEKSTEIN, LLP
TO REQUEST FOR PROPOSALS FROM
THE TOWN OF WASHINGTON
COMPREHENSIVE PLAN REVIEW COMMITTEE**



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September 9, 2021

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Members of the Town of Washington Comprehensive
Plan Review Committee
c/o Hon. Mary Alex, Town Clerk
Town of Washington Town Hall
10 Reservoir Drive
Millbrook, New York 12545

Re: Response to Request For Proposals – 2021 Comprehensive Plan Review Committee

Dear Members of the Committee:

By this letter Hocherman Tortorella & Wekstein, LLP (“HTW”) is responding to the Request For Proposals by the Town of Washington Comprehensive Plan Review Committee (the “Committee”) seeking a land use lawyer to provide legal services in connection with the Committee’s analysis of and possible recommendations as to potential amendment of the Town of Washington’s Comprehensive Plan to encompass “hospitality uses.” HTW possesses the knowledge, experience and responsiveness to fulfill that role effectively. HTW has handled all aspects of zoning, land use and environmental matters and associated litigation, primarily on behalf of landowners, but also as zoning counsel to a number of municipalities. It is comprised of three attorneys, all partners of the firm. Submitted with this letter as Attachment 1 is a description of HTW.

On a regular basis HTW’s attorneys have reviewed, provided input on and drafted proposed amendments to zoning ordinances and/or comprehensive plans. Within the last few months HTW represented the Village of Upper Nyack in completing that municipality’s amendments to its comprehensive plan. My partner, Noelle Wolfson, has participated in the preparation and enactment of a number of zoning and land use provisions on behalf of the municipalities she represents.

Providing HTW with a useful perspective regarding potential pitfalls in the amendment of a comprehensive plan is the litigation it commenced on behalf of a property owner which invalidated the Town of Yorktown’s Comprehensive Plan and Zoning Ordinance, based, among other things, on the Town Board’s failure to comply with the requirements of the State Environmental Quality Review Act (“SEQRA”; collectively referring to Article 8 of the Environmental Conservation Law and 6 N.Y.C.R.R. Part 617). For decades, HTW’s attorneys have litigated about the substantive sufficiency of and procedural requirements for adoption of zoning enactments.

Members of the Town of Washington Comprehensive
Plan Review Committee
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Within the Town of Washington (the “Town”) itself, I have obtained the approvals necessary to authorize the establishment of a veterinary hospital and successfully defended those approvals in litigation pursued by project opponents.¹ HTW has also represented applicants that obtained land use approvals and/or litigated in connection therewith in the nearby towns of Beekman, East Fishkill, Hyde Park, LaGrange, Poughkeepsie and Rhinebeck.

I have reviewed the Town’s current Comprehensive Plan to assess the extent to which hospitality uses are compatible with and could be incorporated in that Plan. I understand that two of the primary goals of the Comprehensive Plan are to preserve the rural and agricultural nature of most of the Town and insure the vitality of the Village of Millbrook as commercial center. Judging the value of hospitality uses and assessing their environmental, economic and fiscal impacts will inform the Committee’s analysis of whether such uses will contravene the essential precepts of the current plan. In turn, these considerations, along with an evaluation of the tax revenue that such uses would generate for the Town, will allow the Committee to determine its view as to the extent, if any, that such uses should be permitted. Should the Committee decide that hospitality uses are appropriate, the inquiry will presumably focus on the precise operational and physical attributes that should be required for them, including their scale, and locations, and the appropriate approval process and regulatory mechanism (e.g., special permit or floating zone).

I believe that to render these decisions the Committee, with its planner’s assistance, will have to start by creating a scope of the salient environmental and fiscal issues, and then undertake a more comprehensive study on topics including, but, not limited to, baseline conditions, noise, traffic and parking impacts, demand for sewer and water, the possibility of adaptively reusing buildings that are historic or otherwise viewed as being valuable for the community, the potential of such uses to detract from or sustain existing agricultural operations, the appropriateness of combining hospitality uses with other desirable ones (such as a bed and breakfast/vineyard), the amount of tax revenue that the uses could generate for the Town and whether the uses would contribute to, detract from or be neutral as to the character of and businesses in the Village of Millbrook. Presumably, the whole process would be animated by public input.

HTW would not be involved in the policy issues referenced above. Rather we anticipate that HTW’s role would be to advise both the Committee and its planning consultant as to the substantive legal and procedural issues associated with any proposed amendment(s). When requested, and particularly during the early portion of the process, HTW would attend Committee meetings to provide guidance on the procedures entailed in amending a comprehensive plan, particularly SEQRA, referral, notice and hearing requirements, and the interrelationship between a comprehensive plan and zoning. HTW would review the language and organization of any drafts of reports, amendments, resolutions, SEQRA documentation and notices in an attempt to eliminate potentially problematic procedural errors. If the Committee determines that hospitality uses should be included in the Comprehensive Plan and proposes such changes, we would, if asked, also work with your planning consultant and you, to

¹ My client on that matter is now the Chairman of the Committee, Dr. Paul Schwartz.

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prepare draft zoning legislation to effectuate the newly-proposed policies. Having regularly been involved in litigation about the procedural requirements for the adoption of land use provisions, provided advice to municipal and private clients regarding them and being faced with navigating the nuances of such requirements on a constant basis in the context of proceedings before town and village boards, city councils, planning boards and zoning boards of appeals, HTW is in superior position to advise the Committee and its consultants of the steps that should be taken to avoid the procedural and substantive deficiencies that could lead to litigation ending in an adverse outcome. At every juncture, HTW would be available to answer questions from Committee members and consultants.

HTW has the capacity to commence working on the matter immediately and to devote the necessary attention to the project to enable the Committee's work to proceed without any significant delay.

I anticipate that my partner, Ms. Wolfson, who currently serves as zoning council for the Village of Upper Nyack and the Town of Eastchester, and I will be responsible for this matter. Copies of our biographies are submitted herewith as Attachment 2. My normal hourly rate is \$425.00 and that of Ms. Wolfson is \$300.00. However, we are pleased to offer the Town a discounted rate of \$275.00 per hour for services provided by any of the lawyers in our firm. Without understanding more about the extent and precise nature of our involvement in the process, we believe that it would be premature to provide a meaningful estimate of total fees.

Submitted with this letter as Attachment 3 is a list of references for HTW. More can be provided to the Committee on request.

If you have any questions or wish to discuss any aspects of HTW's proposal or meet with us, please do not hesitate to contact Noelle or me

Very truly yours,

Hocherman Tortorella & Wekstein, LLP

By: 
Adam L. Wekstein

ATTACHMENT 1

FIRM PROFILE OF HOCHERMAN TORTORELLA & WEKSTEIN, LLP

With more than 80 years of combined experience in Westchester County, the Hudson Valley and Long Island, the lawyers at Hocherman Tortorella & Wekstein, LLP (“HTW”), offer high quality personalized counsel and pragmatic solutions to property owners, developers, builders and municipalities in all aspects of zoning and land use, transactional real property and related litigation. HTW’s attorneys understand the complex legal and procedural requirements involved in the development approval process, which often triggers the jurisdiction of multiple agencies with separate and often overlapping, rules and permitting criteria. They never lose sight, however, of the client’s objectives and the practical realities and intricacies of each application, thus enabling them to maximize the chances of achieving such goals in an efficient fashion. HTW realizes that effective legal representation can add value to a project by rationalizing, defining and shortening the approvals process.

Permeating the land use practice are environmental rules and regulations. HTW’s attorneys have exhaustive knowledge about the State Environmental Quality Review Act, which integrates environmental review into the entitlement approval process. Their practice entails ensuring compliance with and seeking necessary permits under all of the local, state and federal regulations, which regulate the impacts of land use and development on environmentally sensitive features or resources.

When necessary, HTW employs its extensive litigation experience and skill to vindicate its clients’ rights. It regularly represents clients in plenary actions, Article 78 proceedings and appeals to defend approvals that have been granted, to seek to annul unfavorable land use decisions or to invalidate illegal or unconstitutional laws, regulations or ordinances, as well as with respect to issues arising under relevant environmental laws. HTW also excels at litigating other property rights, real estate and general civil matters.

HTW’s real estate transactional practice provides individualized, comprehensive and accessible representation. It regularly assists clients interested in acquiring, selling and leasing of both residential and commercial property and conducting the requisite due diligence associated with such transactions. The hallmark of HTW’s approach is to evaluate, negotiate and effectuate each deal individually rather than on the “assembly line” basis often seen in other real property practices.

ATTACHMENT 2

ADAM L. WEKSTEIN is a founding partner of Hocherman Tortorella & Wekstein, LLP. His practice concentrates on land use, zoning, environmental and constitutional law and he has handled dozens of complex litigation matters on both the trial and appellate levels. He appears regularly before municipal agencies and boards seeking land use approvals and environmental permits.

Mr. Wekstein has lectured and/or written articles regarding various zoning, environmental law, property rights, and constitutional issues for the Local and State Government Law and Environmental Law Sections of the New York State Bar Association, Lorman Education Services, the Practicing Law Institute, The New York Zoning Law and Practice Report, The Urban Lawyer, the Municipal Law Resource Center of Pace University and the Westchester Municipal Planning Federation.

Mr. Wekstein served as a law assistant at the New York State Supreme Court, Appellate Division, Third Department. He is rated "AV Preeminent" by Martindale Hubbell.

Selected Publications

To Fee or Not to Fee, That is the Legal Question: Guiding Principles Regarding Impact Fees, NYSBA Municipal Lawyer, Vol. 33.1 p.34 (2019)

Blurred Lines, When Does Zoning Cross the Boundary Between Legitimate Regulation of Land Use and Impermissible Regulation of Owner or Occupant, Form of Ownership or Internal Business Operations, New York Zoning Law and Practice Report, Vol. 18, I.5 (March/April 2018)

Taking a Hard(er) Look at SEQRA, New York Zoning Law and Practice Report, Vol 16, I.4 (January/February 2016)

Tupper v. City of Syracuse and New York's Zoning Uniformity Requirement, Vol. 27.1 NYSBA Municipal Lawyer, p. 17 (Winter/Spring 2013)

Primary Practice Areas

Land Use & Zoning
Litigation
Appellate Practice

Admissions

New York, 1986
United States District Court for the Southern and Eastern Districts of New York, 1987

Education

Cornell University, B.A., 1982
State University of New York At Buffalo Law School, J.D. *Cum Laude*, 1985

- Buffalo Law Review
 - Note and Comment Editor

Affiliations & Memberships

New York State Bar Association,

- Secretary and Member of the Executive Committee of the Local and State Government Law Section
- Environmental Law Section

NOELLE C. WOLFSON is a partner in the law firm of Hocherman Tortorella & Wekstein, LLP in White Plains. In her practice, she represents both private and municipal clients in land use matters and related litigation, and purchasers and sellers in real estate transactions. Noelle has recent experience representing municipal clients in connection with municipal annexation; the review and adoption of a comprehensive plan; the drafting, review and adoption of land use law amendments; advising municipal land use boards and building departments; and related tasks. She has published articles in the *New York Zoning Law and Practice Report* and has written numerous articles for *The Municipal Lawyer*, a publication of the Local and State Government Law Section of the New York State Bar Association.

Noelle is a 2001 graduate of Siena College and a 2006 graduate of Pace Law School, where she was an Honors Fellow at the Land Use Law Center and a Research and Writing Editor for the Pace Environmental Law Review. As a student associate and Honors Fellow with the Land Use Law Center, Noelle, among other things, contributed to the Gaining Ground Database and was an editor of the practice guide *Reinventing Redevelopment Law*.

Noelle is a member of the New York State Bar Association's Local and State Government Law and Real Estate Law Sections, and the Westchester Women's Bar Association's Real Estate Committee. In 2018 Noelle was the recipient of the Westchester/Putnam United Way's 2018 "Rock Star" award and the Land Use Law Center at Pace Law School's Distinguished Young Attorney Award.

ATTACHMENT 3

REFERENCES:

1. Michael Kenneally, Esq.
Chair, Local & State Government Law Section of the
New York State Bar Association and
Executive Director, New York State
Workers Compensation Alliance
150 State Street
Albany, New York 12207
Phone: (518) 210-3352
2. Margaret H. Uhle, RLA, AICP
Director of Building & Planning
Building & Planning Department
Town of Eastchester
40 Mill Road
Eastchester, NY 10709
Phone: (914) 771-3317
Fax: (914) 771-3322
Email: muhle@eastchester.org

General Description of Work: Our firm serves as outside counsel to the Eastchester Building & Planning Department and in that role, we provide support and guidance on an as-needed basis on substantive and procedural aspects of land use applications pending before the Town's land use boards. We have successfully defended the Town's Zoning Board of Appeals in Article 78 proceedings challenging its decisions.

3. Honorable Karen Tarapata, Mayor
Village of Upper Nyack
328 North Broadway
Upper Nyack, NY 10960
Tel: 845-358-0084
Email: mayor.tarapata@uppernyack-ny.us

General Description of Work: Our firm serves as consulting counsel to the Village of Upper Nyack Zoning Board of Appeals, Planning Board and Architectural Review Board. We have also represented the Village during the course of its drafting and adoption of a new Comprehensive Plan (available at <https://www.uppernyack-ny.us/comprehensive-plan-adoption/pages/upper-nyack-comprehensive-plan-2021>) and are working with the Village on the drafting and review of legislative amendments in accordance with that plan. We have successfully defended the Village's Zoning Board of Appeals in Article 78 proceedings challenging its decisions. We have also advised the Village with regard to the substantive and procedural requirements to enable it to annex land from the Town of Clarkstown into the Village.