

MACKEY BUTTS & WISE LLP

ATTORNEYS AT LAW

June 24, 2021

**VIA HAND DELIVERY and
Email (parisija67@optimum.net)**

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Hon. John Parisi, Chairman
Hon. Members of the Zoning Board of Appeals
Town of Washington
10 Reservoir Dr.
Millbrook, NY 12545

**Re: Applicant - Chatillon Realty Corp.
Use Variance Application
Property Location - Tax parcel number 6666-00-110182
133 Woodstock Road
Zoning - RL-5, Low Density Residential District
Our File Number: 7645.0002**

Dear Chairman Parisi and Members of the Zoning Board of Appeals:

As you know, we represent Chatillon Realty Corp. ("Applicant") who comes before you requesting a use variance pursuant to Town of Washington Zoning Code ("Code") Section 420(1).

Following the May 18, 2021 meeting before your board, our client received additional information on the issue of the unnecessary hardship which will result if the use variance is not granted.

The Applicant purchased the property in December, 2020, to preempt five-acre subdivisions that were being offered by the previous owner. During the due diligence and prior to closing, it was discovered that the reclamation of the mine site in 2003 received environmental accolades from the NYS DEC. As it was winter, predominantly dormant grasses were observed. Several months later, it became clear that the field was not, in fact, a thriving ecological site but rather a giant field of inorganic material with a thin layer of warm season grasses that would only support the narrowest of ecosystems. In fact, two decades later, the standards for NYS DEC reclamation, which were in their most nascent stages at the time, have been rewritten to ensure that these types of "reclamations" will be far better and more effective than just a deceptive layer of grasses that tolerate poor or no soil.

Reply to:

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Regarding the standard that the Applicant must show it “cannot realize a reasonable return, provided that the lack of return is substantial”, as an undeveloped investment property, the rate of return would be realized upon a sale of the property, or some portion, thereof. This standard is met for two reasons:

- a) The value of the property was based on the comparable sales of viable land. With regards to the 40-acre former mine site, at the time of acquisition, our client believed it was open farmable land, and assigned a value of \$9,200 per acre. As it is not viable farmland and has no value as pasture. The only possible chance to achieve a reasonable rate of return on this 40-acre section would be to create a water feature. As local real estate professional, George Langa, has noted, a water feature viewshed would compensate for the lack of tillable soil, and alleviate the substantial lack of return in any future sale. Specifically, Langa states the current value of the 40-acres is \$7,400 (20% discount) because of the liability created by a lack of topsoil. Langa notes that replacing the barren mine field with the water feature would compensate for the substantial lack of return. (Letter from George Langa attached hereto).
- b) The proposed pond could be built and used “as of right” under the Town Code. To build the proposed pond and eliminate the old, denuded mine field, up to 1.2 million cubic yards of excavated waste material must be removed from the 40-acre field to another spot on the 162.7-acre parcel if no variance is sought. To those ends, our client has received an initial bid between \$6.00 and \$8.00 per yard to move the waste material from the mine field to other spots on the property. This would cost \$7.2 to \$9.6 million. The same firm has also bid the job completely removing the excavated waste materials (which would then be recycled alleviating the need to denude other potential mine sites) and have indicated a cost of \$0.10 to \$0.25 per yard. This enormous cost discrepancy is the difference between a variance and the as of right plan. In this instance the substantial lack of return would amount to a loss of between \$6.9 million and \$9.5 million, which would be too costly to pursue. A variance would alleviate this unnecessary hardship.

In either scenario, the value of the property will be enhanced through elimination of the denuded former mine field and through the development of the proposed aquatic habitat (conservation area).

We will be prepared to discuss this additional information at your next meeting on July 13, 2021.

We welcome any questions or comments in the interim to help facilitate our client's application.

Thank you.

Very Truly Yours,

MACKEY BUTTS & WISE, LLP

A handwritten signature in black ink, appearing to read "Joshua Mackey", with a stylized, flowing script.

Joshua E. Mackey, Esq.

JEM

CC: Mary Alex
Chatillon Realty Corporation
Mark Williams
Mark Millspaugh



BERKSHIRE HATHAWAY | Millbrook Real Estate
HomeServices

June 21, 2021

Chris Mailman
225 Woodstock Road
Millbrook NY 12545

RE: Price Opinion Evaluation of Parcel #135889-6666-00-110182-0000

Dear Chris,

I have been a real estate broker in Millbrook and the surrounding areas for over 17 years. Specializing in Estates, Farms, and Land.

The 40-acre parcel that had previously been mined until roughly twenty years ago was purchased as part of a larger 162.7-acre tax lot at 133 Woodstock Rd., Millbrook NY. The purchase by Chatillon Realty of the entire parcel in December, 2020, for \$1.5 million represents roughly a \$9,200 per acre value, which is a fair market value for this neighborhood for raw land. Through geological and ecological surveys commissioned by Chatillon, and my own observation, it is clear that the limited growth on the 40-acre parcel is dominated by a stressed thin layer of grass with no organic material underneath to support tree growth. There is also no significant viewshed. In my professional opinion, the permissible uses in this RL-5 zone are limited by the previous removal of topsoil but might appeal to a residential buyer, if at all. As most residential buyers would want mature tree growth, lawns, etc., or at least the potential for such, the missing layer of topsoil would be viewed as a big liability that would need to be amended. A minimum of a 20% discount should be applied in pricing this land competitively, although the restoration of topsoil might be greater than such a discount. In my professional opinion, given the average cost basis of the 40-acre parcel (\$9,200/acre) seven months ago and a reasonable expectation of a sale at \$7,400 today (~20% discount), I believe Chatillon will have no way to make a reasonable return on this property as it is.

I understand the Chatillon is eager to replace the empty gravel field with a large pond. If the owner had such a water feature at this site, it would more than compensate for the soil deficiencies and the land would likely be valued at a minimum of \$12,000/acre. This remedy would allow the owner to receive a reasonable return.

Sincerely,
George

George Langa
Luxury Collection Specialist
Chairman's Circle Diamond Club Member,
Top 1% of Nationwide Network
Licensed in New York and Connecticut
BHHS Millbrook Real Estate