THE WEST FIRM

A PROFESSIONAL LIMITED LIABILITY COMPANY

Attorneys And Counselors At Law

677 Broadway, 8th Floor
Albany, New York 12207-2990
Telephone (518) 641-0500
Facsimile (518) 615-1500

Thomas S. West
Cindy M. Monaco

John T. McManus
Elizabeth Dailey McManus
Vicki G. Schlierer, *Paralegal*

Direct Dial: (518) 641-0505
Direct Facsimile: (518) 615-1505
E-Mail: jtm@westfirmlaw.com

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Via Facsimile (212-720-3495),
Electronic Mail (rdobrus@planning.nyc.gov),
And First-Class Mail

Robert Dobruskin, Director
Environmental Assessment and Review Division
NYC Department of City Planning
22 Reade Street, Rm 4E
New York, NY 10007

Re: Draft Scope Of Work To Prepare A Draft Environmental Impact Statement For The Proposed Domino Sugar Rezoning

Dear Mr. Dobruskin:

Our Firm serves as land use and regulatory counsel to Radiac Research Corp. (d/b/a Radiac Environmental Services) ("Radiac"). Please accept these comments on the Draft Scope Of Work To Prepare A Draft Environmental Impact Statement For The Proposed Domino Sugar Rezoning (not dated) (the "Draft Scope of Work"). This letter also confirms recent conversations between John V. Tekin, Jr. of Radiac and Steven Leonard of the NYC Department of City Planning (the "Department") concerning the effect, if any, of the Draft Scope of Work on Radiac's business operations and property rights.

Background

Radiac is located at 259 and 261 Kent Avenue and 33 South 1st Street (collectively, the "Property") in Brooklyn. There are two basic components to Radiac's business operations at the Property. First, Radiac collects low-level radioactive waste from hospitals, universities, and medical centers in sealed, approved containers. Radiac then stores the containers for a short period of time at the Property before sending the material to out-of-state end-disposal facilities. Second, Radiac transports and receives pre-packaged hazardous and universal waste from schools, hospitals, universities, and businesses for ultimate recycling and disposal at off-site facilities. Some examples of these types of materials are laboratory reagents, paints, batteries,

and computer equipment. Unlike other similar facilities in the area, Radiac does not pour, pump, mix, or treat these materials prior to transporting them off-site.[1] Radiac has engaged in these business operations at the Property for decades.

Relationship between the Draft Scope of Work, Radiac, and the Property

The Property is currently zoned M3-1. According to the Draft Scope of Work, however, the Property is within a so-called "non-project rezoning area." As part of The Refinery LLC's application to redevelop the former Domino Sugar site (the "Project"), the "non-project rezoning area" would be rezoned from M3-1 to M1-2. Importantly, despite this planned rezoning, the "proposed M1-2 zoning would maintain the current allowable density in this area and would be consistent with most of the existing uses, and would continue to permit manufacturing uses that are compatible with nearby residential uses, while requiring the enclosure of future industrial uses and precluding new heavy industrial operations" (Draft Scope of Work at 3 [emphasis added]).

Comments

Radiac's use of the Property is encompassed by Use Group 18 (see Zoning Resolution of the City of New York § 42-15).[2] Under the current zoning, the activities in Use Group 18 are permitted as of right in the M3-1 District.

As an initial matter, assuming that the "non-project rezoning area" is ultimately rezoned from M3-1 to M1-2, Radiac's use of the Property will remain permitted as of right. Specifically, section 42-20 of the Zoning Resolution of the City of New York states that "[u]es listed in Use Group 18 are permitted in M1 or M2 Districts (as well as M3 Districts) if such uses comply with all of the applicable performance standards for such districts" (see Zoning Resolution of the City of New York § 42-20). Here, Radiac's use of the Property is such that it does not implicate most of the performance standards (ex., noise, vibration, dust, etc.). For those that are relevant to its use, Radiac does and will comply with all of the applicable performance standards for the M1-2 District. Thus, consistent with section 42-20 and the intent of the rezoning as explained in the Draft Scope of Work (see e.g. page 3), Radiac's use of the Property would remain permitted as of right if the Property is rezoned to M1-2.

Alternatively, in the event that Radiac's use of the Property does not comply with some or all of the applicable performance standards for the M1-2 District, that use (or those uses) will nevertheless remain lawful. That is because such use will have been ongoing on the Property for decades, including the time that the Property is ultimately rezoned from M3-1 to M1-2. As such, these uses would be "grandfathered" or "vested," making them lawful pre-existing non-

[1] As you can see, given this description of Radiac's business operations at the Property, the "Land Use" attributed to the Property in Table 1 on page 8 of the Draft Scope of Work is inaccurate.

[2] Further, since Radiac has consistently utilized the Property in these ways for decades, Radiac surely has lawful pre-existing non-conforming use rights at the Property as well (see generally Zoning Resolution of the City of New York, Article V).

conforming uses in the M1-2 District (see generally Zoning Resolution of the City of New York, Article V).

Conclusion

Recently, Mr. Leonard of your Department kindly confirmed the above analysis – particularly that portion going to Radiac's lawful pre-existing non-conforming use rights at the Property – with Mr. Tekin. Unless we are informed by your Department to the contrary, Radiac's future actions at the Property and in regard to the Draft Scope of Work will be guided by Mr. Leonard's assurances.

Finally, please include our Firm on any future public notifications concerning the Draft Scope of Work and the proposed Domino Sugar rezoning.

If you have any questions about the content of this letter, please contact me directly at 518.641.0505. Thank you for your attention in this matter.

Very truly yours,

John T. McManus

CC: Art Green (via electronic mail)
John V. Tekin, Jr. (via electronic mail)