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August 20, 2009

Rivendell Winery, LLC
Susan L. Wine
507 Albany Post Road
New Paltz, New York 12561

Re: Rivendell Winery, LLC, v Linda Donovan, *et al*
Ulster County Index No. 08-275

Dear Ms. Wine:

This will acknowledge receipt by this office on Monday, August 17, 2009 of a “proof” copy of document purporting to be the Record on Appeal in the above matter together with proposed stipulation seeking certification of the “proof” as the record on appeal.

On behalf of all municipal respondents, individually and in their representative capacities and the municipal respondent-boards, this correspondence is sent pursuant to Rule 800.7 (b) of the Rules of Practice (Supreme Court, Appellate Division, Third Department) to advise of the municipal respondents’ objection to the record “proof” upon the ground that such document does not contain correct and complete copies of all documents, transcripts and exhibits which comprise the record in the court below.

In particular, I herewith enclose copies of the Table of Contents of the Record of Proceedings (Volumes I and II) which identifies in chronological order each and every document furnished to the court in the original proceedings pursuant to Article 78 of the Civil Practice Law and Rules (CPLR), including the stenographic record of the public hearing before the Zoning Board of Appeals conducted on October 16 and November 13, 2007. The record also included a supplement provided to the court containing copies of all relevant sections of the municipal Code of the Town of New Paltz constituting its zoning local law.

In consultation with George Lithco, Esq., attorney for Respondent, Building Inspector, it is the position of all of the municipal respondents that the reproduced full record upon which this appeal is being taken (Rule 800.7) must include all documents, transcripts, minutes and exhibits identified in the enclosures with this correspondence as such documents constitute all papers upon which the original order of Ulster County, Supreme Court (Connolly) was founded (CPLR Section 5526). The inclusion in the record of all documents furnished to the court below and

which constitute the record upon this appeal are essential and necessary to the proper consideration of the precise issues to be determined by the Appellate Division, Third Department upon this appeal.

Please be further advised that sections 800.6 and 800.7 of the Rules of Practice cited above and specifically section 5525 of New York's Civil Practice Law and Rules (CPLR) provide that in the event that the parties are unable to settle the record by stipulation, application must be made to have the record settled by Hon. Gerald W. Connolly, J.S.C., the judge before whom the original proceedings were held.

To assist with reference to the matters contained in this correspondence you are referred to Part 800, "Rules of Practice" of State of New York, Supreme Court, Appellate Division, Third Department and to CPLR Section(s) 5525 through 5532, inclusive.

Sincerely,

DI STASI, MORIELLO AND MURPHY, P.C.

By


Joseph M. Moriello, Esq.

JMM/chg
cc: George Lithco, Esq.
Jacobowitz and Gubits, LLP
Whiteman Osterman & Hanna, LLP
encl.
#07-196-BB-21

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

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In the Matter of the Application of

RIVENDELL WINERY, LLC and SUSAN L. WINE,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules

-against-

LINDA DONOVAN, GAIL CHRISTMAN, PATRICIA
SCHWARTZ, JEFFREY CLOCK, and ROBERT HUGHES,
INDIVIDUALLY AND AS MEMBERS OF THE ZONING
BOARD OF APPEALS OF THE TOWN OF NEW PALTZ,
THE ZONING BOARD OF APPEALS OF THE TOWN OF
NEW PALTZ and THOMAS WIACEK, BUILDING INSPECTOR,
TOWN OF NEW PALTZ,

Respondents

-----X

SUPPLEMENT TO
RECORD ON APPEAL

Index No. 08-0275
R.J.I. No. 55-08-00101

Assigned Judge:
Hon. Gerald W. Connolly, J.S.C.

RELEVANT SECTIONS
CODE OF THE TOWN OF NEW PALTZ (ZONING LAW)

DI STASI, MORIELLO AND MURPHY, P.C.
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ZONING BOARD OF APPEALS
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Chapter 140

ZONING

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