



**LIVINGSTON COUNTY  
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May 6, 2019

Hon. Charles J. DiPasquale  
Town Supervisor, Town of Mt. Morris  
103 Main Street  
Mt. Morris, New York 14510

Re: Livingston County Sheriff's Office Training Complex Site  
State Route 408, Town of Mt. Morris

Dear Mr. DiPasquale:

This correspondence is in response to a request from the Town of Mt. Morris to elaborate on Livingston County's position that the siting and construction of a training complex on land owned by the County should be exempt from the Town's zoning and land use regulations. The County's position is based on the rationale set forth in the New York State Court of Appeals case entitled *In re Monroe's Compliance with Certain Zoning & Permit Requirements, etc.* (72 N.Y.2d 338, 533 N.Y.S. 702). Relying on the criteria set forth in that case, the County has made the following determination with respect to the training complex site:

**(1) Nature and scope of the instrumentality seeking immunity.**

Livingston County was formed by an act of the New York State Legislature on February 23, 1821. As a county, Livingston County is a municipal corporation with geographical jurisdiction, powers and fiscal capacity to provide a wide range of services to its residents.

**(2) Encroaching government's legislative grant of authority**

Through state and federal funding sources, New York State has granted to counties reasonable discretion to determine the methods for law enforcement training consistent with State and Federal law.

Section 846(h) of the New York State Executive Law establishes the Law Enforcement Agency Accreditation Council. Said council is the authoritative body responsible for guiding the direction of the New York State Law Enforcement Agency Accreditation Program, which is a program that provides law enforcement agencies with a mechanism to evaluate and improve the overall effectiveness of their agency and the performance of their staff. The Council develops model standards designed to promote excellence and professionalism in the field of law enforcement and creates policies to establish program rules and expectations. The Division of

Criminal Justice Services Office of Public Safety administers the program in accordance with the Council's policies.

Accreditation is formal recognition that an agency's policies and practices meet or exceed the standards established by the Council in the areas of administration, training, and operations. Accreditation further acknowledges the implementation of policies that are conceptually sound and operatively effective. The New York State Accreditation Program encompasses four main goals: (1) To increase the effectiveness and efficiencies of law enforcement agencies utilizing existing personnel, equipment and facilities to the extent possible; (2) To promote increased cooperation and coordination among law enforcement agencies and other agencies in the criminal justice system; (3) To ensure the appropriate training of law enforcement personnel; and (4) To promote public confidence in law enforcement agencies.

The Accreditation Program is comprised of 110 different standards developed to further enhance the capabilities of an agency. Accredited agencies are required to meet every component of each standard to be considered in compliance. The 110 standards are divided into three primary categories: administration standards, training standards, and operations standards. Program standards incorporate key provisions of New York State laws, codes, rules and regulations, as well as requirements set forth by the Municipal Police Training Council.

There are 12 standards related to training, 3 of which are associated with in-service training. The "Length and Content" in-service training standard requires accredited agencies to ensure all sworn personnel, both full and part-time, receive at least 21 hours of in-service training annually. This training must include, at a minimum, firearms training, legal updates, and a review of the use of force and the use of deadly force. The firearms training component must include live fire training of all authorized firearms on the firing range. The "Length and Content" in-service training standard is deemed a "critical standard", which implicates this is an area that has historically had the highest degree of liability for law enforcement agencies or has been problematic in terms of being implemented properly by agencies. The second in-service training requirement is referred to as the "Specialized Training" standard. Accredited agencies are required to identify positions for which specialized technical and job-specific training is needed in order to adequately perform tasks associated with the position. All sworn personnel filling these specialized positions must successfully complete an initial training course in their area of specialization and attend periodic in-service training courses to update their skills. A "specialist" is defined as any officer who uses equipment that requires training beyond that supplied in basic school, for instance, firearms, canine, SWAT, and mounted patrol. The third in-service training requirement relates to using certified instructors to provide and/or approve of the 21-hour in-service training.

Once an agency is granted accreditation, it will be valid for a period of 5 years. During the accreditation period, agencies must continue to monitor and enforce internal compliance with program standards. This ensures continuous compliance and facilitates the reaccreditation assessment. State rules and regulations require accredited agencies to file annual reports attesting to their ongoing compliance and identifying any instances of significant noncompliance. Towards the end of the 5-year accreditation period, a new application must be submitted for an agency to be reaccredited.

The Livingston County Sheriff's Office was the first Sheriff's Office in New York State that was able to get all agency divisions accredited by a recognized accreditation program and those divisions continue to remain accredited. In adhering to the highest standards and procedures of law enforcement, the Sheriff's Office continues to show its strong commitment to providing the best possible law enforcement services to the residents of Livingston County. The Accreditation Program's standards aid the Sheriff's Office in its efforts to remain focused on providing an ethical, professional, highly trained, and community oriented police service that adheres to approved policies and practices recognized by criminal justice professionals within the Accreditation Program.

**(3) The kind of function or land use involved**

The primary function of the project is to meet the Livingston County Sheriff's Office public safety instructional and accreditation needs. The project will allow for ongoing practical shooting skill development for law enforcement officers, as well as provide designated areas for field instruction and training for the mounted patrol, SWAT, and K-9 unit. The project will also allow for training related to woodland search and rescue, defensive driver training, and classroom training for various types of instruction, including, but not limited to, firearms safety classes for the public.

Major project components include: a firing range and appurtenant structures; mounted patrol training area, K-9 training and agility course, parking lot, area for future construction of a classroom building and driver training area, and other support features, including gated/secured access at State Route 408, and a stormwater retention pond. The existing building and accessory structure will remain.

**(4) The effect local land use regulation will have upon the enterprise concerned**

Pursuant to the Town of Mt. Morris Zoning law, the location of the proposed training facility is within the LR Low-Density Residential District. The project would be considered a specially permitted use under the Town's current zoning law. The project is a public/semi-public use as it is publicly owned and partially available to the public.

The project is needed as part of the County's mission to ensure law enforcement has the training, education, equipment, facilities, and other resources required to provide a high level of service to Livingston County residents. As part of achieving this important mission, other law enforcement agencies operating within the County will also be permitted use of the facility. The proposed training facility will also include the ability to offer firearms safety courses to Livingston County residents. The firearms safety course will be offered on a regular basis and participants will be permitted use of the fire range for supervised simulation exercises.

The County is asserting an exemption under the "Balancing of Public Interest" analytic approach established by the Court of Appeals in *In re County of Monroe v. City of Rochester*, 530 N.E.2d 202 (N.Y. 1988). If the County were made subject to the local regulations, the potential would exist for the local review process to delay the County's efforts and prevent the County from establishing and operating required facilities in a timely manner. This could compromise the delivery of adequate services to County residents.

**(5) Alternative locations for the facility in less restrictive zoning areas**

Given the fact that a facility with a semipublic use is allowed in the LR Low-Density Residential District upon the issuance of a special use permit, the proposed training facility is not inconsistent with the Town's zoning law. As such, there is really no need to consider a less restrictive zoning area.

**(6) The impact upon legitimate local interests**

The project will not adversely affect the orderly development and rural character of the surrounding neighborhood. Given the project setback from the highway and surrounding residences, the proposed training facility would pose no greater potential adverse impacts upon surrounding land uses or the community than a number of the other land uses permitted in the LR Low-Density Residential District, i.e., game preserves and recreational uses, excavation operations, airstrips or auto repair shops.

The project will include noise mitigation measures including maintaining a 200-foot conservation buffer along State Route 408 and along the adjacent property lines to the north, west and south. The existing trees and screening within the conservation buffer area will remain and be maintained by the County. An earthen berm will be installed on the north and south side of the firing range to help mitigate noise and to provide additional safety measure.

A Sheriff's Office Training Complex Safety Plan has been developed for use of the firing range to help ensure no hazards or dangers to the general public or persons in the vicinity of the site. Additional security features will include a gated entrance and installation of No Trespassing Zone signs in various locations along the property boundaries.

No development is proposed in the federal wetland area situated in the western portion of the property. The project includes a stormwater pollution prevention plan which will be designed according to NYS Department of Environmental Conservation requirements to appropriately manage stormwater runoff, minimize soil erosion and maintain the natural landscape to the extent practicable.

Lead abatement will be handled through the design of the firing range. The firing range will include bullet traps that use granulated rubber as backstops intended to safely capture bullets intact and have limited lead dust or bullet fragmentation while reducing the noise of the bullet impact.

Project lighting will be limited to safety and security lighting on the exterior of the firing range and for the parking lot area and will not interfere with adjacent properties or State Route 408.

The project will use the existing curb cut on State Route 408. No additional curb cuts will be added. Adequate on-site parking for users will be provided. The project will not significantly impact traffic on State Route 408.

The project will not destroy or adversely impact significant historic and/or cultural resource sites.

The County conducted an environmental review under SEQRA, and as Lead Agency determined that the project would not have any adverse environmental impacts.

While the County certainly understands the Town's concern about losing taxable property, this site only generates roughly \$6,000 per year in property taxes. Though the Town would collect more in property taxes if the land were to be developed, there has been little to no interest expressed in developing this site. In fact, this property has historically been used for

recreational activities like hunting and all-terrain vehicles, and has been marketed as such to potential buyers.

#### **(7) Alternative methods of providing the proposed improvement**

For several years the county has relied on the usage of area “gun clubs” or National Guard facilities in order to complete their training requirements. This is due to the lack of county owned land or facilities. Although this option has assisted in the Sheriff’s Office meeting training requirements, the coordination, scheduling, and the usage of these facilities has been complex. Aside from trials and tribulations that have been associated with gathering permission to utilize these facilities, there have been safety concerns encountered wherein “club” members would arrive to utilize the facility during training exercises thereby forcing the instructors to be ever vigilant for persons entering into a “live range” area.

The County has explored alternative locations within the geographical center of the county. Although the County owns property at Hampton Corners, this site is an optimal site or option due to the liability exposure and possible future use. Said parcel is closely situated near several intersecting highways, including Interstate 390 with a frequently used rest stop, and the property has the potential for future development with respect to other County projects.

The County did explore other options, with a focus on the complex requiring a locality that would be centrally located, offer seclusion, provide for the opportunity to bring each of the training components to one location, provide optimum safety for the public, and provide for space for future classes and/or interactions with the public. The current parcel was the only parcel that fit all of the components the County was seeking for this particular project.

#### **(8) The extent of the public interest to be served by the improvements**

This is perhaps the most important factor in this analysis. The proposed facility serves a governmental function that is key in the Livingston County Sheriff’s Office meeting the mandates of the New York State Law Enforcement Accreditation Program. As a participating agency, the Sheriff’s Office is required to ensure all sworn personnel, both full and part-time, receive at least 21 hours of in-service training annually. This training must specifically include firearms training with live fire training of all authorized firearms on the firing range. In addition, the Sheriff’s Office must ensure all personnel in positions requiring specialized technical training complete an initial training course in their area of specialization and attend periodic in-service training to update their skills. Standards and requirements such as these promote the public’s overall confidence in the Sheriff’s Office. In order to ensure this continues, the agency must continuously improve its staff’s overall effectiveness and performance. The Accreditation Program creates a higher standard of professionalism which, in turn, improves public safety for all County residents. This project is an important tool that aids the Sheriff’s Office in providing the best possible services to the County it serves.

The proposed facility also serves other public interests, including improving gun safety among members of the public seeking a pistol permit or simply looking to improve their knowledge and skill related to owning and handling a gun. The Sheriff’s Office also intends to use the site to assist with its community policing efforts, including hosting a “Deputy Day”. Essentially, the Sheriff’s Office would host an event where members of the community would be encouraged to enter the complex and observe the training areas used by the specialty units.

Participants would have an opportunity to meet and interact with various members of the Sheriff's Office, including the K-9s and horses.

Additionally, future plans for driver training will be incorporated in the site development. The data from a 5-year risk management review of the County's insurance claims reveals that roughly 64% of the claims were automobile related. This data clearly demonstrates a need for increased training for County employees. The County's goal is to increase the level and frequency of training in order to decrease its crash occurrences and reduce its exposure to loss.

**(9) Intergovernmental participation in the project development process and an opportunity to be heard**

On or about November 8, 2018, together in uniform, Sheriff Dougherty, Undersheriff Bean, and Chief Deputy Yasso personally visited the four adjacent property owners in order to explain the County had purchased the property with the intent to create a training facility and range for the Sheriff's Office. At no time did any of these neighbors express any concern related to the proposed project. Each property owner was given a business card and encouraged to contact the Sheriff or Undersheriff should questions or concerns arise at a later date.

On or about January 2, 2019, and March 7, 2019, the County received correspondence from Charles Cottone, the Chairman of the Zoning Board of Appeals, which posed numerous questions related to the project. Subsequently, on April 26, 2019, Sheriff Dougherty, the County Administrator, and various other members of County Administration met with Charles Cottone, Phil Race and Supervisor DiPasquale. At the meeting, the concept plan for the project was presented and many questions were answered. The County also detailed and clarified its position related to asserting an exemption from local zoning regulations. Since that meeting, additional conversations have been occurring with zoning and code enforcement officials from the Town.

On February 6, 2019, a public meeting was held by the Board of Supervisors Public Services Committee. During the course of the meeting, Sheriff Dougherty formally presented the concept plan for the project. The Committee unanimously approved the project moving forward. Supervisor DiPasquale was present at the meeting and voiced his support for the project.

The County will be providing a project presentation to representatives of the Town of Mt. Morris Town Board, Zoning Board of Appeals, and Planning Board, as well as the general public, in June, 2019. Those present will be given an opportunity to provide verbal and written input on the project. The meeting will be open to the public.

The County will be conducting a coordinated review of the project under SEQR.

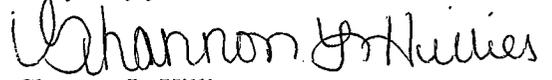
The County will be conducting a public hearing on a date later to be determined in order to allow public comment on the project. The public hearing will be duly noticed and advertised in the local newspapers and written notice provided to the Town Board of the Town of Mt. Morris.

The County will continue to discuss the project at various open meetings held by the Board of Supervisors and Public Services Committee.

Based on the above factors, Livingston County has determined the proposed new Livingston County Sheriff's Office Training Complex, including but not limited to the final selection of a site, is exempt from the zoning review requirements of local zoning ordinances and

laws, including site plan review. If you have any questions please feel free to contact me. Thank you.

Very truly yours,

A handwritten signature in black ink that reads "Shannon L. Hillier". The signature is written in a cursive style with a large initial 'S'.

Shannon L. Hillier  
County Attorney