

NEW YORK STATE  
DEPARTMENT OF ECONOMIC DEVELOPMENT  
633 THIRD AVENUE  
NEW YORK, NY 10017

In the Matter

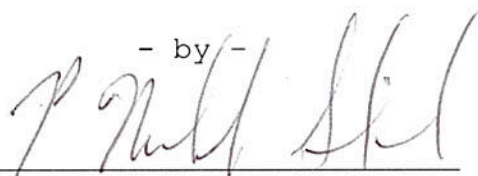
- of -

the Application of  
**JC Land & Site Development, Inc.**  
For Certification as a Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 60837

RECOMMENDED ORDER

- by -



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P. Nicholas Garlick  
Administrative Law Judge

August 31, 2017

## **SUMMARY**

This report recommends that the determination of the Division of Minority and Women's Business Development ("Division") of the New York State Department of Economic Development to deny the application of JC Land & Site Development, Inc. ("applicant") for certification as a woman-owned business enterprise ("WBE") be affirmed for the reasons set forth below.

## **PROCEEDINGS**

This matter involves the appeal, pursuant to New York State Executive Law ("EL") Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") Parts 140-144, by JC Land & Site Development, Inc. challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

JC Land & Site Development, Inc.'s application was submitted on July 25, 2016 (Exh. DED1).

The application was denied by letter dated September 1, 2016, from Bette Yee, Director of Certification Operations (Exh. DED4). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet three separate eligibility criteria related to Rosemarie Caporale's ownership and operation of the applicant.

By letter dated September 19, 2016, the applicant appealed from the Division's determination.

By letter dated September 28, 2016, the Division notified the applicant that its appeal should be received on or before November 28, 2016.

By letter dated October 18, 2016, the applicant submitted its written appeal, which consisted of a two-page letter and six exhibits (listed in the attached exhibit chart as A1 - A6).

In an eight-page memorandum dated August 4, 2017, the Division responded to the applicant's appeal. Enclosed with the

response were six exhibits, described in the attached exhibit chart as DED1-DED6.

On August 8, 2017, this matter was assigned to me.

#### **ELIGIBILITY CRITERIA**

For the purposes of determining whether an applicant should be granted or denied woman-owned business enterprise status, regulatory criteria regarding the applicant's ownership, operation, control, and independence are applied on the basis of information supplied through the application process.

The Division reviews the enterprise as it existed at the time the application was made, based on representations in the application itself, and on information revealed in supplemental submissions and interviews that are conducted by Division analysts.

#### **STANDARD OF REVIEW**

On this administrative appeal, applicant bears the burden of proving that the Division's denial of applicant's WBE certification is not supported by substantial evidence (see State Administrative Procedure Act § 306[1]). The substantial evidence standard "demands only that a given inference is reasonable and plausible, not necessarily the most probable," and applicant must demonstrate that the Division's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate" (Matter of Ridge Rd. Fire Dist. v Schiano, 16 NY3d 494, 499 [2011] [internal quotation marks and citations omitted]).

#### **POSITIONS OF THE PARTIES**

##### Position of the Division

In its denial letter, the Division asserts that the application failed to meet three separate criteria for certification.

First, the Division found that the applicant failed to demonstrate that the woman owner Rosemarie Caporale's capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to,

contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

Second, the Division found that the applicant failed to demonstrate that the woman owner, Rosemarie Caporale, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

Third, the Division found that the woman owner relied upon for certification, Rosemarie Caporale, does not have adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i).

#### Position of the Applicant

JC Land & Site Development, Inc. asserts that it meets the criteria for certification and that the Division erred in not granting it status as a woman-owned business enterprise pursuant to Executive Law Article 15-A.

#### **FINDINGS OF FACT**

1. JC Land & Site Development, Inc. is in the business of landscaping, installing and repairing irrigation systems, septic systems, masonry, stonework, outdoor living areas, and drainage (Exh. DED1 at 3). The firm has a business address of 29 Havell Street, Ossining, New York (Exh. DED1 at 1).

2. JC Land & Site Development, Inc. was established on May 24, 2004 and is owned by Rosemarie Caporale who also serves as its president (Exh. DED1 at 2-3).

3. Ms. Caporale manages the administrative functions of the business while her husband, John Caporale manages field operations and oversees employees in the field (Exh. DED1 at 9).

5. Mr. Caporale has thirty years' experience in all phases of the construction industry (Exh. DED2) and possesses licenses as a septic system contractor for Putnam and Westchester Counties (Exh. DED5).

## DISCUSSION

This report considers the appeal of the applicant from the Division's determination to deny certification as a woman-owned business enterprise pursuant to Executive Law Article 15-A. The Division's denial letter set forth three bases related to Ms. Caporale's ownership and operation of JC Land & Site Development, Inc. Each basis is discussed individually, below.

### Ownership

In its denial, the Division found that the applicant failed to demonstrate that the woman owner, Rosemarie Caporale's, capital contributions were proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). The relevant facts cited in the denial letter were: (1) the application stated that Ms. Caporale made a contribution of [REDACTED] to the business; and (2) that the documents submitted with the application did not support this claim.

On the appeal, Ms. Caporale states that she may have made a typographical error when she filled out the application and that she did not make a [REDACTED] contribution to the firm. As proof of this she includes information from her retirement account (Exh. A1) and a banking statement (Exh. A2) showing no such contribution. No information regarding any contribution she may have made to the company is included in either the appeal papers or the attached exhibits.

In its response, the Division argues that no proof is provided of the claim in the application that Ms. Caporale made a [REDACTED] contribution to the firm (Exh. DED1 at 4). The information provided to the Division shows no contribution of [REDACTED] or any other amount attributable to Ms. Caporale (Exh. DED6). The Division notes that the application lists equipment valued at [REDACTED] that is owned by the firm (Exh. DED1 at 6), but there is no proof that Ms. Caporale provided any capital to the firm. Because of the applicant's failure to show any contribution to the business enterprise, the Division concludes that the application was properly denied.

Based on the evidence in the record, specifically the fact that there is no proof of any contribution by Ms. Caporale to the firm, the applicant has failed to demonstrate that the woman owner Rosemarie Caporale's capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). The Division's denial on this ground was based on substantial evidence.

### **Operation**

In its denial letter, the Division found that the applicant failed to demonstrate that the woman owner, Rosemarie Caporale, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1). The relevant facts cited in the denial letter were: (1) the business is primarily engaged in landscaping installation, masonry, and septic systems; (2) the documents submitted indicate that Ms. Caporale is primarily responsible for preparing contract and bid documents, serving as a point of contact for vendors and subcontractors, and managing financial matters; (3) Mr. Caporale is responsible for overseeing all aspects of field operations and providing services to clients; and (4) Mr. Caporale makes decisions pertaining to critical operation functions of the business enterprise.

On the appeal, Ms. Caporale states that she is the primary point of contact and manages all matters, financially and functionally. As proof of this statement she includes: (1) information regarding a current Westchester County project the firm was awarded and its associated bond, which are both addressed to her (Exh. A3); and (2) information regarding a second contract (Exh. A4). She concludes that her husband, John Caporale, is responsible for overseeing field operations only.

In its response, the Division argues that Ms. Caporale does not manage significant operations of the firm. Specifically, the Division states it determined that estimating and the supervision of field operations, which are how the firm obtains work and delivers services, are functions managed by Mr. Caporale. While the application itself shows these functions are shared between Mr. and Ms. Caporale (Exh. DED1 at 4-5), the

Division notes the resumes provided show Ms. Caporale's role as focusing on administrative and financial matters (Exh. DED3) while her husband's resume shows he manages estimating and project management (Exh. DED2). An additional narrative provided during the application process regarding the respective roles of the Caporales states that Ms. Caporale handles the daily management and administration of the business, seeks out projects to bid on, and networks, while her husband is in charge of everything technically or manually that goes on in the field and oversees all field employees (Exh. DED1 at 10). On the basis of this evidence, the Division concludes that Mr. Caporale manages significant operations relating to estimating and supervision of field operations, and therefore, the application was properly denied.

Based on the evidence in the record, specifically the information regarding Mr. Caporale's role in the core revenue generating functions of estimating and supervising field operations, the applicant failed to demonstrate that the woman owner, Rosemarie Caporale, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1). The Division's denial on this ground was based on substantial evidence.

The Division also found that the woman owner relied upon for certification, Rosemarie Caporale, does not have adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i). The relevant facts cited in the denial letter were: (1) individuals associated with the business must possess certain licenses, including, but not limited to, septic system contractor licenses in order to provide services to clients; (2) Mr. Caporale possesses relevant licensure necessary for the operation of the business; and (3) Ms. Caporale failed to demonstrate that she possesses relevant licensure.

On the appeal, Ms. Caporale provides a copy of her Putnam County Home Improvement Contractor license (Exh. A5) as well as proof of her certification as a WBE contractor for Westchester County (Exh. A6). She concludes by stating that prior to starting the business in 2004, she helped run a local radio

station for 13 years, which provided her with managerial experience.

In its response, the Division argues that Ms. Caporale does not have any demonstrated industry-specific construction management experience or credentials demonstrating that she possesses the capability to evaluate her husband's management of field work. The Division cites the fact that the licenses included with the application show that Mr. Caporale is authorized to install septic systems in Putnam and Westchester Counties (Exh. DED5). In addition, the Division argues that Mr. Caporale has over thirty years of relevant management experience overseeing construction activities (Exh. DED2). With respect to Ms. Caporale's certification as a WBE in Westchester County (Exh. A5), the Division notes that this is not a license. With respect to Ms. Caporale's Putnam County Home Improvement Contractor license (Exh. A5) the Division argues that this just shows she owns the business, not that she has any particular skills or training and is, therefore, not relevant to whether New York State WBE criteria has been met.

Based on the evidence in the record, including the resumes provided and the licenses issued to Mr. Caporale for the installation of septic systems, the applicant failed to demonstrate that the woman owner relied upon for certification, Rosemarie Caporale, has adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i). The Division's denial on this ground was based on substantial evidence.

#### **CONCLUSIONS**

1. The applicant failed to demonstrate that the woman owner Rosemarie Caporale's capital contributions are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

2. The applicant failed to demonstrate that the woman owner, Rosemarie Caporale, makes decisions pertaining to the



operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

3. The applicant failed to demonstrate that the woman owner relied upon for certification, Rosemarie Caporale, has adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i).

#### **RECOMMENDATION**

The Division's determination to deny JC Land & Site Development, Inc.'s application for certification as a woman-owned business enterprise should be affirmed, for the reasons stated in this recommended order.

**Matter of  
JC Land & Site Development, Inc.**

**DED File ID No. 60837  
Exhibit List**

<b>Exh. #</b>	<b>Description</b>
DED1	Application
DED2	Resume of John Caporale
DED3	Resume of Rosemarie Caporale
DED4	Denial letter
DED5	Copies of licenses and permits
DED6	Documents relating to sources of capitalization
A1	Retirement fund information
A2	Bank statement
A3	Information regarding Westchester Co. contract #15-554
A4	Contract with U.W. Marx
A5	Putnam Co. Home Improvement ID Card and Certificate
A6	Westchester Co. WBE information