THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted at the Town Hall, 1 Heady St., Cortlandt Manor, NY on *Wednesday, October 16th, 2019*. The meeting was called to order, and began with the Pledge of Allegiance.

David S. Douglas, Chairman presided and other members of the Board were in attendance as follows:

Wai Man Chin, Vice Chairman
Adrian C. Hunte
Eileen Henry
Thomas Walsh (recused)
Frank Franco (recused)

Also Present — Chris Kehoe, Deputy Director for Planning
Joshua Subin, Assistant Town attorney

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**ADOPTION OF MEETING MINUTES FOR SEPTEMBER 18, 2019**

Mr. David Douglas stated the first item on the agenda is the adoption of the minutes for September's meeting.

So moved, seconded with all in favor saying "aye".

Mr. David Douglas stated the minutes are adopted.

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**ADJOURNED PUBLIC HEARINGS:**

A. **Case No. 2016-24 Hudson Ridge Wellness Center, Inc.** for an Area Variance from the requirement that a hospital in a residential district must have frontage on a State Road for property located at 2016 Quaker Ridge Road.

**(Adjourned to November 20, 2019 meeting)**

Mr. David Douglas stated we have two adjourned public hearings. They're both related – the first one's Case #2016-20 – 2016-24, application of Hudson Ridge Wellness Center. that

particular case has been adjourned to the November meeting. And then the other case is another application of Hudson Ridge Wellness Center. That's case #2019-10.

B. **Case No. 2019-10 Application of Hudson Ridge Wellness Center, Inc.** for an interpretation related to the Code Enforcement Officer's determination(s) on the proposed wellness center for property located at 2016 Quaker Ridge Road.

Mr. David Douglas stated we're going to continue with the public hearing of case 2019-10. I don't know if anybody's here who hasn't been here at the prior meetings but I'll just repeat briefly what I've said at prior meetings on this case. We're focusing at this point on the limited issue that's in front of us regarding whether the application is a "hospital" or not. We're not dealing with the broader issues of the case. I'd ask that the people limit their comments to that particular issue. What we had done when we had the public hearing at the last meeting is we had laid out a course of action as to what steps we would take. The plan was to go for about two hours or so and I guess we dreamed about finishing then but that dream didn't come true. We got partway down the agenda we had here. So now we're picking up. The order we're going to do today is we're going to pick up the public hearing starting with the Town of Cortlandt's Director of Code Enforcement. He'll be presenting his prior determination. The Zoning Board will have an opportunity to ask questions of the Director of Code Enforcement. Next it will be public comments from the public. The applicant's attorney and/or their experts will be afforded a chance at a rebuttal. The attorney for the citizen's group and their experts will be afforded an opportunity for surrebuttal. The Zoning Board will be afforded the opportunity to ask further questions. The applicant's attorney will give closing remarks and then the public hearing will be closed. That's the basic step-by-step we're going to go here. You have a question?

Female speaker asked is it possible to turn those microphones up? I don't have a problem with my hearing but I do have a problem hearing.

Mr. Chris Kehoe stated I just think you really have to speak directly into it.

Mr. David Douglas stated that's fine.

Female speaker stated thank you.

Mr. David Douglas asked Is that better?

Female speaker stated yes.

Mr. David Douglas stated some months I could be sitting a foot away from it and people think I'm shouting and other months they can't hear me. I never figured out why. We will begin with Mr. Rogers. Just for the members of the public in case anyone who doesn't know, Mr. Rogers had made some determinations by way of decisions written on March 21 and May 16th. This is a

chance for Mr. Rogers to walk us through those determinations he made and I'm going to have some questions during the course of when you're doing that. Other members of the board may as well. There have been certain questions that the applicant's attorney and the citizen's group attorney had asked and I've reviewed those and I'll ask of some or all those questions as well. Before you start, let me just ask a preliminary question. Why did you undertake to prepare a review of whether the proposed wellness center is a hospital?

Mr. Martin Rogers responded the Planning Board had requested for me to make a determination based on the application that was before them.

Mr. David Douglas asked did you prepare both of those memorandum that I mentioned yourself?

Mr. Martin Rogers responded yes I did.

Mr. David Douglas asked was anybody else involved in the preparation?

Mr. Martin Rogers responded no. I prepared them.

Mr. David Douglas stated okay, so why don't we start with the first memorandum. That's the March 21 memo that you did and if you could walk us through that, that would be great.

Mr. Martin Rogers stated if you don't mind I'll just give you the procedure that I did to go through for the determination. Give you a little background on myself just so you have it. Certified in the New York State Codes in 2003. I received my license for a professional engineer in 2006 and I've been with Cortlandt since July of 2014 in my current position as Director of Code Enforcement. I reviewed the information presented by the applicant that they have in their documentation as facts. The Environmental Assessment report, Westchester County Department of Health submittals and response letters that they had provided to the boards. In looking at it as a hospital or specialty hospital they noted that in their documents and they also noted an I1 use per the New York State Uniform Prevention Building Code specifically the International Building Code is where that's in. That's a part of the Fire Prevention and Building Code. They also described it as a residential treatment program and they also, with the Health Department submittal, they had used information for that submittal and used those factors for a group home, not for a hospital. I'm just making a note of that. And then what I did is I went to the Town of Cortlandt Code, looked at the permitted uses and in the table of permitted uses in a residential zone there's – hospital is listed, and nursing homes as the board had discussed. So I looked at the Town Code for a definition for hospital or specialty hospital and that is not within our code. So our code then states that you use other methods to look for a definition and the first one is to go to the New York State Uniform Fire Prevention and Building Code. If you don't find anything there you go to the dictionary and then you can further go to the Standard Industrial Classification book to look at those descriptions to further define what you're looking for based on those descriptions that they have in there for establishments per the SIC. When I went to the Town Code there was no definition so therefore I went to the Building Code to look for the definition and in the Building Code there's a definition for hospital and the basic things from the

Building Code is that you're incapable of self-preservation and then I also looked at I1 use: Alcohol and Drug Centers and that in the Building Code is people who are in a supervised environment and receive custodial care. Then I went to the SIC to look for further descriptions and found that in the major group 83: Social Services, 836 Residential Care includes alcoholism and drug rehabilitation centers with health care incidental. That description of that establishment helps further define too what the building code calls an I-1 use: an alcohol and drug center. I do note that Mr. Davis, the attorney for the applicant, has noted in documents and I believe they're in presentations that the patients / clients are there voluntarily and they can move freely around the grounds. I further have to note that if you look at hospital use which is an institutional use, you look at a rehabilitation center which is an institutional use. And if you're neither of those items, then you fall into a standard residential use. In these kind of facilities, what would be that standard residential at a level of care that is just considered a residential use on its own not coming from the institutional uses. And I note that in that section of the code: Residential Group R includes a group home which is a facility for social rehabilitation, substance abuse or mental health problems containing -- contains a group housing arrangement that provides custodial care but does not provide medical care. In what the applicant's been describing, they've been saying that they do receive some medical care. If you are a group home, there's no medical care provided at all. But it is still classified a custodial care because you're in this group home environment. In looking at that information, the only thing that I could determine is that this was a residential use, rehabilitation and wasn't permitted per the table of permitted uses. After being at this meeting last time and looking at other information, I did look, during my review and after the last meeting to prepare for this meeting at the – a lot of talk was talked about OASAS and their levels of care and it was noted by the applicant that the level of care is 3.5 where medical staff can be on call. That was noted by the applicant's people who were with them at the last meeting. It was also noted by the applicant's representative that the persons are capable of self-preservation, can leave at any time, and the patients decide when they want to leave would appear to be not be medical discharge. They also noted that it was treat and rehabilitate. So when you're looking at this and looking at the further definition from the SIC, everything falls into the same position of what's been presented by the applicant as facts and their documentation that the people are capable of self-preservation. They're there for rehabilitation purposes and that they fall into residential care facility.

Mr. David Douglas asked looking at your March report as part of your analysis section, starting at the bottom of page 2 and continuing, you mention certain documents. Can you explain those to us? I think you mentioned a JMC report in correspondence and architectural services letter…

Mr. Martin Rogers responded that was all included in the environmental assessment report as the one document with the exhibits. I did highlight some information where they noted as a residential treatment program and that they did complete, they will have completed detoxification elsewhere or they don't require it. They don't require medical detoxification. And I did note that in their information they have a shift 3 that notes that there's zero physicians on staff at that time.

Mr. David Douglas asked what is the DeAngelis Architectural Services?

Mr. Martin Rogers responded that was -- appears to be generated to discuss whether sprinklers are required or not for the facility. There are some inconsistencies in that information so I re-reviewed that information and also noted that there was a code update right around the time that this document was dated the day after the code had updated to the newer codes. They also note that the most recent use of it was for the Hudson Use Institute which is a business use a B use. In the codes it does require that sprinkler systems will be required wherever there are patients or clients staying.

Mr. David Douglas asked what is the relevance of the domestic well water report that you mentioned?

Mr. Martin Rogers responded that was submitted to the Health Department and approved for the flow rate for the group home and a hospital has a much higher flow rate. I was just noting that they went to the Health Department for approval as a group home not as a hospital use. I need to note, however, Chairman that I am working for the Town of Cortlandt Director of Code Enforcement. There's only certain codes and regulations that I can be the authority having jurisdiction for as part of the town. As far as it goes for the County Health Department and it goes for the State Health Department, I'm not the authority having jurisdiction. Anything that I note on there is just for information only. For anything that I'm making a determination on I'm only making a determination based on where I have authority having jurisdiction.

Mr. David Douglas stated you had taken note of the fact that specialty hospital will have no in house testing lab.

Mr. Martin Rogers responded that's noted in the applicant's documentation if they say they're not going to have any medical waste and maybe a few times a year that it will be picked up because it will only be for those patients, clients that need it for, let's say, diabetes. They mention that in their documents.

Mr. David Douglas stated you also take note in your report some comments that Mr. Davis said at a meeting in October of 2016. Why did you think that that was relevant? I'm looking at page 4 of your report. I'm basically just going down your report.

Mr. Martin Rogers responded the comments are saying it's a wellness center, people are there to get well. It falls into the same descriptions that are in the SIC for rehabilitation centers and in the Building Code for I-2 uses which are institutional for these kind of residential care facilities. And they also noted that they're there voluntarily.

Mr. David Douglas asked the definition in the building code which has the phrasing "capable of self-preservation." Do you understand that phrase to mean that all patients have to fall within that category of being capable of self-preservation or that only some of the patients do?

Mr. Martin Rogers responded I'm just looking for that.

Mr. David Douglas stated you had mentioned I think it's the building code has the phrase and how things fall into which category if they're a hospital if it's incapable of self-preservation. I was just wondering what your view is about if you've got a facility in which some patients are incapable of self-preservation.

Mr. Martin Rogers responded you can have that to be a hospital, one of the reasons you are a hospital is because you have people cannot – are incapable of self-preservation.

Mr. David Douglas asked on page 8 at the bottom you make mention of building permits and COs. How does that play into this?

Mr. Martin Rogers responded as the authority having, being part of the town and authority having jurisdiction in this, everything that's submitted for permits and eventually for certificates of occupancy have to be classified as to a use. So the design professionals that are preparing these documents and preparing the plans and preparing the reports have to attest to a use that this is proposed to be so that appropriate permits can be issued in the appropriate use group and classification can be put on a certificate of occupancy which is required by the state.

Mr. David Douglas asked any of the other members have questions about this memo they want to ask Mr. Rogers? Why don't you then turn to the second memo that you did on May 16th? If you could, could you explain to us why you prepared this second memorandum.

Mr. Martin Rogers responded if I'm recalling correctly it was requested that I prepare an actual straight determination memo to state directly and respond to Mr. Davis's response to my first memo.

Mr. David Douglas stated that's the purpose of the second memo to do the official determination.

Mr. Martin Rogers stated the official, formal determination not just an opinion of what I was asked to opine on.

Mr. David Douglas stated if you could walk us through this that would be great.

Mr. Martin Rogers stated I'll do my best. I note some information about the background of what was asked from the preliminary review and that there was no prior use determinations that were made even though we had issued, the town had issued permits for them to do some required repairs. Then, that there are other areas of the town, this is not zoned out of the town, that there are areas of the town that these uses are permitted within and that there was certain information that was stated in certain letters that states that – I'm noting that one of the design professional firms OLA had not made a determination for the building code of use. They left that as open ended in the information that was provided. And then I did a revised analysis that states I-2 occupancy and in that letter it notes an analysis was prepared by Architectural Visions. Those classifications were determined by Architectural Visions. From what I understand Architectural

Visions is no longer part of this process because their information is not in the amended environmental assessment report. Based on that information provided, the use classification the building code is I1 as I previously discussed and then many of the omissions that they talk about is reaffirming that they're capable of self-preservation, that they're custodial care and then this is where I talk about where I looked into some of the OASAS information and the highest program level of care is 3.5 where medical staff can be on call and that's a residential program. They were talking about altering their plans to include detoxification services on site. That came pretty into the information that they would alter their plans. I don't understand why they didn't just present that in the beginning. There are many more different requirements that are required when you are an actual hospital in the building code. Many technical things I won't go over with you here but it talks about separate sources of water and other different kinds of things that you need within a hospital environment. I re-discuss the primary uses keeping with under SIC 83 and not 80. And reaffirm that it isn't permitted, that the hospital use is not permitted in that zone and then reaffirm that there's no physician overnight on the premises. Just go through a couple of things. They started using some information in that they were using from Public Health Article 28 which the people who are here for the applicant and with Zarin & Steinmetz have discussed the difference between Article 28 and OASAS and that's not up to me. I'm not authority on that but I do notice that it was noted, that they were using arguments from Article 28 not from OASAS but they say that they're getting their certificate from OASAS or certifications. Then I put some information in reviewing that information from OASAS that each of these facilities has to have a medical director and the medical director has to assist for referrals to other institutions which are not limited to general or specialty hospitals. When you asked before about people who are incapable of self-preservation it appears that if someone in the facility their current status changes they have to be able to provide them to another facility that would be regulated where people are incapable of self-preservation otherwise a hospital.

Mr. David Douglas asked as a conclusion to your memo you make your official determination. Is that what the last several paragraphs are?

Mr. Martin Rogers responded yes. The official determination to note that it's not permitted in the R80 zone as a hospital, specialty hospital. Those uses are permitted in the zone but however where they fall under SI group 83; Rehabilitation Centers, that they are not permitted in an R-80 zone.

Mr. David Douglas asked you concluded that this is an I1 use under the building code?

Mr. Martin Rogers responded yes.

Mr. David Douglas asked the I-1 use again, that's alcohol and drug centers?

Mr. Martin Rogers responded alcohol and drug rehabilitation centers, yes.

Mr. David Douglas asked anybody have any questions from the board for Mr. Rogers? In your capacity as a Code Enforcement Officer and Building Inspector, did you receive any training with respect to zoning law and interpreting the zoning code?

Mr. Martin Rogers responded we receive general training to be a Code Official from the required mandated training to receive certification from New York State and then as a Code Official we have to do 24 hours of in-service training per year that's mandatory and parts of that are many different subjects and some of that can be zoning.

Mr. David Douglas asked and some of the training you did, did it in fact involve zoning?

Mr. Martin Rogers responded yes.

Mr. David Douglas asked prior to this matter, did you have any experience with alcohol or drug rehabilitation hospitals or alcohol and drug rehabilitation facilities? Passing the fact whether it's called a hospital – I don't want to get caught up in that word.

Mr. Martin Rogers responded a very long time ago when I was a draftsman for an architect, we did do some group homes, not anything with hospitals. I do have experience with reviews of hospitals, assisted living, nursing homes, those type of uses which are the I uses, I1, I2, the uses that are specific here and a couple of those are that I did do reviews for an architect who was doing repurposes of other buildings for Alan Healthcare for assisted living facilities such as the old hospital in Tuxedo that was turned into an assisted living facility. I was hired as a consultant for the Town of Cortlandt in 2006, 2007 to do the fire and life safety review for the addition to the Hudson Valley Hospital and then in previous experience when I was working for an engineering firm we were hired to do the review and I did the Fire and Life Safety and some of the other systems for Kendal & Hudson in Sleepy Hollow which is multi-faceted facility that goes from regular residential to every level of the institutional uses in every condition to where then people can go to the hospital which is adjacent to it.

Mr. David Douglas asked prior to this determination were you involved any time with matters involving the SIC?

Mr. Martin Rogers responded not specifically. Actually yes from time to time we would go to the SIC when people would come in and ask about our uses permitted in the zone and then we'd look at the table of permitted uses and see if that was listed and then refer to the SIC classification manual. In my five years with the town, from time to time we have to go to the manual to look for specific information.

Mr. David Douglas asked prior to this matter did you have any experience with the Public Health Law or the Mental Hygiene Law?

Mr. Martin Rogers responded as I mentioned just in general terms in working along with the architect that was preparing the documents for Elant Health Care when it came to the Kendal on

Hudson, no because the state was also reviewing that. But when I was looking at it with someone who was doing it from the design side then in those cases it was in what we call a part 700s, part of the Public Health Law where the assisted living facilities are regulated.

Mr. David Douglas asked prior to this situation had you ever been called upon to make a zoning interpretation as to whether a use constituted a hospital under the zoning code or any other law?

Mr. Martin Rogers responded no.

Mr. David Douglas asked as you're sitting here today, can you tell us where in the Zoning Code it allows use of the Building Code use and occupancy classifications to define undefined permitted uses in the Zoning Code?

Mr. Martin Rogers responded yes, it's under section 307-4 definitions.

Mr. David Douglas asked did you read the expert reports that the applicant submitted as part of their April 23rd and June 14th submissions?

Mr. Martin Rogers responded of this year?

Mr. David Douglas stated of this year. I know that's after your determination.

Mr. Martin Rogers responded I did go through those reports and read them. I did not necessarily go through and read it in detail and make any other determinations from those. I kept the determination I had made originally.

Mr. David Douglas asked what is your relationship with any members of the Citizens for the Responsible Development of the Hudson Institute Site or any of the other Teatown neighborhood groups?

Mr. Martin Rogers responded I don't know if I know any of the members of that group. If I met anyone in passing it might have been because I did a permit at their house but I do not know any of them specifically.

Mr. David Douglas asked prior to this matter were you familiar with their counsel Zarin & Steinmetz?

Mr. Martin Rogers responded yes. I've met Mr. Steinmetz before at my previous employment when I worked for the Village of Elmsford when he was there representing applicants.

Mr. David Douglas asked other than that capacity, in that context, did you have any dealings with Mr. Steinmetz or anybody else from his law firm?

Mr. Martin Rogers responded no, none at all. In fact, Mr. Schwartz I met for the first time at the last meeting.

Mr. David Douglas asked did anyone suggest, ask or direct you to delay, interfere with or stop this application?

Mr. Martin Rogers responded no.

Mr. David Douglas asked did you discuss this application with Supervisor Puglisi?

Mr. Martin Rogers responded no.

Mr. David Douglas asked if the answer to the next question is yes, don't tell me what might have been said but did you discuss the application with any of the town attorneys?

Mr. Martin Rogers responded I consult with the town attorney's office on a regular basis.

Mr. David Douglas asked did you consult with them in connection with this matter? Again, if you did, don't tell me what you said with them.

Mr. Martin Rogers responded yes.

Mr. David Douglas asked this next question may overlap with some of what you've told us before but would you mind describing what your professional work experience is as a building inspector in Cortlandt including your familiarity with reviewing zoning codes, the building code and the SIC Manual?

Mr. Martin Rogers responded as part of my job I have many different things that I have to deal with as Director of Code Enforcement. As many people know it also includes parking enforcement and animal control officer and overseeing the fire inspector's duties. I can put it in some examples of the amount of work we get and what we have to do but I have to review most of every application that comes in. That can range from something small to something very large such as the most recent application from Hudson Valley Hospital was; they're renovating their maternity ward so we just issued a permit for that. That would be considered a large project as far as it goes. It includes also the projects where you see the new Shop Rite. It includes any new construction that comes in, permit that's applied for. Last year the town issued over 1400 permits of all types. That's quite a bit of work and most of those applications have to come across my desk at some time to review. I also have to look at – when an application comes in I have to review it and determine if they have an issue where they need a variance or do not need a variance. We will get applications come in: does it need a variance with the town code but does it also possibly need a variance with the state building code. I also have to process those and refer applicants either here to you, to the Zoning Board with a letter of denial or I have to fill out a form to go to the state with the application, the applicant has to give to the state to ask for a variance from the state building code. I'm familiar with that variance procedure also.

Mr. David Douglas asked have you ever officially made a, quote, use determination with respect to this proposal?

Mr. Martin Rogers responded for this application?

Mr. David Douglas responded yes.

Mr. Martin Rogers stated per my memo that's when I made the use determination.

Mr. David Douglas asked did you ever officially advise the applicant that its proposed use qualifies for the hospital special permit under Section 307-59?

Mr. Martin Rogers responded I did not.

Mr. David Douglas asked did anyone affiliated with the applicant ever inquire, prior to purchasing this site, about whether this proposed use qualifies as a hospital?

Mr. Martin Rogers responded when was the site purchased?

Mr. David Douglas responded I don't know off the top of my head.

Mr. Martin Rogers stated I started with the town in July of 2014.

Mr. Bob Davis stated it was 2009 or so.

Mr. David Douglas asked that answers the question. Are you aware of a principle of zoning law that zoning regulations are to be construed in favor of the property owner and against the municipality?

Mr. Martin Rogers responded I've heard of that and that's something I believe you as a board have to consider.

Mr. David Douglas asked did you have any dealings with representatives of the applicant's regarding the issuance of building permits?

Mr. Martin Rogers asked for this site?

Mr. David Douglas responded yes.

Mr. Martin Rogers responded yes.

Mr. David Douglas asked could you describe those for us?

Mr. Martin Rogers responded I met with Mr. Laker and Mr. Mastromonaco were the two people who were involved with these permit issues and they were looking for permits to do necessary repairs. There was a permit issued for one of the buildings to repair the roof that was before us with the town on one of the buildings. And then other one was they needed to do the same type of work to do necessary repairs. And at that time I noted on those permits that no use was implied for these permits because there was nothing that was in the town to be applied for to either change the use or continue a use of any type. It was just for repairs only.

Mr. David Douglas asked would you describe your dealings with the applicant's representatives regarding the building permits as contentious?

Mr. Martin Rogers responded it could have been at the time because it was questionable on how far they were going to go with the work they wanted to do at the time or were they going to go past repair and go into additional electrical work, additional equipment, things that are beyond just repair or replacement of existing systems.

Mr. David Douglas asked that's a line in your view that they were not allowed to cross?

Mr. Martin Rogers responded yes.

Mr. David Douglas asked this may overlap with some of what you've already said but could you explain for us what your view is how Section 307-4 is to be applied when interpreting the town zoning code?

Mr. Martin Rogers responded first you have to look at too is when I do read a code I try to read it in order so I don't miss anything. At first I go to 307-3, Word Usage. And it's important to note that in there are code notes that the word "shall" is mandatory not discretionary. Then when I go to read for definitions it states that "for the purpose of this chapter certain words and terms used herein are defined as set forth below." And then it says "terms and words not defined herein but defined in the New York State Uniform Fire Prevention and Building Code shall have the meanings given therein." So the word "shall" shows up there "unless a contrary intention clearly appears." There is no contrary intention because they also noted in their documents that they were a Use Group I-1 so I had an actual place to go based on their submission to say: I'm not going to the building code not knowing what I'm going to look for. I went to what they told me it was going to be. So I went to the building code and saw that and we discussed that and then it says: if it's not defined in either place you go to the dictionary. Well, it is defined in the building code so we go to there. Then the last sentence says: "Uses listed in the table of permitted uses shall be further defined by the Standard Industrial Classification Manual, United States Office of Management and Budget." Then I went to the SIC to look at those descriptions which I noted. The SIC, the Standard Industrial Classification Manual are descriptions of establishments. The one we use from 1987, there were no definitions from this area. It just was, here's a description of the establishment. The establishment does this. So I matched that to what's in the building code for those two uses and then it further defined and said: Yes, we're in the right place in the SIC, because it's describing exactly what an I-1 use is in the building code.

Mr. David Douglas asked I don't have any further questions. Does anybody up here? I believe that I have covered the applicant's question and the citizens group's questions as well. From my point-of-view I think Mr. Rogers is finished, unless anybody feels otherwise. Mr. Rogers had asked that he be excused after he was finished today so I think he's going to go home at this point. Thank you.

Mr. Martin Rogers stated thank you.

Mr. David Douglas stated going down our order of things, the next item we were going to turn to is any public comments. If any members of the public have anything that they wish to say, now is your time. Again, I'll just repeat for the too many times, please limit it to the issue regarding whether it's a hospital or not. Thank you.

Mr. Bill Scherer responded my name is Bill Scherer. I live at 2126 Quaker Ridge Road. I am a lawyer but I'm not here representing anybody but myself. I did some research because I'm pretty good at that sometimes and I wrote a letter to the Chairman today pointing out to him that this issue regarding the meaning of the term hospital in a zoning code which does not specifically define hospital is derived from the Public Health Law. This is a case that came out of the town of Hempstead. The issue there was: What was a hospital? This dealt with an outpatient facility. The Zoning Board determined that the definition was to be arrived that by reference to Public Health Law. The special term which is the, at the time, was the first place where an Article 78 went now it's just called the Supreme Court, agreed that the place to look was the Public Health Law and there was an appeal and the Appellate Division also agreed that the place to look was the Public Health Law. And in fact, went out of its way to comment that this particular facility was not exempt from the definition of hospital because it was not going to be supervised by the Department of Mental Hygiene. It's a different code. One of the rules that lawyers tend to use when we interpret statutes is to look at the plain meaning of a word or phrase and certainly another Zoning Board, Nassau County Supreme Court and the Appellate Division that were deciding that any cases coming up from whatever determination the board reaches all seem to have no difficulty whatsoever looking at the term hospital and saying: what's the most logical place to find the definition of that? What the state law says about what a hospital is because there's a whole Public Health Law that goes on at length about hospitals, triggers a whole bunch of other requirements and I think that the case is something which should be taken into account and may in fact, in my view, be controlling although one can distinguish it because we're not talking about the SIC or the state building code. But this is a pretty solid authority and tends to support the view that the Public Health Law is the place to look. And the Public Health Law is very specific. This facility is not a hospital within the meaning of the Public Health Law. So I think that if for some reason the board comes to the conclusion that this is a hospital, it's going to have to come to grips with the decision by the Appellate Division that's going to be deciding any appeals that might be taken from here and explain why the case doesn't apply. I have extra copies of my letter. I tried to explain it in a simple fashion. Not much more to say except that when we lawyers find the case that seems to be pretty much on point, and it comes from the Appellate Court that is in charge of the jurisdiction that a Zoning Board is sitting in, they're

supposed to take notice of that and find some pretty persuasive reasons why to disregard it. I don't think they're here.

Mr. David Douglas stated we all have your letter. You don't need to give us extra copies. Thank you. Any other members of the public wish to speak? Mr. Davis you now have another opportunity.

Mr. Bob Davis stated believe it or not I do have some things to say. First of all because some of your board, maybe all of your board hasn't really seen what we are going to use or proposing to use as the hospital building. I just want to take one minute of your time. Chris will take you through a drone video we did and then a couple of still photos. You'll get a sense of the property. You'll see it's a campus like setting and you'll see – this is the main hospital building. You see it's not a home or a group home type of building. It was built as a hospital in the '20s. Give you a sense of the magnitude of it. It's really a beautiful property actually. Again that's the main hospital building. I think we have some – there we go. This is just some of the ancillary buildings. There's a garage. There's a conference building. Some were set up as offices but almost all of the patients would be in the main larger building. There's a caretaker's cottage. All of that open space will be preserved over 40 acres. Thank you Chris. So this is basically our rebuttal here tonight and we'll have a couple of speakers. I'm going to stick mainly to the legal aspects as opposed to the medical aspects. The presentation of our opponent's counsel at the September meeting contained numerous misstatements so tonight I'll address Mr. Steinmetz's comments with respect to what definition of the use hospital must be used by your board. My colleagues will address the comments of opponent's other counsel with respect to the nature and extent of the medical and healthcare to be provided by the proposed hospital which placed it squarely within the definition required by your code. My letter of October 4 addressed in detail Mr. Steinmetz's comments at the last meeting where he purports as to where he purports you should look for the definition of hospital. I'll just summarize the main points in my letter. In essence, Mr. Steinmetz really evaded a direct answer to the board's question of how you should define hospital under the zoning code. In our view, he essentially suggested that the board should look anywhere and everywhere for that definition as long as it supports his position and not that of the applicant's while giving short shrift to the only source the board is required to use which is the SIC Manual and in so doing, that misleading discussion was rife with glaring errors and omissions. And some of these overlap with what Mr. Rogers had to say, and I'll deal with some specific comments as to him at the end of this. The issue of where you look for the definition of hospital is pretty simple. You look where your zoning code directs you to look and that's the SIC Manual. Could we put up Exhibit I, Chris please? We're going to put up Section 307-4 of the zoning that's been referenced. When Mr. Steinmetz discussed Section 307-4 we would submit that he misconstrued the meaning and importance of the last highlighted section in that 307-4 as did Mr. Rogers when he was talking about it. "Uses listed in the table of permitted uses shall be further defined by the SIC Manual." Accordingly, he failed to distinguish between the section's requirement as to how undefined words and terms in general shall be defined and its separate requirement for defining uses listed in the table of permitted uses. As a result, in essence, Mr. Steinmetz claimed that the SIC Manual's more or less the last place the board should look for the definition of uses after first looking at the zoning code followed by the building code definitions,

followed by the Webster's Dictionary along with a number of other sources as well. But to the contrary in context Section 307-4 separately employs the fire and building code definitions in the dictionary with respect to words and terms not defined in the code in general. It does not apply those definitional sources to uses listed in the table of permitted uses. It employs the SIC Manual to define uses because in fact that's a publication which specifically lists and defines or describes uses. Accordingly, the words further defined as pertained to the SIC Manual in 307-4 simply mean that the SIC Manual is an additional definitional source to be used specifically defining uses listed in the table of permitted uses as opposed to words and terms in the code in general. And as you know, hospital is a use listed in the table of permitted uses therefore the SIC manual definition is the controlling definitional source. Our interpretation to that effect that the SIC Manual definition is the one to be used for defining hospital is buttressed by two additional sections of the code which Mr. Steinmetz and Mr. Rogers conspicuously failed to mention. If we could put up Exhibit 2, Chris please? First, Mr. Steinmetz omitted any reference in his presentation to Section 307-14 of the code which is entitled "Content of Table of Permitted Uses" and it augments 307-4 with respect to the use of the SIC Manual to define uses by providing in Subsection D which you're looking at, that unless otherwise stated in this chapter, non-residentially uses listed on the table of permitted uses shall be further defined by the SIC Manual. Chris if we can put up Exhibit 3? Exhibit 3 is the table of permitted uses I believe, which we highlighted. There we go. And there's a few pages that you can scroll down. You can scroll down through it and you'll see the yellow highlighting. Second omission of Mr. Steinmetz was the fact that it set forth in my letter of September 12th, the table of permitted uses expressly uses the SIC Manual and only the SIC Manual to define non residential uses listed in the table as required by 307-4 and 307-14(D), specifically citing the SIC Manual with respect to at least 35 listed non-residential uses that we've highlighted. And you can see that the legend at the top of each page of the table cites the SIC abbreviation for the manual and again it is the only definitional source listed in the legend. Neither the fire and building code, nor the dictionary, nor any other source are referenced in the table or its legend for defining non-residential uses. Mr. Steinmetz also conveniently omitted the fact that among the many instances where the table of permitted uses expressly uses the SIC Manual sections to identify and define non-residential, it references the SIC Manual in the very category which is the subject of this proceeding which is Health and Social Services which includes hospitals. We submit that when the foregoing definitional sections of the zoning code 307-4, 304-14(D) and the table or permitted uses themselves are read together in context. It's abundantly clear that the SIC manual is the source to which this board must look for defining uses listed in the table of permitted uses and therefore it's the place to look for the definition of hospital. Were the board to adopt Mr. Steinmetz's position that it should look to multiple concurrent sources in 307-4 and also elsewhere to define uses in the code like hospital it would likely result in different and conflicting definitions. If we could put up Exhibit 4, Chris please? In short, the zoning code we would submit, has two separate definitional procedures under 307-4 taking into account the other sections as well and only the second of these procedures applies to defining uses particularly non-residential uses listed in the table of permitted uses such as hospital. First, for words and terms not defined in the code in general, we look first to their definition under the Uniform Fire Prevention and Building Code unless a contrary intention appears and we've talked about that in our submissions. And if not defined in either code we look to the dictionary but for uses listed in the table of permitted

uses we must look to the SIC Manual. And indeed a review of the cases, of prior cases in your board's minutes in recent years, the last ten years, indicates that the board, in rendering interpretations as to particular uses, has regularly applied the SIC definitions along sometimes with the dictionary definitions on occasion, but certainly not the Fire and Building Code and other sources. We listed some of those past cases just a smattering of them in our October 4 letter. A couple of cases involved Mr. Steinmetz representing applicants. In one of his cases the SIC Manual was referenced dozens of times by the board and in that case the reason for that was that the Deputy Town Attorney and the Deputy Director of Code Enforcement specifically advised the board that the SIC manual is the definitional source the town uses in defining uses listed in the table of permitted uses. Mr. Steinmetz certainly didn't object or claim that another definitional source should be used nor did anyone else, and we would submit the board follow the code in this regard and its own precedent in using the SIC for defining uses. Significantly, in light of this case, the board rendered an interpretation in one of those prior cases as to whether a proposed rehab center and hospice facility to serve stroke victims and post surgical patients constituted a nursing home under the SIC Manual. The board noted that it did, notably and I'll get to this, you didn't mention the Public Health Law. In this regard it's important to note that were the board to find that rather than a hospital the use in this case constitutes a nursing home where custodial care may be predominant as falsely claimed with respect to our use by our opponents, it would still be a permitted use under your zoning code subject to the very same special permit requirements as a hospital. Finally, with respect to the SIC Manual, while Mr. Steinmetz on a number of occasions deferred to Mr. Rogers in not answering questions by the board, he did omit the fact that as discussed in our April 23 submission Mr. Rogers implicitly agreed in his analysis and conclusion in his March 21 determination as well as his determination section in his May 16 determination that the SIC is the controlling definitional source although, as we pointed out, we believe he relied on the wrong sections. In short, the attempt to confuse the issue by citing definitional sources other than the SIC Manual in this case should fail. Notwithstanding that the SIC Manual should be controlling, Mr. Steinmetz also said you should take a look at the customary meaning of hospital and putting aside that your code, unlike some others, doesn't provide for you doing that, what better place to look than the zoning codes of your surrounding communities which have defined hospital which I provided to you in one of my September 12th letters. The definitions in those codes strongly support our position that this is a hospital for zoning purposes. So do the definitions in Webster's Dictionary and Black's Law Dictionary which although not applicable we did give you in April 23 but which our opponents haven't cited Webster's: Institution where the sick or injured are given medical or surgical care. Black's: An institution for the treatment and care of sick and wounded infirmed or aged persons. The building us for such purposes hospitals may be either public or private and may be limited in their functions such as a children's hospital. We previously also explained in our prior submissions and presentations that the various definitions of the Public Health Law, the Mental Hygiene Law and the Building Code do not apply but nonetheless they generally support our position as well. indeed the attempt of our opponents, and we heard some of this tonight, the places under some of these irrelevant regulations by stating the patients will be capable of self-preservation only contradicts and undermines the false claim that it's primarily custodial care. If you're capable of self-preservation you usually don't need help getting dressed or going to the bathroom. Mr. Scherer mentioned the case that we're well familiar with and Mr. Millock will

speak to this. It's a 33-year-old regarding an outpatient clinic from 1987. The key aspect of that is the zoning code of the Town of Hempstead, unlike your code, didn't have any definitional procedures. The Zoning Board in that case didn't have the SIC, didn't even have the dictionary. They were pretty free to choose a place to look for how to define the use in that case so they looked to the Public Health Law and the court didn't say they were required to do that. In fact, the Appellate Court said that the lower court actually misapplied the Public Health Law, but it certainly is totally irrelevant to this case because in that case there was no requirements in their zoning code as to how to define an undefined use. Here you have that requirement in your code. Finally, Mr. Steinmetz once again raised the absurd argument that we're not a hospital because the prefatory purpose provision of the special permit section of your code says "The purpose of the permit is to allow for provisions of hospitals and nursing homes to serve the needs for medical care of the residents of the town." First, we will not only be serving town residents who no doubt include many people suffering in the nationwide opioid crisis but as we've stated from the very outset, we will be giving town residents preferential treatment by reserving beds for them, providing reduced fees for them, providing full scholarships for some of them by participating and assisting in town programs. But notwithstanding that, when the Chairman asked Mr. Steinmetz whether limiting the definition of hospital to one serving town residents would be illegal, once again I don't think there was a direct answer to the question. The direct honest answer to that question is: yes it would be legal as he well knows. As explained in my October 4th letter, such an interpretation would violate the fundamental principle of zoning law that zoning regulations and your board regulate the use of property not the user of property and also the fundamental principle that you may not regulate the internal operations of a business. Moreover to the extent that such legal interpretation would prohibit out of state residents that would surely violate the commerce clause of the United States constitution. In sum, it's clear that the board must apply the SIC manual in determining the definition of hospital for purposes of the zoning code albeit the proposed use complies with many of the other definitions referenced by the opponents. Before I let my colleagues speak a little bit to the medical use just in reference to Mr. Rogers specifically tonight, I won't try to address each and every comment that he made. Our extensive April 23rd and June 14th and to some extent our October 4th submission, basically everything we've submitted has addressed each and every statement that he made tonight. There's not one that we didn't address. The thing about the I-1 it's been designated as I-2 since, as we've pointed out, since August of 2015 and the town has been aware of that for at least a couple of years now. Building Code classifications don't relate to zoning uses in any event. We've talked about all of the other issues with the Westchester County Health Department. We never said our patients roam the grounds freely, quite the opposite. We've never said our physicians are on call. We said we had 42 health professionals including physicians on site at all times. Mr. Baldwin will go over that with you tonight. We've addressed the Westchester County Health Department which has defined us as a hospital. We've addressed the flow rate issue, the medical waste issue, the medical discharge. People don't just leave when they feel like it. We've addressed all of those things. As previously noted, if you can read those, you'll see that. As previously noted, state law provides that not only does the board owe no legal deference to Mr. Rogers. It possesses all the powers he does to make your own interpretation. And respectfully, unlike the case I'm sure with the building code he has no real expertise interpreting the zoning code and no expertise with respect to hospital treating alcoholism. His determination that the use

will be primarily custodial care with only incidental medical care, quite honestly as the record reflects, is really baseless and arbitrary and contrary to the substantial evidence before the board. While he discussed the building code in an attempt to support his determinations he relied primarily on his interpretation of what the use is under the SIC but just unfortunately so many misstatements of the facts. Building Code Use and Occupancy Classifications are not a permitted source of definitions under your zoning code. It speaks to definitions not occupancy classifications and it doesn't apply to uses in the table. And curiously, while he really wasn't involved in the review process and doesn't have expertise in this particular type of use, he never reached out to us for any information. We weren't given an opportunity to give any input. He looked at the things we submitted initially in 2015 when there's been a huge amount of submissions since then that might have helped him make a decision. We weren't even informed frankly that he was reviewing the matter. Under the circumstances we just found that whole procedure somewhat inappropriate and unfair and we think it resulted in an egregiously erroneous and costly outcome. At this point, I would like to reintroduce, he was here last time, our healthcare expert attorney Mr. Millock.

Mr. David Douglas asked Mr. Davis before you leave the podium I've got one or two questions. I understand that your position is that we should only look at the SIC.

Mr. Bob Davis responded correct.

Mr. David Douglas asked but let's say, I'm not saying that we will or will not but let's say that we look at the building code as well, to your view, does the outcome differ in any way? Is your proposed facility a "hospital" under one definition but not a hospital in the other?

Mr. Bob Davis responded you said first look at the SIC. What was the alternative that you said?

Mr. David Douglas asked my understanding is that we should look at the SIC but let's say that we also are going to look at the building code. Again, I'm not saying we will or won't. We haven't made up our minds about anything but I'm just trying to understand is your position that your facility falls into the category of hospital under the SIC? Your position is that it falls under hospital in the SIC. Is it your position that it also falls into the category of hospital under the building code?

Mr. Bob Davis responded I think you have to watch, when you're referring to the building code, first of all the definitional section talks about the building code definitions for words and terms not defined in your code not for uses. It says unless in a contrary intention here…

Mr. David Douglas stated I'm not talking about what our code says. Put aside how we should read section 307…

Mr. Bob Davis stated I pointed out to you in my October 4th letter that I think that it does, if you look at the definition of hospital it talks about the same types of general components that you see in the dictionary definition. It uses the term for purposes of its use because it's involved with fire

protection, it says “For people not capable of self-preservation.” And you asked an erudite question by, Does that mean everyone? And I don’t think we got a definitive answer on that. I don’t think the code provides one but I also pointed out that if you look at the definition of incapable of self-preservation in the building code it’s actually a word defined. Even though I believe it’s irrelevant because it’s only relating to fire protection. It has nothing to do with zoning or medical treatment or anything else. It has to do with can people get out in a fire? Even then the definition it speaks to people suffering from chemical dependency. That’s one of the specific references under incapable of self-preservation and that was in my original April 23rd, it’s in my October 4th letter. I think when you apply the relevant provision of the building code, yes, I think we do fall under it.

Ms. Adrian Hunte asked if you go to the building code and there is a definition of say hospital, would you then say that it’s required to go to the SIC code because we’re talking about a use?

Mr. Bob Davis responded yes. I think the whole context of your code, and granted it could be more specifically worded, but as reflected in your board’s own practice, as reflected on the table of permitted uses where it references the SIC in its very legend, not the building code, where for like 35 non-residential it specifically references the SIC, never references what those things are defined as in the building code or what their use and occupancy classification is. Clearly the clear intent of your ordinance to me is to say that you should use the SIC Manual and that’s what your board has used in the past. There’s no reference in the table of permitted uses for figuring out what a non-residential use is other than the SIC Manual. It’s right in the legend. It’s one of a few words in the legend of each page of the table and I highlighted in yellow 35 times where it’s referenced throughout the table including under the category of Health and Social Services. No references to the building code.

Mr. David Douglas asked one other question, I apologize this is a lawyer type question. But in your view, do you believe that our determination of whether or not your proposed facility is a “hospital” or not, is that a question of fact or a question of law?

Mr. Bob Davis responded I think that the facts of our use are indisputable. What we say our use is, is what it is. We have a very extensive record now of the medical treatment there and what will take place there. Really no one is capable of saying: “no, you’re lying. You’re making your use up.” To me, you have indisputable if not undisputed facts and then you have the law to apply to it. I would say, at the very least, it’s primarily a legal question. You take the descriptions in the SIC manual which talk have the category of hospitals, places that provide medical care where the medical care is a primary component or a principle component, or an extensive component depending on what section you look at and on the contrary is not an incidental component. I don’t think under any stretch of the imagination from what you’ve heard from our healthcare experts and what the regulations themselves provide, under any stretch is healthcare and medical care incidental here. I’ll speak a little more to that in my closing remarks tonight.

Mr. Millock stated good evening. I’d like to address six points that were made by the attorneys for the opponents to the application and also address Mr. Scherer’s comments about the Mercy

Hospital case which he just made. I do this with some difficulty because the attorneys representing the opponents are dear friends and colleagues but I do disagree with them on several of their legal positions. One position that Mr. Zambri stated related to the corporate practice of medicine, and she appeared to claim that only a facility certified under article 28 of the Public Health Law which we've talked about at several points, may employ physicians. The corporate practice of medicine doctrine basically forbids entities that are not physicians themselves unless they are licensed by the license to provide healthcare to employ physicians. The idea is that corporations, US [indiscernible] should not be able to tell a physician how to practice medicine. There are two exceptions to that corporate practice prohibition: one exception is facilities that physicians form, professional corporations, professional limited liability companies. We're not in that category. And the second exception are facilities that are licensed to provide medical care. Ms. Zambri limits that to hospital but in fact there are many other facilities that are capable of providing medical care, in fact required to, and in doing that have to employ physicians. The facility that we are proposing, the applicant is proposing is just one of those facilities because under the regulations governing OASAS each facility that is licensed by OASAS has to have a medical director, that is a physician, and has to have physicians and other healthcare professionals providing services. The idea that for some reason Hudson Ridge proposed facility could not employ physicians is just incorrect. The second point was also made by Ms. Zambri and she said that in effect, only facilities regulated under the Public Health Law may provide medical care and in my written submission I cite the section of the transcript when a statement like that was made. I think, if I read that statement, I believe she was implying that only the Department of Health regulates medical care and a facility like the one we're proposing which is regulated by another state agency; the Office of Alcoholism and Substance Abuse Services would not be able to provide medical care. Again, that's just incorrect. Alcoholism, alcoholism disorders and substance abuse disorders are illnesses and the facilities that are licensed by OASAS are intended to treat those illnesses. That is medical care. I think there's no dispute that the services provided to deal with the disease, two different sorts of diseases, is medical care. The idea that somehow only a hospital that's licensed by the Health Department may provide that care is inaccurate. Mr. Laks asserted that patients will not get extensive medical treatment at Hudson Ridge. And again it's this effort to sort of create this very limited definition of what medical care is. It's true that if somebody were to suffer a grievous disease in one of the facilities that are licensed by OASAS or Hudson Ridge if it is approved would not be treating heart attacks, would not be doing operations. Those things would have to be done in a standard acute care hospital but that doesn't mean that the services that Hudson Ridge will provide are not medical services. It's a different sort of medical services. Every medical service that's provided is not in the ICU, or in the OR, or in the Emergency Room. They're also provided in the sort of facility that we want to build. Ms. Zambri also said that she think that Hudson Ridge would have a clinical environment and that's the term that she used. And I think, with all respect to my colleague who I like dearly, that's an inaccurate and irrelevant statement. First of all there's no definition of clinical environment. As we all know, even the most sophisticated facilities like Westchester Medical Center or Montefiore, or Mount Sinai they are urged or they are compelled to provide services in as residential, as home-like setting as possible for a lot of different reasons. It attracts patients. It makes them more comfortable. It actually improves the outcomes. So that's true of even the most sophisticated hospitals. The idea that providing services to people with

alcoholism disorders or with substance abuse disorders cannot be provided in a homelike setting or residential-type setting because that makes it less than medical is not accurate because there are services and Mr. Baldwin will go through that again that are strictly medical services that will be provided in the facility that we would like to build. Lastly, Mr. Laks asserted that he would measure the extent of medical services by the amount of medical waste that the entity, that the facility will generate and again we will concede that Hudson Ridge will not generate the level of medical waste that Montefiore generates but it seems to me irrelevant. There's no test for a hospital or for any other kind of facility based on the amount of medical waste that it produces or doesn't produce. Finally, I'd just like to say a word about the Mercy Hospital case that Mr. Scherer cited in his testimony and his submission to you this afternoon. The crucial difference as we just stated earlier, as Bob just stated earlier, is that in Hempstead there was no definition and there was no place to go so the court, this was actually in [indiscernible], went to the Public Health Law and the regulations. The lower the court and the Zoning Board confused the connection between the regs and the law but they looked to the law. They had to pick someplace so they used that. But we're in a very different position. Your code gives you a direction. Even Mr. Rogers with whom we disagree on so many things was not limiting himself to the Public Health Law, he was looking to the building code. Obviously we look to the SIC Manual and we think we're correct in that but that's the distinction. In Hempstead, where the case emerged that Mr. Scherer cited, there was no place to go or no direction to go anyplace and in your situation, our situation, there's a very specific place to go. So I think not only is the case in opposite, it is really just not relevant to the discussion here because they were dealing 33 years ago with a very different basic code. Thank you very much. I'm happy to answer questions. I won't turn away this time Mr. Chairman.

Mr. David Douglas stated I don't have any questions. Thank you.

Mr. Bob Davis stated at this time I'd like to bring back Mr. Baldwin.

Mr. Baldwin stated good evening Mr. Chairman and members of the board. My presentation tonight will demonstrate that Hudson Ridge Wellness Center will in fact provide extensive medical services that are required by their OASAS license as a chemical dependence residential program. I will also demonstrate that the program will be designed as a hospital and function as a hospital. First I'll begin by refuting two of the statements that actually Mr. Millock has made reference to, made by Mr. Laks and Ms. Zambri. The first is that only New York State Department of Health licenses programs that employ physicians and the second is that supervised stabilization and withdrawal treatment otherwise known as detoxification is not a medical service. The first statement that the Department of Health is the only agency that licenses facilities that employ physicians; this proposed residential substance abuse program provides extensive medical services under the supervision of a physician for the medical illness of substance use disorder as defined in the diagnostic and statistical manual of mental disorders otherwise known as the DSM5. Part 800 of Title 14: New York Codes Rules and Regulations mandates that all OASAS-licensed programs must have a medical director who is a New York State-licensed physician who has education, training and experience in substance use disorder services and has overall responsibility for the program. The Hudson Ridge Wellness Center

medical director will be on-site daily. This refutes the statement made by Ms. Zambri that only New York State Department of Health licenses programs that employ physicians. The physicians in a residential substance abuse treatment facility provide in-person assessment and direct medical treatment not just, as Ms. Zambri has stated, for screening purposes and otherwise. In addition, the nurses, social workers, psychologists and counselors also provide in person medical assessment and direct medical treatment. Let's just talk a little about the treatment environment. The treatment environment in which these extensive medical services are provided will not be, as described by the opposition, like a home. It will be designed as a hospital. It'll have patient rooms for one or two patients per room. It will have individual group and family therapy rooms. It will have offices for physicians, and counselors and stations for nurses. It will have medication rooms and locked medication storage cabinets. It will have an electronic medical record for documenting assessment, toxicology tests, laboratory tests, treatment planning and treatment services. There'll be a formal intake process based on medical necessity and individualized medical treatment program and a formal discharge procedure. Every person seeking admission must be referred and no one can walk into the facility without going through the intake process. Next we'll look at the stabilization and withdrawal services provided in New York State. Mr. Laks has stated correctly that medically supervised stabilization and withdrawal services or detoxification services can be provided in OASAS licensed residential programs. But then he states that doesn't mean the provision of complex and high level of care. He argues that a person experiencing life endangering withdrawal symptoms would have to be transferred or treated at a facility offering medically managed stabilization withdrawal treatment thereby implying that the facility offering medically supervised stabilization withdrawal treatment is not providing medical services. A facility treating a patient with a heart disease which must transfer him or her to a facility where a heart transplant can be done is not viewed as not providing medical services. Medically supervised stabilization and withdrawal services are required by OASAS and will be provided at the proposed facility and this will include what we refer to as medication assisted treatment – MAT which will be provided by physicians and nurses to patients who are experiencing mild or moderate withdrawal symptoms or post acute withdrawal syndrome. Mr. Laks also stated that the proposed facility does not primarily provide medical care and extensive medical treatment. Let's take a look at why that's not correct. First, what are the levels of care in a residential substance abuse treatment program? Part 820 mandates that the facility has to provide one or more of three levels of care: stabilization level, rehabilitation level, or reintegration level. The proposed Hudson Ridge Wellness Center will provide stabilization level and rehabilitation level. This facility design uses only the medically intensive levels of care authorized under part 820. What are the services that are included in those two levels of care? Let's look at the first level, the most intense stabilization level. The term stabilization comes from the name stabilization withdrawal service otherwise known as detoxification. The stabilization level of care will include medication assisted treatment which will be provided to patients who are experiencing mild or moderate withdrawal symptoms or post acute withdrawal syndrome. You may ask: what is medication assisted treatment? Hudson Ridge Wellness Center will offer MAT to help these patients address their withdrawal symptoms and the potential cravings associated with them. The components of medication assisted treatment start off with an assessment of withdrawal symptoms which will include ongoing standardized withdrawal evaluation including the use of clinical institute withdrawal assessment and/or clinical opiate

withdrawal scale. Those are standardized scales to measure the level of withdrawal symptoms. Patients will receive symptom relief and/or addiction medications such as Suboxone, Vivitrol, buprenorphine, naltrexone for opiate withdrawal, Librium, Ativan and Valium and other medications for alcohol withdrawal. This type of withdrawal management will be closely managed withdrawal management service which will assist patients through withdrawal using a substance specific taper or induction plan. In addition, regular vital signs will be monitored by the medical staff including the physician. All this will be governed by and the medical staff will follow the Hudson Ridge Wellness Center withdrawal protocol which is a protocol that must be approved by the medical director of OASAS. Let's just take a look at some of the services that make up the medical treatment services.

Mr. David Douglas asked can I just ask a question, make sure I'm understanding. You're talking about medically assisted treatment? Is that the phrase? MAT?

Mr. Baldwin responded medication assisted treatment.

Mr. David Douglas stated that's what I'm saying, medication assisted treatment. Are you saying that because of that is being provided that means that this is necessarily a hospital?

Mr. Baldwin responded the provision of medication assisted treatment is a medical treatment for a medical illness of addiction and is part of the reason that this is a hospital, yes.

Mr. David Douglas stated I'm trying to think this through because it seems to me that sort of treatment doesn't necessarily have to be in a hospital. It seems that that's almost irrelevant to whether this is a "hospital" or not. For instance take palliative care, somebody who is undergoing palliative care and treatment is that would be a medication assisted treatment I assume but that's not necessarily given in a hospital and generally isn't. I'm just trying to understand how what you're describing, which I actually find fascinating except I'm not sure how it's relevant to the issue ultimately that we are faced with here.

Mr. Baldwin responded I think in our original presentation based on the SIC code substance abuse treatment hospitals and alcoholism treatment hospitals are part of that definition and that's what this program is. It's a substance abuse treatment program. It therefore does meet the definition from the SIC code.

Mr. Bob Davis stated we also, in Mr. Baldwin's presentation, he's going to have an exhibit to show you and much of what he has to say tonight will be in writing as all of our presentations are so we don't have to go through everything but he's going to give you, in a moment, a schedule of all of the medical activities not just the MAT. He's going to give you a staffing schedule and he's going to give you an activity schedule that will show that the medical services at this facility where people stay overnight for 28 to 45 days are continuous over 24 hours, 7 days a week. It's not just the medical assisted treatment that connotes a hospital, it's the totality of the medical treatment. The medical assisted treatment is just one component of that.

Mr. Baldwin stated I talked about that first because that is the beginning of a substance abuse treatment program is dealing with the withdrawal symptoms and providing medication assisted treatment. OASAS and most experts in the field feel that medication assisted treatment is a vital part of treating addiction because the person's addiction results in them being sick, having withdrawal symptoms, and having cravings to use drugs and alcohol. That's where it starts. We're not saying that's the only medical service but it is a major medical service. I'll just talk a little bit about some of the other ones. In this program in the stabilization level which is the level that usually somebody enters the program on, they'll have daily on site medical and clinical staff who are also accessible for emergencies 24/7. Medication assisted treatment as I just described, psychotropic medication therapy for the alleviation of symptoms of mental illness, regular toxicology screening for the presence of addictive substances, trauma informed care. Hudson Ridge Wellness Center recognizes that trauma has a profound effect on the lives of people seeking treatment, frequently an underlying cause. Hudson Ridge realizes that people who have been exposed to trauma are at a greater risk for developing addiction and mental health problems. Hudson Ridge Wellness Center will assume that many residents will have experienced trauma and will use several screening tools to assess that including the stressful life experience tool, the PCL-5 for PTSD and the intimate partner violence screening tool to inform the questions to be asked during the comprehensive assessment. They will also receive individual, group, and family counseling provided by licensed health professionals as well as ongoing use of clinical tools to assess withdrawal, emotional distress, cognitive functioning and cravings as well as ongoing assessment of housing and recovery needs and incorporation of recovery principles to promote a supportive residential environment. The next level after somebody completes the stabilization level is the rehabilitation level and the services there are very similar. First let me say that when somebody enters the rehabilitation level of care they may still require some stabilization and withdrawal services including medication assisted treatment. That will be provided in order to continue to assist the patient with mild to moderate withdrawal symptoms, cravings, as well as post acute withdrawal syndrome. The services in the rehabilitation level of care will also include daily on site clinical staff, medical assisted treatment, psychotropic medication therapy, toxicology screening, trauma informed care as I just described, individual, group, and family counseling and ongoing use of clinical tools to assess social functioning, community engagement, empathy, behavioral control, and anger management, as well as ongoing assessment of housing, that's part of the discharge planning. Where are they going to be living afterwards, participation in prevocational activities as well as incorporation of recovery principles to promote supportive residential environment. I'd like to also answer the question: how are residential substance abuse treatment services built?

Mr. David Douglas stated you're about to go into a different topic.

Mr. Baldwin stated not his is just a brief…

Mr. David Douglas asked or are you close to wrapping up because otherwise I'll take a break but I don't want to cut you off.

Mr. Baldwin stated residential substance abuse treatment programs are medical services with current procedural terminology – CPT codes for coding medical services for payment by their health insurance. Residential substance abuse treatment is billed using the UB-04 Revenue Code of 1002. So, what we'd like to do also is show you three schedules, a description of the services at the program, a complete daily schedule which we're putting up because the one that was submitted by the opposition was not really a complete schedule.

Mr. David Douglas stated what we're going to do since we've been going for about an hour and forty minutes and you're about to shift gears is we're going to take a five minute break. Thank you.

* * *

Mr. Baldwin stated we're just about done. We just wanted to mention that we're submitting a description of the various services in the residential treatment program as well as the staff, the medical staff that provides it. We're also providing a typical complete daily schedule. That's a different slide. It's the complete daily schedule. Yes that's it which is much more complete than one that was shown by the opposition. The last we're submitting a staffing schedule. It shows the coverage by all the various professional staff. That's not it. Keep going. That's it right there. That's being submitted.

Mr. David Douglas stated you say submitted, you're going to submit that in hard copy.

Mr. Chris Kehoe stated yes I have all the hard copies.

Mr. David Douglas stated because I think I'm passing my eye test, but still.

Mr. Baldwin stated you'll be able to read it when you see it in front of you. And then just one final note is that the name was brought up, the idea of a wellness center and I just wanted to give some examples of other medical treatment facilities operated by Article 28 hospitals in New York using the name Wellness in their titles. First: Cancer Treatment and Wellness Center of Northern Westchester Hospital, Military Families Wellness Center of NewYork-Presbyterian Columbia Medical Center and NewYork-Presbyterian Weill Cornell Medical Center and Saint Catherine and Saint Charles Health and Wellness Center of Catholic Health Services of Long Island.

Mr. Bob Davis stated just to point out to clarify everything we've spoken of tonight and more, just like all of our past presentations you have complete copies of. The reason the difference in the activities schedule between what you see tonight and what you saw last night is because the ones our opponent showed last time only showed common group activities common to all of the patients and did not show a sampling of the individual medical treatment which is unique to each specific patient. What we tried to give you is a schedule sampling of a typical patient what their daily schedule would be. We've given you the staffing for 24 hours of the day, 7 days a week. You'll see that medical staffing is completely covered in that and then a complete list of all of

the services that are offered. At this point I'd like to introduce one person that hasn't been here before. It's doctor Ernst Jean and Dr. Jean is actually a medical director currently of two Part 820 facilities in the near vicinity: in the Bronx actually. He would like to just speak to you briefly to talk about from his own perspective because he is a physician. He's an internist. He has over 20 years experience in addiction related medicine and he actually is a medical director of the type we've been talking about for the same type of part 820 program. He can testify or answer any questions both as to the extensive nature of the treatment and the fact that it's not incidental and the fact that these facilities operate much like hospitals. Dr. Jean?

Dr. Ernst Jean stated good evening.

Ms. Adrian Hunte stated hi. Good evening.

Dr. Ernst Jean stated I'm Dr. Ernst Jean and I'm the medical director for VIP Community Services in the Bronx. We are a federally qualified health center. We are also certified behavioral health center that we also have two residential programs that we have converted from an 819 to an 820 type of facilities. I'm here to, at the request of the Hudson Ridge Wellness Center, to share with you that the medical services are an integral part of the 820 programs. By all means we do not provide custodial care. In fact, I can attest that the medical component of the 820, of the specialty hospital has been the key element distinguishing residential redesigns program from the old, the 819. We are already noticed in all the presentation before that there are significant requirements for nursing presence in our programs and we have 24 hour nursing presence in our stabilization and rehabilitation phases. The staff has to have access to a medical provider 24 hours. That has allowed us at VIP to tackle significant medical issues. The reality is that the teenagers who have used drugs in the '70s are now the first wave of geriatric patients with problems that are unique but will present with coronary artery disease, hypertensive cardiovascular disease, smoking induced cancers, COPD from smoking significantly and these have to be addressed. It's a shift from high intensity hospital settings detox to an ambulatory setting. The needs remains quite high and it's urgent to stabilize these patients in order to continue with them. Crisis can occur as soon as they come and the nursing presence is key. It's not custodial care. It's real medicine for this population and there is a risk. The reality is that the patients who do not qualify for this type of setting, for a residential setting if they are not severely ill. Many patients will go to an ambulatory setting. We are dealing with patient who have a significant medical and psychiatric needs. And only because of our nursing and medical presence are extensive have we been able to address and control [diabetes] and being successful addressing it, the additional trauma, bulimia. We've been very successful with reducing smoking in this setting. I had some doubts when we started but 50 to 70 percent of patients while they are in a residential setting – now these facilities are smoke-free because of the support that we provide as providers: medication assisted treatment with nicotine replacement therapy, and the intensity of the intervention by the nurses are doing group and individual intervention for our patients, we are seeing results in terms of smoking cessation that we have not seen elsewhere. But the medical presence is extensive and has to be skilled. We have to hire the right type of nurses to be able to achieve that. With the psychological and psychiatric services we have to

provide this in order to comply with the OASAS mandate. That's a requirement by the state. Thank you.

Mr. David Douglas asked anybody have any questions?

Mr. Bob Davis stated we didn't provide one yet but we'll provide a written presentation by Dr. Jean. That would conclude our rebuttal presentation at this particular time.

Mr. David Douglas stated Mr. Steinmetz.

Mr. Chris Kehoe asked do you want the photograph now?

Mr. David Steinmetz stated that's great. I'll have you change just a couple of slides. Mr. Chairman, members of the board, David Steinmetz from the Law Firm of Zarin & Steinmetz representing the Citizen's Group. I will try to be as efficient and timely as possible. I'm joined again this evening by Melissa Zambri from Barkley Damon our Healthcare expert and counsel. She will be brief as well. We're quite glad that this evening we all got a chance to hear and see Martin Rogers. It's important for us to all remember that regardless of the back-and-forth between lawyers and consultants and experts, you are here tonight in connection with a review of Martin Rogers's determinations; his ultimate May determination and his finding that this is not, excuse me, that this that we're looking at, this lovely residential, bucolic, peaceful, green, non-commercial setting is not a hospital. It's a lovely, wonderful residential treatment concept, probably a great location if you wanted to have a residential treatment, quiet, bucolic facility but that's not allowed under the Town of Cortlandt Zoning Ordinance. Mr. Rogers told us that he was asked by the Planning Board whether this residential treatment program constitutes a hospital and he is charged, and I think we all are clear on this but I want to make sure the record is, he is charged under New York State Town Law and under the Zoning Ordinance to be the arbiter of the zoning code. So to try to attack Martin and his expertise on zoning every single day that Town Hall is open, Martin Rogers is interpreting and enforcing your Zoning Ordinance. Now there obviously are some disagreements here. We've had disagreements over a lot of different things. The disagreements between attorneys and experts doesn't create ambiguity or confusion in the code. And I think, quite frankly, that's one of the Herculean tasks that the applicant has attempted to surmount by piling on papers, reams, briefs, constantly changing facts or let's call them evolving facts. There's an attempt, I believe, we believe, to create an ambiguity here. Martin Rogers is the primary arbiter of the code. Martin Rogers has found no ambiguity. We believe, Mr. Chairman and members of the board, that this board must look to your code and the directions that we get from your code. Mr. Rogers told us that specifically looking at the applicant's materials he found it repeatedly referencing residential treatment. One example, actually stated by the applicant's counsel in the beginning of this evolving process; I'm going back to a letter from the applicant dated August 4th, 2015. Quote, Iin short, this is a wellness center, hence the name. It's intended to providing a very private, quiet, peaceful, bucolic setting, closed quote. That's why I started with their own exhibit because when I looked at it I thought that's exactly what they described in 2015. That's what we've heard about and that is not a hospital. Notably it's not called a hospital. It's not licensed by DOH. We've heard that it's not

going to be an Article 28 licensed facility. So Mr. Rogers also cites the building code and the SIC Manual all in accordance with 307-4. Chris, if you could just jump to 307-4, our slide.

Mr. Chris Kehoe asked from your PowerPoint?

Mr. David Steinmetz responded from our PowerPoint. We talked about 307-4 last time. Mr. Chairman you asked me some questions about it and I want to be very clear because I went back and watched that question and answer. We believe that your code clearly lays out what the law frequently refers to as a waterfall provision where you go from one sentence to the next, to the next. This provision makes it quite clear. Briefly, certain words and terms are defined in the code, not everything. We know not everything. Terms and words not defined herein but defined in the building code shall have the meanings given therein unless a contrary intention appears. Words not defined in either one or two, we can look at the dictionary. And last sentence, there's no however. There's no while. There's no juxtaposition set up. It's the next sentence, it begins with the word "uses" not the word "for." Uses listed in the table of permitted uses shall be further defined by the SIC code. One thing that the applicant and we agree with, the SIC code's relevant. No one ever said that the SIC code is not relevant but what's possibility dispositive is the fact that you don't get to the last sentence, you don't get to the SIC code for further definition until you first go through the building code. Our position, and I want to make this very clear, our position is that Martin Rogers tonight told us, and in his writing explained we believe precisely correct. He looked at the code. He didn't find the definition. There is no definition of the word "hospital." The word "hospital", the term "hospital" is used in your Zoning Ordinance. The use hospital, the word "hospital", the "use" hospital is identified in the table of permitted uses. Why am I setting that up? Because there's an attempt to confuse the issue and possibly the board that the use has to go straight to the SIC code. Well the word "hospital" in the first two sentences of 307-4 tells us we don't go right to the SIC code. The SIC code is further defining something. Chris, do me a favor please? Go to Exhibit 4 in the applicant's PowerPoint that they raised tonight. I just want to make sure, members of the board, that you see this. And I'm not suggesting that the applicant intentionally was trying to do anything other than advocate. I'm not going to use the word misleading but I am going to say that the code does not say "for" words and terms, blah, blah, blah. It certainly doesn't say "however" and number two it doesn't say for uses listed in the table of permitted uses, quote, we must use the SIC Manual. So please don't bite on that head fake. I doubt you would. I doubt you will but I'm disturbed that it was presented in this fashion visibly in front of the board tonight. I didn't know I was going to see this. And the word "however" is not in your code, neither are the words "for" setting up each particular sentence. That's why I showed you what your code says. Let's go back Chris to what 307-4 actually says. Thank you. I highlight the phrase further defined. It is not highlighted in your code. I highlighted it because it's a phrase further defined. We can all acknowledge, something can only be further defined additionally, extra, something more defined if it was first defined. So, to jump to the SIC code, to argue in front of you, I'm sure in good faith, that it is a mandate, that it's a must is just simply wrong. Use your common sense. Read the words. Look at 307-4. You don't have to believe me. This is not about me. This is not about others. This is about what your code says. This is about what Martin Rogers interpreted. Also, I just want to correct something. We never "objected" to the use of the SIC as was recently maintained. We don't. In

fact, we actually think the SIC is helpful we just think that Martin cited the correct section of the SIC and they did not.

Mr. David Douglas asked that's a perfect segue into my question. My question is going to be the mirror image of the question I asked of Mr. Davis. You say that we should be looking at the building code first, and then the dictionary and then the SIC. You used the word "waterfall." He says something different. Let's assume, not saying that we're deciding this or using this approach, this is exactly what I said to Mr. Davis, let's assume that we take Mr. Davis's approach and we look at the SIC. Does that change what you say should be the outcome of the situation?

Mr. David Douglas responded no it doesn't if you utilize the correct section of the SIC code which we believe Mr. Rogers brought you to. He did that after he reviewed the SIC code and found that this is a "residential treatment program" as SIC 8361 Residential Care states. There is clearly, nobody's questioning the physician who's here this evening, by any means. We know there's some medical care going on. There's not a question about that. The question is whether or not it's predominant, it's principal, it's the main thing going on there. That's what Martin tried to explain to us in 8361. The interesting is the applicant has tried to criticize us for other applications that have been processed in the Town of Cortlandt before this Zoning Board where the SIC was relied upon. In the applicant's own exhibit and in your town code the table of permitted uses clearly identifies, and I think they told us, 33 uses are cited by them where the SIC is specifically identified. In the Cortlandt Organics matter where I represented the applicant, I had a lumber and wood products facility and there was a specific line item that brought us to SIC 24. Of course we looked at the SIC code. There was no question we were going to look at the SIC code because the code directed us to go there. In this instance, there is no SIC reference next to the word "hospital" but even if you go to the SIC code we believe Mr. Rogers took you to the correct location in the SIC code.

Mr. David Douglas asked if I'm understanding you correctly with the SIC code, what your bottom line conclusion is that any medical care that's being provided is, to use the SIC language, is incidental?

Mr. David Steinmetz responded correct. Because I don't think, and I want to make this clear, you're not circumscribed by that word in the SIC code because you can go to the building code…

Mr. David Douglas stated I understand that. I understand that's your position. I'm asking you – I'm doing the same to you as I did to him.

Mr. David Steinmetz stated and I'm going to answer the way I feel needs to be answered that the medical care is secondary, incidental, I don't know whether incidental is the right word. It is a word in the SIC code. It is not the primary function and I'm going to differ to Melissa to explain why that is the case because that is her expertise. I can take you through your code. I can understand what Mr. Rogers has told us but I'm not going to try to opine on, definitively opine

on the Public Health Law, Article 28, Article 32 and what really is what is happening inside this wonderful, bucolic piece of property in their ideal world. In sum, we believe that your board does need to be informed by state licensing. I think it's relevant. I told you that last time. I stand by that. I don't deviate. There's nothing in 307-4 that tells me plain meaning's relevant. There's nothing in 307-4 that tells me that you should look at the state licensing and DOH but 33 years of experience and listening to somebody like Mr. Scherer come to the microphone and say: "How could you not rely upon your own practical judgment?" is in fact meaningful. Looking at the building code, which is not an easy thing and I give Mr. Rogers a tremendous amount of credit for what he does and going through it, I absolutely think in trying to decipher what the building code was trying to tell all of us about hospitals, I think looking at the Public Health Code is probably the most important thing to look at if your question is not answered in the building code itself. With that, I'm going to indicate to all of you that we do think that despite all the effort, despite the volumes of material that you have receive, this really is a pretty straightforward matter. It's not a hospital. It was never a hospital and it's unfortunate that as a result of this process a target that was originally put in front of the town in one fashion seems to keep moving. Every time we speak it feels like we get more information. It doesn't change the bottom line. The bottom line is this location, this proposal is a residential treatment facility. It's a wonderful, laudable concept and significantly, because threats have been made against the town, I want to remind you what Mr. Rogers said earlier: there are places in the Town of Cortlandt that one can loftily operate in accordance with zoning what they seek to do. No one in this room is telling them they can't do it and no one in this room is saying it doesn't belong somewhere in the town. We are simply saying it doesn't belong on this piece of property under your code. Thank you.

Ms. Melissa Zambri stated Melissa Zambri. I'm a partner with Barclay & Damon and a fast talking Italian which is perfect for this time of night. Peter you're welcome to disagree with me anytime you want, you know that. I just want to touch on a very few points and respond to a couple of comments that were made about some of the points that we made and be very quick about it. There has been some discussion of self-preservation. It was in the applicant's letter Friday again and there seems to be two points being made. One is that we, by raising the issue, have said that you wouldn't even need custodial care. What I would say to that is, in an assisted living environment in New York State you have to be able to transfer yourself. You have to be able to work your wheelchair yourself. You have to be able to walk independently. If you can't do those things, you need a higher level of care. That higher level of care, it's a little confusing in New York, there's enhanced assisted living but normally it's a nursing home. There are people in custodial care situations who can self-preserve. Now, arguably in an assisted living setting can you get everyone out as fast as you would like? No but just like sometimes you can't get a 90 year old still living on their own out of a senior residence as fast as you would like but they can get out. When we talk about self-preservation, hospitals are defined under the building code and I understand all the back-and-forth of all of that, but that's where we get this idea that the recipients are incapable of self-preservation. In 814-6, and I hate reading regs or covering that but those regs apply to residential facilities, among other inpatient facilities, and 814.6(B) provides: "That clients admitted into a residential program must have the capability of self-preservation. If the client is not capable of self-preservation they should be referred to a section 816.6: Medically Managed Withdrawal and Stabilization Service or other program equipped for

the level of care." 816.6(A) provides that that level of complexity has to be provided in a facility certified by this office and certified by the New York State Department of Health as a general hospital pursuant to Article 28 of the Public Health Law. So the idea, and I think it was referenced in the letter, that these individuals are so impacted by their disease and they are definitively impacted by their disease and it is absolutely a disease but the idea that they are so impacted that they cannot get out of this residential treatment facility, they would not be in it. So that's the first point I wanted to make. We feel on that issue it's dispositive. It does not trivialize the care that's being provided or the stabilization services. It just doesn't rise to the level of that medically managed service as we talk about what's substantial or not incidental or any of the things we've heard. I also wanted to say, as we talk about this idea of what is more than incidental or substantial or any of the words that we've used. I've the corporate practice of medicine because when we talk about the facilities under Article 28, when we talk about physician practices, when we talk about those entities, we're talking about principally providing medical care. I didn't mean to imply that there is not a medical director that's required under the regs and I didn't mean to imply that there aren't people providing those services but when we start to talk about substantial services we start to talk about those entities that I named including Article 28 of the Public Health Law. That doesn't mean to say that it's not it's just meant to say that if we're talking about something more substantial medical care is provided we're generally talking about an Article 28 hospital. Here, using the old staffing schedule and the new staffing schedule that we got, we have a physician on staff on the old schedule and the new schedule but available as needed, overnight which is to be expected but there is not a physician on staff overnight and there's 2.8 FTEs I think allocated under the new staffing schedule of an addiction psychiatrist who is an MD and provides medical services without a doubt. There was five nurses I think listed but when you have the overnight shift as needed and you have two nurses, I think, on the overnight shift, yes absolutely medication assisted treatment, taking of vital signs, drug testing. We do not dispute that those things are going to be done but we don't think that that makes the medical care substance or not incidental or any of the other things. You know, I know there's a lot of words and they gave nice definitions as to what those services are in the handout that they had and in their slides but obviously medication therapy prescribing and then monitoring and education similar to what you would get from your physician if you were being monitored outside of this type of facility or at a pharmacy but it doesn't make the actual facility significantly medical in our opinion and that is where, of course, we disagree. There's been some talk about billing and medical necessity and kind of this implication that because we say something is medically necessary that implies that it's medical but the truth is we use that phrase all the time for just about anything that's covered by your health insurance. And the example I would give to you is livery, particularly in New York City. You needed a ride to a doctor's office. You might go by taxi, they call it livery. It's covered by Medicaid. It has its own code. It gets billed but it's not medical but we would decide it was medically necessary because you needed to take that taxi. Just because we use that term or there's a billing doesn't necessarily mean that we're talking about something very traditional medically. There was some reference in the letter from Friday about whether or not this might be a nursing home. Maybe that's the direction they would want to go because that would be covered then. It would be very similar to an Article 28 hospital. Nursing homes generally provide long term care. Short turn stay sometimes for medical rehab: PT, OT, those types of services and anyone who knows someone

who had a stroke or has gone there for 90 days to rehab but generally a person lives in a nursing home. They don't kind of stay in a nursing home unless it's for that short term medical rehab. Those who reside in a nursing home require 24/7 nursing care. That is what gets you into a nursing home. That's how you get removed from assisted living and put in a nursing home. I don't think anyone here necessarily thinks that the individuals staying here need 24/7 nursing care. If they did that's not a lot of nursing staff overnight to have a couple of people to be providing that care. I don't think we would say that it is a nursing home. The building code talks about intermediate care facilities and skilled nursing facilities where any of the persons are incapable of self-preservation and that goes back to the prior argument where we can't have people who are not. I would say here that you have medical care is incidental. I often tell my clients: don't tout that you're doing something unless you want the licensure who license it to come look at you. Obviously we do not dispute that there is some medical care going on. We just don't think it's enough to make it a hospital. Thank you again for having me.

Mr. David Steinmetz stated point of information, Melissa was referring to a letter Friday, that would be the October 4th letter from the applicant that we received on Friday and that's why she referred to it as the Friday. I just wanted you to know what she was referring to. We were not copied on that letter but we did receive it on Friday just so you're clear.

Mr. David Douglas stated thank you. Mr. Davis, now you've got your closing remarks.

Mr. Bob Davis stated thank you. I can't resist but commenting on a couple of things that were said before I do my closing remarks. One thing I've learned as an attorney is not to try to practice medicine. I think you have to ask yourselves, we've heard Code Enforcement Officer and an attorney tell you what constitutes, in their opinion, extensive medical treatment or incidental medical treatment. On the other hand, you've heard a medical doctor who actually runs these facilities. You've heard at least three professional consultants, if you include Mr. Calvin who set these facilities up, managed them, are intimately involved with them on a daily basis tell you what constitutes extensive treatment. I think you have to weigh that and I think you can only come to one conclusion as to who has more credibility as to the type of medical services that these facilities provide: the doctors who run them, the professional consultants who run them or an attorney and a Code Enforcement Officer. That's all I would suggest to you. And by the way, as Mr. Baldwin has pointed out previously, the regulations themselves to which we're a subject require 24/7 medical care. That was a misstatement in that regard. If we are a nursing home, as I said, we're subject to the exact same regulations under your zoning code as a hospital. If you want to call us a nursing home for purposes of zoning, call us that as well. I'd be happy to have that because it's the same exact qualifications. Mercifully by way of closing, as previously noted, in September 2014, five years ago before formally submitting our application we requested and had a meeting with town staff which included Mr. Rogers, who apparently according to his testimony was fairly new at the time and the deputy town attorney for the express purpose of confirming that the proposed specialty hospital was a permitted hospital under your zoning code specifically as defined by the SIC Mmanual. Based on the express recognition of the town representatives at that 2014 meeting that we were a permitted hospital under the SIC we submitted our comprehensive application to the Planning Board in July 2015, over four years

ago. Included in our voluminous submission was our permitted hospital status under the SIC specifically, and our expert Mr. Calvin's narrative report which discussed in great detail the extensive medical staffing – and by the way we will have 42 medical professionals, licensed professionals on staff, on site, not just on call, and also indicating the treatment, the extensive medical treatment we would be providing at the hospital. Despite all of the many contested proceedings before the Town Board, the Planning Board, the Zoning Board and Supreme Court Westchester County, for over four years thereafter, it was not until February of this year, 2019 that opposing counsel first raised to the Planning Board the question of whether we were a permitted hospital use and did so in a very generalized way and not citing any of the matters raised by Mr. Rogers. Tellingly this inquiry came only after concluding extensive environmental review proceedings before the Planning Board. Just when we had addressed all of the environmental issues raised by the town staff and its expert consultant to their satisfaction, particularly with respect to the lack of significant adverse traffic and well impacts, and in March as a result at the Town's request we submitted a four volume, seven inch thick encyclopedic consolidation of our submissions to date with dozens of voluntary mitigative conditions. I'm sure Mr. Rogers did not review all of those. The Planning Board was scheduled to proceed with it's SEQRA determination this past May. In other words, this belated inquiry about whether the use is a hospital was nothing but a last stitch effort to forestall this application, all else having failed. The Planning Board asked the town staff to respond to that inquiry which we thought would be simply answered by the town attorney but it was given to Mr. Rogers, unbeknownst to us and the rest is history. As I explained at length previously and in my original April 23rd submission, Mr. Rogers and his opponent should be legally barred from even raising this issue which was not raised by any of the parties in the prior proceedings before the board regarding the nature of the state road frontage variance or in the related court proceedings all of which were premised from day one on our being a hospital use, expressly premised on that. Subsequent court decisions confirmed that we were right and our opponents were wrong on the variance issue and the same is true for this matter. They are wrong again. One of two things must be true. If Mr. Steinmetz's firm and our opponents and everyone else couldn't figure out for four years even to raise the issue of whether our use was a hospital, there must really be some ambiguity with respect to the application of that term to our use which the law requires be resolved in our favor. We don't think there is ambiguity but they can't have it both ways. On the other hand, if it's as clear as Mr. Rogers and our opponent now claim that we are not a hospital, I would think counsel's clients might ask as we do why that issue wasn't raised at the outset instead of spending so much time and money on things like the nature of the frontage variance and all the environmental issues. Notwithstanding whether defined as your code requires by the SIC manual or based on the common understanding of what a hospital is for zoning purposes as evidenced by the zoning codes of your neighbors, there can be no question that the proposed use constitutes a hospital. When you apply the required rules of strict construction in favor of the applicant as well as the requirements of the federal ADA you can come to no other lawful conclusion. The applicants and their opponents are not on equal footing here. The opponents have the right to be heard which they have certainly been afforded, however the applicants have countervailing and superseding property rights. One of those rights is to have the zoning code strictly construed in their favor. That fundamental right is strongly fortified by their concurrent rights under the ADA. Quite simply, the opponents have rights but the applicants have greater legal rights in this

proceeding and those rights require that they prevail on this issue. As we've said from the beginning of this proceeding, it comes down at this point, even after all of the information that's been thrown at you to your just applying to the proposed use the specialty hospital provisions of the SIC manual which you have used many times in the past and you're doing so in a manner which resolves in favor of the applicant as state and federal law requires any ambiguity as to whether the proposed use falls under the SIC provisions and under your code. In accordance with your SIC manual, the extensive expert testimony you've heard from our professional consultants who are intimately involved with the proposed use and this type of use has overwhelmingly demonstrated that this use will be a specialty hospital as it will be "primarily engaged in providing diagnostic services, treatment and other hospital services for specialized categories of patients," in this case suffering from alcoholism and drug addiction and medical care will be a "major element" and extensive, not merely incidental. Mr. Millock was a long time general counsel to the Department of Health which administers the Public Health Law and its regulations. He's an expert in healthcare law. Mr. Cicero and Mr. Baldwin have been involved for decades in working with or for the Department of Mental Hygiene and OASAS and with the regulations governing this type of hospital. Dr. Jean is the Medical Director, a doctor, of two such part 820 facilities. They all have clients with similar uses. They are very familiar with our client's use and the services provided. Surely these four experts, along with Mr. Calvin, have accurately advised this board as to the intent and meaning of the applicable regulations and the nature of our use, and under the law all this expert testimony cannot be disregarded by the board, certainly, and should certainly supersede the uninformed opinions of others particularly non medical professionals. We note again that the Westchester County Health Department has designated the use as an addiction recovery hospital and approved our water and septic system on that basis. Also by court order this board has previously approved a specialty rehabilitation hospital for this property. Our clients will be utilizing the building designed and used for 30 years as the same type of hospital. It's located in an institutional campus-like setting. The main hospital building will be set up with hospital rooms and beds, where one or two patients suffering from an acknowledge disease will stay for 28 to 45 days. The hospital is strictly regulated by the state. There will be a medical director, as required by OASAS, which will license and supervise the hospital under the Mental Hygiene Law. There will be offices staffed for patient supervision 24 hours a day, seven days a week, with licensed health care professionals on-site, including doctors, nurses, psychologists, and licensed addiction counselors, at least 42 such licensed professionals in all to serve 42 patients at start-up. As outline by our experts, all of these patients will be undergoing extensive medical and health care treatment on a daily basis for their physical, mental, and behavioral health issues. Their health insurance will be accepted toward the fees incurred for their treatment. As explained, the patients must demonstrate a significant medical necessity even to be admitted. They will have an individualized medical treatment plan while in the hospital. They will undergo required discharge procedures when they leave. This is clearly a specialty alcoholism and drug addiction rehabilitation hospital under the SIC, just as the SIC lists other types of specialty hospitals for other illnesses. We've gone over with you the substantial benefits the hospital will offer the town, including the preservation of over 40 acres of open space in Teatown and over half-a-million dollars in annual taxes while providing medical treatment with favorable accommodations for Cortlandt residents, so many of whom are no doubt suffering from these terrible disorders. For all of the reasons we've stated

since April, in person and in writing, Mr. Rogers's March 21st and May 16th determinations must be set aside by your board in their entirety as a matter of law. Respectfully, his belated, incorrect findings that, number one, the proposed hospital is not a hospital under the zoning code; and that, number two, the state road frontage variance is a use variance, not an area variance, if, in fact, he's claiming that, a matter already determined by your board and by the courts in other cases to the contrary, are both, under the circumstances, beyond his lawful authority, as well as barred by and contrary to law and erroneous in numerous ways. Lastly, as explained, Mr. Rogers's gratuitous additional ruling in his May 16th determination that the building code use and occupancy classification of the main hospital building, is I-1, rather than I-2, is not only incorrect for all of the reason we've stated since April 23rd – and you can see where a number of the things he said tonight on that issue are just incorrect. We designated it since 2015 as an I-2 use. In any event, that determination is premature and beyond his lawful authority at this point, because no one requested his advisory opinion, and because it appropriately awaits the submission of a building permit application and plans, which has not yet occurred. Such building code determinations generally are not within the board's authority. However, it is within the board's purview to determine that building code use and occupancy classifications, whatever they may be, are not to be used to define non-residential uses under your zoning code. The SIC Manual is required for that. And also, under Sections 307-87 and 88 of the zoning code, his issuance of building permits must be in accordance with the code, any necessary board approvals, and your boar's interpretation of the code. So the board can and, also, should determine that his determination with respect to a building permit and the use and occupancy classification under the building code is premature at this point. So in sum, the applicants have spent over four years and made incredible expenditures, acting in the utmost good faith and diligence to address and eliminate any and all legitimate environmental and other concerns raised by the town, its professional staff, its expert consultants, and the neighbors, only to be suddenly burdened, at this late juncture in the ballgame, by the patently spurious contention that, after all this, you're not a hospital. Quite simply, Mr. Rogers's determination must be reverse, and the review of this application permitted to recommence on the merits. Some may not like what we propose or where we propose it, but it is a hospital we propose, as defined under permitted by your zoning code, plain and simple. Thank you.

Mr. David Douglas stated thank you, Mr. Davis. We're now going to close the public hearing. If somebody wants to make that motion that would be great.

Ms. Adrian Hunte stated I make a motion that we close the public hearing.

Seconded with all in favor saying "aye".

Mr. David Douglas stated the public hearing is closed. We had discussed at the work session – in know that both the applicant's attorney and the attorney for the citizens group wanted to – the opportunity, if they wish, to provide written submissions. And it was agreed those would be due by no later than October 29th. We look forward to receiving them. Thank you.

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**ADJOURNMENT**

Mr. Wai Man Chin stated I make a motion that we adjourn the meeting.

Seconded with all in favor saying "aye".

Mr. David Douglas stated our meeting is adjourned.

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**NEXT NOVEMBER 20, 2019**