
RESPONSE TO 2022-01-26 PUBLIC HEARING COMMENTS

PROPOSED SPECIALTY HOSPITAL

**2016 QUAKER RIDGE ROAD
TOWN OF CORTLANDT
WESTCHESTER COUNTY, NY**

Prepared for:

**Hudson Ridge Wellness Center, Inc. and
Hudson Education and Wellness Center**
72 North State Road, Suite #502
Briarcliff Manor, NY 10510

Prepared by:



JMC Planning Engineering
Landscape Architecture &
Land Surveying, PLLC
120 Bedford Road
Armonk, NY 10504

JMC Project 14088

Date:

February 2022



Site Planning
Civil Engineering
Landscape Architecture
Land Surveying
Transportation Engineering

Environmental Studies
Entitlements
Construction Services
3D Visualization
Laser Scanning

February 16, 2022

Loretta Taylor, Chairperson and Members of the
Town of Cortlandt Planning Board
Town Hall
1 Heady Street
Cortlandt Manor, NY 10567

Re: JMC Project 14088
Proposed Specialty Hospital
2016 Quaker Ridge Road
Town of Cortlandt, New York

Subj: Response to 2022-01-26 Public Hearing Comments

Dear Chairperson Taylor and Members of the Board:

This letter provides responses to comments received in connection with the Board's public hearing on this application on January 26, 2022, at which the Board closed the public hearing on SEQRA, with written comments accepted until February 7, 2022.

Similar comments have been grouped together by topic area without identifying specific individuals in order to reduce repetitiveness in the responses. Wherever possible, reference will be made to previously submitted documents should the comment have been addressed during the extensive submission history of this application.

As such, attached please find written comments submitted by the public and well as previously submitted materials that respond to these comments.

1. Letter to Planning Board from Cuddy + Feder on behalf of the applicant, dated January 19, 2022. (Appendix 55)
2. Letter to Thomas Wood Esq. from Cuddy + Feder, dated January 25, 2022. (Appendix 56)
3. Attorney Robert Davis, Esq., Planning Board Meeting Outline, dated January 26, 2022. (Appendix 57)
4. JMC letter to Hudson Ridge Wellness Center, re: Irrigation Requirements and Water Summary Proposed Planting for 2016 Quaker Ridge Road, dated February 7, 2022. (Appendix 58)

5. Letter to Planning Board from Robert Davis, Esq., dated February 9, 2022. (Appendix 59)
6. Hudson Ridge Wellness Center, response in regard to Board Member Kessler's comment on the OASAS letter. (Appendix 60)
7. Hudson Ridge Wellness Center, OASAS Communication Timeline – Summarized. (Appendix 61)
8. Ralph G. Mastromonaco, P.E., P.C. Consulting Engineers letter re: General Clarifications in Response to Site Plan Comments, dated February 15, 2022. (Appendix 62)
9. JMC Comment Response Letter, dated February 14, 2022. (Appendix 63)
10. August 2021 Addendum to March 2019 Consolidated Expanded Environmental Assessment Report. (Appendix 40 – 54, included under a separate book)
11. List of Stipulated Conditions for Conditional Negative Declaration for Proposed Specialty Hospital, revised March 14, 2019. (Appendix 64)
12. SEQRA Summary Support for a Conditioned Negative Declaration. (Appendix 65)
13. SEQRA Summary of No Potential Significant Adverse Impacts. (Appendix 66)
14. Site Plan Approval Drawings by Ralph G. Mastromonaco, P.E., P.C. (Appendix 67)
15. Robert Davis Submission, dated September 3, 2021. (Appendix 68)
16. JMC Comment Response Letter, dated December 20, 2021. (Appendix 69)
17. 1/26/2022 Public Hearing Correspondence (Appendix 70)
 - a. Letter from Hudson Ridge Wellness Center, Inc., dated August 8, 2016, to OASAS. with FedEx label. (Sub-Appendix A)
 - b. Applicant submission regarding OASAS timing, dated September 3, 2021. (Sub-Appendix B)
 - c. Cortlandt Planning Board Public Hearing Power Point, dated January 26, 2022. (Sub-Appendix C)
 - d. Town of New Castle Millwood-West End Advisory Board Group Comments, dated January 26, 2022. (Sub-Appendix D)
 - e. Planning Board Talking Points, January 26, 2022. (Sub-Appendix E)

- f. Ms. Manocherian Presentation. (Sub-Appendix F) (Sub-Appendix F)
- g. Teatown Public Comments, dated February 3, 2022. (Sub-Appendix G)
- h. Joel Greenstein letter to the Planning Board, dated February 6, 2022. (Sub-Appendix H)
- i. Email from Jayne Karlin dated February 6, 2022. (Sub-Appendix I)
- j. Michael Shannon letter to Planning Board, dated February 7, 2022. (Sub-Appendix J)

Thank you for your consideration.

Sincerely,

JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC

Amanda Mell-Taylor

Amanda Mell-Taylor
Administrative Assistant

cc: Mr. Steve Laker
Robert Davis, Esq.

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APPENDIX 55



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White Plains, New York 10601
T 914 761 1300
F 914 761 5372
cuddyfeder.com

Joshua J. Grauer
jgrauer@cuddyfeder.com

January 19, 2022

BY EMAIL & FEDERAL EXPRESS

Hon. Loretta Taylor
Chairperson of the Town of Cortland Planning Board
Cortlandt Town Hall
1 Heady Street
Cortlandt Manor, New York 10567

Re: Hudson Ridge Wellness Center, Inc., No. 6-15 (the "Application")

Dear Chairperson Taylor and Members of the Planning Board:

We represent Hudson Ridge Wellness Center, Inc. and I write on their behalf to reconfirm to the Board as I previously corresponded on June 28, 2021 and again on August 31, 2021 (copies attached) that our client has consented and continues to consent to special permit conditions aimed at the broadest mitigation and accommodation of the community and of immediately adjoining neighbors with whom Hudson and its landscape architect recently met on several occasions.

Set forth below is a summary of conditions that Hudson voluntarily consents to subject to the Board's close of the seemingly never-ending proceedings of the past seven (7) years and, in particular, the public hearing which has lasted longer than ever expected and than understood would be the case herein. Be that as it may, Hudson is pleased to memorialize its agreement to the following as binding terms of a special permit arising from the closing of the public hearing at the upcoming special meeting and determination of the Planning Board to expeditiously adopt a Negative Declaration:

1. Covenants of Hudson Ridge. Hudson Ridge shall:
 - a. Cap the number of patients admitted to the Specialty Hospital as the lesser of forty-nine (49) in its first year of operation and fifty-eight (58) thereafter, or as required by any third-party licensing agencies;
 - b. Develop the Property in substantial accordance with the site plan (Exhibit A), landscaping plan (Exhibit B), lighting plan (Exhibit C), and building plan

(Exhibit D) subject to minor amendments, any final changes required by the Planning Board or ZBA, or any minor field changes. These covenants include

- i. Blocking off and restricting for emergency use only all windows and exterior doors facing the northerly property line in Buildings 2-6;
 - ii. Restricting lighting along the northerly property line to emergency use in and around Buildings 2-6;
 - iii. Reducing pole lighting by 11 p.m.;
 - iv. Storing snow plowing equipment towards the interior of the Property and away from residential property lines when snow is expected;
 - v. Screening as needed for houses along the northerly property line any tennis courts and swimming pool;
 - vi. No group housing (e.g. dormitory or ward style);
 - vii. Providing patients with private or semi-private rooms with a maximum of two persons in separate beds per room, except for a maximum of five larger style suites with no more than three persons in separate beds permitted, and no Murphy or bunk beds;
 - viii. Designing the entrance way to eliminate queuing of cars on the public road
- c. Not expand the footprint of existing buildings or construct new buildings as part of the Specialty Hospital;
 - d. Not develop the adjoining property, owned by Hudson Ridge's affiliate, located to the south so long as the Property is used as a specialty hospital;
 - e. Provide nonprofessional staff with van access to the Property from a carpool area located offsite and will schedule employee shift changes to minimize potential traffic impacts;
 - f. Not use any exterior bells, pagers, or public address systems;
 - g. Agree that the terms and conditions placed upon its special permit and site plan approval by the Planning Board, including the terms in this Agreement, shall be memorialized in a Declaration of Covenants and Restrictions, which Hudson Ridge shall record with the Westchester County Clerk's office;

Hon. Loretta Taylor
January 19, 2022
Page -3-

- h. Agree that its special permit will be subject to renewal to assure compliance with its terms and conditions, with a three-year renewal period for the first three periods and then five-year renewal periods thereafter;
- i. Reserve two beds for Cortlandt residents who will be afforded reduced admission rates on a sliding scale based on income, augmented by private insurance;
- j. Provide two full scholarships each year to Cortlandt residents;
- k. Identify a community liaison who will invite neighborhood representatives to meetings no fewer than two times a year and will keep them apprised of operations and respond to community questions and concerns;
- l. Provide a staffed 24-hour access line to appropriate municipal authorities;
- m. Participate in community outreach with community and school programs as requested, including D.A.R.E. and Cortlandt and Croton Community Coalitions by providing expert speakers and programs free of charge;
- n. Work with the Town, as requested, to combat the problem of substance use disorder.

Upon the Planning Board's closing of the public hearing on January 26, 2022 and the expeditious adoption of a Negative Declaration on or before the 3rd day of February, 2022, Hudson stands ready to immediately execute, acknowledge and deliver to the Town's counsel both the Declaration of Covenants referenced above and such other reasonable instruments that the Planning Board and its counsel and planner request.

Lastly, we ask that Hudson's agreement and covenants described above and in all exhibits be immediately published on the Town's website.

Thank you for your assistance.

Very truly yours,



Joshua J. Grauer

JJG:jv

Enclosure

Hon. Loretta Taylor
January 18, 2022
Page -4-

cc: Robert F. Davis, Esq. (via email)
Thomas Wood, Esq. (via email)
Joshua Subin, Esq. (via email)

Exhibit A

Exhibit B

NO.	DATE	REVISION

HUDSON RIDGE WELLNESS CENTER, INC.
72 NORTH STATE STREET #202
BRAMBLET MANOR, NEW YORK 10910

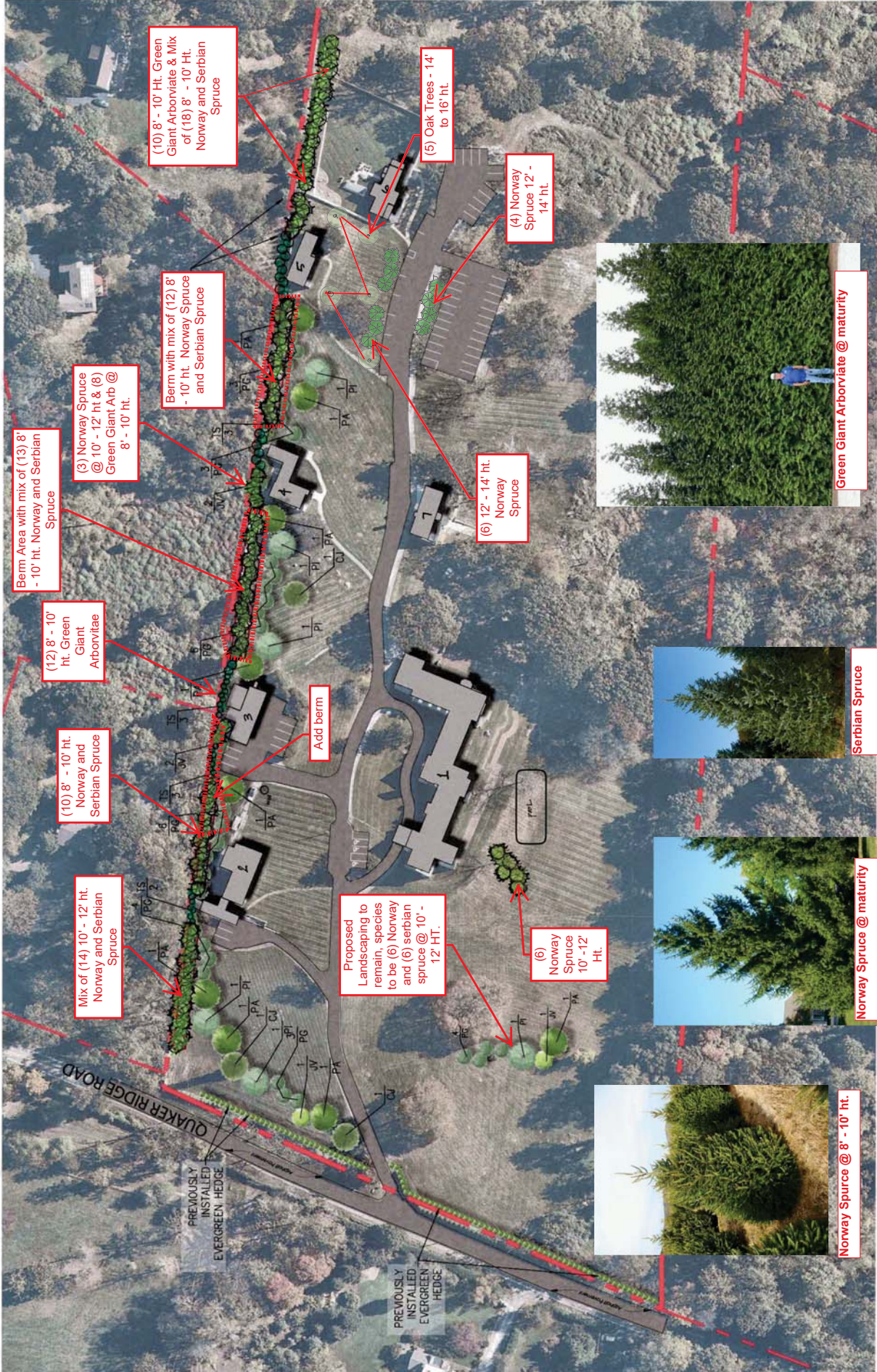
JMC
130 REDBOND ROAD • REDBOND, NY 10924
TEL: 845.272.2125 • FAX: 845.272.1810
JMC Planning & Design, LLC
Landscape Architecture & Land Planning, LLC
John M. Crotty, President, Inc.



LANDSCAPING PLAN
PROPOSED SPECIALTY HOSPITAL
2016 QUAKER RIDGE ROAD
TOWN OF CORNFORD, NEW YORK

DATE	NO.	DESCRIPTION

L-100



CONCEPTUAL LANDSCAPE PLAN

12-31-21



- ### Plant Schedule
- (10) Norway Spruce - 12'- 14' HT.
 - (22) Norway Spruce - 10' - 12' HT.
 - (33) Norway Spruce - 8' - 10' HT.
 - (13) Serbian Spruce - 10' - 12' HT.
 - (32) Serbian Spruce - 8' - 10' HT.
 - (30) Green Giant Arborvitae 8' - 10' HT.

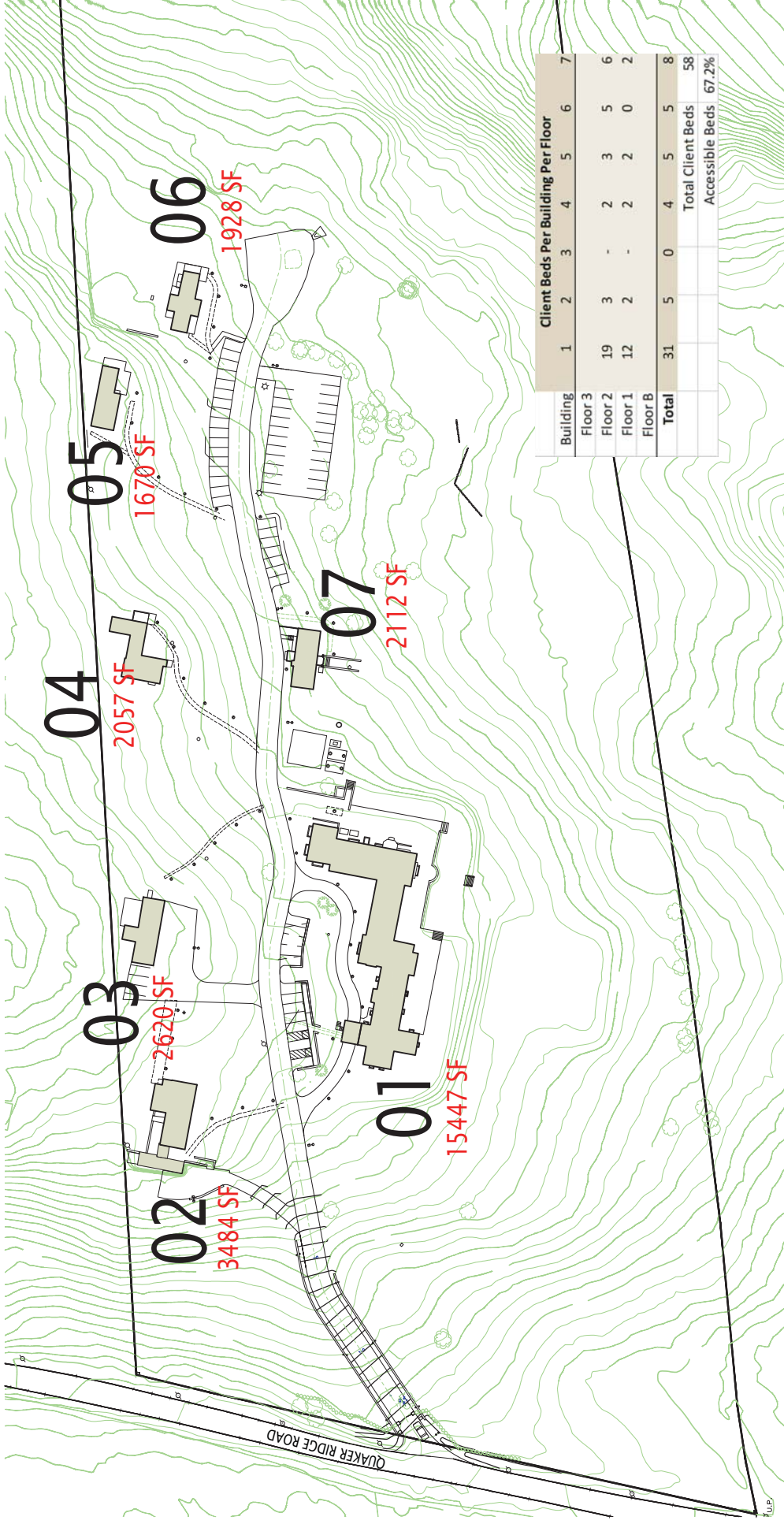
Exhibit C

Exhibit D



HUDSON EDUCATION AND WELLNESS CENTER

LOTHROP ASSOCIATES LLP
OCTOBER 2021



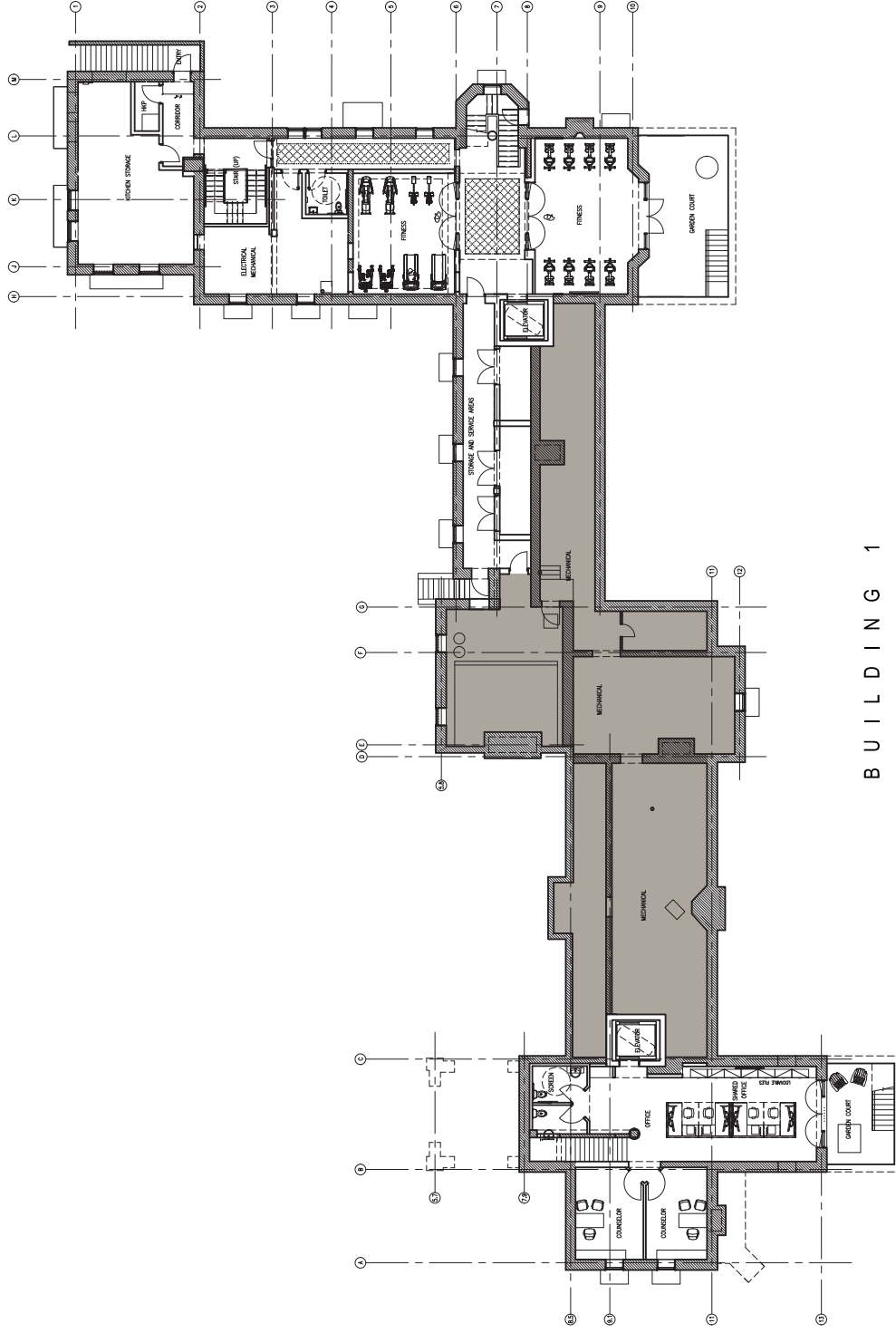
Building	Client Beds Per Building Per Floor							
	1	2	3	4	5	6	7	
Floor 3								
Floor 2	19	3	-	2	3	5	6	
Floor 1	12	2	-	2	2	0	2	
Floor B								
Total	31	5	0	4	5	5	8	
Total Client Beds							58	
Accessible Beds							67.2%	

BUILDING KEY PLAN

HUDSON EDUCATION AND WELLNESS CENTER

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OCTOBER 2021

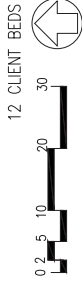
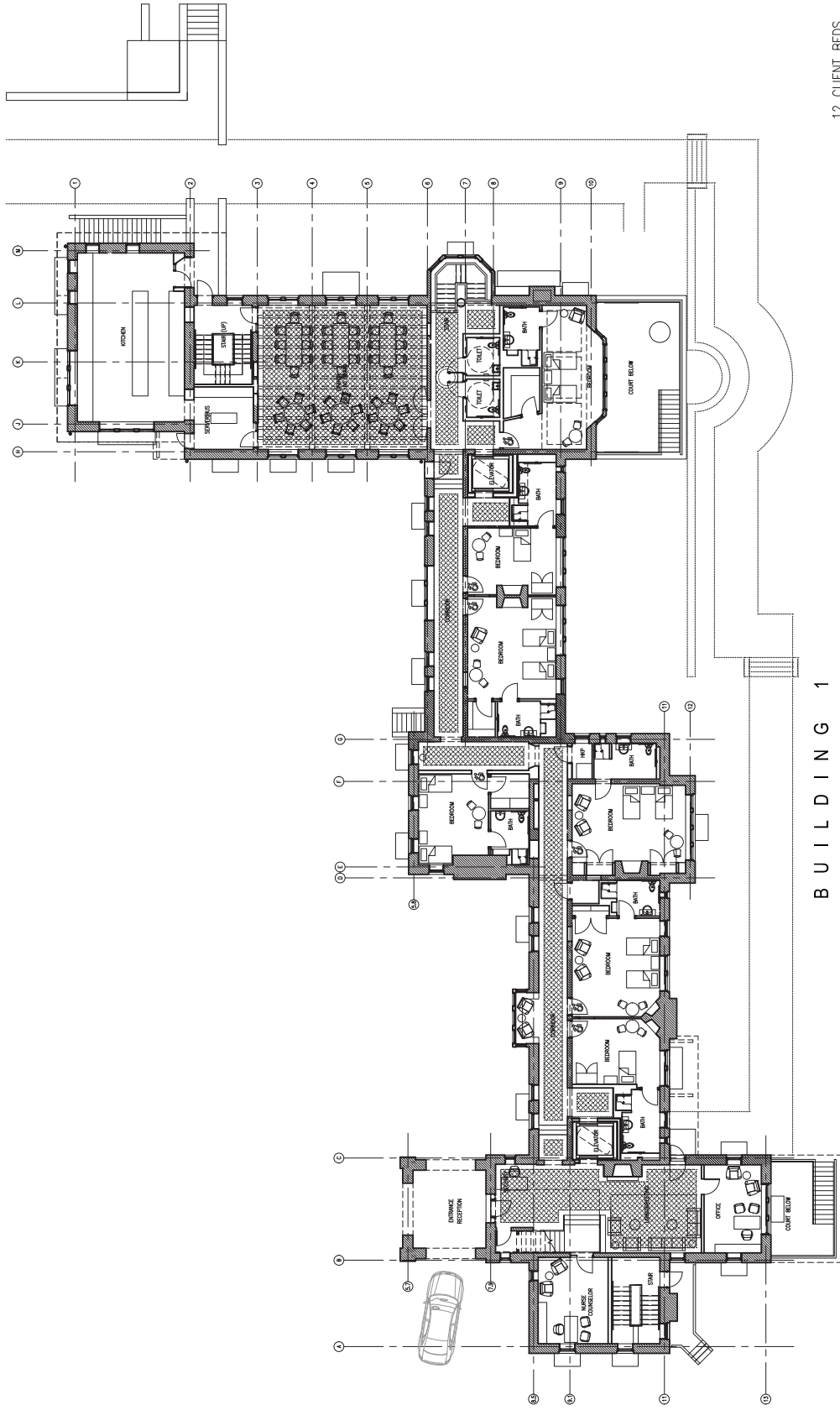
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 BASEMENT LEVEL
 HUDSON EDUCATION AND WELLNESS CENTER

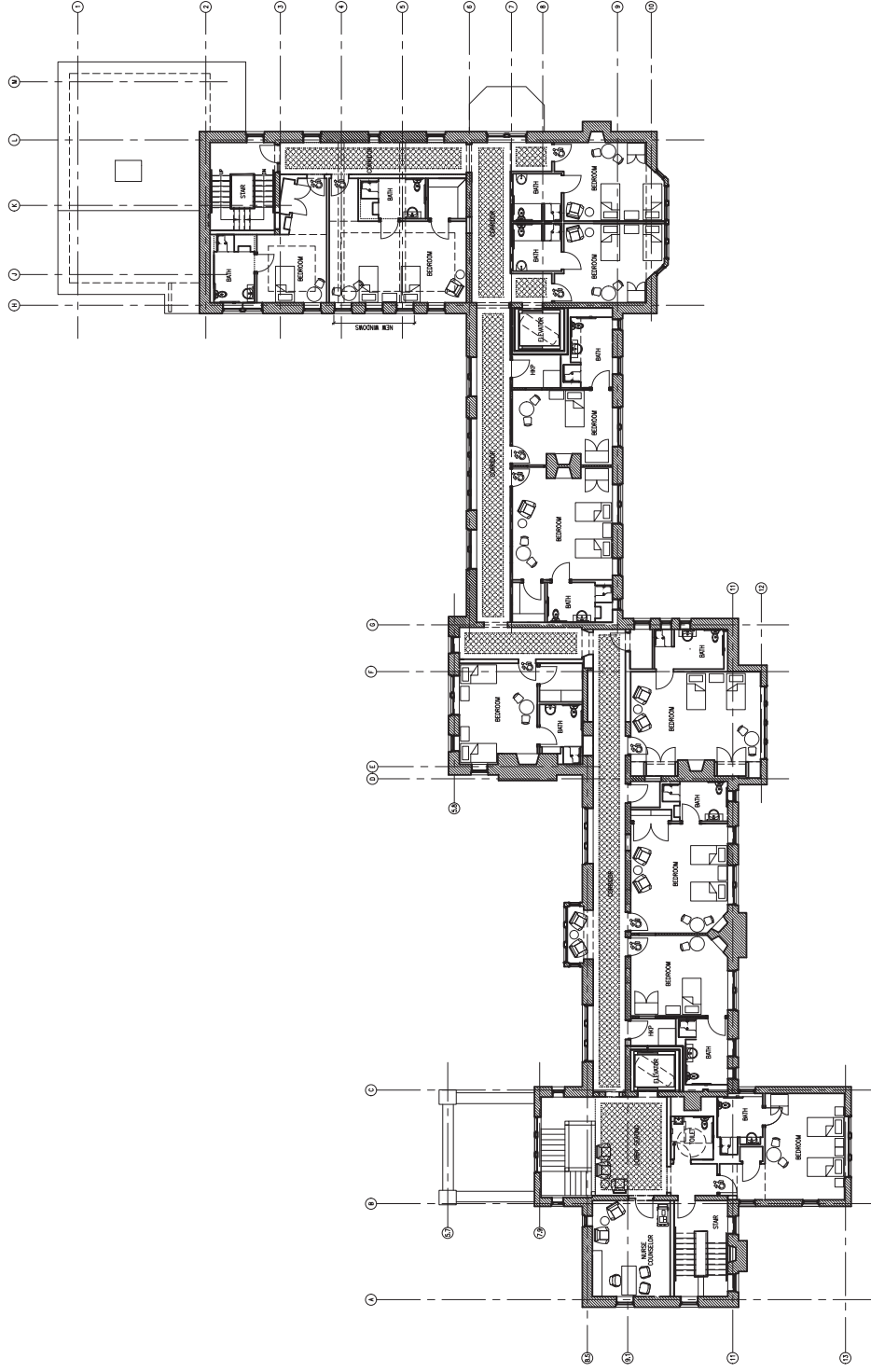
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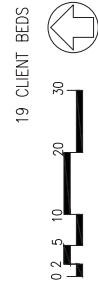


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HUDSON EDUCATION AND WELLNESS CENTER

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OCTOBER 2021

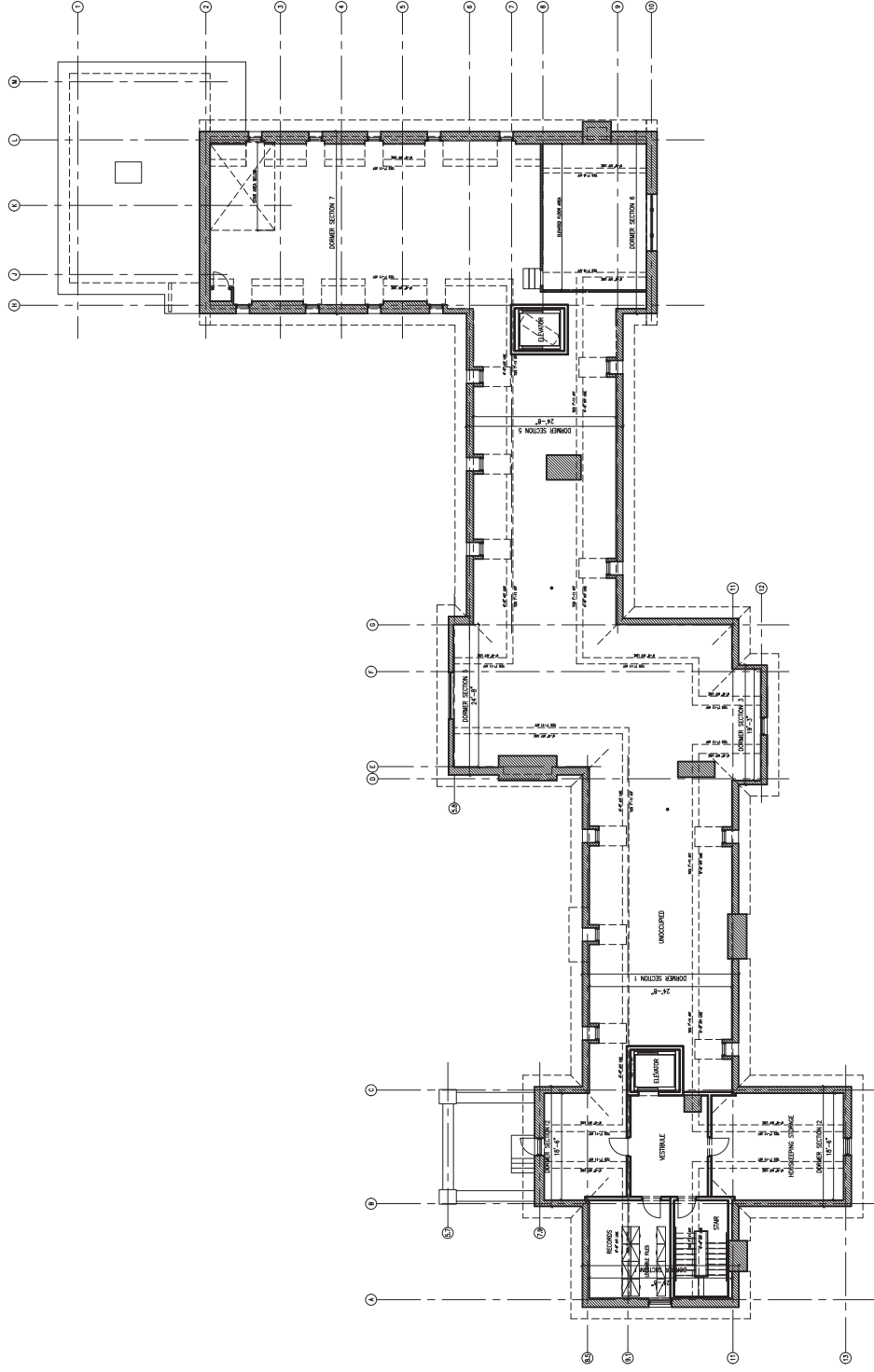


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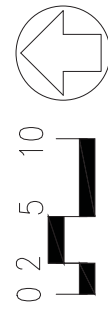
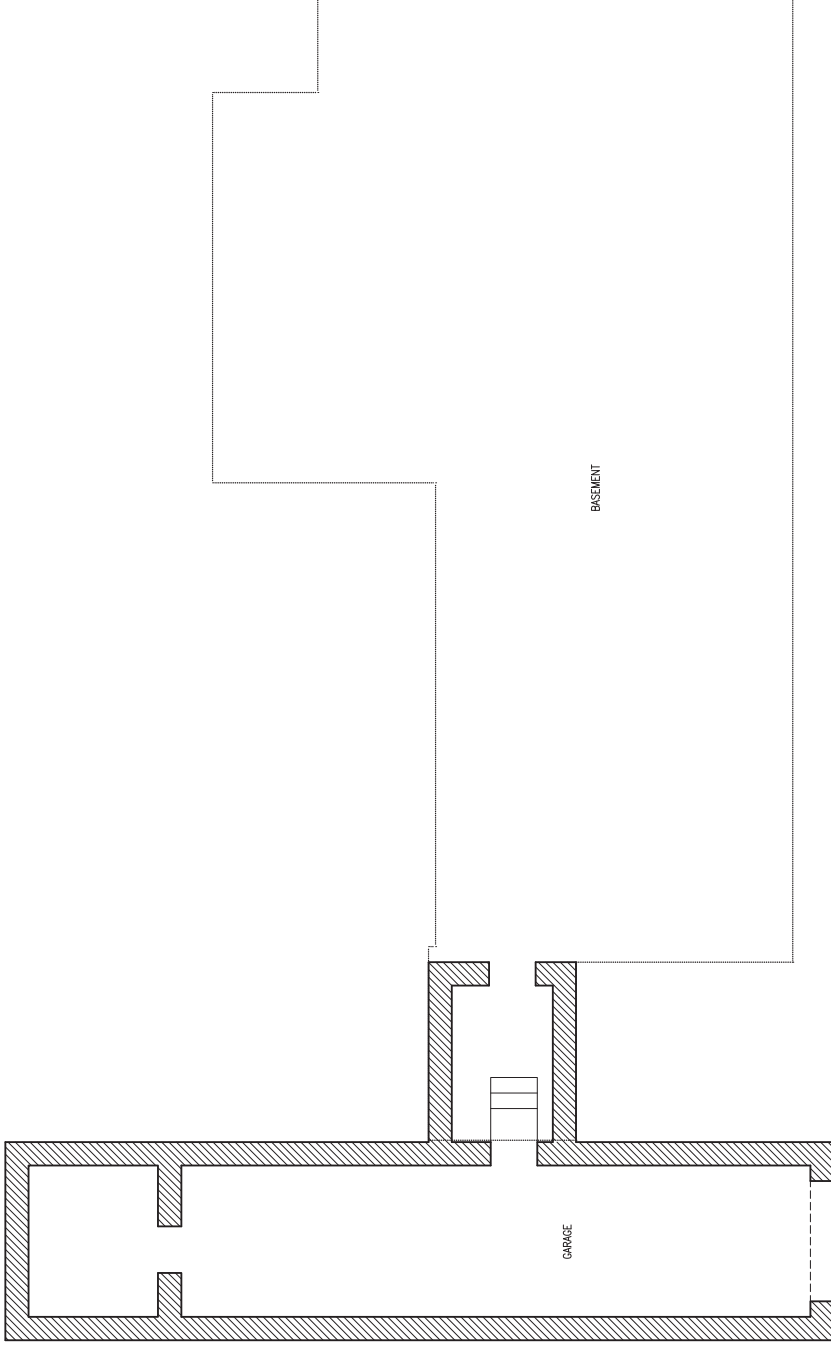
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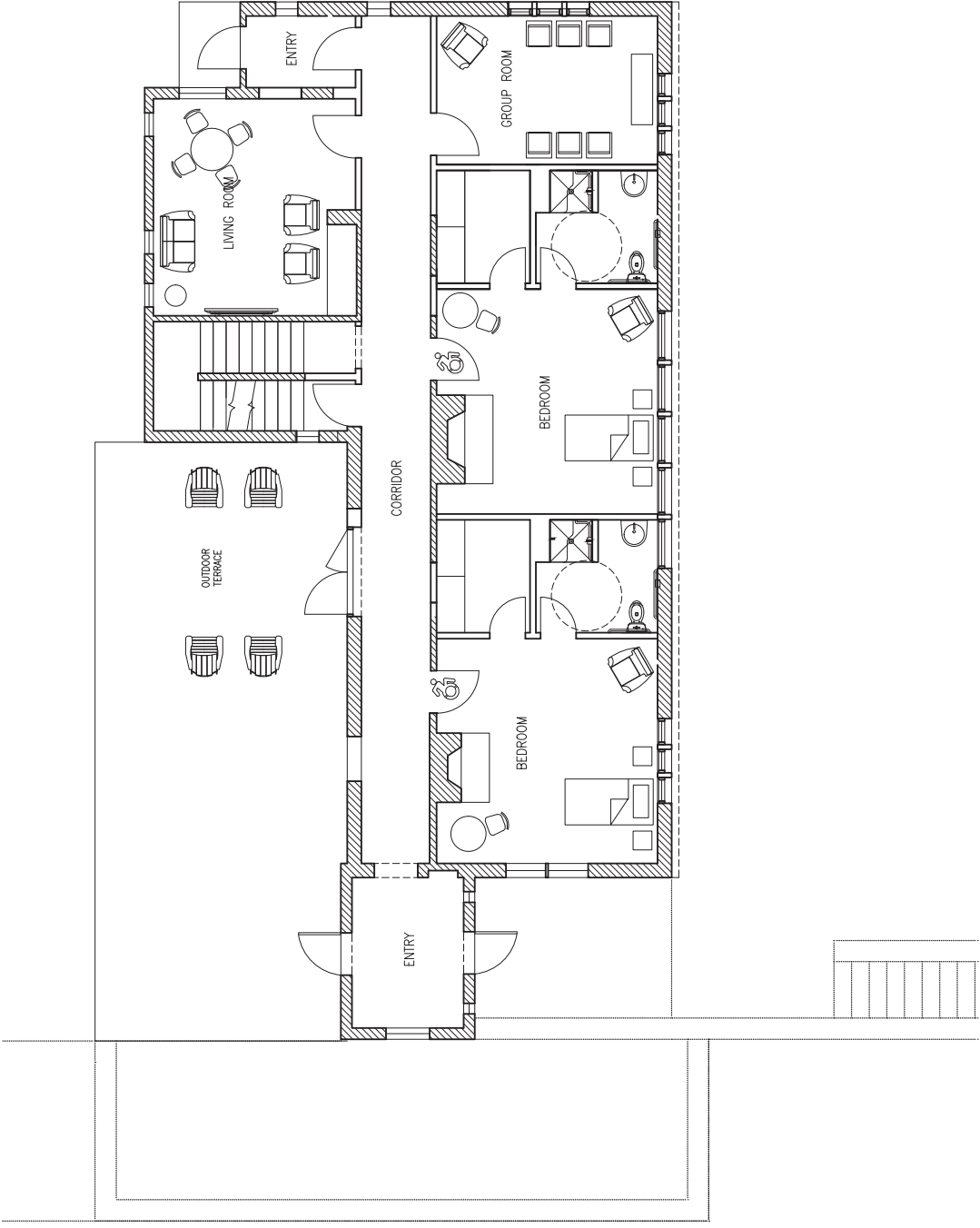


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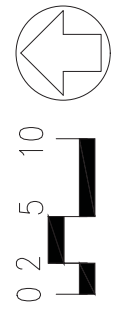
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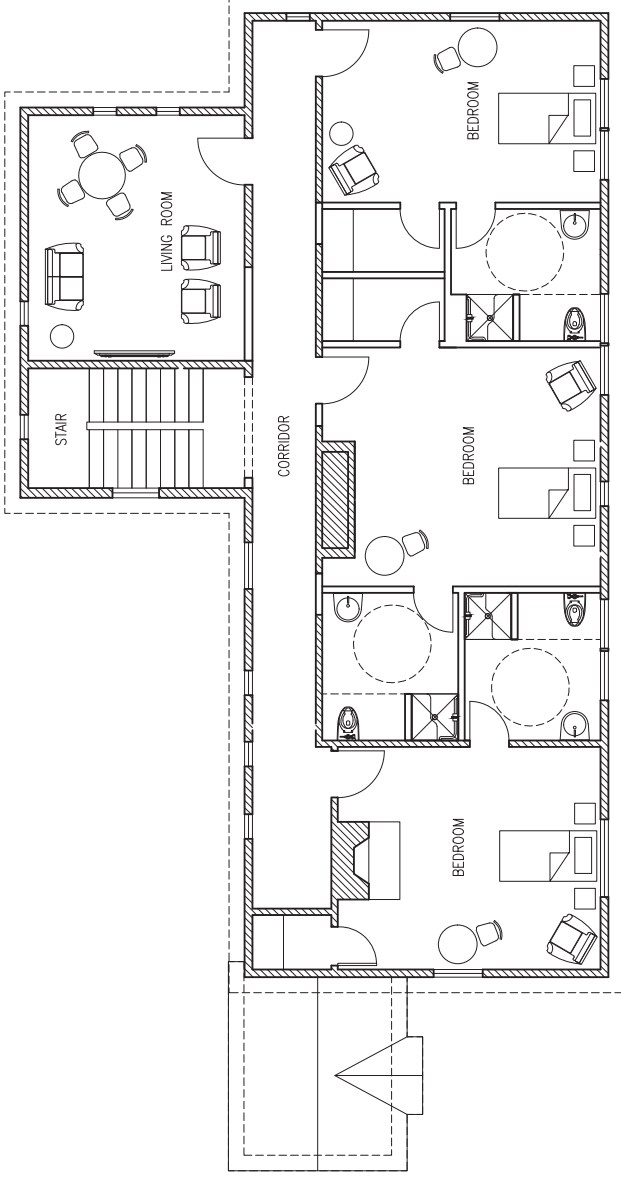


FIRST FLOOR FURNITURE PLAN



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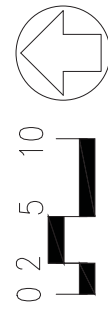
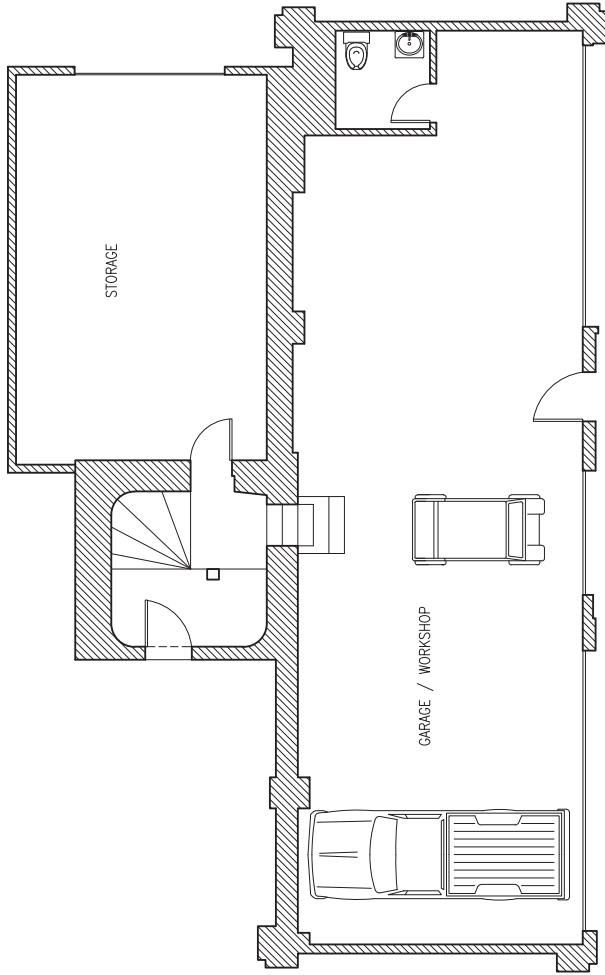
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SECOND FLOOR FURNITURE PLAN

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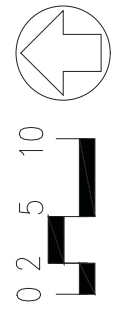
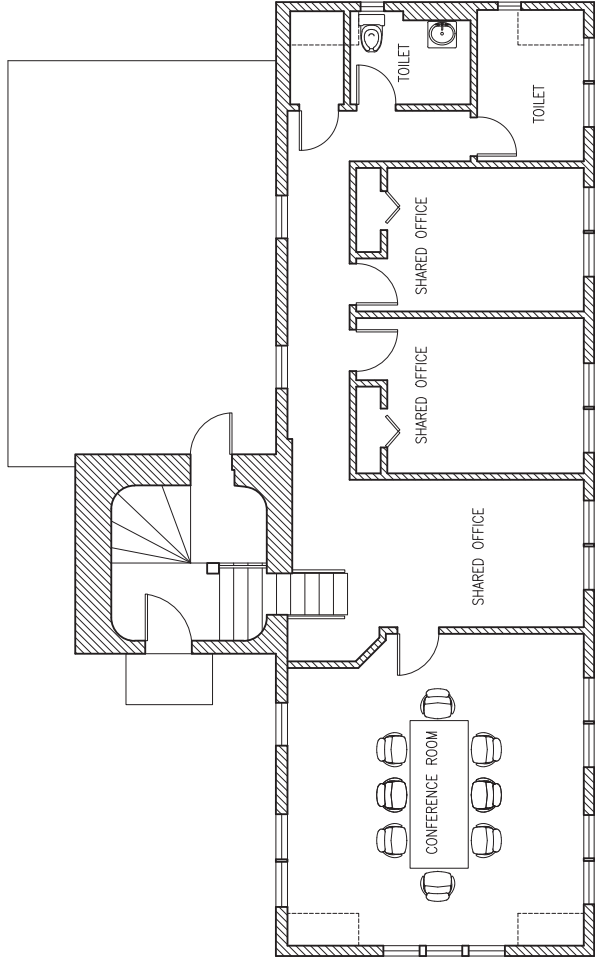
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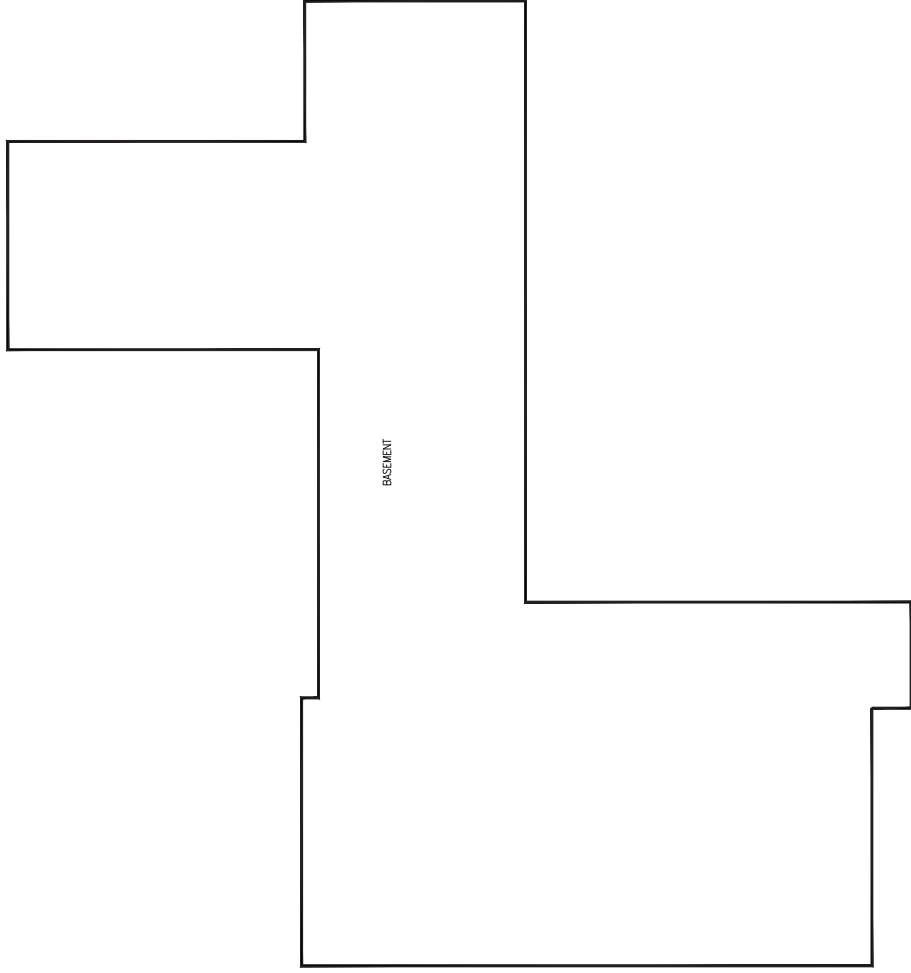


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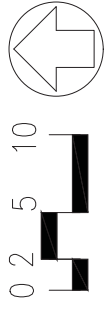


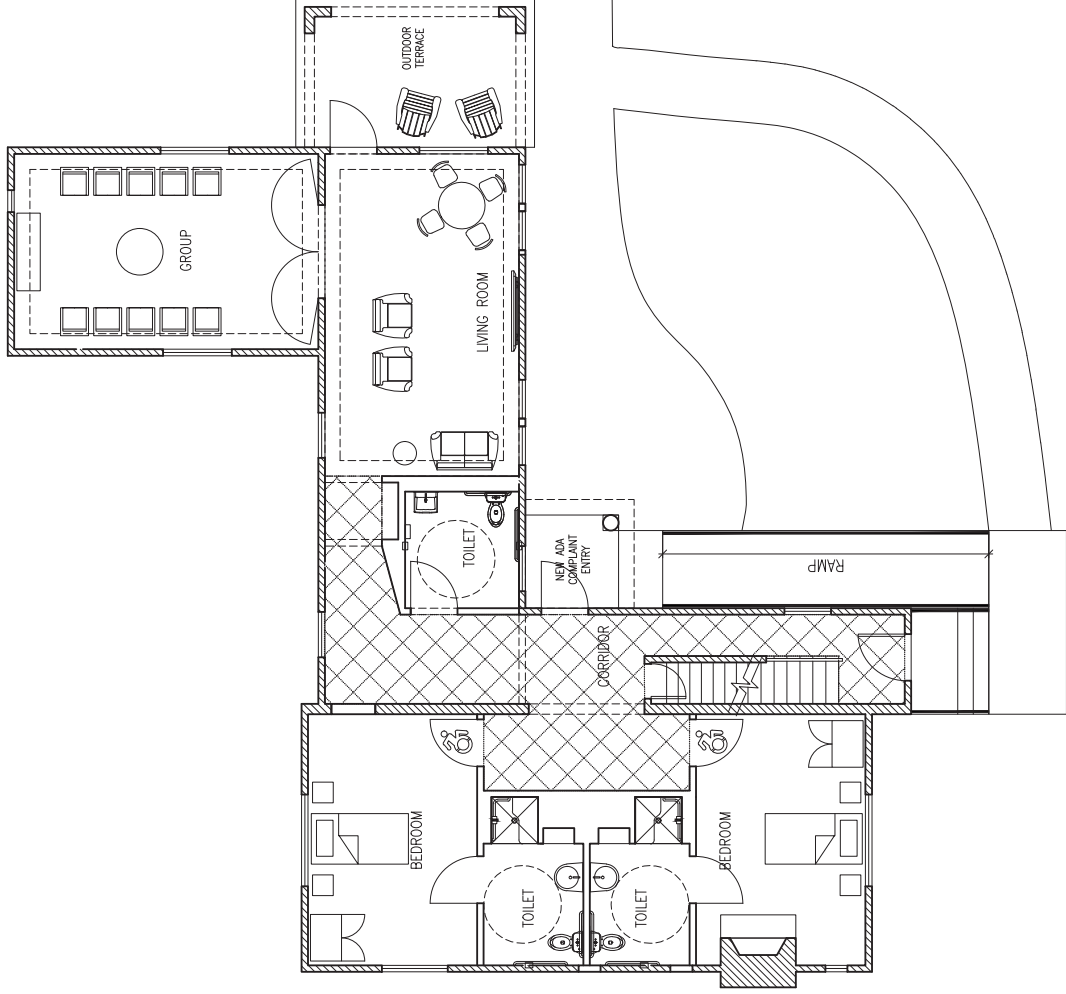
BASEMENT

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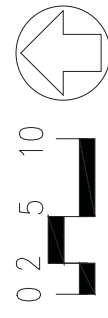
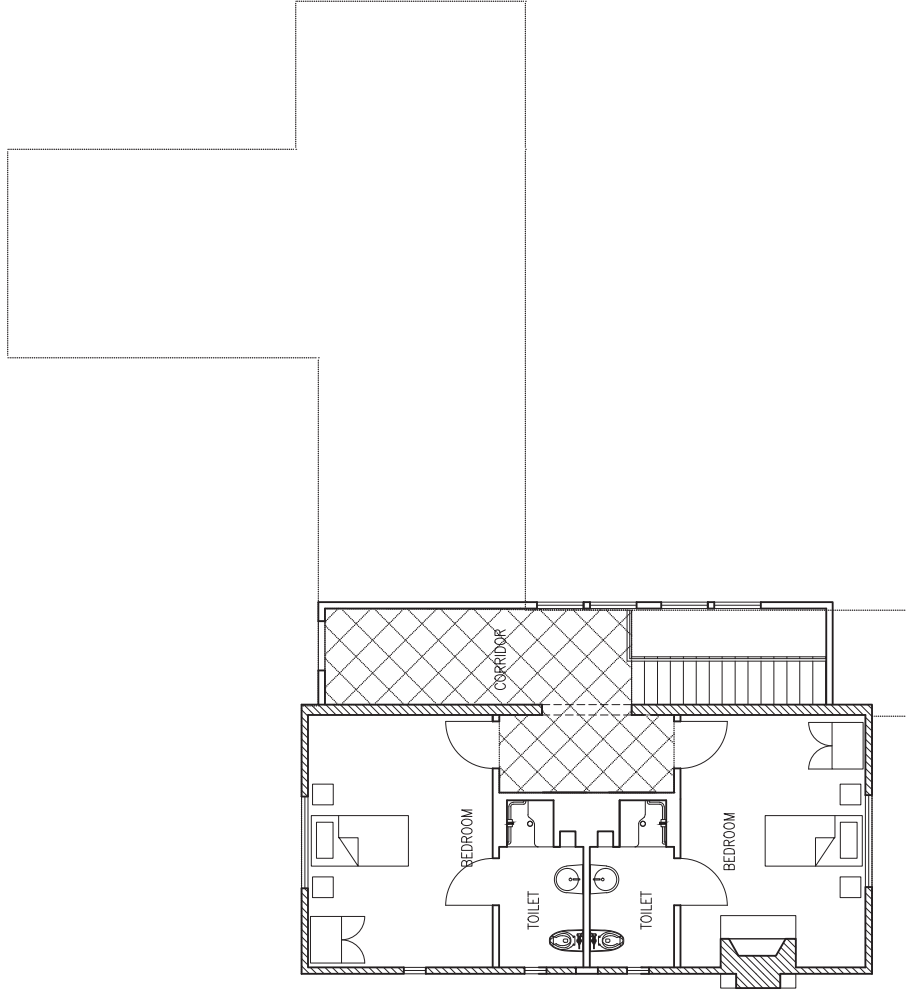




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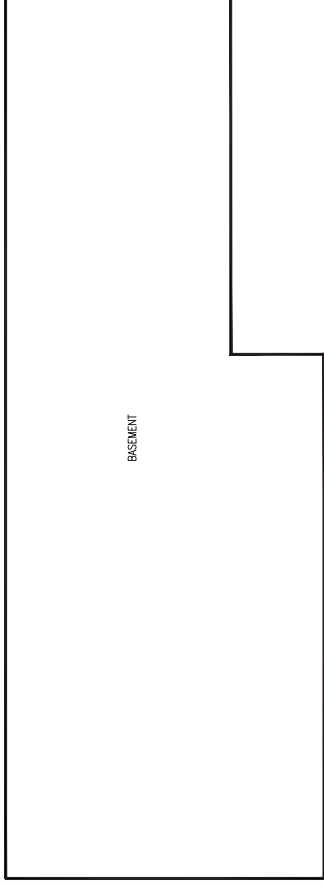
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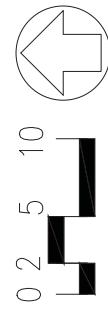
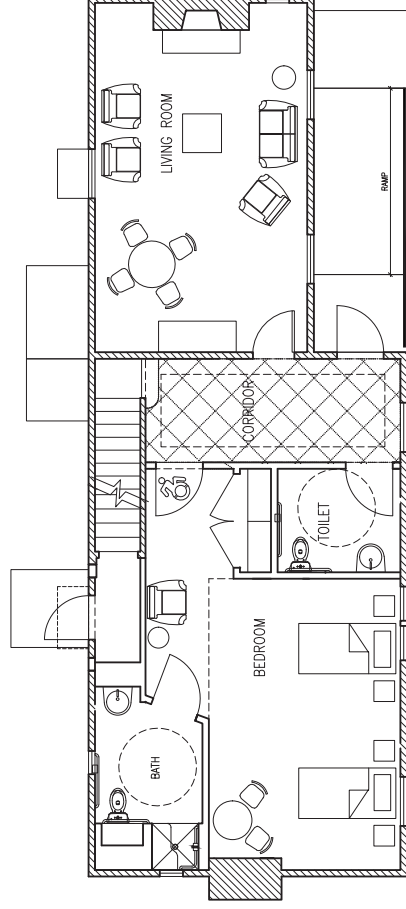


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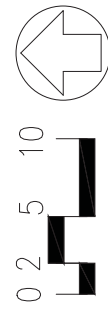
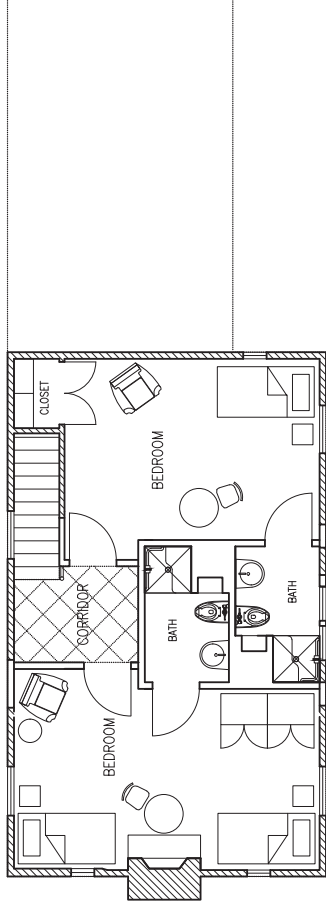
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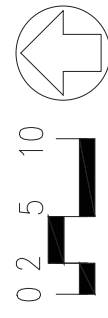
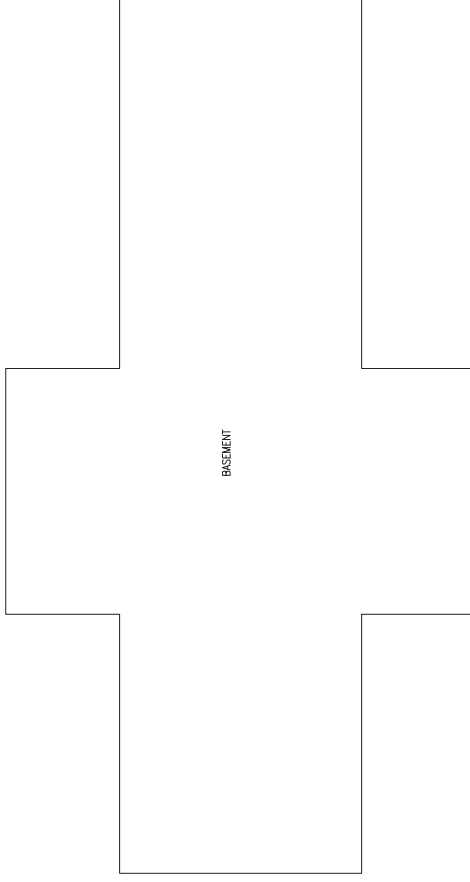


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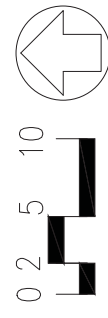
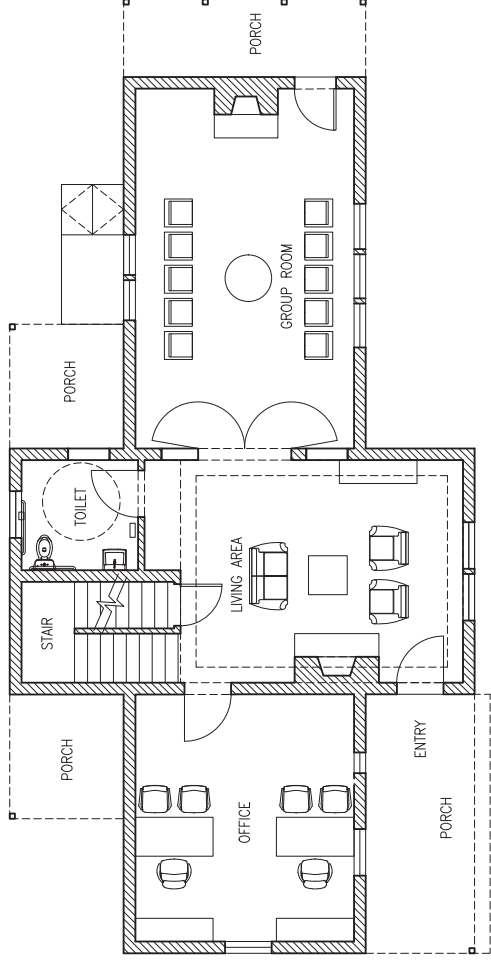
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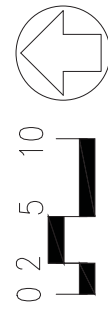
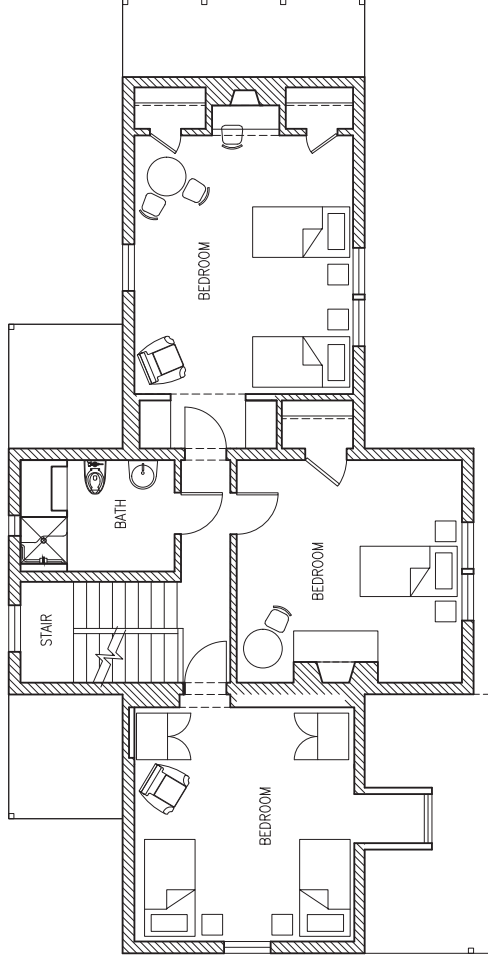
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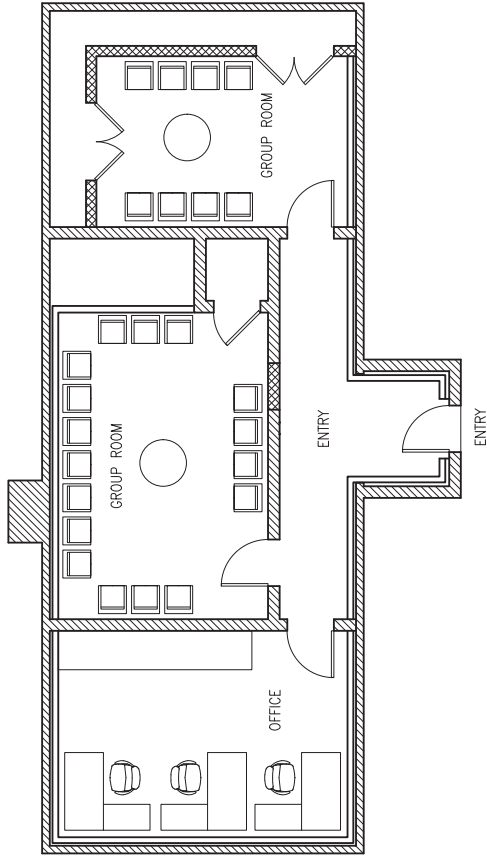


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OCTOBER 2021

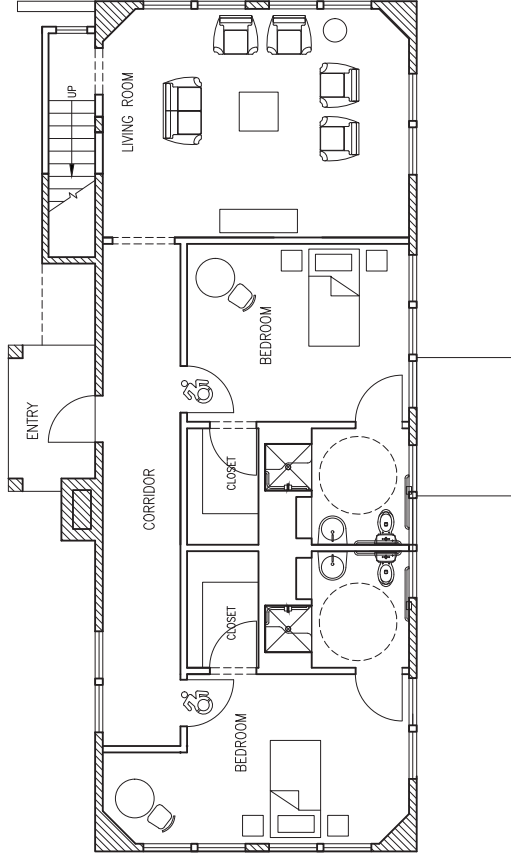
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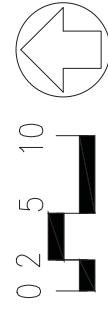
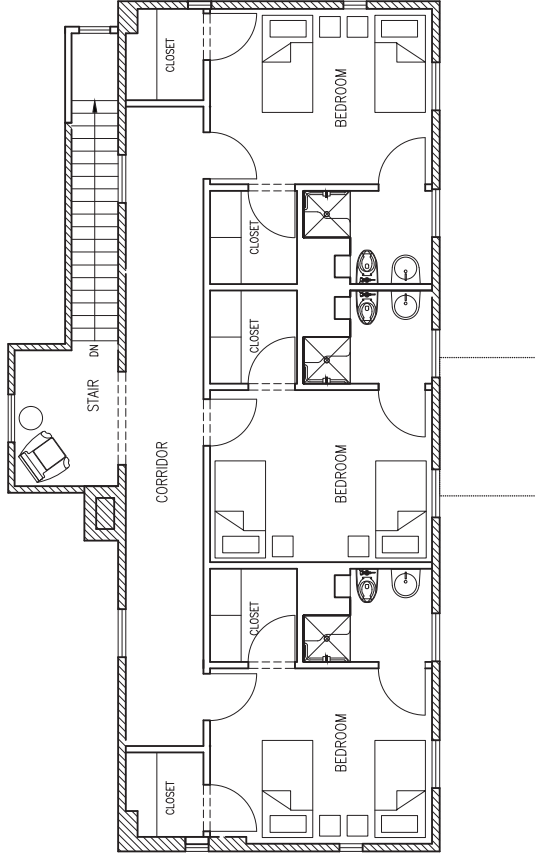
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FIRST FLOOR FURNITURE PLAN

HUDSON EDUCATION AND WELLNESS CENTER

LOTHROP ASSOCIATES LLP
OCTOBER 2021



SECOND FLOOR FURNITURE PLAN

HUDSON EDUCATION AND WELLNESS CENTER

LOTHROP ASSOCIATES LLP
OCTOBER 2021



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cuddyfeder.com

Joshua J. Grauer
Jgrauer@cuddyfeder.com

June 28, 2021

Via email and FedEx

Hon. Loretta Taylor
Chairperson of the
Town of Cortland Planning Board
Cortlandt Town Hall
1 Heady Street
Cortlandt Manor, New York 10567

Re: Hudson Ridge Wellness Center, Inc., (the "Application")
Application for Special Use Permit and Site Plan approval to establish a specialty hospital
Property: 2016 Quaker Ridge Road, Town of Cortlandt

Dear Chairperson Taylor and Members of the Planning Board:

Following up on conversations with Town Attorney Thomas F. Wood, we are writing to confirm that Hudson Ridge will voluntarily agree to conditions to the special use permit approval for its proposed specialty hospital at 2016 Quaker Ridge Road (the "Property") identified below.

Hudson Ridge is sensitive to the Town and Planning Board's efforts to balance the interests embodied in Town Code that hospital uses be permitted to provide care for the medical needs of patients while ensuring that hospital facilities are not disruptive to surrounding property or the neighborhood (Town Code Section 307-59.A). Accordingly, Hudson agrees to the following:

Hudson Ridge agrees that the maximum occupancy will be the *lesser* of the cap imposed by any third-party licensing agencies or ninety-one (91) patients or individuals receiving treatment.

Hudson Ridge agrees and commits to execute a Declaration of Covenants and Restrictions memorializing all Special Permit terms and conditions to be recorded with the Westchester County Clerk. The declaration will be enforceable by the Town.

Hudson Ridge agrees that the use and operation of the specialty hospital will be phased in over a period of 2-3 years to allow the use and operation of the site to be gradually introduced to the surrounding property owners and the neighborhood.



Hudson Ridge agrees that its Special Permit be made subject to frequent renewal to assure compliance with Permit terms and Conditions. We respectfully request that terms of three years would be appropriate for the first three renewals subject to the Planning Board's discretion to extend the renewal term thereafter to every five years.

Hudson Ridge agrees that housings for patients or individuals receiving treatment shall be restricted as follows: (a) Group housing such as dormitory style or ward type housing will not be permitted; (b) Each patient or individual admitted for treatment shall be housed either in a private room with only one bed and one person in a room or in a semi-private room with a maximum of two persons in separate beds except that a maximum of five (5) larger style suites with no more than three (3) persons in separate beds is permitted; and (c) bunk beds or any type of murphy bed will not be permitted. Each configuration of housing will also be approved by the appropriate third-party licensing agency(ies). Compliance with the occupancy restrictions set forth will be monitored by the Town of Cortlandt's Fire Inspector and verified during annual inspections or other inspections requested upon reasonable notice.

Hudson Ridge agrees that all uses comprising the specialty hospital will be limited to the existing buildings and improvements on the Property. There will be no expansion of the footprint of the existing buildings. Buildings located near neighboring property lines will be used in a manner to minimize impacts on adjoining residents.

Hudson Ridge agrees that the adjoining property located to the south under common ownership will not be further developed for so long as the Property is used as a specialty hospital.

Hudson Ridge agrees that the easement over the adjacent parcel will not be utilized for ingress and egress.

Additional site design issues that Hudson Ridge agrees to include as conditions to the special use permit include: (a) the design of the front gate shall eliminate any queuing of cars on the public road; (b) no exterior bells, pagers, public announcement (PA) systems or similar such systems will be permitted; (c) the lighting plan shall utilize Ballard lighting whenever possible, and it will be reviewed to reduce the number of light poles if possible.



June 28, 2021
Page 3

To limit the number of vehicles trips to the Property, Hudson Ridge agrees to provide the nonprofessional staff van access to the Property from a carpool area off site. In addition, employee shift changes will be scheduled at times that will lessen the potential traffic impacts on local roads.

If Hudson Ridge proposes an outdoor recreation facility, it will only be permitted subject to Planning Board approval and it will be sited near the southern property line.

We hope that this voluntary undertaking by our client as a supplement to all prior submissions will be deemed a constructive basis for the Planning Board's decision to adopt a negative declaration and we stand ready to work with the Town's Counsel, the Town's Planner, Planning Board and Zoning Board of Appeals to incorporate these terms and conditions in whatever reasonable fashion is necessary to achieve expeditious approval of all pending applications.

As this entire matter has been pending in one fashion or another for almost 8 years, and the specialty hospital seeks approval to operate a facility for the disabled, we trust that the Planning Board is ready to close their very extensive review and public hearing while providing final limited time for any final written comments prior to its Decision.

Thank you for your kind consideration.

Very truly yours,

A handwritten signature in black ink that reads "Joshua J. Grauer". The signature is written in a cursive, flowing style.

Joshua J. Grauer

cc: Robert F. Davis, Esq. (via email - RDavis@sdslawny.com)
Thomas Wood, Esq. (via email - tfwesq@aol.com)
Joshua Subin, Esq. (via email - jsubin@townofcortlandt.com)



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White Plains, New York 10601
T 914 761 1300
F 914 761 5372
cuddyfeder.com

Joshua J. Grauer
Jgrauer@cuddyfeder.com

August 31, 2021

Via email and FedEx

Hon. Loretta Taylor
Chairperson of the Town of Cortland Planning Board
Cortlandt Town Hall
1 Heady Street
Cortlandt Manor, New York 10567

Re: Hudson Ridge Wellness Center, Inc., No. 6-15 (the "Application")

Dear Chairperson Taylor and Members of the Planning Board:

I write to reiterate and reconfirm that Hudson Ridge Wellness Center will agree to the special use permit conditions identified in my letter to the Board dated June 28, 2021. This is, of course, in addition to the dozens of special conditions that Hudson Ridge has voluntarily agreed to throughout this 6-year process.

Since writing that letter we have continued to express Hudson Ridge's willingness to agree to any additional reasonable terms required by the Town not already addressed and I reiterate that commitment here as well.

Very truly yours,

A handwritten signature in black ink that reads 'Joshua J. Grauer'.

Joshua J. Grauer
JJG:jv
Enclosure

Hon. Loretta Taylor
August 31, 2021
Page -2-

cc: Robert F. Davis, Esq. (via email)
Thomas Wood, Esq. (via email)
Joshua Subin, Esq. (via email)

APPENDIX 56



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Joshua Grauer
jgrauer@cuddyfeder.com

January 25, 2022

BY EMAIL: tfwesq@aol.com

Thomas Wood, Esq.
Office of the Town Attorney
1 Heady Street
Cortlandt Manor, New York 10567

Re: Hudson Ridge Wellness Center, Inc.

Dear Tom:

I am writing in response to the disappointing and deeply misleading letter submitted yesterday by Brad Schwartz on behalf of CRHISD to the Planning Board.

First, as you know, the discussions between the parties over the past approximately five-months have been cooperative and productive. The CRHISD letter badly mischaracterizes this, asserting that Hudson Ridge has somehow stopped communicating with CRHISD. You have first-hand knowledge that this is false. Indeed, my clients have done everything that CRHISD has asked of them. Hudson Ridge and its representatives worked according to CRHISD's schedule and its demands at great personal inconvenience at times. Hudson Ridge repeatedly invited CRHISD and its representatives to be involved in the process and never cut off discussions.

To the contrary, "discussions" had concluded as you know and a draft agreement was prepared which incorporated all terms requested and agreed to. The final issue of landscaping to accommodate two neighbors was fully addressed to their satisfaction and you and I were awaiting execution. Of course, we were open to any tweaks of the agreement and that should have occurred long ago.

In light of the above you confirmed that both you and staff would recommend that the public hearing be closed and a negative declaration adopted. While the board of course could not be asked for any such commitment we were satisfied with your written representation of what you and staff would do on the record. We therefore agreed to yet another postponement with the assurance that regardless of any last minute shenanigans you and staff would support closing the public hearing and the issuance of a negative declaration.

After months of work and acceding to every demand made of it, and with our agreement, it was you who provided to CRIHSD the deadline which elapsed by which they were to formally accept the agreement and terms they requested and negotiated and it goes without saying that it was a very liberal "deadline" to confirm a previously committed to agreement. In fact, it should never have taken so long to come out in the open and essentially say that seemingly, based on Mr. Schwartz's letter at least, there are no conceivable terms on earth that CRIHSD can or will ever agree to and actually perform and sign off on. Moreover we cannot continue with "death by 1000



January 25, 2022
Page 2

cuts" and the Planning Board and Town should have no further part in this very transparent strategy.

Below I will address some of the most frivolous points raised in Mr. Schwartz's letter.

Non-Expansion of Current Buildings

This has been agreed to.

Number of Beds and Location of Client Rooms

The reference to "new facilities" as a basis for further delay is completely disingenuous. Those new facilities were proposed by CRHISD and Hudson Ridge agreed to CRHISD's request for assurances of a quality facility in their view. The relatively few patients in the outbuildings have been discussed for months and accepted subject to the agreement on lighting and landscaping buffers and the many other accommodations that Hudson Ridge has since made—it is the very reason for these accommodations, which have been the subject of so much discussion and finally agreement.

Hudson Ridge provided floor plans to CRHISD and discussed and revised them with CRHISD's architect at length. No one ever questioned the revised floor plans and, in fact, CRHISD's architect and representatives confirmed that everything supplied and proposed was reasonable.

No outpatient treatment

Any reference to outpatient treatment is a red herring. Hudson Ridge has stipulated repeatedly since 2015 that there will be no outpatient treatment.

Staffing, Shuttle Program, and Parking.

As we have always indicated, non-professional staff will use the shuttle. Because of the reduced patient numbers, Hudson Ridge has agreed to that and may end up being unnecessary for the 10 p.m. shift.

Landscaping, Lighting, and Site Plans

Mr. Schwartz's letter mischaracterizes the location of the pool and tennis courts to justify a faux-environmental concern. Not only are the pool and tennis courts outside of wetlands, but they are outside of the 100-foot wetland buffers. Moreover, the pool and tennis court amenities are something that CRHISD requested be added and as further demonstration of the extent Hudson Ridge has bent over backwards to try to satisfy this group, it is willing to remove these amenities



January 25, 2022
Page 3

if CRHISD would prefer. As proposed now, the pool and tennis courts are on the far southerly side of the property removed and well-screened from any neighbors on the northerly side, they will not be used at night, will have no lighting, and are fully screened from adjoining neighbors.

Despite insinuating otherwise, CRHISD representatives and its architect have reviewed the lighting plans, which addressed all issues the group has raised, and signed off on them.

Parking Outside Building 3

We agree to a reasonable limitation to daytime parking only.

Non-Use of Adjoining Property in New Castle

This is another red herring. Hudson Ridge has stipulated consistently since 2015 to place a restrictive covenant on the adjoining property to be in effect so long as the property is used as a hospital.

Limitations on Noise

If the Town so chooses, such noise limitations can be conditions of approval.

No Helicopter use

The new concern about helicopter use is completely contrived and absurd. We have never suggested helicopters would be used at the property.

Community Beds and Scholarships

Hudson Ridge has not only pledged the two yearly scholarships but committed to a sliding fee scale and to reserving beds for Cortlandt residents. This letter is the first time that CRHISD has suggested beds be reserved for residents of any other Towns or indicated that Hudson Ridge should be making more accommodations for Cortlandt residents. Such continuous eleventh-hour concerns demonstrate that the underlying goal here seems to be delay.¹

Community Interaction

Hudson Ridge has no issues with having a Town liaison should the Town so wish and has stipulated to provide its own liaison to the neighbors.

¹ Hudson Ridge has also stated for years that it will accept all insurance, including Medicaid. This is another contrived issue.



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Page 4

Other Issues Not Covered Under the Applicant's Covenants

Any such other issues may be assessed in final site plan review. Notably, the purported concerns as to stormwater should be largely irrelevant for the adjoining uphill neighbors.

Post-Approval of Off-Site Well Monitoring Plan

Hudson Ridge's hydrogeological consultant's report, as approved by the Town's consultant, showed little potential for any impact on adjoining off-site wells. The neighbors in that area have not responded to our invite to be part of post-approval monitoring. The Town and Hudson Ridge's consultant agree that it is unlikely that any mitigation will be required and if it is, it would entail minimal work, rendering bonding unnecessary.

Competency and Appropriateness

In Hudson Ridge's September 3, 2021, response to Mr. Subin's request for more information, we responded at length, including with a published article and legal citations, addressing the fact that it is not within the Planning Board's legal authority to demand information on the identity of an operator. Despite this, Hudson Ridge, as a courtesy, has provided information as to who the operator may be. Of course, there will also be a Medical Director as required by OASAS, a professional, licensed medical staff, and a competent board of directors. OASAS will regularly inspect the hospital as part of its oversight role and Hudson Ridge has agreed to undergo a permit renewal process and to have a liaison for and regular meetings with the neighbors.

As you have directly seen, Hudson Ridge has gone far above and beyond what is required of it, effectively doing whatever it was asked and agreeing to any reasonable—and some unreasonable—requests. This latest letter only reinforces that this process must conclude.

Notice To Town of OASAS Operator filing & Submissions

We agree – period.

Conclusion

Tom - As a very able and seasoned counsel you (the town's planner and the board) are well aware of the ability of the board to set reasonable conditions is not disputed; thus the only items remaining to be determined are the content of those reasonable conditions. We have long ago offered very reasonable terms and conditions and the reasonable time for a decision also elapsed long ago.



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Page 5

There is no doubt that any further delay in closing the public hearing and issuing a negative declaration would be punitive and pandering to irrational and unreasonable community opposition to the Town Board's legislative selection of this use as subject to only a Special Permit. Lastly, please remind the board that reasonable conditions do not extend to micromanagement and control of the internal business operations of the property owner's business operations, which is beyond the Board's legal purview. Our terms and conditions which we have offered and again reaffirm go beyond what is reasonable and proper in this regard but we offered same because we wanted to go the extra mile to bring about the end of this unfortunate saga. That offer remains on the table and will be deemed reasonable conditions agreed to by the owner/applicant provided this saga concludes expeditiously.

Thanks for your cooperation.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Joshua J. Grauer', with a long, sweeping horizontal flourish extending to the right.

Joshua J. Grauer

JJG:jv

cc: Chris Kehoe (chrisk@townofcortlandt.com)
Brad Schwartz, Esq. (bschwartz@zarin-steinmetz.net)
Kevin Cassidy (kcassidy@hudsoneducationandwellness.com)

APPENDIX 57

PLANNING BOARD MEETING – JANUARY 26, 2022

INTRODUCTION

1. Good evening, I am Bob Davis, attorney for the Applicant. Thank you for holding this special meeting. It has been a while since we were before you last Summer, but a lot has occurred since then. In particular, in working very closely with the neighborhood group and Town Attorney Wood over the past 5 months, we have substantially modified and reduced the magnitude of the application. So tonight I will bring you to date, with the intention, that after 7 years, we can finally move forward expeditiously to approval and perhaps a win-win result for the Applicant, the neighbors and the Town.
2. On August 9th last year, we submitted our Addendum to our March 2019 Expanded Environmental Assessment Report. The 4-volume 2019 set had included all of our submissions and responses to public comment since the filing of the application in 2015 to that point. The August volume completed the Record and public comment response from 2019 through your July 6th meeting. On September 3rd, we submitted additional information requested by Mr. Subin regarding OASAS.
3. Importantly, last August, the Applicant also terminated the easement over its affiliate's adjoining property, which has been sold to third parties for single-family residential use, thereby eliminating a significant neighborhood concern.
4. Thereafter, as reflected in my co-counsel, Mr. Grauer's letter to you of January 19, based on extensive discussions with Mr. Wood and the neighbors, and their consultants, the Applicant has consented as conditions of approval to extremely broad mitigation measures and accommodations to the community, including the adjoining neighbors, with whom the Applicant and its landscape architect have met on several occasions.
5. All of those measures and accommodations are set forth in Mr. Grauer's January 19th letter, which most significantly include the Applicant's principal concession to reduce the maximum number of patients in its application from 92 to only 49 at the outset and thereafter, upon the renewal of its special permit to 58, or such lesser maximum number as may be required by the licensing agency, OASAS. That represents a reduction in the maximum number of patients to be allowed of at least 47% at the outset and 37% ultimately, with a commensurate reduction in staff and potential impacts

6. Among its other recent additional mitigative measures, the Applicant has substantially enhanced its landscaping plan with an immense evergreen tree hedge along the northern boundary, about 140 trees, 8-14 feet tall, utilizing berms in spots, to buffer the adjoining neighbors, and has also revised its lighting plan to further mitigate any impacts on those neighbors, all in extensive consultation with them.

7. In addition, back in March 2019 we had provided you with a list of some 54 other stipulated mitigative conditions of approval, which have been enhanced by those set forth in Mr. Grauer's recent letter, along with JMC's analysis of the SEQRA criteria supporting the Board's issuance of a Negative Declaration. We re-submitted those items to Mr. Wood and the Board earlier this month for the Board's convenience (and again yesterday).

8. However, despite all of these fruitful cooperative efforts, we have received Mr. Schwartz's January 24th letter, which we found most surprising and disappointing, in tone and content, given the very cooperative relationship the Applicant has established directly with the neighbors over the past 5 months, and the agreement we believed we had forged with them and **still** hope to positively conclude. I believe Mr. Grauer's January 25th submission amply addresses Mr. Schwartz's letter, but suffice it to say, it contains many mischaracterizations and inaccurate statements. Most importantly, as reflected in Mr. Grauer's letter, **we have already agreed**, in some cases since the very beginning in 2015, to do most of the things he asks for, or have agreed now in response.

9. Having practiced zoning law now for over 40 years, contrary to any claim of lack of transparency or failure to answer questions, I have never seen a longer or more substantial review process - or a more responsive and transparent Applicant.

10. The fact that one may not like our answers, or that our answers do not support their narrative, does not mean that the answers are insufficient.

11. Likewise, the fact that the Applicant may not have specifically answered each and every one of the hundreds of questions presented by the public - with more questions presented each time others are answered, in an unending process - does not mean the application is insufficient.

12. Moreover, the Board does not have the legal authority to engage in an intimate review of the Applicant's internal business operations or the feasibility of its business. Supervisor Becker himself recently pointed this out in his letter to the Editor regarding certain land use issues in Town, where he stated, "It is not in the purview of government to assess the need for or likelihood of success of private investments".

13. Accordingly, as requested in Mr. Grauer's January 19th letter, we ask that the Board close the public hearing tonight and expeditiously adopt a Negative Declaration so that the Applicant may move forward before the Zoning Board for the one area variance from the State road frontage requirement, and thereafter return to this Board for the issuance of the special permit and site plan approval.

14. We thank the Board for its consideration and courtesy throughout this incredibly long process and those neighbors as well, who have engaged in mutual efforts with the Applicant these past few months, whom we will continue to work with.

15. With me tonight is Lucille Munz of JMC, our Landscape Architect, who has met with the adjoining neighbors and who will continue to work with them, if you have any questions on the revised landscaping plan.

Thank you.

APPENDIX 58



Site Planning
Civil Engineering
Landscape Architecture
Land Surveying
Transportation Engineering

Environmental Studies
Entitlements
Construction Services
3D Visualization
Laser Scanning

February 7, 2022

Mr. Steven Laker
Project Manager
HUDSON RIDGE WELLNESS CENTER, INC.
72 NORTH STATE ROAD #502
BRIARCLIFF MANOR NY 10510

RE: JMC Project 14088
HUDSON EDUCATION AND WELLNESS

Irrigation Requirements and Water Summary Proposed Planting for 2016 Quaker Ridge Road

Dear Mr. Laker,

Per your request and per the discussion at the Planning Board meeting on January 26, 2022, I have tried to summarize the water requirements and water solutions for the proposed plantings for the above noted project as follows:

1) Proposed Plantings:

- a. Approximately 140 Trees (8' – 10' Height) average
- b. An 8' – 10' Height evergreen tree equals approx. a 4" caliper tree

2) How much water is required for the proposed planting?

- a. Rule of thumb is 2 to 3 gallons of water per inch of trunk diameter
- b. 4" trunk average would range from 8 to 12 gallons of water per tree
- c. Newly planted trees require more frequent watering and should be watered at the time of planting and at the intervals noted below:
 - Week 1-2 after planting, water 1-2 days
 - Weeks 3-12 after planting, water every 2 to 3 days
 - After 12 weeks, water weekly for the first two growing seasons then on an as-needed basis for the first two years

Weeks 1-2 (12) gallons per tree every 1 to 2 days = 3.5 days per week X 12 gallons/tree = 42 gallons a week per tree X 140 trees = 5,880 gallons (say 6,000 gallons) per week for the first two weeks.

Weeks 3-12 (12) gallons per tree every 2 to 3 days = 2.3 days per week X 12 gallons = 28 gallons a week per tree X 140 trees = 3,940 (say 4,000 gallons) per week for weeks 3-12.

After 12 weeks (12) gallons per tree @ once a week = (1) X 12 gallons = 12 gallons per tree per week X 140 trees = 1,680 gallons (say 2,000 galls) for the first two growing seasons or on an as-need basis for the first two years.

For this calculation we have used the more conservative number of 12 gallons per tree per watering.

- 3) How will the plantings be watered **without** using the existing well system?
 - a. Water can be brought in from an outside source with the use of a portable water 1,000-gallon water trailer.
 - Weeks 1 to 2 = 6,000 gallons of water is required, which will require (6) trips with the water trailer per week.
 - Weeks 3-12 – 2,000 gallons of water is required, which will require (2) trips with the water trailer per week.
- 4) A Water tank can be hauled with a $\frac{3}{4}$ ton or 1-ton pick-up truck (i.e. Ford 250 or 350 Pick-up) How big is the water trailer? See the picture below:



WH1000 Water Hauler

The WH1000 Water Hauler is the work horse in our Heavy Duty series. It features a 1000 gallon elliptical tank and a heavy duty 12,000# rated trailer. The WH1000 picks up where the WH500 left off with all of the versatility and twice the capacity. It's ideal for dust control, watering trees, ditch jetting, fire fighting, washing machinery, and much more.

Heavy Duty — Versatile — Cost Effective

Category: [Water Trailers](#)

Description

Description

Model:

WH1000 – 6' x 10'

GVWR:

12,000#

Standard Features:

- 1000 Gallon Low-Profile Elliptical Tank
- 6000# EZ Lube Axles
- Silver Mod Wheels (8 Hole)
- New Tires (235-16) Load Range D
- 7000# Side-Mount Fold-up Jack
- Electric Brakes on both axles
- D.O.T. Lighting
- Safety Chains
- Adjustable 2" Bulldog Coupler
- Diamond Plate Fenders
- Sealed Wiring Harness
- 3" x 5" x 1/4" Frame

Pump Options:

- **No Pump** -Tank and Trailer Only
- **Gravity Feed** – Tank and Trailer with a standard 3/4" Garden hose connection
- **Honda WB20X** – Standard Duty Pump installed with a standard 3/4" Garden hose connection
- **Honda QP205SH** – High Pressure Pump installed with a standard 3/4" Garden hose connection
- **Honda QP2TH** – Trash Pump installed with a standard 3/4" Garden hose connection

5) How will the trees be watered? We are proposing gator/water bags for each tree which delivers water via a trickle method to the root zone of each tree. The bags are filled with hoses from the water truck. We are proposing a 25-gallon Ooze Tree Water System per tree. See below:



Ooze Tube Professional Tree Establishment System, 25 Gal.

Ooze Tube Professional Tree Establishment patented system specifically engineered to establish trees in under-irrigated sites with minimal cost and maximum survival.

Sold Individually, Case Qty. = 20

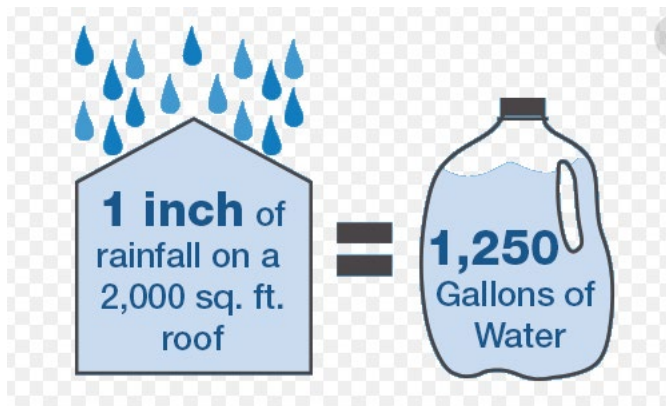
PRICE BREAKS - The more you buy, the more you save

Quantity	5+	10+	20+	60+	120+
Price	\$18.45	\$17.95	\$17.45	\$16.95	\$16.45

Below is a link to the site which explain how the back works:

<https://www.forestrydistributing.com/ooze-tube-professional-tree-establishment-systems>

- 6) Another way to provide water for the landscaping is through rainwater harvesting. In our area we use a 1" rainfall amount for our region per week. A 1" Rainfall Amount converts to 1/2 gallon per s.f. so use (.623 gallons X s.f.) to get the rainfall amount per week



The approximate roof square footage for the site is 13,000 s.f.

Therefore, the site could potentially harvest approximately 8,000 gallons per 1" rainfall occurrence.

In summary, you could utilize a combination of bringing in water with rainwater harvesting to water all the proposed plant material. Keeping in mind that it is the first two growing seasons that are critical coupled with management during the first 2 to 3 years.

Please do not hesitate to contact me if you have any questions or needed additional clarification.

Sincerely,

JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC

Lucille S. Munz

Lucille Munz, RLA, ASLA
Senior Landscape Architect

p:\2014\14088\admin\water and irrigation requirements.docx

APPENDIX 59



SINGLETON, DAVIS & SINGLETON PLLC

ATTORNEYS AT LAW

THOMAS J. SINGLETON, 1930-2015
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WHITNEY W. SINGLETON*
ALEXANDER D. SALVATO

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February 9, 2022

Via E-Mail and Federal Express

Hon. Loretta Taylor, Chairperson and Members of the Board
Planning Board of the Town of Cortlandt
1 Heady Street
Cortlandt Manor, NY 10567
Attn.: Chris Kehoe, AICP, Deputy Director, Planning Division

*Re: Hudson Ridge Wellness Center, Inc. and Hudson Education and Wellness Center
2016 Quaker Ridge Road, Town of Cortlandt
Letter of Zarin & Steinmetz, February 7, 2022*

Dear Chairperson Taylor and Members of the Board:

This letter is in response to the letter of Zarin & Steinmetz on behalf of CRHISD, dated February 7, 2022. As their comments and questions in most instances have already been addressed on numerous occasions over the course of this 7-year review process, in the Applicant's numerous, voluminous submissions to date, and/or in the submissions accompanying this letter, I will not address their letter in complete detail herein. However, several points warrant concise response.

Initially, on page 4 of their letter, as unfortunately they have done on previous occasions, CRHISD's counsel intentionally quotes me out of context, when at the very end of the January 26, 2022 Planning Board meeting, in the context of my various responses to Member Foley's inquiries as to the Applicant's contacts with OASAS and the Westchester County Department of Community Mental Health, I stated that "we don't have a defined project to contact them with".

Counsel employs this out of context statement in support of their absurd contention that, after 7 years of extensive review, the Applicant purportedly has not yet presented this Board with a "defined project". While in that one particular statement I should more accurately have used the phrase "approved plan", it was abundantly clear in the context of my entire discussion with the Board that night, and in many prior meetings and submissions, that my intended point was that we do not yet have a project *approved* by the Town to present to OASAS.

Hon. Loretta Taylor, Chairperson and Members of the Board
February 9, 2022
Page 2

As counsel well knows, it has been our consistent position that, even with respect to the prospective internal operations of the specialty hospital, we have indeed submitted an extremely well *defined* plan to this Board. See, for example, as referenced in our letter to Mr. Subin and the Board, dated September 3, 2021, our submissions in the prior Zoning Board proceedings setting forth the hospital's prospective internal operations in minute detail, which are part of the Record before this Board, and which are contained in Appendices 42(B-(E), (G) and (I) to the Applicant's "August 2021 Addendum to March 19 Consolidated Expanded Environmental Assessment Report" submitted to this Board. (Another copy of our September 3, 2021 letter is submitted herewith).

Thus, it is difficult to conceive how the Applicant could "define" its project in any greater or more relevant detail than it has already done. Counsel's transparent effort to mislead the Board must fail. The fact that counsel may not like the answers to their unending questions, or that the answers do not support their narrative, does not mean that the answers are insufficient. Likewise, the fact that the Applicant may not have specifically answered each and every one of the thousands of questions presented by counsel and the public – with more questions presented each time others are answered, in an intentionally unending process – does not mean the application is insufficient for purposes of a SEQRA determination. Most of the questions now being raised by counsel with respect to OASAS and the Applicant's internal medical operations have not only been answered, but are irrelevant to the SEQRA process, and moreover, beyond this Board's legal authority. See again, our attached September 3, 2021 submission.

The obvious reason the project opponents have shifted their focus to OASAS and the Applicant's internal operations is because the actual legitimate environmental issues have already been resolved to the satisfaction of the Town's expert consultants, thereby supporting a Negative Declaration under SEQRA.

With respect to counsel's repeated mantra that the "Applicant must identify an operator", as likewise referenced in the scholarly article regarding the Board's lawful powers, submitted with our September 3rd letter and written by a former partner of one of the opponents' counsel, this demand is beyond the Board's lawful jurisdiction. As the Applicant has noted many times, OASAS, which will make regular inspections of the specialty hospital, requires that the hospital be operated under the auspices of a medical director who is a licensed physician. There will also be an appropriate professional staff of licensed medical and health professionals directing the day-to-day operations of the hospital. The Applicant is regularly working with a number of consultants experienced in the set-up, licensing and management of such specialty hospitals and they have regularly appeared before and made submissions to the Planning and Zoning Board. The ownership and management of the hospital is a significant aspect of OASAS's review of the Applicant's license application. Notwithstanding, the Applicant agrees to the proposal in the "Appendix" to counsel's February 7th letter that the Applicant shall identify the operator at the same time it does so for OASAS.

Hon. Loretta Taylor, Chairperson and Members of the Board
February 9, 2022
Page 3

With respect to obtaining “input” from OASAS prior to approval, the Applicant’s experts have amply rebutted the letter of Steven Rabinowitz, dated March 21, 2021, submitted with counsel’s letter, in the Applicant’s March 2021 submission to the Board. Notwithstanding, the Applicant *will* seek the input of OASAS and the Westchester County Department of Community Mental Health in the context of applying for licensure from OASAS. Such licensure will be a condition of this Board’s special permit and site plan approval. This is the Board’s standard and proper practice with respect to approvals which an applicant needs to obtain from other agencies which have jurisdiction of matters not within the jurisdiction of this Board.

In this regard, another obvious fact also bears noting – OASAS will not take any action which will increase the intensity of the Applicant’s proposed use. If anything, OASAS would further restrict the intensity of that use, including with respect to the number of patient beds. That is why the Applicant has proposed a number of patient beds *or* such *lesser* number as required by OASAS, *not* such greater number as may be required by OASAS. The OASAS licensure process will only serve to lessen impacts, not to increase them.

With respect to the propriety of the Board’s rendering its SEQRA determination at this juncture – and that determination being a Negative Declaration – which counsel challenges, the Board has well beyond sufficient information to make that determination.

Notably, on August 9, 2021, after almost 7 years of review at that juncture, the Applicant submitted its Addendum to its March 2019 Consolidated Expanded Environmental Assessment Report. The voluminous 4-volume 2019 set had included all of the Applicant’s submissions and response to public comments since the filing of its application in 2015. The substantial August volume completed the record and public comment response from 2019 through the Board’s July 6 meeting. On September 3rd the Applicant submitted the additional information requested by Mr. Subin regarding OASAS, another copy which is attached hereto. The response to public comment since last July has now been brought to date with this submission.

Furthermore, as reflected in co-counsel Grauer’s letter to the Board of January 19, 2022, based on extensive discussions with Mr. Wood and the neighbors and their consultants, the Applicant has consented as conditions of approval to extremely broad mitigation measures and accommodations to the community, including the adjoining neighbors, with whom the Applicant and its landscape architect have met on several occasions.

All of those measures and accommodations are set forth in Mr. Grauer’s January 19th letter, which most significantly include the Applicant’s principal concession to reduce the maximum number of patients in its application from 92 to only 49 at the outset and thereafter, upon the renewal of its special permit to 58, or such lesser maximum number as required by OASAS. That represents a reduction in the maximum number of patients to be allowed of at least **47%** at the outset and **37%** ultimately with a commensurate reduction in staff and potential adverse impacts.

Hon. Loretta Taylor, Chairperson and Members of the Board
February 9, 2022
Page 4

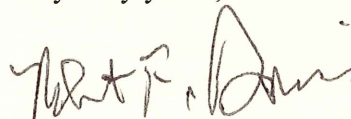
Among its other recent additional mitigative measures, the Applicant has substantially enhanced its landscaping plan with an immense evergreen tree hedge along the northern boundary, where the nearest neighbors are located, of about 140 trees, 8-14 feet tall, utilizing berms where appropriate, to buffer the adjoining neighbors, and has also revised its lighting plan to further mitigate any impacts on them, all in extensive consultation with them.

In addition, in March 2019, we provided your Board with a list of some 54 initial stipulated mitigative conditions of approval, which have only been enhanced by those additional or modified conditions set forth in Mr. Grauer's January 19th letter, along with Applicant's expert consultant's analysis of the SEQRA criteria for significance supporting this Board's issuance of a Negative Declaration. Those items were re-submitted to Town Attorney Wood and the Board in January 2022.

On the basis of the foregoing, we respectfully request that the Board proceed with its SEQRA determination and that the Board render its Negative Declaration. We also ask that the Board reject any further delay tactics of the opponents and their counsel. We submit that any legitimate matters which the Board believes remain outstanding are appropriate for consideration in the context of site plan review and its conditions of approval.

Thank you for your consideration.

Very truly yours,



Robert F. Davis

RFD:dds
Enclosure

c: Thomas F. Wood, Esq. (via e-mail)
Brad Schwartz, Esq. (via e-mail)

APPENDIX 60



HUDSON RIDGE
WELLNESS CENTER

In regards to board member Kessler's comments on the OASAS letter:

Please see attached.

The first letter was from 2016 along with a FedEx label. This was submitted by us previously as part of our response to show communication with OASAS.

At the January 26th special meeting before the planning board one board member, Steven Kessler, expressed concern and even insinuated that the 2016 letter was never sent by us. Mr. Kessler even went on to state that he searched the FedEx label number and it provided no results so that furthered his suspicion as to if this letter was ever sent in 2016. Please find attached the stamped letter from OASAS that this letter was in fact received in 2016 by OASAS.

Also, after speaking to FedEx they stated their system only keeps tracking records for approximately 90 days – certainly not 5 years. So there is no possible way that Mr. Kessler's investigative search would have returned any tracking results.

While attorney Bob Davis pointed out to Mr. Kessler that this was not in his or the boards purview Kessler stated it demonstrates the applicant's credibility or lack thereof if this letter was never sent in 2016 as he implied.

To summarize: In 2016 a neighbor contacted OASAS and stated we were operating a facility without a certification. OASAS contacted us regarding same. We responded to say we are not operating any facility at this time however we would be in contact in the future. That was the initial correspondence. Nothing nefarious as implied by Mr. Kessler.

August 8, 2016

Ms. Diane Gerdon
Certification Specialist
Bureau of Certification & System Management
1450 Western Avenue
Albany, NY 12203-3526

Re: Letter of Inquiry Regarding Program Services

Dear Ms. Gerdon,

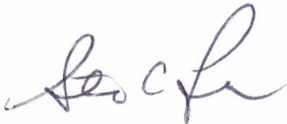
We received your letter dated July 13, 2016 from the New York State Office of Alcoholism and Substance Abuse Services (OASAS) regarding Hudson Ridge Wellness Center, Inc. and a recent article that you received.

Please note that at this time that we are not an operational facility. The buildings on the former Hudson Institute are not currently in the condition to house anyone at this time.

However, Hudson Ridge Wellness Center, Inc. is planning to seek certification in the near future from OASAS and has recently hired Shari Noonan to assist with this matter.

We thank you for your note and look forward to working with your agency in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Laker', written in a cursive style.

Steven Laker
Vice President
Hudson Ridge Wellness Center, Inc.

CC: Shari Noonan

FedEx *Express* **NEW Package**
US Airbill

FedEx Tracking Number **8066 8038 6177**

Form ID No. **0200**

Sender's Copy

From Please print and press hard.
Date **9/8/16** Sender's FedEx Account Number **571406802**
Sender's Name **Steven Laker** Phone **(914) 643-9711**

Company _____
Address **72 N State Road 502** Dept./Floor/Suite/Room _____
City **Bracecliff Manor** State **NY** ZIP **10570**

Your Internal Billing Reference
First 24 characters will appear on invoice. OPTIONAL

To Recipient's Name **Diane Gerdon** Phone () _____

Company **OASAS Bureau of Certification & System**
Address **1450 Western Ave** Dept./Floor/Suite/Room _____
We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address _____
Use this line for the HOLD location address or for continuation of your shipping address.
City **Albany** State **NY** ZIP **12203-3526**

HOLD Weekday
FedEx location address
REQUIRED. NOT available for
FedEx First Overnight.

HOLD Saturday
FedEx location address
REQUIRED. Available ONLY for
FedEx Priority Overnight and
FedEx 2Day to select locations.

4 Express Package Service * To most locations.
NOTE: Service order has changed. Please select carefully. **Packages up to 150 lbs.**
For packages over 150 lbs., use the new FedEx Express Freight US Airbill.

Next Business Day

FedEx First Overnight
Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Priority Overnight
Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Standard Overnight
Next business afternoon.* Saturday Delivery NOT available.

2 or 3 Business Days

FedEx 2Day A.M.
Second business morning.* Saturday Delivery NOT available.

FedEx 2Day
Second business afternoon.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Express Saver
Third business day.* Saturday Delivery NOT available.

5 Packaging * Declared value limit \$500.

FedEx Envelope* **FedEx Pak*** **FedEx Box** **FedEx Tube** **Other**

6 Special Handling and Delivery Signature Options

SATURDAY Delivery
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

No Signature Required
Package may be left without obtaining a signature for delivery.

Direct Signature
Someone at recipient's address may sign for delivery. **Fee applies.**

Indirect Signature
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. **Fee applies.**

Does this shipment contain dangerous goods?
One box must be checked.

No **Yes** As per attached Shipper's Declaration. **Yes** Shipper's Declaration not required. **Dry Ice** Dry ice, 9 UN 1845 _____ x _____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box. **Cargo Aircraft Only**

7 Payment Bill to: Enter FedEx Acct. No. or Credit Card No. below.

Sender Acct. No. in Section 1 will be billed. **Recipient** **Third Party** **Credit Card** **Cash/Check**

FedEx Acct. No. _____ Exp. Date _____
Credit Card No. _____

Total Packages **1** Total Weight _____ lbs. Total Declared Value* \$ _____ .00

*Our liability is limited to US\$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

644

! Easy new Peel-and-Stick airbill. No pouch needed.
Apply airbill directly to your package. See directions on back.

August 8, 2016

RECEIVED
O.A.S.A.S.

AUG 12 2016

Ms. Diane Gerdon
Certification Specialist
Bureau of Certification & System Management
1450 Western Avenue
Albany, NY 12203-3526

BUREAU OF CERTIFICATION AND
SYSTEMS MANAGEMENT
Albany, New York

Re: Letter of Inquiry Regarding Program Services

Dear Ms. Gerdon,

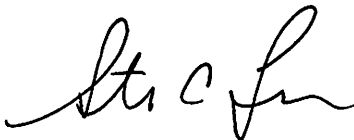
We received your letter dated July 13, 2016 from the New York State Office of Alcoholism and Substance Abuse Services (OASAS) regarding Hudson Ridge Wellness Center, Inc. and a recent article that you received.

Please note that at this time that we are not an operational facility. The buildings on the former Hudson Institute are not currently in the condition to house anyone at this time.

However, Hudson Ridge Wellness Center, Inc. is planning to seek certification in the near future from OASAS and has recently hired Shari Noonan to assist with this matter.

We thank you for your note and look forward to working with your agency in the future.

Sincerely,



Steven Laker
Vice President
Hudson Ridge Wellness Center, Inc.

CC: Shari Noonan

RECEIVED
O.A.S.A.O

AUG 1 8 2016

BUREAU OF CERTIFICATION AND
SYSTEMS MANAGEMENT
Albany, New York

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Main body of faint, illegible text, possibly representing a letter or report content.

Faint, illegible text in the lower right quadrant, possibly a signature or stamp.

APPENDIX 6 I



OASAS Communication Timeline - Summarized

- July 2016 Received a letter from OASAS stating they were informed we were operating a facility and to let us know we needed certification to do so.
- We replied informing them we are not currently operating any facility but will be seeking certification.
- Feb 2019 Received another letter from OASAS stating they were informed we were housing patients and operating a program without certification.
- We replied informing them that the buildings are not in any condition to house anyone at this time and we are not operating any program but will seek certification.
- June 2019 Due to the Town's question as to if we required OASAS certification we completed a Certification Questionnaire and sent a note to OASAS asking for their determination if we are required to be certified.
- They replied that services are not currently being provided but information on a proposed program was sent. As such they provided information that defines the circumstances when an entity must obtain certification for operation but would not provide a determination.

Additionally, there were further emails and phone calls asking OASAS for a determination. They maintained their stance that they would not provide a determination until the full process was completed.

In summary, a specialty hospital is a permitted use with a special permit in an R-80 zone. A specialty hospital must also receive a variance from the state road frontage requirement. We have clearly stated and defended that our proposed use, once certified, would be considered a specialty hospital under Town code.

If our specialty hospital use, based on the size and impacts described for years, and recently significantly reduced, does not receive a special permit AND a variance from the state road frontage then we cannot proceed and any efforts with OASAS certification would be a waste of resources.

Our special permit and variance will be granted contingent upon it being an OASAS certified facility. But if we don't receive those items we can never apply for certification. Thus, we need the special permit and variance before we dive into the certification process.

APPENDIX 62

Project: Hudson Education and Wellness Center
Town of Cortlandt, NY

Scope: General Clarifications in Response to Site Plan Comments

Date: February 15, 2022

The following responds to comments from the lay public and others regarding this project that were received lately.

1. Stormwater Management Plan

The proposed reduction in the number of patient beds will allow a reduction in the total length of septic fields. This reduction will also reduce the amount of site disturbance such that the total disturbance will be less than 1 acre. As a result, in this case, there are no extra requirements for post-construction stormwater treatment. However, the Site Plan does include a permanent NYSDEC Rain Garden for stormwater treatment for the portion of the site where the primary septic system is located. Additional treatment devices would be used if the tennis court and swimming pool are constructed.

2. Photometric Plan - Lighting

The applicant has agreed that all outdoor, free-standing lights will be low-wattage, about 4 feet tall, and will be activated on a timer with some lights being activated by proximity detectors. The Photometric Plan will reflect these changes in the upcoming submission. Floodlights located on buildings will be used only for purposes of security and will not be left in the "on" position.

3. Heating, Ventilation and Air-Conditioning Systems

The building will be heated and cooled using conventional systems that require electricity and oil for heating. As noted the larger generator will be isolated within the basement of the Main building and will serve that building alone.

A secondary emergency generator will serve to operate the small pumps used in the septic system. This generator will be located at the easterly side of the Main building near the exterior wall. The secondary generator will be a low power system with muffled exhaust and will operate by propane. The secondary generator will only operate during power outages and occasionally for servicing. The generator would run several, small 1/3 horsepower motors. This generator will produce about 7.5 kilowatts, which is generally the size of a residential air-conditioner.

The sound level of these generators, at 23 feet is about 66 decibels. This can be compared to a residential washing machine that produces about 70 decibels. Accordingly, there should be no noise impacts to off-site properties.

The remaining outer buildings will be serviced by individual generators, similar to the secondary generator noted, and will be placed at the side of the existing buildings away from the neighboring homes.

Fuel delivery includes both oil and propane. The site is anticipated to use about 100 gallons per day of fuel oil in the winter months for heating and hot water. Generally, oil deliveries would be once every two to three weeks during the winter heating months. A 2000 gallon tank is to be located in the basement of the Main building. If the applicant installs a larger fuel storage tank, the delivery times would be reduced even further. In general, it takes about 15-30 minutes per location to fill the fuel tanks and there should be little or no impact on the neighborhood from this delivery traffic.

Propane fuel will be delivered as needed based on emergency use of the generator and may be twice annually.

4. Construction Scheduling

The work to rehabilitate the buildings will be generally indoors and should not impact the neighborhood. The applicant will comply with any local work ordinances as to the time of day or relevant noise ordinances.

5. Indian Brook Watershed

There is relatively little proposed development within the Indian Brook watershed. The primary septic system that is now reduced in size due to the reduction from 92 to 58 beds would not need to be installed within the Indian Brook watershed. The work within the Indian Brook watershed is merely the increased width of the driveway to accommodate some new parking.

6. Septic Systems

The proposed septic system for Hudson Wellness should not be compared to a residential septic system. A detailed report was filed with the Town, dated March 20, 2019, indicating the state-of-the-art treatment processes that will be employed in this case. The Health Department has concluded the system is appropriate and has given its approval as well as New York State DEC in their SPDES approval. The report entitled, "Extraordinary Wastewater Treatment Processes at the HEWC Site," is attached.

There are about 300 houses in the 768 acre Indian Brook watershed. At an average of 3 bedrooms per house, the design flow for the current septic disposal would be about 180,000 gallons per day. The design flow of the Hudson Wellness project currently, shown as being in the partially watershed would be 3% of the total load. The loading to the watershed will be zero (0) percent based on the proposed, reduced-bed Site Plan.

Further, the average density in the watershed is about 2.5 acres per house and this density would compare with the estimated potential of 20 or so houses on the full 45 acres of the Hudson Wellness project. Accordingly, the project would be within scale of the area when considering septic disposal loads.

Even if the original portion of the septic system were to remain within the watershed, it is a well-known fact in the industry that treatment of septic discharges by the sub-soil would remove nearly all of the pathogens within a few feet of the system. The Indian Brook reservoir is 3200 feet from the site, therefore, no impact would be expected in that case.

The Health Department was explicit in their approval of the septic system, stating that it “can be constructed consistent with standards and should not contravene groundwater standards”.

7. Water Usage Comparison to Single Family Homes

The Hudson Wellness water usage was estimated using an accepted “rule-of-thumb” of 110 gallons per bed. The accepted “rule-of-thumb” for a single-family, four-bedroom house is 200 gallons per day per bedroom. Therefore, septic systems for the comparable 20 houses, on at least 40 to 45 acres by the “rule-of-thumb” standard, would be designed for at least 16,000 gallons per day, which is far greater than the estimate for the Hudson Wellness project.

Further, Hudson Wellness will not use well-water for irrigation, a restriction that should be compared to the single-family home alternate. Single family homes may conceivably use 200 gallons per day per home, or more, during the growing season.

Also, it should be noted that the Hudson Wellness project will be subject to a restrictive well monitoring program though single-family homes can pump unlimited amounts of water from their wells without such a restriction.

Submitted by:



Ralph G. Mastromonaco, PE

Attach: 3/20/2019 Report

Extraordinary Wastewater Treatment Processes at the HEWC Site

Hudson Wellness and Education Center
Quaker Ridge Road, Town of Cortlandt, New York

March 20, 2019

The proposed wastewater disposal system for the project has the approval of the Westchester County Department of Health and a (SPDES) discharge permit from the Department of Environmental Conservation.

The proposed system is unique in that there are several important features that greatly enhance the reliability of the treatment process, far above that of a typical septic system. These additional or supplemental features were not required by any agency and were voluntarily provided by the applicant at its expense. These are described as follows:

1. Galley Disposal Chambers: Instead of small pipes as found in typical septic systems, the HEWC plant uses 2100 linear feet of 4 x 4 x 4 foot concrete chambers to store and distribute the treated wastewater. The storage volume of the chambers is about 250,000 gallons which is significantly more than the few thousand gallons of storage if this had been designed as a conventional septic system. Further, for context when compared to the daily flow of about 12,400 gallons per day, the raw storage in the subsurface system is equivalent to 20 days of wastewater flow. This is a significant advantage to regulating the diurnal peaks of flow.

2. Electrical Generation: The proposed wastewater system will have a dedicated automatically operated electrical generator to handle any power outages.

3. Recirculating Gravel Filter (RSF):

Completely distinct from a typical septic system, the HEWC system will use an RSF to further polish and treat the effluent from the septic tanks, thereby reducing BOD, Total Suspended Solids and other parameters of the effluent prior to discharge to the subsurface soil layers.

The US EPA lists various results from installed RSF's as indicated herein. Large reductions were measured in BOD, TSS, TKN, TN and Fecal Coliform.

From U.S. Environmental Protection Agency under Assistance Agreement No. CX824652:

The recirculating sand filter (RSF) concept was introduced in the late 1960s and early 1970s by Hines and Favreau, public health engineers from Illinois who were experimenting with sand filter designs. An RSF system is a modified version of the old-fashioned, single-pass open sand filter. It was designed to alleviate the odor problems associated with open sand filters. The noxious odors were eliminated through recirculation, which increases the oxygen content in the effluent that is distributed on the filter bed.

This system has the advantages, as follows:

1. *RSFs provide a very good effluent quality with over 95% removal of biochemical oxygen demand (BOD) and total suspended solids (TSS).*
2. *The treatment capacity can be expanded through modular design.*
3. *RSFs are effective in applications with high levels of BOD.*
4. *RSFs are easily accessible for monitoring and do not require a lot of skill to maintain.*
5. *A significant reduction in the nitrogen level is achieved.*
6. *If sand is not feasible, other suitable media could be substituted that may be found locally.*
7. *No chemicals are required.*

The RSF operates by continually contacting the biological substrate that covers the gravel. This promotes growth on the gravel surface that oxidizes a portion of the particulate mass in the flow.

The recirculated flow is fed to the gravel filter composed of 3 feet of $\frac{3}{4}$ " gravel. The filter tank is 830 square feet of surface area equivalent to a hydraulic loading of 15 gpd per square foot of the forward flow (9 gpm). The combined daily loadings are three times the hydraulic loading and will be about 45 gpd per square foot. The openings in the gravel amount to about 332 square feet and the flow will not be impeded by the recirculated flow.

The filter is in four compartments of 210 square feet each to allow for maintenance while the system continues to operate. A solid wall separates each system. The base of the system is concrete such that no flow exfiltrates.

Four inch diameter slotted underdrains allow the filtrate to flow by gravity back to the recirculation tank. The inflow is distributed to the gravel beds in a manifold of 2" PVC pipes arranged to distribute the flow evenly over the bed.

The covers for the bed are to be removable concrete slabs with two manhole openings in each compartment to allow inspection and maintenance of the gravel and piping.

An overflow pipe is provided to prevent a build-up of flow beyond 6 inches for which an alarm is provided to the control panel in the main building. The overflow may also be visibly monitored to detect clogging. The overflow is directed to enter the head end of the septic system using 4" diameter PVC piping.

The new system will be a major environmental improvement compared to the site's current septic system since the new system is fully removed from the 100 foot wetland buffer and replaces a very old system.

In summary, the proposed HEWC treatment plant will be well beyond the state of the art for an on-site wastewater disposal system in regards to treatment efficiency and reliability.

Submitted by:



Ralph G. Mastromonaco

APPENDIX 63



Site Planning
Civil Engineering
Landscape Architecture
Land Surveying
Transportation Engineering

Environmental Studies
Entitlements
Construction Services
3D Visualization
Laser Scanning

February 14, 2022

Honorable Loretta Taylor
Town of Cortlandt Planning Board
Town Hall
1 Heady Street
Cortlandt Manor, NY 10567

RE: JMC Project 14088
Proposed Specialty Hospital
2016 Quaker Ridge
Town of Cortlandt, New York

Dear Honorable Chairperson Taylor:

This letter has been prepared to address comments contained in two different letters, one from Zarin & Steinmetz, dated February 7, 2022 and the other from The Chazen Companies, dated August 21, 2021 regarding “Hudson Ridge Wellness Center, Inc. Case No. 6-15, CRHISD’s Comments on Responses to Public Hearing Comments”.

I. Zarin & Steinmetz Letter, dated February 7, 2022

Comment No. 6

How many staff would arrive and depart at each shift?

Response No. 6

The staff arrivals and departures for each shift are shown on the attached Table S1, revised 2/14/2022. The table shows trips with and without the use of the proposed shuttle vans, thus quantifying the reductions in trips with the shuttle vans. It is not expected at this time that the shuttle vans will be transporting staff to the site at 10:00 PM or from the site at 6:00 AM in association with the potential use of the FDR Park since there is not overnight parking at the park. While not reflected on the table, shuttle van service may be provided for staff to and from other locations. The revised table reflects the reduction of staff anticipated as a result of the Applicant recently committing to reducing the proposed project from 92 beds to 56 beds.

Comment No. 7

What are the details of the shuttle program (which purportedly would be used to mitigate traffic and community character impacts)?

Response No. 7

The details of the shuttle program have been described and addressed in several submissions, most recently on pages 7, 8 and 12 of the August 2021 Addendum to March 2019 Consolidated Expanded Environmental Assessment Report.

Comment No. 8

Applicant must update Table SI, entitled "Number of Employees Entering/Exiting the Site by Shift."

Response No. 8

See Response 6.

Comment No. 9

What off-site location would be used for shuttle pick-up/drop-off? Is there a guarantee that parking spaces would always be available at such location(s)?

Response No. 9

The Applicant has had discussions regarding the use of the FDR Park, and is also expected to utilize other locations such as bus stops and the train station. As previously stated, the Applicant will modify the locations in the future as may be necessary, and the use of the shuttle vans is an integral component of the proposed Transportation Management Plan, which the Applicant prepared in concert with the Town traffic consultant Provident Design Engineering.

Comment No. 17

CRHISD's Supplemental Traffic Report, prepared by Bernard Adler, P.E., of The Chazen Companies, dated August 23, 2021, has not been adequately addressed.

Response No. 17

While it is the Applicant's opinion that the substantive aspects of comments made by Chazen were sufficiently addressed in the August 2021 Addendum to March 2019 Consolidated Expanded Environmental Assessment Report.

Comment No. 21

Submit all back-up information about the bicycle and pedestrian counts conducted along Quaker Ridge Road for 2 days in April 2021, for a 3-hour period each.

Response No. 21

The traffic information shown for the six hours counted by JMC in April 2021 is provided in Table B on page 13 of the August 2021 Addendum to March 2019 Consolidated Expanded Environmental

Assessment Report, as well as in Table B on page 12 of the Planning Board PowerPoint presentation included as Appendix 47 of the August 2021 Addendum.

Comment No. 22

How many truck deliveries are expected each week (e.g., food, laundry, fuel, medical-waste disposal, supplies, packages, etc.), and how does the Applicant arrive at its number? The Applicant has not substantiated its estimate of only 5-6 truck trips per week.

Response No. 22

In addition to the 5-6 delivery trucks mentioned in the comment, the previous submissions have discussed truck trips expected by the USPS, UPS and FedEx, which typically operate in the vicinity of the site.

2. The Chazen Companies Letter, dated August 23, 2021

Comment No. 1

Quaker Ridge Road Roadway Width

An inaccurate pavement measurement of Quaker Ridge Road presents a safety concern.

Based on visual measurements, we noted that the dimensions of Quaker Ridge Road amounted to approximately 18.5 feet. Accordingly, we recommended that a machine survey be performed to accurately measure the roadway. The Applicant's response is that the roadway generally has a width of 20 feet. (Page 3 of 22, Appendix 47). A machine survey was not used to verify this measurement as we had requested. The Applicant further offers that vegetation and overgrowth attribute to the apparent narrowing of the roadway. A major concern with this statement is that even with an initial cleaning of the overgrowth, the overgrowth will continually recur within the width of the roadway and will appear narrower. Further, my measurements in the field indicated that the roadway width was less than 20 feet as measured between edge-of-pavement lines, not as a result of overgrowth.

Accordingly, the motorists, pedestrians, and cyclists who use the roadway will tend to move closer to the center of the roadway leading to a potential safety concern and accident potential. The Applicant should be required to measure the width of the roadway pavement using verifiable survey equipment to ensure that Quaker Ridge Road would always contain sufficient pavement for all traffic movements to occur in a safe manner.

Response No. 1

The existing roadway dimensions shown on drawings submitted to the Town were field measured by the project Professional Land Surveyor, utilizing standard professional surveying equipment. As discussed in previous submissions, minor widening to 20 feet is proposed in the relatively short sections of the roadway in areas with less than 20 feet as required by the Town traffic consultant, Provident Design Engineering.

Comment No. 2

Dated Traffic Volume Data

Our second comment related to the traffic volume data collected in 2014. It is outdated.

In response, the Applicant re-installed Automatic Traffic Recorders (ATRs) in April 2021. (Page 11 of 22, Appendix 47). However, while new data may have been collected, only spot reporting of the volumes was made. This is not how traffic volumes are normally reported, because it only provides a partial picture. There was no reporting of Annual Daily Traffic for a weekday and a weekend day, no mention of the number of trucks on the roadway and no discussion of travel speed on Quaker Ridge Road, all of which we requested and is typically done, and which would have been available as a product of the ATR data collection process. None of this backup data was provided.

This information is of critical importance to the Planning Board as Lead Agency and the residents along Quaker Ridge Road to provide a full understanding of the characteristics of travel on the roadway. We need to see the data, not just the Applicant's partial conclusion.

Response No. 2

All data previously requested by the Town traffic consultant, Provident Design Group, was previously submitted. The updated 2021 traffic counts confirmed that the most recent peak hour traffic volumes were similar to the 2017 and 2014 data previously reviewed by the Town traffic consultant, as discussed and shown on pages 11 and 12 of the August 2021 Addendum.

Comment No. 3

Trip Generation

We noted in our prior letter that the independent parameter from which trips are to be generated for the instant application was based on the land-use characteristics of a Nursing Home.

The Addendum just submitted by the Applicant notes that traffic counts were conducted at a "similar facility." (Page 13 of 22, Appendix 47). Interestingly, if similar data was available, why wasn't it used to accurately predict trip generation from this proposed facility?

The Applicant ignored our comment that a Land-Use Code 610 - Hospital, would have been appropriate. A "Sensitivity Study" should have been performed to determine what the trip generation impacts would be using that land-use code and is considered more appropriate for SEQRA purposes. The projections using a Nursing Home land use are overly liberal. Further, the use of a minimalistic trip-generating nursing home, upon which additional credits are shown with the use of a shuttle, presents an overly optimistic and least-possible anticipated number of trips to be generated. SEQRA is supposed to study worst case scenario.

Response No. 3

The previous traffic projections were not projected based on a nursing home land use, as suggested in the comment. The use of credits for shuttle van trip reductions, as suggested in the comment,

were not applied to the intersection capacity analyses computed for the area intersections. Thus, the worst case scenario was considered. Previous trip generation projections were reviewed in detail by the Town traffic consultant, Provident Design Group. The recent reduction of the project from 92 beds to 56 beds will result in a further reduction in staff for the four shifts, as shown on the attached Table SI, Revised 2/14/2022. As discussed extensively in earlier submissions, the proposed shift changes are out of phase with the peak operating hours of the analyzed intersections and the project will not have a significant impact on the intersection operations, even if the shifts were concurrent with the roadway peak hours.

Comment No. 4

The amount of anticipated truck trips appears to still be grossly underestimated. The Applicant has not substantiated its conclusion that there would only be 5-6 truck trips per week for this 92-bed facility.

These anticipated deliveries would include deliveries of food supplies to feed all 92 patients 3 meals a day, laundry services, fuel deliveries, medical-waste disposal, and usual over-the-road carriers such as Amazon, UPS and other suppliers. The Applicant merely states that the "truck activity is based on discussions with a consultant experienced in the operation of numerous facilities" (Response #4, page 13 of 22, Appendix 47) This is a vague attempt to verify the assertions without noting the consultants name, his/her credentials to make such assertions, and, most importantly, the quantitative data to back it up. It seems highly unlikely that all deliveries for a facility of this scale will be limited to 5 to 6 trucks per week.

Response No. 4

The comment does not correctly recognize that the previous submissions mention that there would be additional trips, in addition to the 5-6 delivery trucks, which would be made by USPS, UPS and FedEx trucks typically driving along the area roadways regardless of the proposed use. The recent reduction of the proposed project from 92 beds to 56 beds would be expected to have an associated reduction in deliveries.

Comment No. 5

Credit Taken for Shuttle Usage

While it is recognized that the use of a shuttle service may work in certain situations, our request was to show an example of how a shuttle has been used successfully for this type of facility as a way to reduce vehicular trips. This request was ignored with a statement that the shuttle service will be monitored (Response #5, page 14 of 22, Appendix 47). The issue is, of course, if the monitoring shows that the shuttle service is not being used, it would be too late to make any corrections to the plan. Additionally, while Level-of-Service calculations may not have used the credit for shuttle services, Table SI (attached) as presented by the Applicant to the Zoning Board certainly gives the impression of dramatic reductions in the number of trips generated by the facility. But, again, if this does not come to fruition, the actual number of trips will be greater. This could affect character of the roadway, even if not a Level-of-Service impact.

Response No. 5

The use of the shuttle vans would be a Condition of the Site Plan Approval.

Comment No. 6

Staging for Shuttle Services.

We raised a concern about whether the staging of vehicles for the shuttle trip at a park and ride lot at the FDR park with access from the Taconic State Parkway is viable. Park and ride lots are typically open to the public on a first-come, first-serve basis. The Applicant has not provided information about the lot in terms of the number of spaces in the lot and whether there are spaces actually available on a daily basis based on usage. Further, even if the lot currently has spaces available, there is no guarantee that the lot will not become full in the future. Accordingly, in order to claim use of the lot for SEQRA purposes, it would be necessary to show that permits are available and the necessary number of spaces in the lot can be guaranteed for staff of the Specialty Hospital. The answer is once again vague and unresponsive. The use of "another facility or other public transportation hubs" (Response #6, page 15 of 22, Appendix 47), is simply not a viable answer without clear designations of where they are, whether they can accommodate the specific number of workers and shuttle vehicles and whether they are logistically viable for the use proposed.

Response No. 6

See above responses.

Comment No. 7

Location of the Facility on a Major Roadway

Just because one example is shown of a facility located on a similar road, doesn't eliminate the importance of a facility being located on or immediately near a major roadway such as a State or County Highway. In response to concerns raised about ambulance trips, the applicant states that the facility is not targeted to "the elderly and infirm" and that they "were not able to locate data related to the type and number of medical emergencies for a residential program facility."(Response# 14, Page 10). The proposed facility will be treating conditions wherein urgent care can become crucial even if it's not at the level of a general hospital. It is highly recommended that a facility such as that proposed be located on a major highway where ambulance care can be provided on a more reliable basis than on a roadway such as Quaker Ridge Road. This is at least one of the reasons why the Town Code requires this type of facility to be located on a State Road.

Response No. 7

The comment has been previously addressed.

Comment No. 8

Turning-Template for Emergency Vehicles

It is understood that the Applicant's site engineer met with the Fire Chief of Croton-on-Hudson. However, it is highly recommended that Fire Department sign off on the proposed k-turn maneuver and that the

Applicant's site engineer carefully dimension the internal roadway showing the components of the hammerhead for consent by the Fire Department. This should be done during the SEQRA process.

Response No. 8

It is the Applicant's opinion that any additional minor coordination with the Fire Department should not be required during the SEQRA process.

Sincerely,

JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC

Richard J. Pearson

Richard J. Pearson, PE, PTOE
Sr. Associate Principal

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Table S1

Number of Employees Entering/Exiting the Site by Shift

Shift Number	1A / Nursing 1		1B (Entering)		2		1B (Exiting)		Nursing 2		3	
Shift Start Time	6:00 AM		9:00 AM		2:00 PM		5:00 PM		6:00 PM		10:00 PM	
	Entering	Exiting	Entering	Exiting	Entering	Exiting	Entering	Exiting	Entering	Exiting	Entering	Exiting
Number of Entering/Exiting Employees	16	11	17		6	7		17	9	9	2	6
Less: Number of Employees Using Shuttle Van	(16)	0	(8)		(6)	(7)		(8)	0	(9)	0	(6)
Plus: Two Van Trips	2	0	2		2	2		2	0	2	0	2
Net Number of Vehicle Trips	2	11	11		2	2		11	9	2	2	2

APPENDIX 64

**List of Stipulated Conditions for Conditional Negative Declaration for Proposed
Specialty Hospital
2016 Quaker Ridge Road
Town of Cortlandt, NY
Revised 03/14/2019**

The following is a list of voluntary conditions that the Applicant has included in its application and to which the Applicant stipulates as conditions of its proposed Conditional Negative Declaration and any Approval Resolution.

A. Traffic Management Plan

1. The staff will not exceed 86 total staff spread over four shifts.
2. Employee work schedules will be established to minimize any traffic impacts by scheduling the staff arrival / departure times outside of the existing peak hours along the area roadways. The shifts are proposed as follows:

Shift 1 (6:00 AM – 2:00 PM)
Shift 1A (9:00 AM – 5:00 PM)
Shift 2 (2:00 PM – 10:00 PM)
Shift 3 (10:00 PM – 6:00 AM)
3. The Specialty Hospital, when fully operational, will have 92 patients maximum and a total of 37 employees on the largest combined shift (19 on the 6:00am-2:00pm Shift 1, and 18 on the overlapping 9:00am-5:00pm Shift 1A).
4. The Applicant will monitor the parking utilization of the site biannually and provide a report to the Department of Technical Services until two years subsequent to the full occupancy of the facility, and will construct additional spaces beyond the 65 to be provided in the unlikely event the existing spaces are 90% occupied during the monitoring studies, subject to amended site plan approved by the Planning Board.
5. Snow removal and lawn and yard maintenance will be done by on-site staff, and yard waste will be recycled/mulched on the site, so no truck traffic will be necessary.
6. Two shuttle vans will be provided, for required use by a substantial portion of the employees, primarily lower level non-professional employees, who will be shuttled to and from several transit hub locations outside the immediate area, including, but not limited to the FDR Park park and ride lot, the Croton Harmon train station or other stations on the Harlem line such as White Plains, and the vans will also transport clients for pick-up from

and drop-off at their home, train station, or bus stops as necessary and to be determined, or other locations as may be required.

7. Delivery vehicles will be directed to access the property from NY 9A and US 9 and travel through Crotonville via Old Albany Post Road to Quaker Bridge Road to Quaker Ridge Road. Old Albany Post Road, Quaker Bridge Road, and Glendale Road have weight restrictions for vehicles over 5 tons, except for local deliveries, which therefore do not preclude trucks associated with the site from using the roadways. The delivery vehicle drivers will be directed to not travel along the Quaker Bridge Road one-lane bridge over the Croton River.
8. No tractor trailers will be permitted to make deliveries to the hospital.
9. No deliveries by 3rd party service providers, such as deliveries of food/perishables, pharmacy, paper/office supplies, garbage collection, laundry, etc., will occur on weekends.
10. The Applicant will monitor the use of the security gate and the gate will be open from 6:00 AM to 8:00 PM to prevent any queuing from the driveway within the Town right of way.
11. An intercom will be provided for communication between an occasional approaching driver between 8:00 PM and 6:00 AM, including emergency vehicles, and on-site personnel so that the gate can be opened. If there were to be a known emergency such as a fire, the gate would be opened by staff and remain open during the event.
12. The Applicant will monitor traffic volumes when the patient occupancy reaches 75 percent and for 2 years after 75 percent occupancy, to compare actual future volumes to the projected volumes. Automatic Traffic Recorders (ATR) will record 24 hour directional volumes along the site access driveway (entering and exiting) as well as along Quaker Ridge Road northbound and southbound, both north and south of the site access driveway. The details of the traffic monitoring protocol will be coordinated with the Town staff and traffic consultant.
13. The Applicant shall adhere to the conditions of the Applicant's Transportation Management Plan.

B. Well Monitoring Plan

14. The applicant volunteered to conduct an offsite water supply well monitoring plan to document if concurrently pumping the two new HRWC wells at conservatively twice the average water demand of the project for three days would have any impact on offsite neighboring wells. The Applicant canvassed 67 homes, as required and approved by Town staff and Town Board, within 1,500 feet of the new HRWC wells, and 18 signed permission slip were received. Two of these were found to have inaccessible wells, with the Applicant agreeing to include the remaining 16 in the monitoring program.

Based on the fact that some drawdown effects were observed in two of the sixteen monitored wells, although after the pumping test was ended the water levels in the

impacted offsite wells recovered to pre-test conditions, and the actual usage conditions are not expected to significantly affect these wells, the two homeowners will be solicited to participate in the following offsite well monitoring program.

15. The Applicant is offering to conduct an offsite well monitoring program of up to six neighboring wells as the Specialty Hospital becomes operational. The well monitoring program would start three to six months before the certificate of occupancy is issued and continue for up to two years after 75 percent of full occupancy of the Specialty Hospital occurs. The duration of the monitoring plan may be extended, at the discretion of the Town, if offsite impacts are observed. Pressure transducer data loggers would be set in select offsite and onsite pumping wells to document long term trends in groundwater table fluctuations related to onsite pumping and water use. A semi-annual hydrogeologic report of pumping volumes and onsite and offsite groundwater levels would be provided to the Town for review. After it is confirmed that onsite pumping is sustainable and is not adversely impacting existing offsite wells, the program and reporting would be terminated. If long-term monitoring were to unexpectedly demonstrate any significant interference from the proposed Specialty Hospital wells, mitigation options (including but not limited to, lowering the homeowner pump or deepening their well) would be evaluated and implemented.

C. Clients

16. The hospital's clients are not permitted to have vehicles on site or use vehicles during their stay.
17. Prior to admittance, all clients shall undergo background checks using a professional background check organization, and no one with a known/identified serious psychiatric or violent history will be accepted for admission.
18. All clients will be pre-tested to be sure they are not using illegal addictive drugs and/or alcohol before they are permitted admission.
19. All clients will have either already completed detoxification elsewhere or do not require it.
20. No one under the age of 21 will be admitted to the hospital.
21. All clients will stay at the hospital throughout the full course of their treatment program.
22. No clients will be permitted to leave the property during their stay.
23. No alcohol, recreational drugs, or unmonitored medications will be permitted.
24. The hospital will be private pay for all clients, with private insurance plans accepted, but not government assistance programs. HEWC will not accept client referrals from the penal system.

D. Operations

25. Lights out for the clients is at 10:30 PM.
26. There will be no outpatient treatment or emergency room.
27. Patient census is limited to 92 persons, and staff is limited to 86 persons.
28. There will be no outdoor dining, and the residents will have no individual kitchen facilities.
29. There will be no onsite pharmacy at HEWC, as no medications for the treatment of addictions will be utilized or stored onsite. Onsite medications would include only patient personal medication prescribed to them by their personal physician(s) and brought into the hospital with them at admission (i.e. personal prescribed medications for patient's high blood pressure, epilepsy, diabetes, etc.). These personal medications will be inventoried and securely stored in the main facility by HEWC medical staff for self-administration when needed by the client. Clients will be encouraged to bring a 30 to 45 day supply of their own medications at admission. The HEWC medical director will evaluate and approve the need for continuing of these personal medications at admission, and prescribe as needed when patient's personal medication supply runs low/out.
30. 24/7 on-site security will be provided. The security staff will not be armed with weapons of any type.
31. A private trash carter will be used.
32. Recycling will be performed in accordance with Westchester County requirements, and be picked up the private carter.
33. The only medical waste to be generated by the program will be limited to items such as medical "sharps" including needles for treatment of clients with diabetes and lancets to test client's blood sugar levels, when needed. All medical waste, if any, will be handled by a private medical waste disposal contractor, and be disposed of in accordance with all pertinent medical waste disposal regulations. The very small quantity of this type of medical waste that will be generated is such that it is anticipated that only a quarterly annual pick-up by the medical waste vendor is anticipated.
34. No irrigation system is to be used on the property. The landscaping will be hand-watered by a manually carried hose only as necessary as determined by an inspection of the landscaping, and only that landscaping requiring watering will be watered.
35. No deliveries by 3rd party service providers, such as deliveries of food/perishables, pharmacy, paper/office supplies, garbage collection, laundry, etc., will occur on weekends.
36. No laundry will be processed on-site but will be contracted to an outside laundry service.

37. Proposed site lighting, where required, will be shielded to prevent lighting spreading onto adjoining private properties.
38. There will be designated smoking areas for both clients, family members and staff located outside adjacent to Building #1 (the main treatment building) and Building #7, which are both situated in the central portion of the property. Smoking will be limited to the southern side of each building, which is facing away from the northerly property line and neighboring properties along that boundary.
39. The outdoor area for any individual training program by a trainer or other outdoor exercise activity weather permitting would be situated at and limited to the rear (south) area adjacent to Building #1, which is facing away from the northerly property line. There will be no swimming pool, tennis courts, or other recreational facilities.
40. There will be no outdoor speakers or music.
41. A small generator for the emergency operation of the septic system pumps is to be located near the Main building as shown on the septic system plans. The separate emergency generator for the hospital services will be inside the building.
42. The Applicant will submit monthly operation reports of the project's water usage to the Westchester County Department of Health (WCDH) and to the Town.
43. The hospital will obtain required certification from (and undergo regular inspections by) the NYS Office of Alcohol and Substance Abuse Services (OASAS).
44. The Specialty Hospital is subject to WCHD approval for its septic and water supply systems- which it has obtained.
45. The Applicant will also provide appropriate municipal authorities with a staffed 24-hour access line.

E. Visitors

46. There will generally be no visitors. Family weekends will be scheduled for only one day every weekend for family member visitation, family education and group counseling. These family weekends will be staggered, so as the facility approaches and reaches full capacity, only one quarter of the client population will have their family weekend each weekend of the month.

F. Community Outreach

47. Preferences for admission to the facility will be given to residents of Cortlandt, and they will be afforded reduced fees on a sliding scale base on income, augmented by their private insurance.
48. Full scholarships will be awarded each year to two Cortlandt residents.

49. The Applicant will actively participate in community outreach with relevant community and school programs, such as Cortlandt's DARE program and both the Cortlandt and Croton Community Coalitions, by providing expert speakers and programs free of charge, and will work with the Town as requested to combat the problem of substance use disorder.
50. The Applicant will designate a neighborhood/community liaison on its staff, who will among other duties, invite neighborhood representatives to open meetings no less than twice a year to keep them apprised of its operations and to address any questions or concerns from the neighbors. That person will also be available to call at any time if there is ever a more immediate matter to address.

G. Site Development

51. Only existing buildings will be used, there will be no construction of new buildings or exterior building additions, as depicted on Ralph G. Mastromonaco, PE, PC drawing "Site Plan/Grading Plan/Tree Plan".
52. There will be no disturbance to wetlands or wetland buffers, as depicted on Ralph G. Mastromonaco, PE, PC drawing "Site Plan/Proposed Disturbance Plan".
53. The existing approximately 75% open space of the 20.8 acre property will be kept intact.
54. The 27.8 acre adjoining property to the south, owned by an affiliate company, will not be developed and will serve to provide a substantial additional buffer while the hospital use is in effect and a restrictive covenant so provided.

Note

The Applicant will otherwise adhere to all representations made in its documents submitted to the Town, including responses to public comments, subject to any modifications resulting from further proceedings before the Town's Boards.

APPENDIX 65

**PROPOSED SPECIALTY HOSPITAL
2016 QUAKER RIDGE ROAD
TOWN OF CORTLANDT
WESTCHESTER COUNTY, NY**

**SEQRA Summary Support for a Conditioned
Negative Declaration.**

A. SEQRA Summary Support for a Conditioned Negative Declaration

The proposed action will have no significant adverse environmental impacts. The criteria for determining significance are enumerated in the SEQRA regulations as set forth below, followed by the specific reasons the proposed action has no potential significant adverse environmental impacts as more fully discussed in the Point 2, below, thus justifying a Negative Declaration.

I. Determining Significance (from Section 617.7 of the SEQRA regulations)

Section 617.7

a. The lead agency must determine the significance of any Type I or Unlisted action in writing in accordance with this section.

(1) To require an Environmental Impact Statement (EIS) for a proposed action, the lead agency must determine that the action may include the potential for at least one **significant adverse environmental impact**.

(2) To determine that an EIS will not be required for an action, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.

b. Criteria for determining significance.

To determine whether a proposed Type I or Unlisted action may have a significant adverse impact on the environment, the impacts that may be **reasonably expected to result** from the proposed action must be compared against the criteria in this subdivision. The following list is illustrative, not exhaustive. These criteria are considered indicators of **significant adverse impacts** on the environment:

SEQRA Criteria:

- (l) A **substantial adverse change** in existing air quality, ground or surface water quality or quantity, traffic or noise levels; **a substantial increase** in solid waste production; **a substantial increase** in potential for erosion, flooding, leaching or drainage problems.

This Action will have no such impacts:

The proposed action has no long-term air quality impacts, and no significant adverse impacts from noise (see subsection h, below). There are no potential significant adverse traffic impacts on the neighborhood , and significant mitigating measures are proposed in the Applicant's Traffic Management Plan, developed in conjunction with the Town's expert traffic consultant (see subsection m, below); no substantial adverse change in existing ground or surface water quality is anticipated (see subsections g and f, below), based on an additional pump test conducted which included off-site well monitoring, as approved and supervised by the Planning Board and, its professional staff and expert hydrogeology consultant; nor is there any increase in potential for erosion, flooding, leaching or drainage problems (see subsection f, below). No significant quantity of solid waste is being generated (see subsection p, below).

SEQRA Criteria:

- (2) The removal or destruction of **large quantities** of vegetation or fauna; **substantial interference** with the movement of any resident or migratory fish or wildlife species; impacts on a **significant** habitat area; **substantial** adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other **significant** adverse impacts to natural resources.

This Action will have no such impacts:

None of these impact issues are pertinent to the proposed action (see subsection i, below) because no construction is proposed, with no disturbance of areas not already disturbed. The existing 75% open space of the property will be kept intact as will the open space on the adjoining 27.8 acre parcel, owned by an affiliate company.

SEQRA Criteria:

- (3) The **impairment** of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part.

This Action will have no such impact:

No impairment of the environmental characteristics of a Critical Environmental Area will occur (see subsection l, below).

SEQRA Criteria:

- (4) The creation of a **material conflict** with a community's current plans or goals as officially approved or adopted.

This Action will have no such impact:

The proposed action creates no material conflict with Cortlandt's 2004 or 2016 Comprehensive Plans and their goals, including the proposed Medical Oriented District ("MOD") discussed in the 2016 Comprehensive Plan (see subsection a, below). The MOD legislation has not been adopted and is currently undergoing SEQRA review. The Town is currently drafting the DEIS for the legislation as well as for the site plans for two developers who have projects related to the MOD district. In any case, the proposed legislation makes the MOD an "optional" overlay district designation, for which those property owners wishing to be included must apply to the Town Board for inclusion in the district in the Board's discretion.

SEQRA Criteria:

- (5) The **impairment** of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character.

This Action will have no such impact:

There is no impairment of the character of any important historical or archeological, architectural, or aesthetic resources, with preservation of the site and its existing buildings (see subsections c and k, below). Likewise, the existing community and neighborhood character will not be significantly impacted by the proposed action (see subsection a, below).

SEQRA Criteria:

- (6) A **major change** in the use of either the quantity or type of energy.

This Action will have no such impacts:

No significant change in quantity or type of energy will occur because of the proposed action (see subsection o, below).

SEQRA Criteria:

(7) The creation of a **hazard** to human health.

This Action will have no such impact:

No hazard to human health will be created by the proposed action (see subsection p, below).

SEQRA Criteria:

(8) A **substantial** change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses.

This Action will have no such impacts:

The Specialty Hospital preserves all existing open space on two parcels, does not impact recreational resources (see subsection k, below), and there is no impact to agricultural resources (see subsection j, below). There is no substantial change in use or intensity of use because there is no new construction, existing buildings will be used, and the property historically contained hospital and institutional uses for some 60 years with various special permits issued for similar institutional use, including one in 1989 for a hospital (see subsection a, below). The special permits for IBM and Hudson Institute allowed 225 employees on site and the 1989 hospital special permit allowed a combined total of patients and staff of 225. The maximum occupancy of the Specialty Hospital at ultimate full capacity would be only 178 combined patients and staff (92 plus 86), but never at one time. Maximum occupancy at one time would not exceed approximately 129.

SEQRA Criteria:

- (9) The encouraging or attracting of a **large** number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action.

This Action will have no such impact:

There will not be any such “large” numbers of people coming to the adjacent 48.6 acre combined site. The patients on the site will remain on the property for a month or more with no vehicles, and will not leave the site during treatment, and so the number of people on site for more than a few days does not generate any significant adverse environmental impact, including staff, with staggered off-peak hour shifts and use of shuttle vans, and limited vendor traffic, with visitation limited so that patients may have visitors only one day per month, which will take place on a weekend, and only up to 25% of the patients may have visitation on any one weekend. Further, there is no current limitation on the number of people who may come to the site absent the action. Absent this proposed action, there would likely be another action, such as a school or religious use with school which would generate more people.

SEQRA Criteria:

- (10) The creation of a **material** demand for other actions that would result in one of the above consequences.

This Action will have no such impact:

There will be no creation of a material demand for other actions that would result in one of the above consequences since the use is very self-contained.

SEQRA Criteria:

(11) Changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a **substantial** adverse impact on the environment.

This Action will have no such impact:

There are no changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment.

SEQRA Criteria:

(12) Two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

This Action will have no such impact:

There are no two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

APPENDIX 66

**PROPOSED SPECIALTY HOSPITAL
2016 QUAKER RIDGE ROAD
TOWN OF CORTLANDT
WESTCHESTER COUNTY, NY**

**SEQRA Summary of No Potential Significant
Adverse Impacts**

**2. The Proposed Action Has No Potential Significant Adverse
Environmental Impacts Based on the Reasons Stated Below:**

**a. The Proposed Action is Consistent with The Town Development
Plan and Community Character**

- (1) The Proposed Action is consistent with the 2004 Comprehensive Plan. The Town's 2004 Master Plan makes note of this property in Policy 34, with the property being within the Special Reuse and Conservation Development (SRC) district at that time. Policy 34 recommended that the Town Board eliminate the SRC district from the Zoning Ordinance. The Hudson Institute property (the site) was mentioned in Policy 34 as one of the institutional properties expressly intended to benefit by redevelopment under the SRC zoning because the permitted lot area in that District was 5,000 square feet for single-family, two-family and multifamily dwellings, potentially making the property attractive for denser residential redevelopment than under the R-80 District. However, the Master Plan proposed to eliminate the SRC because of the lack of infrastructure in the area to support the increased housing density permitted thereunder. The Town Board adopted the Master Plan recommendation in amending the Zoning Ordinance to eliminate the SRC, whereby the property reverted to R-80 zoning. Thus, the proposed re-use of the property as a Specialty Hospital permits the property to be

used again and to remain on the tax rolls with no such increase in density, while providing for the Specialty Hospital's sanitary and water infrastructure needs on-site. The proposed use is therefore consistent with the Town's 2004 Master Plan and Policy 34 in particular.

(2) The Proposed Action is consistent with the 2004 Comprehensive Plan's goal of preserving Quaker Ridge Road, and also with the 2016 Comprehensive Plan where the Quaker Ridge Road area is listed on Table 7-1 on page 94 as a scenic resource in the Town, which is consistent with Quaker Ridge Road's recent historic designation. As demonstrated on Table III.C-4 (Appendix 5.K) and as updated in Appendix 30 (PowerPoint presentation to the Planning Board on 1/08/2019), the proposed Specialty Hospital has lower traffic volumes than other uses permitted in the R-80 district with no requirement of access to state roads (such as private schools, places of worship with associated religious school, and governmental buildings). As documented in the EEA Addendum, the Level of Service will not change, and there will be minimal traffic impact. No scenic features of Quaker Ridge Road are proposed to change, because the existing buildings on the property are proposed to be reused, with no new building construction proposed. Landscaping on the property will be enhanced. The existing open space (approximately 75% of the property) will remain intact. The adjacent 27.8 acre adjacent property to the south, owned by an affiliate company, that contains a small, vacant house but is otherwise undeveloped will remain in this condition as a buffer so long as the subject property is used as a hospital.

(3) The Town's 2004 Open Space Plan includes the property in its current state under Index E-2 as an "Under-Utilized Parcel, Five Acres or More, Particularly Worthy of Preservation". The proposed re-use of the property as a Specialty Hospital, with no new buildings proposed and with minimal land disturbance for some driveway, walkway and parking

improvements, maintains this property's open space identity in the substantially same condition as it was in 2004, and thereby conforms to the Town's Open Space Plan.

- (4) The proposed use preserves significant open space, a goal of the 2004 Comprehensive Plan. For example, as noted on page 86 of the 2016 Comprehensive Plan, the property is specifically mentioned in the context of meeting a goal of the 2004 Master Plan as being within “Category 3”, which is an “underutilized privately-owned land” that currently provides open space benefits. With no new building development proposed on the property, the Proposed Action conforms to this goal.

- (5) The Proposed Action is consistent with the 2004 amendments to the Zoning Code to preserve local residential roads, as well as with Quaker Ridge Road as a recently designated Town Historic and Scenic Road with specific protections for pavement width, preservation of stone walls, mature trees and requirements for screening of new developments, as discussed below. The same roads were used for over 60 years for institutional use of the property. A special permit for such a hospital use was issued as late as 1989, when the character of the current neighborhood was already established. Furthermore, as noted previously, the proposed Specialty Hospital has lower traffic volumes than other uses permitted in the R-80 district with no requirement of access to state roads (such as private schools, places of worship with associated religious school, and a government building). All of these uses would have a greater impact than the proposed Specialty Hospital on any local residential road. As documented in the EEA Addendum, the Level of Service will not change with the proposed Specialty Hospital, and there will be minimal traffic impact.

With regard to Quaker Ridge Road as an Historic and Scenic Road, the Specialty Hospital proposes no changes to pavement width of Quaker Ridge Road (the proposed driveway improvements will widen the driveway and provide a 90 degree intersection with Quaker Ridge Road yet will not require the widening of the travelled pavement of Quaker Ridge Road), no alteration to any stone walls or mature trees, and evergreen hedge screening has been installed along the property's westerly property line adjacent to Quaker Ridge Road. No changes are proposed to the existing road striping adjacent to the property. An approximately 3 feet by 4 foot sign is proposed at the front gate of the property. Therefore, the Specialty Hospital will have no discernable impact to the historic nature of Quaker Ridge Road since the character of the roadway will not be noticeably altered.

- (6) The Proposed Action is consistent with the Town's 2016 "Envision Cortlandt" Comprehensive Plan. In addition to the property being mentioned, as indicated above, on page 86 with regard to the property providing open space benefits, and on page 94 with regard to the property as a scenic resource in the Town, the 2016 Master Plan provides on page 88 a list of Key Challenges and Opportunities for the Future; the Proposed Action is in conformance with many of these. For example, how the Specialty Hospital responds to the challenge of providing and preserving open space is discussed in #4, above. The Specialty Hospital also addresses the key challenge of preserving the Town's biodiversity by protecting significant expanses of land and habitat, with no new building construction proposed and minimal site disturbance (under one acre), preserving the majority of the 20.8 acre site. In addition, the adjacent 27.8 acre adjacent property to the south, owned by an affiliate company, that contains a small, vacant house but is otherwise undeveloped will remain in this condition so long as the subject property is used as a hospital. The Specialty Hospital also speaks to the challenge of protecting

environmentally sensitive land, with no disturbance proposed to wetlands, wetland buffers, and steep slopes. This also helps to address the additional challenge of encouraging climate resiliency by protecting wetlands and preserving forested areas.

- (7) The Specialty Hospital addresses the 2016 Master Plan challenge on page 88 of preserving water quality and protecting surface and groundwater resources. The two new HEWC wells will pump, on average, 9 gallons per minute. For some perspective, this is approximately the rate of a garden hose. In addition, the well will not run continuously, but will cycle on and off throughout the day, with less use at night. As discussed in the LBG Hydrogeologic Assessment in Appendix 5.H, the data indicate that groundwater withdrawals up to twice the average water demand of the Specialty Hospital will not result in storage depletion of the groundwater.

As approved and supervised by the Planning Board and, its professional staff and expert hydrogeology consultant, LBG conducted a 72-hour pumping test in August 2018. The primary goal of the pumping test was to evaluate potential impacts to water levels in nearby offsite potable supply wells while pumping the new water supply at twice the average water demand of the Specialty Hospital. To achieve this goal, a simultaneous pumping test was conducted on Well 1 and Well 2 between August 20 and August 23, 2018 with pre- and post-water level monitoring of the offsite wells. The two Hudson Ridge Wellness Center wells were pumped concurrently for three days, each at a pumping rate of 9 gpm (gallons per minute), for a combined yield of 18 gpm or 25,920 gpd (gallons per day). The average water demand for the Specialty Hospital is 12,660 gpd (8.8 gpm).

During the pumping test program, water-level measurements were collected from a total of four onsite wells, including two onsite bedrock

monitoring wells and the two wells pumped during the testing program (Well 1 and Well 2) and 16 residential wells. Minimal drawdown (less than 0.50 foot) was documented in the two onsite bedrock monitoring wells. Water-level effects related to the pumping test was observed in two adjacent properties located on Quaker Hill Drive with a drawdown of approximately 18.5 and 24.5 feet. Because both wells had a significant amount of available water above their respective pumps at the end of the test, during a test that was conducted to demonstrate extreme conditions that will not occur during the hospital occupancy (72 hours of continuous pumping at a combined rate of double the average water demand), these wells are not expected to be adversely affected by the use of the Hudson Ridge Wellness Center (HRWC) wells. Additionally, no discernible water-level impacts were measured in any of the other offsite monitoring locations that were attributed to pumping in Well 1 and Well 2. The Town's hydrogeology consultant and professional staff agreed with the testing protocol and findings.

Nonetheless, the Applicant has requested via a letter dated October 03, 2018 to the owners of the properties containing the wells affected by the pump test that they consider participating in a long-term offsite well monitoring program, which would start three to six months before the certificate of occupancy for the Specialty Hospital is issued and continue for up to two years after 75 percent full occupancy occurs. If long-term monitoring were to unexpectedly demonstrate any significant interference on these wells from the Hudson Ridge Wellness Center wells, mitigation options would be explored and implemented.

There will also be a domestic water storage tank to mitigate peak water draw demand, the existence of which was not accounted for in the extreme pumping test.

Additionally, eighty-five percent (85%) or more of the pumped water will be recycled back to the ground due to infiltration from the septic system following treatment, such that there would only be an effective draw of about 1.3 gallons per minute - or approximately 1,900 gallons per day. The contribution to ground water of annual rainfall to the Specialty Hospital site is equivalent to about 21 gallons per minute - much more than the intended draw from the ground. This routine analysis also indicates that HEWC would not affect groundwater supplies. In addition, there will be no irrigation systems installed for the site landscaping. Rather, the landscaping will be hand-watered by a manually carried hose as determined by an inspection of the landscaping. Thus, watering will only be conducted should the landscaping require it based upon the conditions at the time, and only that landscaping requiring watering will be watered, and only then by hand using a hose. This will keep landscaping watering to a minimum. Once established, the species planted will not require heavy usage of water. The existing approximately 15,000 gallon emergency fire water storage tank behind building #3 will continue to be used for emergency fire water storage. The emergency fire water storage tank will be refilled from the existing functional wells, which will be dedicated to supplying the fire storage tank and which may not be used for irrigation or any other purpose. Fire storage tank refill water will not be sourced from the two new wells which are only being used to supply domestic water to the facility.

- (8) Preserving community character is another 2016 Comprehensive Plan challenge on page 88, which the proposed action is addressing. As discussed in the Expanded Environmental Assessment (EEA) dated October 6, 2016, there was similar institutional use of the property from the 20's throughout the 80's, culminating in the issuance of a hospital special permit in 1989 when the neighborhood was fully developed, and the Applicant is using the same buildings that were used for those

institutional purposes. In addition, the existence of a Specialty Hospital on this site in a primarily residential neighborhood is not fundamentally different than any of the other non-residential uses permitted in the neighborhood, such as schools, places of worship with nursery schools, government offices, country clubs and recreation clubs.

- (9) Limiting the impacts associated with development, including increases in airborne pollutants, traffic, and noise levels is an additional 2016 Comprehensive Plan challenge on page 88, which the proposed action is addressing. The existing buildings on the property are proposed to be reused, with no new building construction proposed. No airborne pollutants are anticipated to be generated by the operation of the use, and any temporary construction impacts such as dust from the less than one acre of proposed disturbance will be mitigated by the sediment and erosion control plan. The proposed Specialty Hospital has lower traffic volumes than previous existing and approved uses of the site as well as other uses permitted in the R-80 district with no required access to state roads (such as private schools, places of worship with associated religious school, and a governmental building, per Table III.C-4 (Appendix 5.K) and as updated in Appendix 30 (PowerPoint presentation to the Planning Board on 1/08/2019), the Level of Service will not change, and there will be minimal traffic impact. Facility operations are not noise-intensive. During the day, patients may walk on the property for relaxation when they have any free time between sessions/activities. After dark, patients may be walking from their living space to possibly another building on the property for meetings. For example, there is a meditation meeting noted on the current schedule that begins at 9:00 PM. Lights out is at 10:30 PM. Also, there are limited employee arrivals/departures at the start of the night shift at 10:00 PM, with the use of the two shuttle vans. The nearest residence is approximately 300 feet distant and upgradient from the proposed parking lot of the main hospital building, and buffered by a solid

6-foot high fence on the Specialty Hospital property and by a wooded buffer on the residential property, limiting noise impacts.

(10) The proposed use will offer a number of other benefits to the Cortlandt community:

- Because the proposed Specialty Hospital is to be operated on a for-profit basis, it will not be exempt from local and school property taxes, and thus, unlike some other permitted uses, will remain on the Cortlandt tax rolls.
- The redeveloped property will pay a total of approximately \$561,660 in annual property taxes.
- This is almost a **ten-fold increase** in annual property taxes to be paid to all taxing jurisdictions following the proposed redevelopment, a very significant increase over existing conditions.
- No school children will be generated by this Specialty Hospital. As such, the approximately \$390,314 in school taxes generated will all be to the benefit of the Croton-Harmon School District.
- Because the residents remain on the property and are not permitted to have vehicles, there will be little impact to Town services such as highway and recreation.
- Also, private carters are to be used, so Town taxes will not be used for trash collection.
- No municipal water or sewer service will be utilized.

- The Specialty Hospital preserves all existing open space on two large, contiguous parcels:
- The adjacent 27.8 acre forested parcel to the south in the Town of New Castle containing a small vacant house will remain undeveloped open space;
- Approximately 75% of the 20.83 acre Site will remain undeveloped open space.
- There is no significant change in use or intensity of use because there is no new construction, existing buildings will be used, and the property historically contained hospital and institutional uses for some 60 years.
- The Town's 2004 Open Space Plan includes the property in its current state under Index E-2 as an "Under-Utilized Parcel, Five Acres or More, Particularly Worthy of Preservation". The proposed re-use of the property as a Specialty Hospital, with no new buildings proposed and with minimal land disturbance for some driveway, walkway and parking improvements, maintains this property's open space identity in the substantially same condition as it was in 2004.
- Due to the limited nature of the construction, there is no impact to environmental features such as wetlands, wetland buffers, steep slopes, or trees.
- Much less impact than other uses requiring a variance, such as a private or public school, a place of worship with religious school, or a general office building.

- Little disturbance by construction activity, with under one acre of site disturbance.
- Preferences for admission to the facility will be given to residents of Cortlandt, and scholarships will be awarded each year to two Cortlandt residents.
- A number of beds will be reserved for Cortlandt residents and they will be afforded reduced fees on a sliding scale based on income, augmented by their private insurance.
- The Applicant will actively participate in community outreach with relevant community and school programs, such as DARE, by providing expert speakers and programs, and will work with the Town as requested to combat the problem of substance use disorder.
- As part of its community outreach, the Applicant will designate a neighborhood/community liaison on its staff, who will among other duties, invite neighborhood representatives to open meetings no less than twice a year to keep them apprised of its operations and to address any questions or concerns from the neighbors. That person will also be available to call at any time if there was ever a more immediate matter. The Applicant will also provide appropriate municipal authorities with a staffed 24-hour access line.

(11) The proposed use is not appropriate for the Medical Oriented District discussed in the 2016 Comprehensive Plan. The issue of the inappropriateness of the Specialty Hospital in the MOD is discussed in great length in Appendix I.R and Appendix I.S. For example, the 2016 “Envision Cortlandt”, does not propose to require or envision that the proposed use components of the MOD or all medical uses in general be

limited to just the MOD. Indeed, existing residential-oriented medical uses such as nursing homes, assisted living facilities, and group homes for disabled adults are dispersed throughout the Town, many in residential zoning districts such as the proposed Specialty Hospital. Other non-residential medical uses such as doctors' offices are also dispersed throughout the Town, with some doctors maintaining home offices in residential zones. Page 107 of the 2016 Comprehensive Plan, for example, acknowledges that care for the elderly residents of the Town is provided by several facilities, including the Bethel Nursing Home in Crugers, the Cortlandt Nursing Home on Oregon Road, the Seabury at Field Home in Cortlandt Manor, the NYS Veterans Home at the VA Campus in Montrose, and the Danish Home in Croton-on-Hudson. If all medical uses were intended by "Envision Cortlandt" to be limited to the MOD, all such existing uses and the properties on which they are located would be rendered non-conforming. Clearly, this is not "Envision Cortlandt's" intent. Further, there would be no basis to so distinguish a medical use from other non-residential uses in residential zones, such as educational and religious uses. The proposed Specialty Hospital has a temporary "residential" component but is not a long-term residential medical use because clients only stay for a limited period of time.

- (12) To-date, the MOD zoning district has not been enacted by the Town. The Town is currently drafting the DEIS for the legislation as well as for the site plans for two developers who have projects related to the MOD district. In any case, the proposed legislation makes the MOD an "optional" overlay district designation, for which those property owners wishing to be included must apply to the Town Board for inclusion in the district in the Board's discretion.
- (13) The envisioned MOD district in the 2016 Comprehensive Plan is depicted as a dense concentration of uses. This is contrary to the generally

accepted industry standards for such high-ended “luxury” Specialty Hospital facilities, which depend on location, privacy, tranquility, and security to provide a recovery buffer from the hustle and bustle of fast-paced, stressful everyday life. This buffer contributes to their success in working with individuals towards recovery and sobriety, and re-entry into normal everyday life. The MOD district, in contrast, does not provide such a location by its very nature of consolidating various medical uses into one location which is expressly envisioned to become a vital economic center of the Town.

(14) The proposed MOD differs in other ways from the needs of the proposed Specialty Hospital:

- The Specialty Hospital only permits limited visitation. Families will be scheduled for one weekend day every month for family member visitation, family education and group counseling. These family weekend days will be staggered, so as the facility approaches and reaches full capacity, visitation will be limited so that patients may have visitors only one day per month, which will take place on a weekend, and only up to 25% of the patients may have visitation on any one weekend. . Family contact and visits are generally minimized to enable the client to transition from their previous typical routines as well as to separate and distance themselves from those contacts while in the facility for an effective and long lasting treatment. Thus, unlike the goal of the MOD to provide for "boutique hotels, inns and bed & breakfasts", the Specialty Hospital has no such need and does not share this goal.
- Likewise, the Specialty Hospital's clients reside elsewhere and have no need for any housing component of the MOD. Further, their

demographic will be such that they have no need for any transportation component of the MOD.

- The Specialty Hospital is not an ambulatory or outpatient use, and so does not require a number of the ancillary/ambulatory/walk-in/urgent care/medical office/social services uses proposed for the MOD.
- The clients of the Specialty Hospital are not permitted to leave the grounds of the facility, and thus have no need for the MOD's "complimentary and accessory commercial uses". All of the Specialty Hospital's clients' needs will be provided for on-site.
- In addition, one of the "driving forces" of the MOD according to "Envision Cortlandt" is to offer "a continuum of care (aging in place)", and, "An aging demographic in the region is the driving force behind this growth strategy of moving towards larger and centralized medical facilities that provide a range of services." The proposed Specialty Hospital has no relationship to an "aging demographic", because it is to serve adults of all ages with a condition that is not age-related. Therefore, there is no need for the types of services that the elderly might require, which is a key rationale by the Town for the establishment of the MOD district. This is another reason why the proposed use is not appropriate for the MOD district.

(15) The 2016 Comprehensive Plan states that Quaker Bridge and Quaker Ridge Road are listed under priority capital improvements for 2015-2019, for resurfacing and rebuilding, which will support the proposed use. As documented in the EEA, the Level of Service will not change with the proposed Specialty Hospital, and there will be minimal traffic impact.

b. The Proposed Action Will Not Have Any Significant Adverse Impacts On Land

(16) No disturbance is proposed to Town-regulated steep slopes, wetlands, and wetland buffers.

(17) The proposed disturbance is less than one acre and is to occur on the developed portion of the property, and no trees are proposed to be removed. The forested portions of the site are to remain undisturbed. A mixture of shrubs and trees exists along the site's frontage with Quaker Ridge Road and has been supplemented with additional evergreen screening. A total of 80 new trees are depicted on the plan, including spruce, holly, fir and other species, some of which have already been planted.

(18) The approximately 27.8 acre property immediately adjacent to the south that is owned by the Applicant's affiliate contains a small, vacant house but is otherwise undeveloped, and will remain as a wooded buffer while the hospital use is in effect.

(19) The existing building coverage on the site is only 2%, and is proposed to remain with no construction of new buildings, with less than one acre of site disturbance proposed. The vast majority of the site, some approximately 75%, will remain undeveloped as open space, preserving the character of the neighborhood.

c. The Proposed Action Will Not Have Any Significant Adverse Impacts on Historical, Archeological or Geological Resources

(20) The existing buildings on the property are to remain, and no new buildings are proposed to be constructed.

(21) Grading and land disturbance will be limited to some driveway, walkway and parking improvements.

(22) No disturbance is proposed to Town-regulated steep slopes.

d. The Proposed Action Will Not Have Any Significant Adverse Impacts on Wetlands

(23) No disturbance to wetlands or wetland buffers is proposed.

e. The Proposed Action Will Not Have Any Significant Adverse Impacts on Trees

(24) The site vegetation is comprised primarily of mature hardwood trees on the eastern and south-central portion of the site, which will remain undisturbed.

(25) A mixture of shrubs and trees exists along the site's frontage with Quaker Ridge Road and has been supplemented with additional evergreen screening. A total of 80 new trees are depicted on the plan, including spruce, holly, fir and other species, some of which have already been planted.

(26) Because of the small extent of proposed disturbance (for some driveway, walkway and parking improvements), the limited extent of additional impervious surface, and with only 3 trees currently proposed to be removed to accommodate the new septic field, no significant impact to trees is anticipated.

f. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Surface Water or Stormwater**

(27) The Proposed Action is within the Croton River Basin watershed, which drains to the Hudson River, and a portion of the property is within the Indian Brook Reservoir watershed (Appendix 5.C). Thus, the Proposed Action is not within a New York City watershed, and hence is not regulated by the NYCDEP.

(28) The proposed disturbance to the site is under one acre. Erosion and sediment control measures will be designed and implemented in accordance with Section 262-10 of Chapter 262 "Stormwater Management and Erosion and Sediment Control" of the Town of Cortlandt Code, which specifies utilizing the most current version of the Westchester County Soil and Water Conservation District's Best Management Practices Manual for Erosion and Sediment Control and the New York State Guidelines for Urban Erosion and Sediment Control, as amended.

g. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Groundwater**

(29) The two new wells are both at least 200 feet from any potential source of pollution, and are situated within the property by more than 200 feet, in accordance with Health Department requirements.

(30) The closest of the two nearest wells on adjoining properties is approximately 300 feet distant and 70 feet lower in elevation. This separation is satisfactory to the Health Department, who has approved the site's wells as a source for the proposed Specialty Hospital, with neighboring wells very unlikely to be affected in any way.

(31) The Specialty Hospital will use less water than allotted to the property by its hydrology since the daily rainfall recharge to the groundwater is 21 gallons per minute based on the size of the Specialty Hospital property, while the projected use of groundwater is only approximately 9 gallons per minute (gpm). In addition, the well will not run continuously, but will cycle on and off throughout the day, with less use at night. Further, on an annual basis, approximately 85 percent of water used indoors is returned, or recharged, to the groundwater system by the septic system through treatment and percolation from the leach field. As a result, the total consumptive use, or water lost from the groundwater system, would be approximately 15 percent of the average water demand, or approximately 1,900 gallons per day (gpd), with a projected use therefore of only approximately 1.3 gallons per minute, which is only about 6% of the daily rainfall recharge.

(32) As discussed in the LBG Hydrogeologic Assessment in Appendix 5.H, the HEWC wells were tested simultaneously after they were drilled, each at a constant rate of 9 gpm (totaling 18 gpm which is twice the average water demand of the Specialty Hospital of 9 gpm, so each well can independently meet the water demand for the Specialty Hospital), for 72 hours. The test results demonstrated stabilized yield and drawdown in both wells within 48 hours from the start of the test. The wells also reported very good recovery (the water levels in Well 1 and Well 2 recovered 100 percent approximately 1.5 hours and 2.5 hours following the test shut down, respectively). The 72 hour testing of both wells demonstrate that they can independently meet the Specialty Hospital water demand. In addition, the data indicate that groundwater withdrawals up to twice the average water demand of the Specialty Hospital will not result in storage depletion of the groundwater. This indicates that the hospital's use would have no effect on adjoining water supplies, as further discussed in point

#7 based on an additional pump test which included offsite well monitoring.

- (33) As also discussed in the LBG Hydrogeologic Assessment in Appendix 5.H, the combined 48.6 total acreage of the Specialty Hospital site and the adjoining property to the south owned by an affiliate company might, based on zoning requirements, be developed with a minimum of 20 and a maximum of 24 single-family homes. The consumptive water demand (after 85% return through the septic systems) would range from 1,650 gpd to 1,980 gpd. This range in consumptive water demand is similar to the projected consumptive water demand (1,900 gpd) of the proposed Specialty Hospital.
- (34) There will be no irrigation systems installed for the site landscaping. Rather, the landscaping will be hand-watered by a manually carried hose as determined by an inspection of the landscaping. Thus, watering will only be conducted should the landscaping require it based upon the conditions at the time, and only that landscaping requiring watering will be watered, and only then by hand using a hose. This will keep landscaping watering to a minimum. Once established, the species planted will not require heavy usage of water. An existing approximately 15,000 gallon emergency fire water storage tank behind building #3 will continue to be used for emergency fire water storage. The emergency fire water storage tank will be refilled from the two functional existing wells, and refill water will not be sourced from the two new wells which will only be used to supply domestic water to the facility.
- (35) As noted in the letter contained in Appendix I.P, the Specialty Hospital site is not located over an aquifer, nor is it within an Aquifer Protection District.

h. The Proposed Action Will Not Have Any Significant Adverse Impacts on Noise, Odor or Air Quality

(36) Supplemental landscape buffers and fencing have been installed on the property to buffer the adjoining neighbors from any noise, glare, visual impacts or other potential adverse impacts, which are expected to be largely irrelevant to the proposed re-use of the property. Approximately 75% of the site will remain undeveloped open space.

(37) Because no new buildings are proposed to be constructed, with minimal site disturbance proposed, dust from construction activities is anticipated to be minimal, and will be mitigated with sediment and erosion control measures.

(38) No long-term impacts to air quality are anticipated.

(39) Facility operations are not noise-intensive. During the day, patients may walk on the property for relaxation when they have any free time between sessions/activities. After dark, patients may be walking from their living space to possibly another building on the property for meetings. For example, there is a meditation meeting noted on the current schedule that begins at 9:00 PM. Lights out is at 10:30 PM. Also, there are limited employee arrivals/departures at the night shift change at 10:00 PM with the use of the two shuttle vans. The nearest residence is approximately 300 feet distant and upgradient from the proposed parking lot of the main hospital building, and buffered by a solid 6-foot high fence on the Specialty Hospital property and by a wooded buffer on the residential property.

(40) No odors are anticipated from the proposed Specialty Hospital.

i. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Plants or Animals**

(41) Because of the small extent of proposed disturbance of less than one acre (for some driveway, walkway and parking improvements in already disturbed areas), the limited extent of additional impervious surface, no disturbance to wetlands or wetland buffers, and the adjoining 27.8 acre undeveloped property to the south owned by the Applicant's affiliate which contains a small, vacant house but is otherwise undeveloped and will remain so, no significant impacts are anticipated to the property's habitats and biodiversity.

j. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Agricultural Resources**

(42) There are no agricultural resources in the vicinity of the Property. Any agricultural use of the property ceased in 1920 when Dr. Lamb constructed a substance use disorder treatment hospital on the site.

k. **The Proposed Action Will Not Have Any Significant Adverse Impacts On Aesthetic Resources, Open Space or Recreation Areas**

(43) The properties in the vicinity of the site are primarily residential uses with relatively large parcels. Mature trees exist on most of the neighboring properties along with a variety of other vegetation. However, there are non-residential and institutional uses in the vicinity as well. At least one of the nearby properties, directly across the street, has horse stables and corrals along its Quaker Ridge Road frontage. It is known as Rolling Stone Farm LLC with an address of 99 Quaker Bridge Road. The Danish Home is in the vicinity, and the GE Learning Center is situated at I Shady Lane Farm Road. Lakewood House, near the Danish Home and at 2125 Quaker Ridge Road, is a commercially used estate property that is

advertised and rented for gatherings such as weddings, family reunions, etc. Regarding the Danish Home, the property will contain a wireless cell tower because a special permit was approved by the Zoning Board of Appeals on February 15, 2017. Approximately 0.3 miles to the northeast of the Danish Home along Quaker Ridge Road are high tension overhead utility wires within an approximately 350-foot-wide easement, where trees and larger vegetation have been cleared. The Proposed Action is therefore not out of character with the neighborhood.

(44) The existing building coverage on the site is only 2%, and is proposed to remain with no construction of new buildings, with proposed site disturbance of less than one acre. Approximately 75% of the site will remain undeveloped open space and remain unchanged from existing conditions, preserving the character of the neighborhood. The existing buildings have been upgraded and repaired, and the property is no longer vacant which led to vandalism and destruction of property, which was a nuisance to the neighborhood.

(45) The buildings and use have been screened by substantial additional landscaping and the fencing recently installed on the property, and the adjoining 27.8 acre forested property to the south, owned by a related entity, that contains a small, vacant house but is otherwise undeveloped will remain in this condition to provide a substantial additional buffer while the hospital use is in effect. A mixture of shrubs and trees exists along the site's frontage with Quaker Ridge Road and has been supplemented with additional evergreen screening. A total of 80 new trees are proposed, including spruce, holly, fir and other species, some of which have already been planted.

(46) The Town's 2004 Open Space Plan includes the property in its current state under Index E-2 as an "Under-Utilized Parcel, Five Acres or More,

Particularly Worthy of Preservation". The proposed re-use of the property as a Specialty Hospital, with no new buildings proposed and with minimal land disturbance for some additional parking, upgrading of utilities and new septic fields, maintains this property's open space identity in the substantially same condition as it was in 2004, and thereby conforms to the Town's Open Space Plan.

(47) There will be no impact on Town recreation resources because the Specialty Hospital patients will remain on-site, and there will be no new residents of the Town who would use the Town's recreation resources.

(48) Site lighting, where required, will be shielded to prevent lighting impact beyond the property. Lights off is at 10:30 PM for lighting within the patient rooms.

I. The Proposed Action Will Not Have Any Significant Adverse Impacts on Critical Environmental Areas

(49) The western, developed portion of the property is not within the Indian Brook Reservoir Critical Environmental Area ("CEA") (Appendix 5.C), or any other CEA, nor is any portion of the property within the New York City watershed, nor over an aquifer protection zone.

(50) The eastern, undeveloped portion of the property, which will remain undeveloped, is within the periphery of the Indian Brook Reservoir CEA (Appendix 5.C). The western portion of the site is within the Croton River watershed, which drains to the Hudson River. The incorporation into the Proposed Action of stormwater best management practices on the existing developed, western portion of the property, which is not in said CEA, in compliance with current law and regulation should prevent any potential adverse impact to the CEA and the Hudson River.

(51) There are currently several working septic systems on the HEWC site, and these have been in existence since the 1920's. The HEWC plans to completely rebuild the septic systems to modern standards, with only the existing septic system serving Building 2 (to have limited use for offices) continuing to do so. A portion of the new septic system will be within the periphery of the Indian Brook Reservoir watershed but not within the CEA, as was also the case for the old septic system (Appendix 5.C). As such, there will be no impact of the septic system to the CEA. The new HEWC septic system is to be monitored as part of the on-going responsibilities of the hospital's facilities manager, unlike residential septic systems. If a repair is needed to the HEWC system, it would be taken out of service completely until repairs are made. This procedure eliminates any risk of adverse impacts, such that there will be no impact to any downstream areas.

m. The Proposed Action Will Not Have Any Significant Adverse Impacts on Transportation and Traffic

(52) The Traffic Studies provided analyzed the neighborhood roadway network, as well as the roadways within the Crotonville area (see Appendix 5 and 5.D).

(53) The Traffic Studies conclude that the proposed use will not generate any significant traffic volumes and will not have any significant adverse impacts on the neighborhood associated with the proposed Specialty Hospital with regard to traffic operations or safety. There will be no changes to the peak hour intersection levels of service at the analyzed intersections in the vicinity of the site and in Crotonville, and the intersections will continue to operate with the same minimal delays, operating at the best possible Level of Service A, during all hours of the day.

(54) The existing roadway widths are sufficient to accommodate the existing and projected vehicles. Accident reports were requested for accidents which occurred along the area roadways during the past three years from the Cortlandt, New Castle, and Ossining Police Departments. No accidents were reported in the vicinity of the site by the Cortlandt and New Castle Police Departments along the approximately 1,200 feet of Quaker Ridge Road from the frontage of the subject property to Glendale Road, approximately 3,500 feet of Quaker Ridge Road north of the site driveway and along approximately 650 feet of Glendale Road from Quaker Bridge Road to Quaker Ridge Road. Tables AR1 thru AR3 in Appendix 5.D depict data from the accident reports provided by the Town of Ossining Police Department. One accident was reported along Quaker Bridge Road between Old Albany Post Road and Glendale Road near Riverview Farm Road, located approximately 0.5 miles from the site, which involved a distracted driver. One accident was reported along Shady Lane Farm Road located more than a mile from the site which was caused by an alcohol impaired driver improperly exiting the Route 9A northbound off-ramp. There were 11 reported accidents along Old Albany Post Road between North Highland Avenue (US Route 9) located approximately 1.5 miles from the site and Quaker Bridge Road, the majority of which were in or south of the Crotonville area, approximately one mile or more from the site. Based on the contributing factors shown on the attached tables, the studied roadways experienced accidents resulting primarily from operator error or distraction. Based on the type and infrequency of accidents reported in the vicinity of the site and the low volume of traffic associated with the proposed use which is disseminated as traffic uses various roads farther from the site, the roadway characteristics combined with the relatively low traffic volumes are not expected to significantly impact access for emergency vehicles.

No accidents have been reported in the vicinity of the site during the past three years involving pedestrians or bicyclists. The area roadways are not heavily utilized by vehicular traffic, bicycles or pedestrians and the minor increases in vehicular volumes will not significantly impact the ability of bicycles and pedestrians to share the roadways. The roadway characteristics of Quaker Ridge Road are similar to Furnace Woods Road, the roadway which provides access to the Yeshiva for which the Town previously approved an area variance while acknowledging in the Yeshiva case, unlike this case, that there was substantial pedestrian use of Furnace Woods Road by the students.

(55) The site generated traffic, which occurs primarily at shift changes, will be minimized with the utilization of two shuttle vans for the employees. The area roadways would operate at level of service A, the best possible level of service, even without the use of the shuttle vans.

(56) The below traffic mitigating measures are part of the application and will be implemented per the Applicant's Transportation Management Plan, and as described in the attached 01/08/2019 PowerPoint presentation to the Planning Board, which is incorporated by reference herein:

- Patients will not be permitted to have vehicles on site or to use vehicles during their stay.
- Employee arrival and departure times will be scheduled outside of existing peak traffic hours on area roads.
- Staffing will consist of four shifts. Two shuttle vans will transport a substantial number of employees from pick-up points outside of the area.

- The estimated supply deliveries to the hospital are 5-6 per week, weekdays only, as well as once a week garbage and laundry service and daily UPS vehicles.
- Delivery vehicles will be directed to arrive via Routes 9 and 9A through Crotonville. Tractor trailer trucks will be prohibited.
- The existing security gate will be relocated and remain open during the day. The existing entranceway will be improved to prevent any queuing on Quaker Ridge Road.
- Visitation for each patient is limited to one weekend day per month, with only 25% of patients having visitation on any weekend.
- Snow removal and grounds maintenance will be handled on site.
- There will be more than adequate parking on site, much of which is already existing:
 - The Specialty Hospital will require much less parking than a general hospital or a nursing home, because it will have far fewer people coming to the site than those uses because:
 - There is no emergency room or outpatient treatment.
 - Visitation is very limited.
 - Many employees will be required as a condition of employment to use the shuttle vans.
 - There will be an on-going parking utilization monitoring program, with required reporting to the Town, with similar reporting on the traffic volumes along Quaker Ridge Road and the site driveway.

- (57) The lack of traffic impacts is true both for a very conservative traffic analysis (where it was assumed for purposes of the traffic study that the two morning shifts [6:00 AM Shift 1 and 9:00 AM Shift 1A] are combined into one shift, where in reality, these shifts are split and the traffic trips will be fewer than analyzed, as well as although Shift 1 and Shift 2 do not correspond to the peak AM and PM highway hours, they were assumed to correspond to the peak AM and PM highway hours), as well as for a traffic analysis where realistic traffic operations were utilized.
- (58) The proposed Specialty Hospital will generate far less traffic than the excess capacity of Quaker Ridge Road can absorb.
- (59) The proposed Specialty Hospital has lower traffic volumes than with prior institutional uses approved for the site by special permit, including IBM, Hudson Institute and the hospital approved in 1989, all of which were permitted up to 225 people on site at one time, as opposed to 129 for the proposed use. 92 of the maximum 129 persons on site at one time are patients, none of whom will have cars, and 37 employees on the maximum shift, many of whom would be shuttled. In addition, other uses permitted in the R-80 district with no requirement of access to state roads (such as private schools, places of worship with associated religious school, and a governmental building), as illustrated on Table III.C-4 (Appendix 5.K) and as updated in Appendix 30 (PowerPoint presentation to the Planning Board on 1/08/2019), would generate more traffic than the proposed use.
- (60) The 2016 Comprehensive Plan states that Quaker Bridge and Quaker Ridge Road are listed under priority capital improvements for 2015-2019, for resurfacing and rebuilding, which would seem to support the proposed use.

n. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Parking**

(61) All parking will be on-site, and there will be no street parking or use of municipal parking facilities. The Town parking requirements for hospitals is one parking space for each patient and one space for each employee on the maximum shift. Based on the Town requirement, a total of 129 spaces are required. However, the actual parking requirements for the proposed Specialty Hospital will be far less than parking associated with a typical general hospital and will be more like a nursing home. There will be no emergency rooms and no daily visitors. The clients will not have their own vehicles on site, and so the proposed use is more like a nursing home, which requires less parking than a hospital use, or even less because visitation to nursing homes is not restricted. For the Specialty Hospital use, visitation is limited so that patients may have visitors only one day per month, which will take place on a weekend, and only up to 25% of the patients may have visitation on any one weekend. Accordingly, far fewer spaces than the required 129 will actually be needed or utilized at the site.

65 parking spaces are proposed which will be provided by a combination of resurfacing the existing parking areas and creating new gravel parking areas as depicted on the drawing "Site Plan/Tree Plan/13% Max. Grade", revision dated November 5, 2018, by Ralph G. Mastromonaco, PE, PC., and included with this submission. An additional 64 spaces could easily be provided to meet the Town requirement should ever it become necessary in the future to do so. Since the 129 spaces will not be required for the specific use, a parking waiver special permit is being requested from the Town. As discussed in point #56, there will be an on-going parking utilization monitoring program, with required reporting to the Town.

o. The Proposed Action Will Not Have Any Significant Adverse Impacts on Energy

(62) The Specialty Hospital will increase current electrical usage at the Property, although electricity was used in the past by the institutional uses that previously occupied the site. The facility will be served by Consolidated Edison, which currently services the area. Existing Con Edison facilities will be utilized, and the buildings' electrical systems upgraded.

(63) Energy efficiency will be emphasized in the restoration and operation of the buildings.

(64) The Proposed Action will not have any significant adverse impacts on energy.

p. The Proposed Action Will Not Have Any Significant Adverse Impacts on Sewer or Human Health

(65) Two new septic systems will be installed to replace the old existing system.

(66) There are currently several working septic systems on the HEWC site and these have been in existence since the 1920's. The HEWC plans to completely rebuild the septic systems to modern standards. The new HEWC septic system is to be monitored as part of the on-going responsibilities of the hospital's facilities manager, unlike residential septic systems. If a repair is needed to the HEWC system, it would be taken out of service completely until repairs are made. This procedure eliminates any risk of adverse impacts, such that there will be no impact to any downstream areas.

- (67) The Westchester County Department of Health (WCDOH) has witnessed and agreed with all the septic soil testing on the site and the results of the testing. A WCDOH permit for the new septic system is pending and is expected shortly.
- (68) The property is not within the New York City watershed. Therefore, no septic system reviews and/or approvals are required from the NYCDEP.
- (69) All medical waste, if any, which will be minimal, will be handled by a private medical waste disposal contractor, and be disposed of in accordance with all pertinent medical waste disposal regulations including a weekly pickup. With this type of level of care, the only medical waste generated by the program will be limited to medical “sharps” including needles for treatment of clients with diabetes and lancets to test client’s blood sugar levels, when needed. Any other type of blood or other type of testing would be conducted off-site by a medical testing laboratory. Generally, treatment programs with the number of beds/clients projected at the Specialty Hospital produce only minimal medical waste in the form of needles and/or lancets. The very small quantity of this type of medical waste that will be generated is such that only a quarterly annual pick-up by the medical waste vendor is anticipated. Thus, due to the limited nature and quantity that will be generated, and use of proper disposal techniques, there should be no significant adverse environmental impact to the character of the neighborhood due to medical waste.
- (70) Projected non-medical waste generation of approximately 4-5 tons per month is not significant, and will be handled by a private waste disposal contractor.

(71) Human health will be improved with the proposed Specialty Hospital because it will provide a private residential treatment program for individuals who are recovering from chemical dependency.

APPENDIX 67

**PROPOSED SPECIALTY HOSPITAL
2016 QUAKER RIDGE ROAD
TOWN OF CORTLANDT
WESTCHESTER COUNTY, NY**

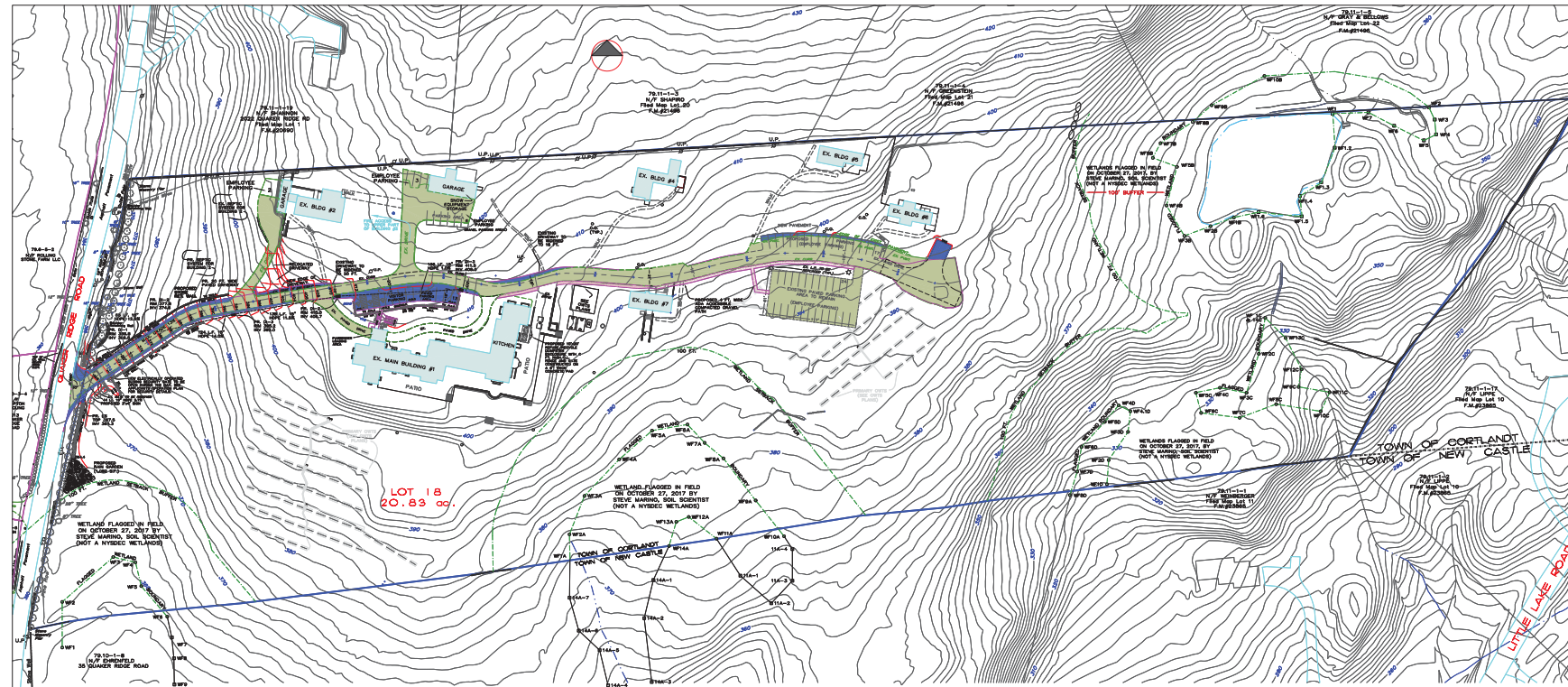
**Site Plan Approval Drawings by Ralph G.
Mastromonaco, P.E., P.C.**

<u>DWG. NO.</u>	<u>TITLE</u>	<u>REV. NO./DATE</u>
0	Title Sheet	Rev. 03/20/2019
1	Site Plan/Grading Plan/Tree Plan /13% Max. Grade	Rev. 11/08/2021
2	Site Plan/Utility Plan	Rev. 02/04/2019
3	Driveway Improvement Plan	Rev. 03/15/2019
4	Site Plan/Lighting Plan	Rev. 11/05/2018
5	Site Plan/Fire Access Plan	Rev. 02/27/2019
6	Site Plan/Proposed Disturbance Plan	Rev. 11/05/2018
7	Site Plan/Erosion Control Plan/Details/Notes	Rev. 03/20/2019
Not Numbered	Additional Parking Plan in Support of the Parking Count Waiver	03/20/2019
	Entrance Driveway Profile Grade Study	02/28/2019

HUDSON RIDGE WELLNESS CENTER

TOWN OF CORTLANDT
WESTCHESTER CO., NY

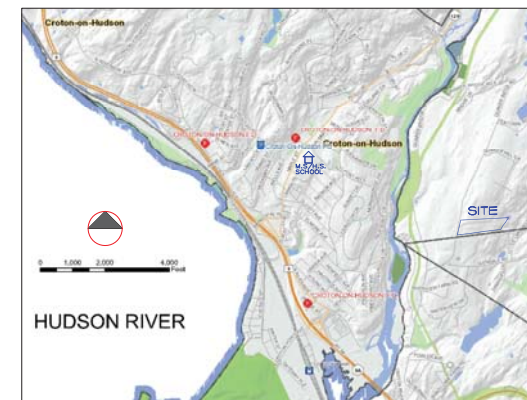
LAST REVISED: MARCH 20, 2019



OVERALL MAP
SCALE: 1"=80'

SECTION 30-68 HOSPITAL OR NURSING HOME		MAIN BUILDING		OFFICE BUILDING		STORAGE BUILDING		GROUP ACTIVITIES		GROUP ACTIVITIES		PROPOSED HOSPITAL OR NURSING HOME	
REQUIRED	EXISTING	EXISTING	EXISTING	EXISTING	EXISTING	EXISTING	EXISTING	EXISTING	EXISTING	EXISTING	EXISTING	EXISTING	EXISTING
AREA	107.517	107.517											
NUMBER OF BUILDINGS	2	2	0	0	0	0	0	0	0	0	0	0	0
AREA PER BUILDING	53.758	53.758	0	0	0	0	0	0	0	0	0	0	0
TOTAL AREA	215.034	215.034	0	0	0	0	0	0	0	0	0	0	0
NUMBER OF BUILDINGS	2	2	0	0	0	0	0	0	0	0	0	0	0
AREA PER BUILDING	107.517	107.517	0	0	0	0	0	0	0	0	0	0	0
TOTAL AREA	215.034	215.034	0	0	0	0	0	0	0	0	0	0	0
NUMBER OF BUILDINGS	2	2	0	0	0	0	0	0	0	0	0	0	0
AREA PER BUILDING	107.517	107.517	0	0	0	0	0	0	0	0	0	0	0
TOTAL AREA	215.034	215.034	0	0	0	0	0	0	0	0	0	0	0
NUMBER OF BUILDINGS	2	2	0	0	0	0	0	0	0	0	0	0	0
AREA PER BUILDING	107.517	107.517	0	0	0	0	0	0	0	0	0	0	0
TOTAL AREA	215.034	215.034	0	0	0	0	0	0	0	0	0	0	0
NUMBER OF BUILDINGS	2	2	0	0	0	0	0	0	0	0	0	0	0
AREA PER BUILDING	107.517	107.517	0	0	0	0	0	0	0	0	0	0	0
TOTAL AREA	215.034	215.034	0	0	0	0	0	0	0	0	0	0	0
NUMBER OF BUILDINGS	2	2	0	0	0	0	0	0	0	0	0	0	0
AREA PER BUILDING	107.517	107.517	0	0	0	0	0	0	0	0	0	0	0
TOTAL AREA	215.034	215.034	0	0	0	0	0	0	0	0	0	0	0
NUMBER OF BUILDINGS	2	2	0	0	0	0	0	0	0	0	0	0	0
AREA PER BUILDING	107.517	107.517	0	0	0	0	0	0	0	0	0	0	0
TOTAL AREA	215.034	215.034	0	0	0	0	0	0	0	0	0	0	0
NUMBER OF BUILDINGS	2	2	0	0	0	0	0	0	0	0	0	0	0
AREA PER BUILDING	107.517	107.517	0	0	0	0	0	0	0	0	0	0	0
TOTAL AREA	215.034	215.034	0	0	0	0	0	0	0	0	0	0	0

ZONING SCHEDULE



LOCATION MAP
APPROX. SCALE: 1"=2000'

DRAWING SCHEDULE

SHEET	TITLE
1	SITE PLAN/GRADING PLAN/TREE PLAN-13% MAX. GRADE
2	SITE PLAN/UTILITY PLAN
3	DRIVEWAY IMPROVEMENT PLAN
4	SITE PLAN/LIGHTING PLAN
5	SITE PLAN/FIRE ACCESS PLAN
6	SITE PLAN/PROPOSED DISTURBANCE PLAN
7	SITE PLAN/EROSION CONTROL PLAN/DETAILS/NOTES

WSP USA Leggette, Brashears & Graham, Inc.
Groundwater Specialists
Sheldon, CT

Singleton, Davis & Singleton
Attorneys
Mount Kisco, NY

Evans Associates
Bio-Diversity Consultant
Bethany, CT

Steve Marino / TM Associates
Wetland Consultant
Cold Spring, NY

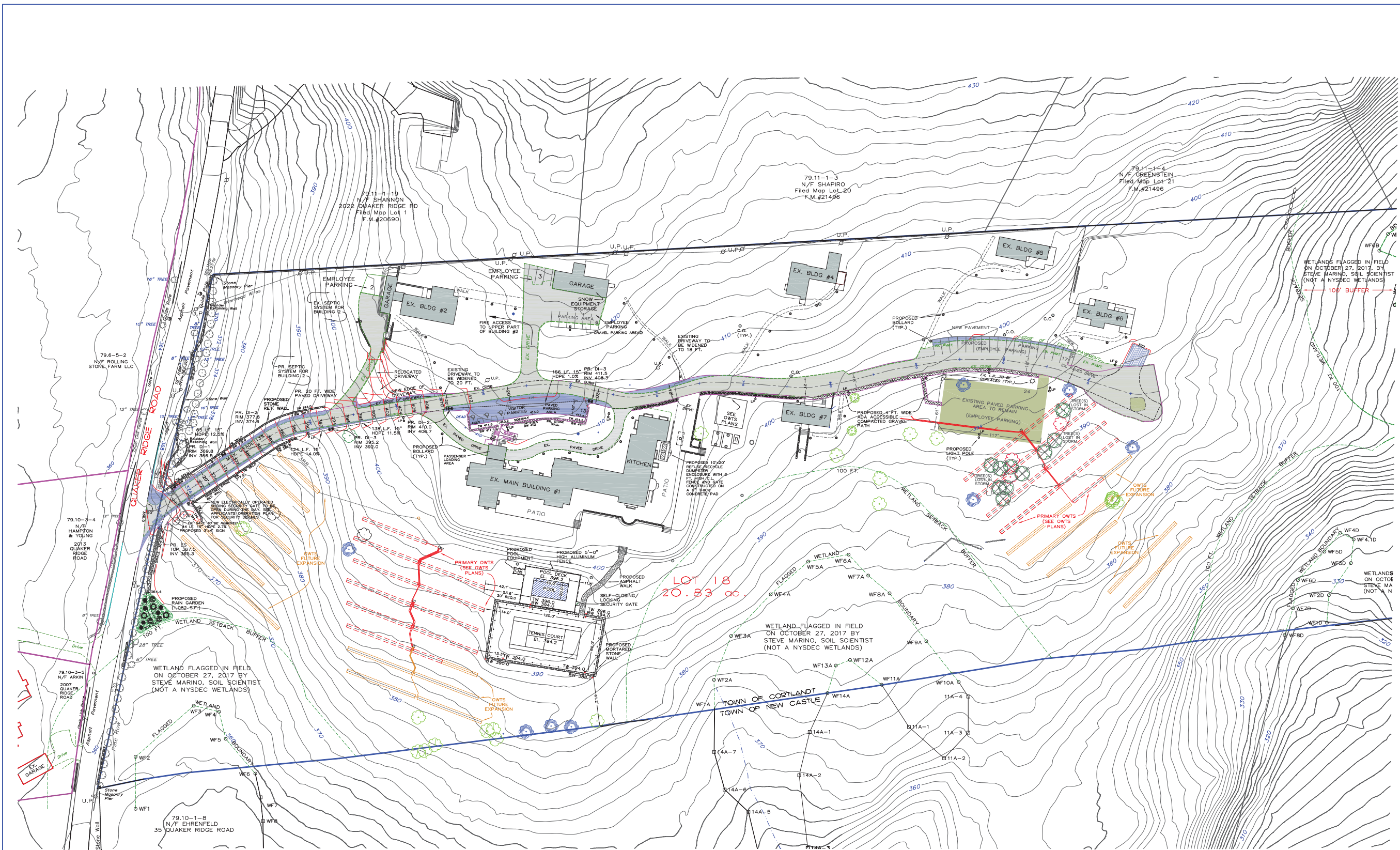
OLA Consulting Engineers
Mechanical and Electrical Engineers
Hawthorne, NY

JMC Site Development Consultants, LLC
Environmental Planner
Armonk, NY

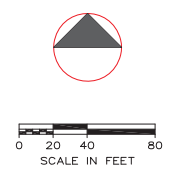
TC Merritts-Land Surveyors
394 Bedford Road
Pleasantville, NY

SITE ENGINEER:

RALPH G. MASTROMONACO, P.E., P.C.
Consulting Engineers
13 Dove Court, Croton-on-Hudson, New York 10520
(914) 271-4762



VICINITY MAP



LEGEND

EXISTING	PROPOSED	DESCRIPTION
[Symbol]	[Symbol]	CATCH BASIN
[Symbol]	[Symbol]	DRAIN MANHOLE
[Symbol]	[Symbol]	DRAIN INLET
[Symbol]	[Symbol]	HEADWALL
[Symbol]	[Symbol]	SEWER MANHOLE
[Symbol]	[Symbol]	MONUMENT
[Symbol]	[Symbol]	O.W.T.A.
[Symbol]	[Symbol]	CONTOUR LINE
[Symbol]	[Symbol]	SPOT ELEVATION
[Symbol]	[Symbol]	DRILLED WELL
[Symbol]	[Symbol]	BOLLARD LIGHT
[Symbol]	[Symbol]	LIGHT POLE

Parking Schedule

EMPLOYEE PARKING	52
VISITOR PARKING	13
TOTAL PARKING	65

TREE LEGEND

[Symbol]	EX. TREE - TO BE REMOVED
[Symbol]	EX. TREE - TO BE SAVED
[Symbol]	EX. TREE - TO BE PROTECTED

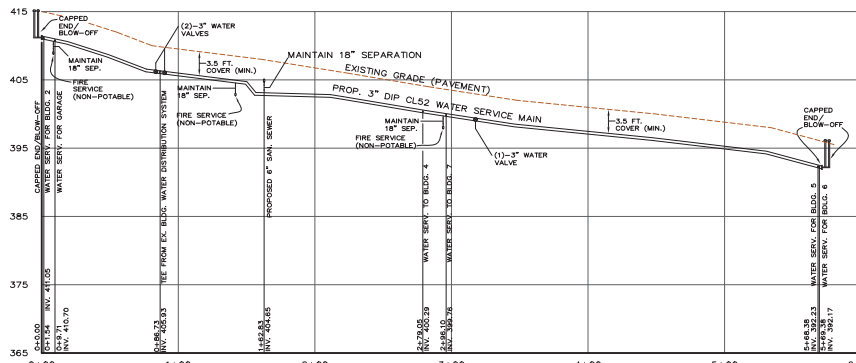
AS SPECIFIED IN CONSULTING ARBORIST'S REPORT DATED APRIL 30, 2018.
 NOTE: ALL OTHER EXISTING TREES NOT INCLUDED IN THE ABOVE CLASSIFICATION SHALL BE LEFT IN THEIR PRESENT STATE.

RALPH G. MASTROMONACO, P.E., P.C.
 Consulting Engineers
 13 Dove Court, Croton-on-Hudson, New York 10520
 (914) 271-4762 (914) 271-2820 Fax

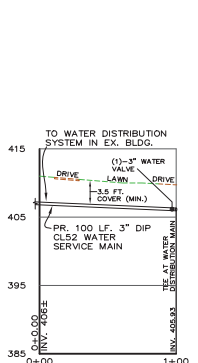
**SITE PLAN/
 GRADING PLAN/TREE PLAN
 1 3/8 MAX. GRADE**
 PREPARED FOR
**HUDSON RIDGE
 WELLNESS CENTER**
 LOCATED AT
**2016 QUAKER RIDGE RD
 TOWN OF CORTLANDT
 WESTCHESTER CO. NY
 JANUARY 8, 2018**
SHEET 1 OF 8 SHEETS

TOPOGRAPHICAL INFORMATION UPDATED BY TC MERRITTS LAND SURVEYORS, OCTOBER 18, 2018.
 Unauthorized alterations or additions to this drawing is a violation of Section 7209 (2) of the New York State Education Law.

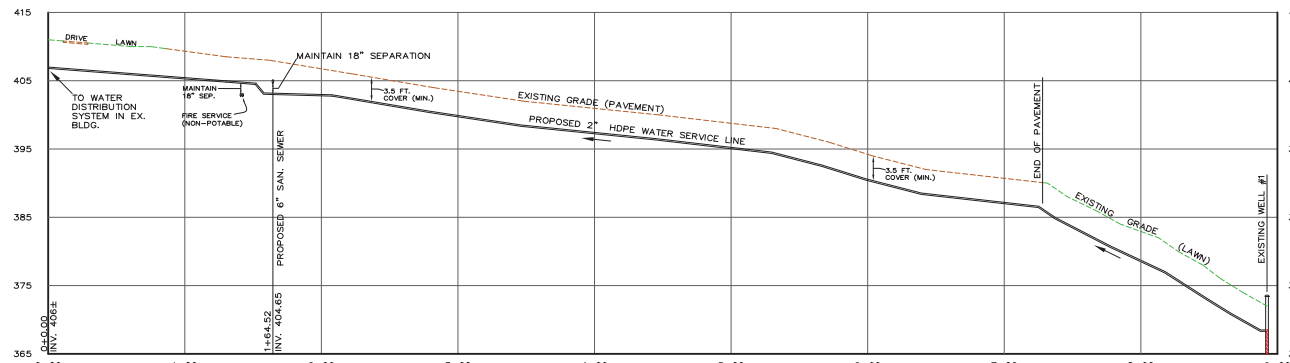
REVISED: NOVEMBER 8, 2021
 REVISED: MARCH 20, 2019
 REVISED: NOVEMBER 5, 2018
 REVISED: AUGUST 8, 2018
 REVISED: JUNE 21, 2018
 REVISED: MAY 16, 2018



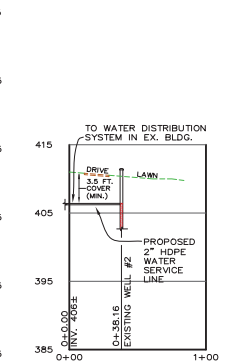
WATERMAIN PROFILE
FROM END TO END IN EX. ROAD
SCALE: HOR. 1" = 50'
VER. 1" = 10'



WATERMAIN PROFILE
EX. BLDG TO WATER SERVICE MAIN
SCALE: HOR. 1" = 50'
VER. 1" = 10'



WELL SERVICE LINE PROFILE
FROM EX. BLDG. TO WELL #1
SCALE: HOR. 1" = 50'
VER. 1" = 10'



WELL SERVICE LINE PROFILE
FROM EX. BLDG. TO WELL #2
SCALE: HOR. 1" = 50'
VER. 1" = 10'

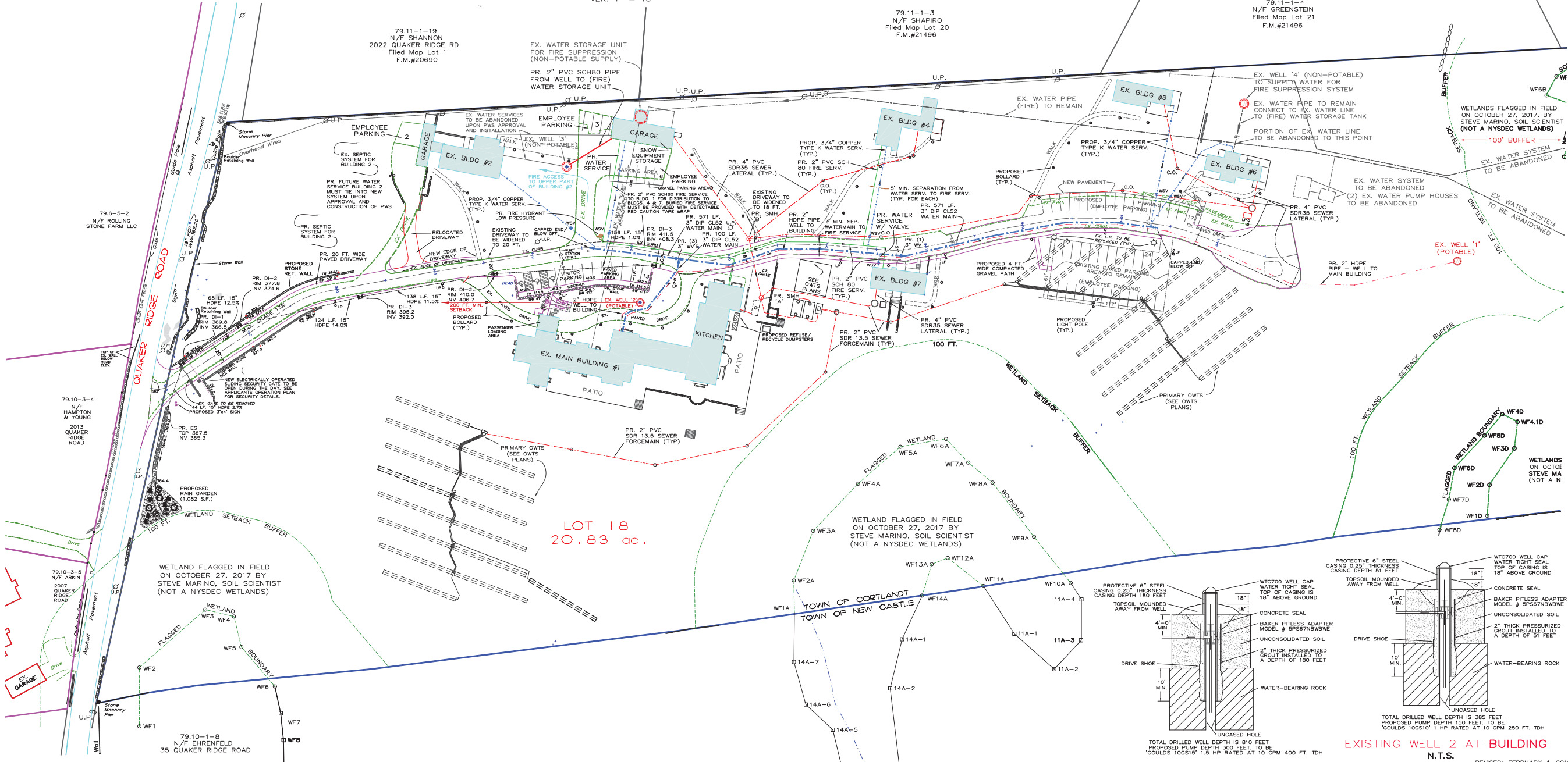


VICINITY MAP

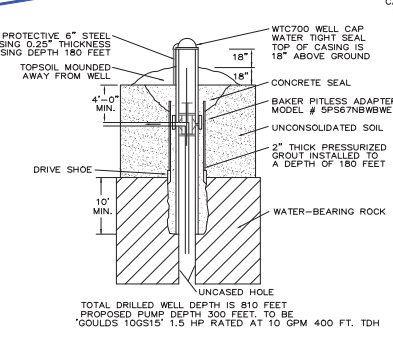


LEGEND

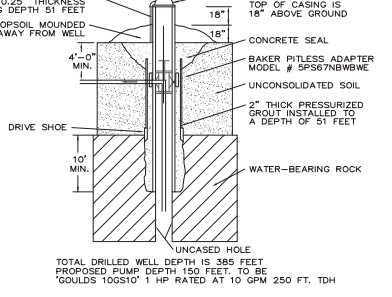
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|----------|----------|----------------|
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| [Symbol] | [Symbol] | DRAIN MANHOLE |
| [Symbol] | [Symbol] | DRAIN INLET |
| [Symbol] | [Symbol] | HEADWALL |
| [Symbol] | [Symbol] | SEWER MANHOLE |
| [Symbol] | [Symbol] | MONUMENT |
| [Symbol] | [Symbol] | O.W.T.A. |
| [Symbol] | [Symbol] | CONTOUR LINE |
| [Symbol] | [Symbol] | SPOT ELEVATION |
| [Symbol] | [Symbol] | DRILLED WELL |
| [Symbol] | [Symbol] | BOLLARD LIGHT |
| [Symbol] | [Symbol] | LIGHT POLE |



LOT 18
20.83 ac.



EXISTING WELL 1 AT POND
N.T.S.



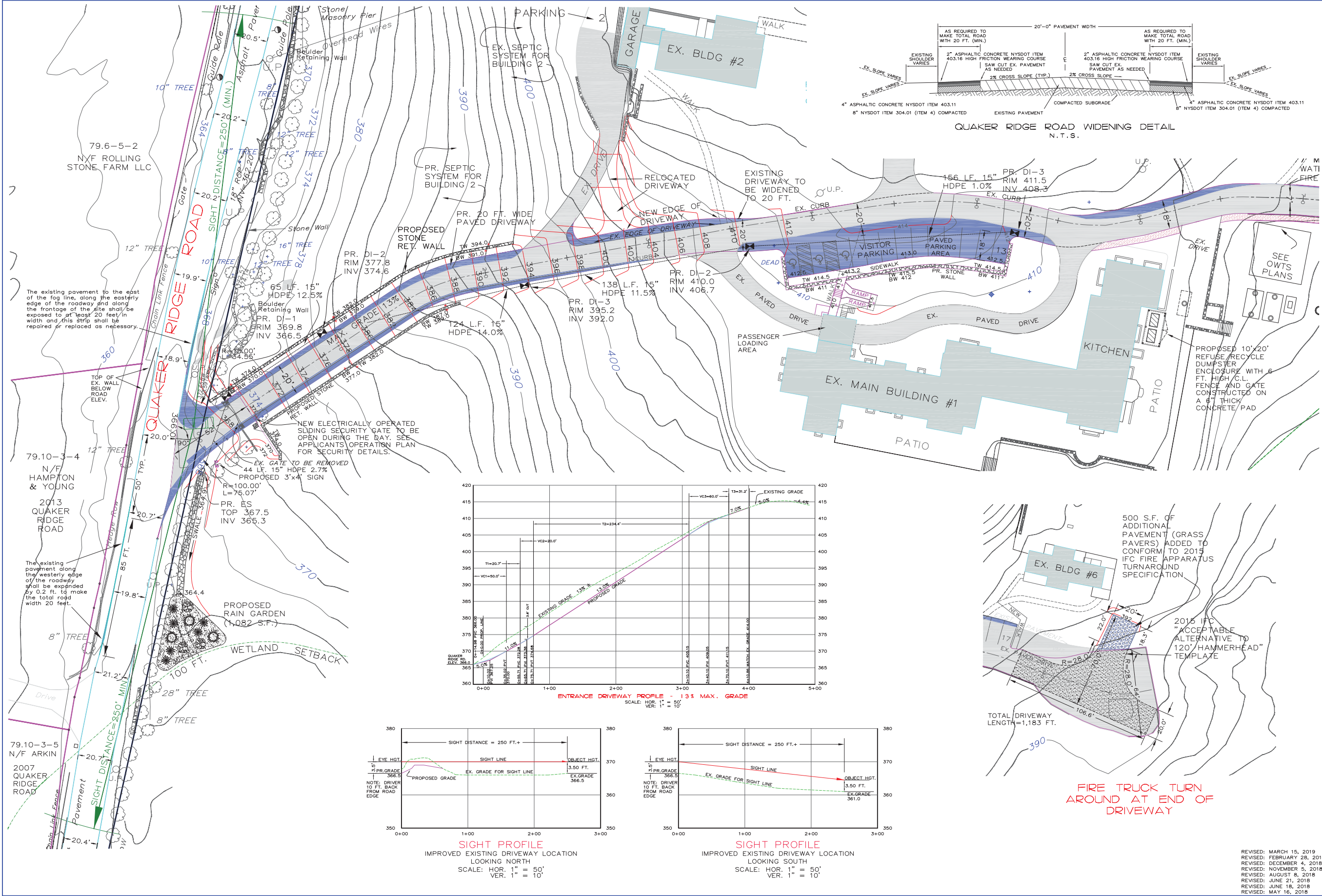
EXISTING WELL 2 AT BUILDING
N.T.S.

RALPH G. MASTROMONACO, P.E., P.C.
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13 Dove Court, Croton-on-Hudson, New York 10520
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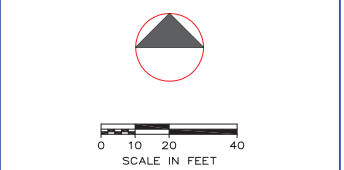
SITE PLAN/ UTILITY PLAN
PREPARED FOR
HUDSON RIDGE WELLNESS CENTER
LOCATED AT
2016 QUAKER RIDGE RD
TOWN OF CORTLANDT
WESTCHESTER CO., NY
JANUARY 8, 2018
SHEET 2 OF 7 SHEETS

Unauthorized alterations or additions to this drawing is a violation of Section 7209 (2) of the New York State Education Law.

REVISED: FEBRUARY 4, 2019
REVISED: JANUARY 10, 2019
REVISED: NOVEMBER 30, 2018
REVISED: NOVEMBER 5, 2018
REVISED: JUNE 8, 2018
REVISED: MAY 16, 2018

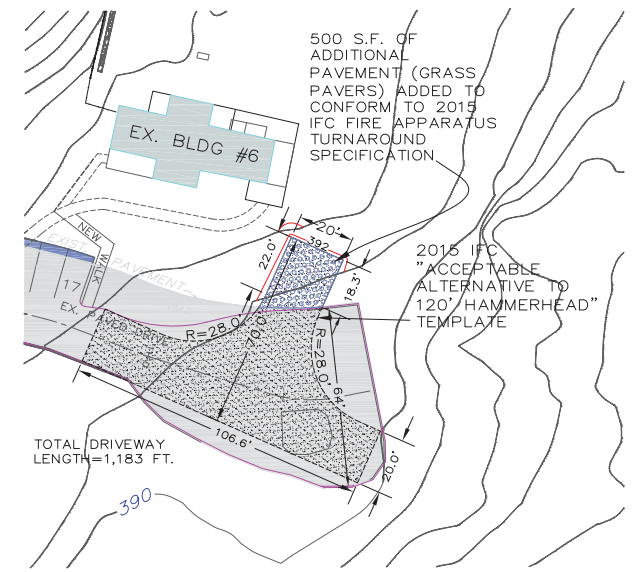
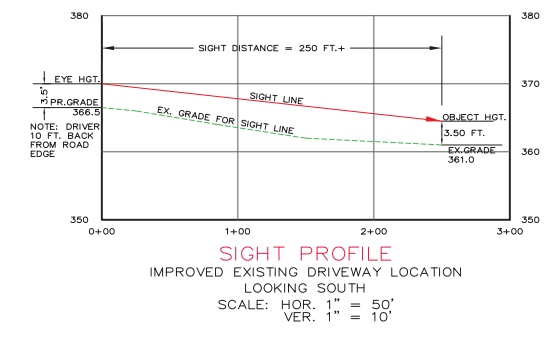
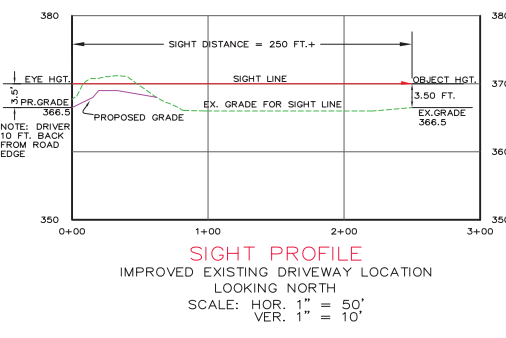
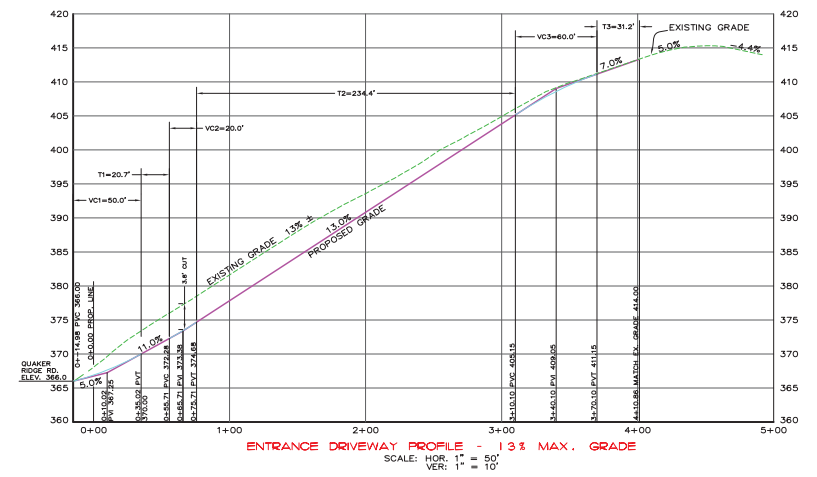


VICINITY MAP



LEGEND

EXISTING	PROPOSED	DESCRIPTION
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[Symbol]	[Symbol]	DRAIN MANHOLE
[Symbol]	[Symbol]	HEADWALL
[Symbol]	[Symbol]	SEWER MANHOLE
[Symbol]	[Symbol]	MONUMENT
[Symbol]	[Symbol]	O.W.T.A.
[Symbol]	[Symbol]	CONTOUR LINE
[Symbol]	[Symbol]	SPOT ELEVATION
[Symbol]	[Symbol]	DRILLED WELL

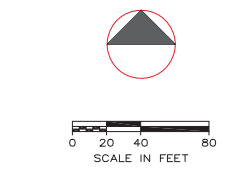
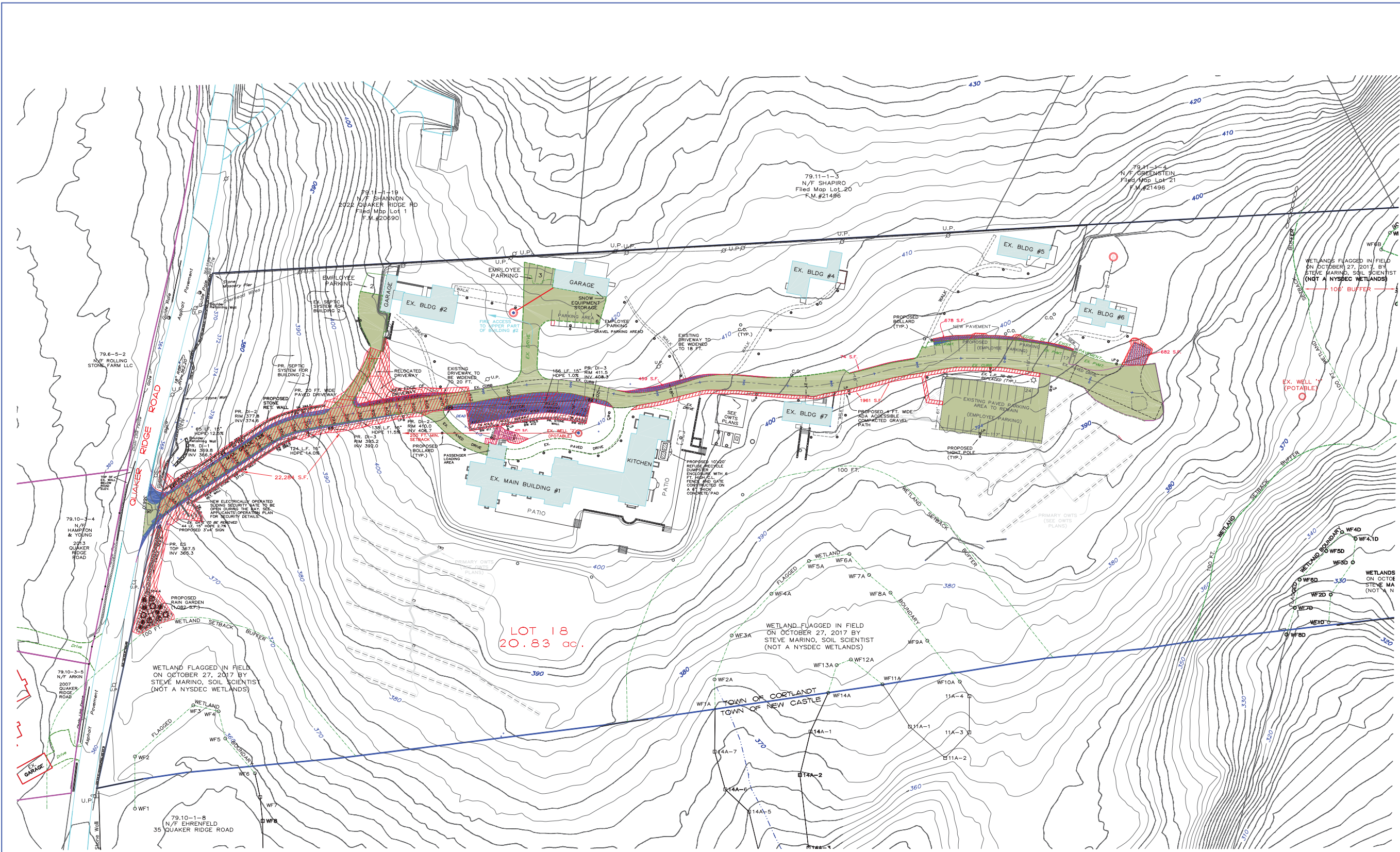


FIRE TRUCK TURN AROUND AT END OF DRIVEWAY

RALPH G. MASTROMONACO, P.E., P.C.
Consulting Engineers
13 Dove Court, Croton-on-Hudson, New York 10520
(914) 271-4762 (914) 271-2820 Fax

DRIVEWAY IMPROVEMENT PLAN
PREPARED FOR
HUDSON RIDGE WELLNESS CENTER
LOCATED AT
2016 QUAKER RIDGE RD
TOWN OF CORTLANDT
WESTCHESTER CO., NY
JANUARY 8, 2018
SHEET 3 OF 7 SHEETS

REVISED: MARCH 15, 2019
REVISED: FEBRUARY 28, 2019
REVISED: DECEMBER 4, 2018
REVISED: NOVEMBER 5, 2018
REVISED: AUGUST 8, 2018
REVISED: JUNE 21, 2018
REVISED: JUNE 18, 2018
REVISED: MAY 16, 2018



LEGEND

EXISTING	PROPOSED	DESCRIPTION
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[Symbol]	[Symbol]	DRAIN MANHOLE
[Symbol]	[Symbol]	DRAIN INLET
[Symbol]	[Symbol]	HEADWALL
[Symbol]	[Symbol]	SEWER MANHOLE
[Symbol]	[Symbol]	MONUMENT
[Symbol]	[Symbol]	O.W.T.A.
[Symbol]	[Symbol]	CONTOUR LINE
[Symbol]	[Symbol]	SPOT ELEVATION
[Symbol]	[Symbol]	DRILLED WELL
[Symbol]	[Symbol]	BOLLARD LIGHT
[Symbol]	[Symbol]	LIGHT POLE
[Symbol]	[Symbol]	DISTURBANCE AREAS

Hudson Institute Disturbance Schedule

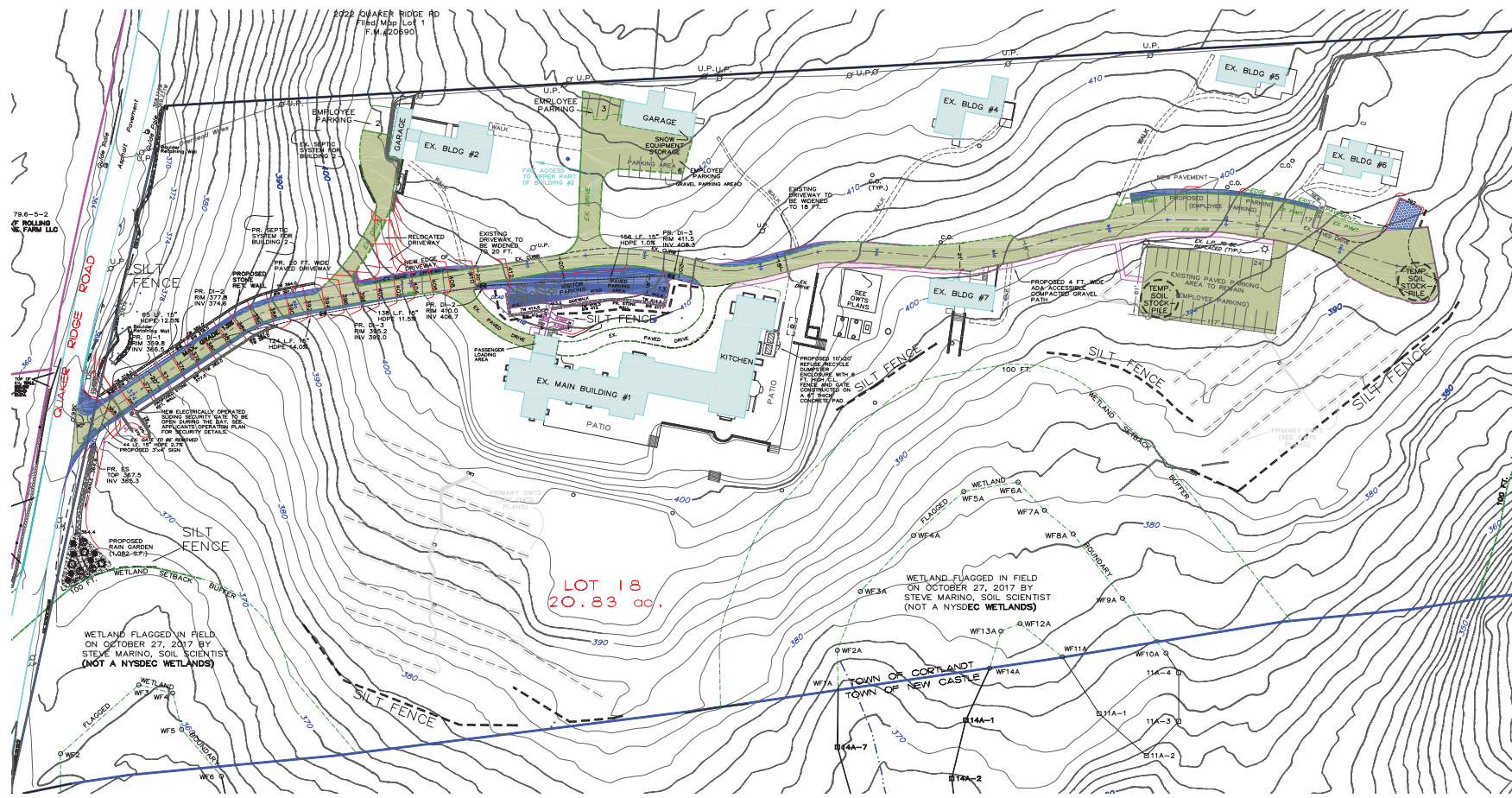
DESCRIPTION	DISTURBANCE S.F.	ACRES
ROADS/PARKING/WALKS/SWALE	26,609	0.610
TOTAL DISTURBANCE	26,609	0.610

RALPH G. MASTROMONACO, P.E., P.C.
 Consulting Engineers
 13 Dove Court, Croton-on-Hudson, New York 10520
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**SITE PLAN/
 PROPOSED
 DISTURBANCE PLAN**
 PREPARED FOR
**HUDSON RIDGE
 WELLNESS CENTER**
 LOCATED AT
**2016 QUAKER RIDGE RD
 TOWN OF CORTLANDT
 WESTCHESTER CO. NY**
JANUARY 8, 2018
 SHEET 6 OF 7 SHEETS

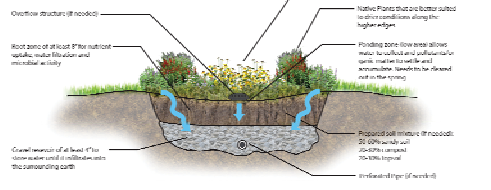
Unauthorized alterations or additions to this drawing is a violation of Section 7209 (2) of the New York State Education Law.

REVISED: NOVEMBER 5, 2018
 REVISED: AUGUST 8, 2018
 REVISED: JUNE 18, 2018
 REVISED: JUNE 8, 2018
 REVISED: MAY 30, 2018
 REVISED: MAY 16, 2018

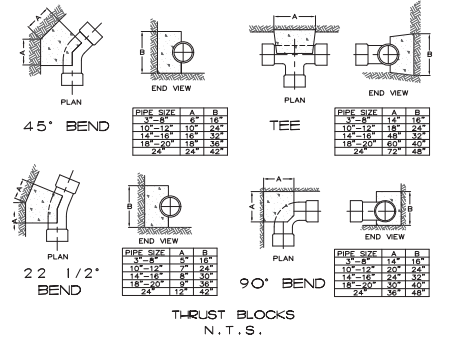


EROSION CONTROL PLAN
SCALE: 1" = 50'

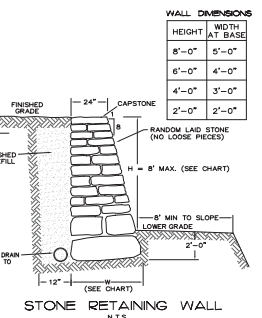
RAIN GARDEN DESIGN:
NEW IMPERVIOUS AREA TO BE CAPTURED: 6,568 S.F.
CAPTURE 1.5" = (0.125") OF RAINFALL
STORAGE VOL. REQUIRED: 821 C.F.
AREA PROVIDED: 1,082 S.F.
AVERAGE DEPTH PROVIDED: 1.0 FT.
VOLUME PROVIDED: 1,082 C.F.



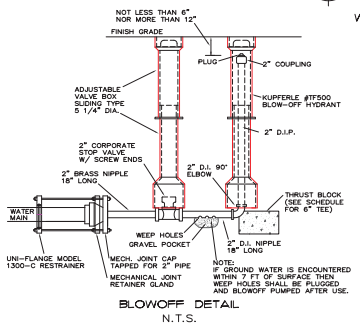
TYPICAL RAIN GARDEN
N.T.S.



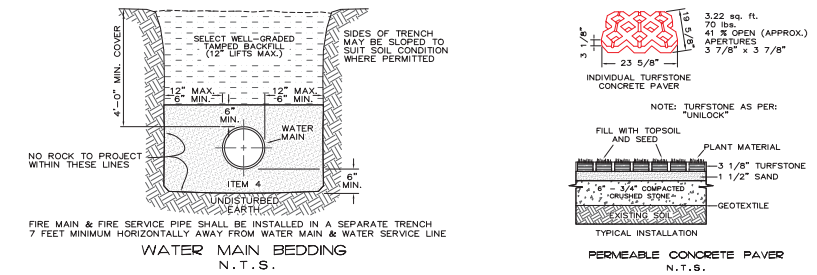
THRUST BLOCKS
N.T.S.



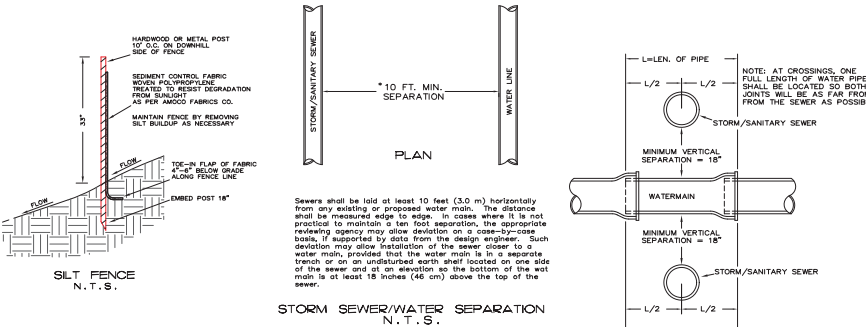
STONE RETAINING WALL
N.T.S.



BLOWOFF DETAIL
N.T.S.

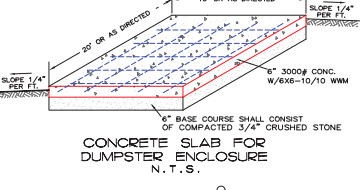


WATER MAIN BEDDING
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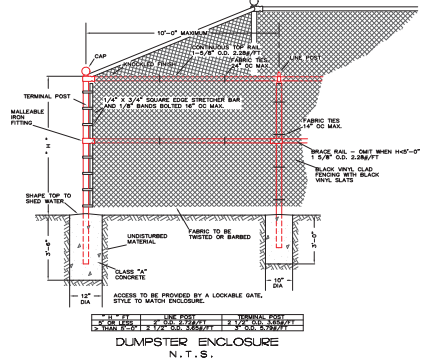


STORM SEWER/WATER SEPARATION
N.T.S.

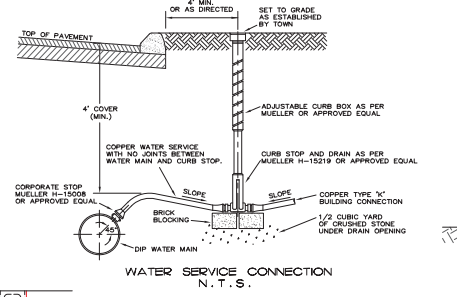
STORM DRAIN WATER MAIN CROSSING
N.T.S.



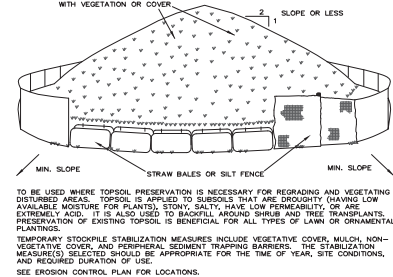
CONCRETE SLAB FOR DUMPSTER ENCLOSURE
N.T.S.



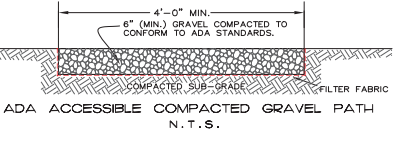
DUMPSTER ENCLOSURE
N.T.S.



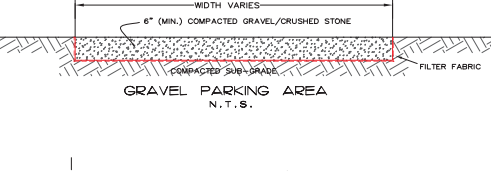
WATER SERVICE CONNECTION
N.T.S.



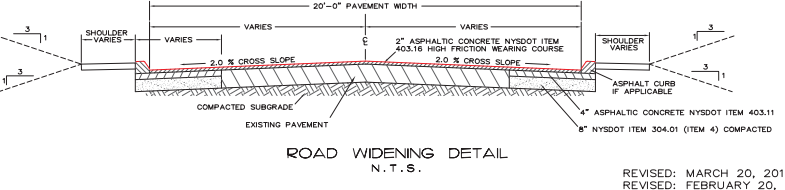
TEMPORARY SOIL STOCKPILING
N.T.S.



ADA ACCESSIBLE COMPACTED GRAVEL PATH
N.T.S.



GRAVEL PARKING AREA
N.T.S.



ROAD WIDENING DETAIL
N.T.S.

GENERAL NOTES:

1. THE CONTRACTOR SHALL LOCATE AND VERIFY IN THE FIELD ALL UTILITIES. GROUND WATER ELECTRICITY SHALL BE SHOWN ON THE START OF CONSTRUCTION. CONTRACTOR SHALL CALL CODE 753 (FORMERLY CODE 53).
2. THE INSTALLATION OF WATER AND SEWER SHALL BE UNDER THE DIRECTION OF A N.Y. STATE LICENSED PROFESSIONAL ENGINEER.
3. AS BUILT PLANS SHALL BE REQUIRED AND CERTIFIED BY A N.Y. STATE LICENSED PROFESSIONAL ENGINEER OR SURVEYOR.
4. ALL PROPERTY DISTURBED IN THE R.O.W. OR ON PRIVATE LANDS, SHALL BE RESTORED TO NEW CONDITIONS.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL APPLICATIONS AND PERMITS REQUIRED FOR CONSTRUCTION.
6. THE ROAD AND UTILITIES SHALL BE STAKED IN THE FIELD BY A N.Y. STATE LICENSED SURVEYOR OR ENGINEER.
7. UNDERGROUND GAS AND ELECTRIC SHALL BE AS REQUIRED BY THE TOWN AND COB EDISON.
8. TELEPHONE AND CABLE LINES TO BE UNDERGROUND.
9. ALL DRAINAGE PIPE TO BE HDPE UNLESS OTHERWISE NOTED.
10. ALL GRADED SLOPES SHALL NOT EXCEED 1 VERTICAL ON 2 HORIZONTAL UNLESS OTHERWISE APPROVED BY THE TOWN ENGINEER.
11. ALL STRUCTURES TO BE PLACED IN PAVED AREAS SHALL BE DESIGNED FOR H-20 LOADING.

EROSION AND SEDIMENT CONTROL NOTES

1. EROSION CONTROL MEASURES SHALL BE INSTALLED PRIOR TO THE START OF CONSTRUCTION AND MAINTAINED IN EFFECTIVE CONDITION THROUGHOUT THE CONSTRUCTION PERIOD.
2. ALL EROSION AND SEDIMENTATION CONTROL MEASURES AND PROCEDURES SHALL COMPLY WITH THE STANDARDS AND SPECIFICATIONS OF THE "EROSION AND SEDIMENT CONTROL GUIDELINES FOR NEW DEVELOPMENT".
3. PRIOR TO ANY EXCAVATION, SILT FENCE SHALL BE INSTALLED AT THE APPROXIMATE LOCATION OF THE EXCAVATION. SILT FENCE SHALL BE LOCATED AS DIRECTED BY THE OWNER'S REPRESENTATIVE IN THE FIELD AND INSTALLED AS PER THE MANUFACTURER'S INSTALLATION INSTRUCTIONS. SILT FENCE MAY BE PLACED BY THE OWNER'S REPRESENTATIVE IN THE FIELD. SILT FENCE SHALL BE MAINTAINED IN OPERABLE CONDITION AND SHALL NOT BE REMOVED UNTIL DISTURBED AREAS ARE THOROUGHLY STABILIZED.
4. IMMEDIATELY TOPSOIL & SEED WITH A MIXTURE OF PERENNIAL RYE GRASS, ANNUAL RYE GRASS AND WINTER RYE AND MULCH WITH 6\"/>

PIPE SCHEDULE

DESCRIPTION	PIPE MATERIAL
WELL LINE INTO MAIN BUILDING	2" HDPE
WATER MAIN DISTRIBUTION	3" DIP CL52
FIRE SERVICE DISTRIBUTION	2" PVC SCH80
FIRE WELL SERVICE	2" PVC SCH80
WATER SERVICE	3/4" TYPE K COPPER
SEWER MAIN	6" PVC SDR35
SEWER LATERAL	4" PVC SDR35
SEWER FORCEMAIN	2" PVC SDR 13.5

INSTALLATION NOTES

1. AREA CHOSEN FOR STOCKPILING OPERATIONS SHALL BE DRY AND STABLE.
2. MAXIMUM SLOPE OF STOCKPILE SHALL BE 1:2.
3. UPON COMPLETION OF SOIL STOCKPILING, EACH PILE SHALL BE SURROUNDED WITH EITHER SILT FENCING OR STRAW BALES, THEN STABILIZED WITH VEGETATION MEASURES SHOULD BE APPROPRIATE FOR THE TIME OF YEAR, SITE CONDITIONS, AND REQUIRED DURATION OF USE.

ADA ACCESSIBLE COMPACTED GRAVEL PATH
N.T.S.

GRAVEL PARKING AREA
N.T.S.

ROAD WIDENING DETAIL
N.T.S.

REVISED: MARCH 20, 2019
REVISED: FEBRUARY 20, 2019
REVISED: FEBRUARY 4, 2019
REVISED: NOVEMBER 5, 2018
REVISED: OCTOBER 1, 2018
REVISED: AUGUST 8, 2018
REVISED: MAY 16, 2018

RALPH G. MASTROMONACO, P.E., P.C.
Consulting Engineers
13 Dove Court, Croton-on-Hudson, New York 10520
(914) 271-4762 (914) 271-2820 Fax

SITE PLAN/ EROSION CONTROL PLAN/ DETAILS/NOTES
PREPARED FOR
HUDSON RIDGE WELLNESS CENTER
LOCATED AT
2016 QUAKER RIDGE RD
TOWN OF CORTLANDT WESTCHESTER CO. NY
JANUARY 8, 2018
SHEET 7 OF 7 SHEETS

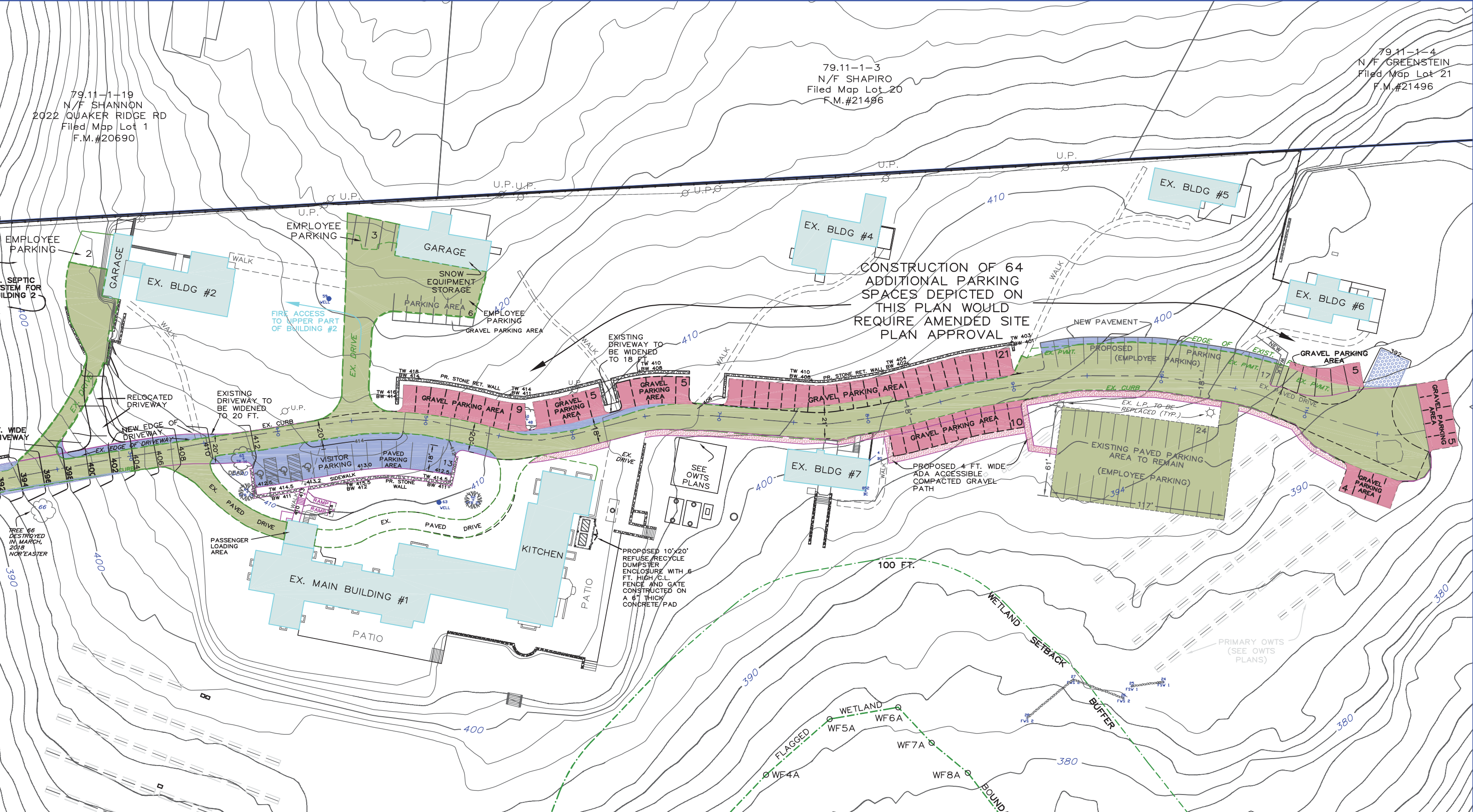
Unauthorized alterations or additions to this drawing is a violation of Section 7209 (2) of the New York State Education Law.

79.11-1-19
N/F SHANNON
2022 QUAKER RIDGE RD
Filed Map Lot 1
F.M.#20690

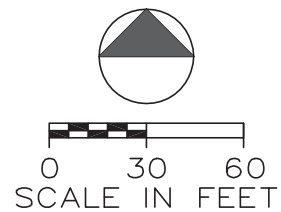
79.11-1-3
N/F SHAPIRO
Filed Map Lot 20
F.M.#21496

79.11-1-4
N/F GREENSTEIN
Filed Map Lot 21
F.M.#21496

CONSTRUCTION OF 64
ADDITIONAL PARKING
SPACES DEPICTED ON
THIS PLAN WOULD
REQUIRE AMENDED SITE
PLAN APPROVAL



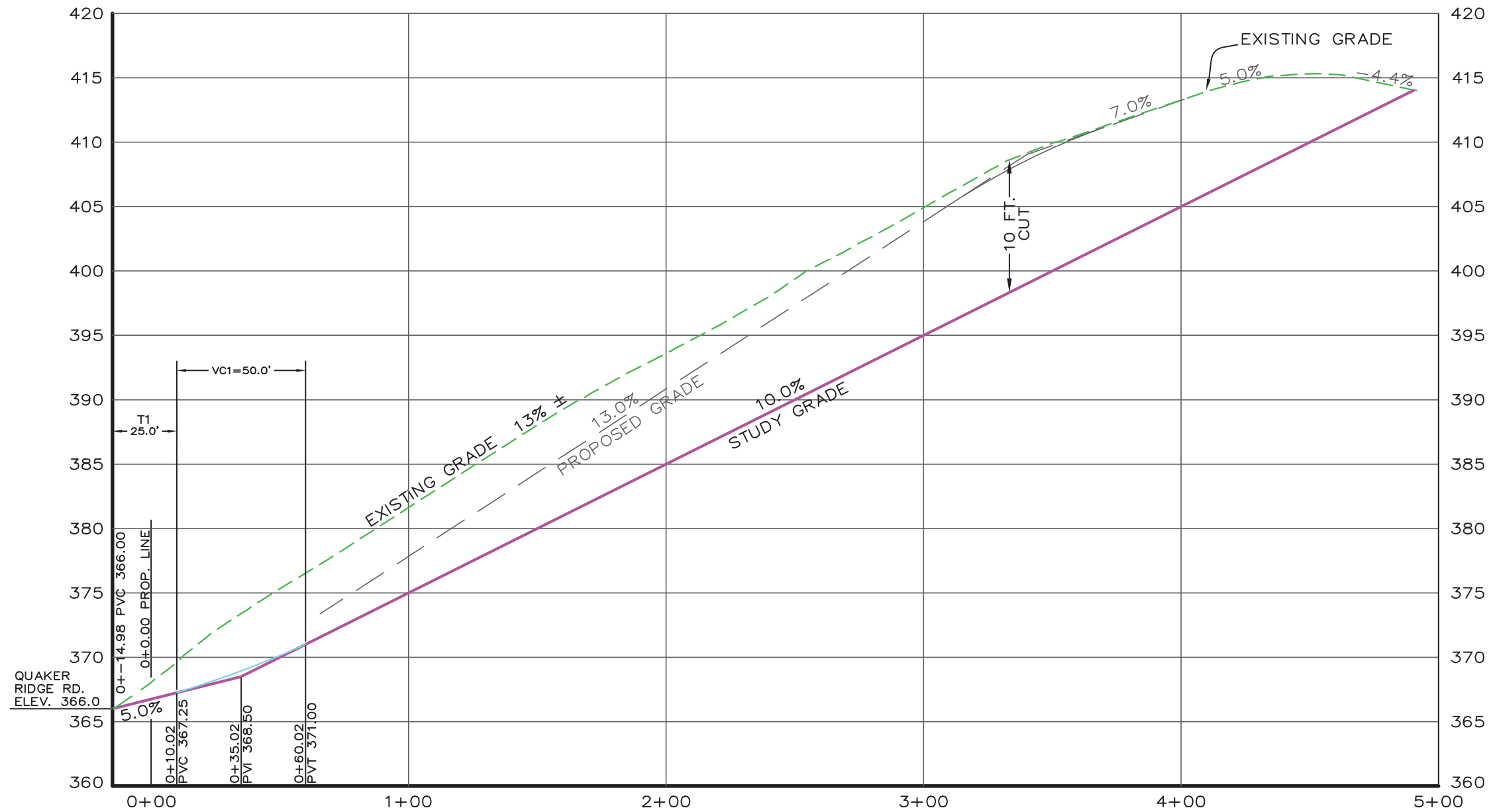
RALPH G. MASTROMONACO, P.E., P.C.
Consulting Engineers
13 Dove Court, Croton-on-Hudson, New York 10520
(914) 271-4762 (914) 271-2820 Fax



Parking Schedule

EMPLOYEE PARKING	52
VISITOR PARKING	13
AVAILABLE PARKING	64
TOTAL PARKING	129

ADDITIONAL PARKING PLAN
IN SUPPORT OF THE
PARKING COUNT WAIVER
HUDSON RIDGE WELLNESS CENTER
2016 QUAKER RIDGE RD
TOWN OF CORTLANDT
WESTCHESTER CO. NY
MARCH 20, 2019



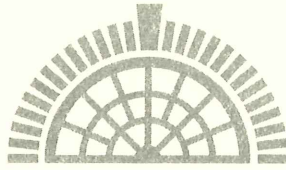
ENTRANCE DRIVEWAY PROFILE - 10% STUDY GRADE

SCALE: HOR. 1" = 50'
VER: 1" = 10'

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13 Dove Court, Croton-on-Hudson, New York 10520
(914) 271-4762 (914) 271-2820 Fax

ENTRANCE DRIVEWAY PROFILE
GRADE STUDY
HUDSON RIDGE WELLNESS CENTER
2016 QUAKER RIDGE RD
TOWN OF CORTLANDT
WESTCHESTER CO. NY
FEBRUARY 28, 2019

APPENDIX 68



SINGLETON, DAVIS & SINGLETON PLLC

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September 3, 2021

Joshua B. Subin, Esq.
Office of Town Attorney
Town Hall
1 Heady Street
Cortlandt Manor, NY 10567

*Re: Hudson Ridge Wellness Center, Inc. and Hudson Education and Wellness Center
2016 Quaker Ridge Road, Town of Cortlandt*

Dear Mr. Subin:

This letter is in response to your letter of August 23, 2021. In answer to the inquiries in your letter, enclosed is the letter of the Applicants' State licensing consultant, Frank M. Cicero, principal of Cicero Consulting Associates VCC, Inc., dated August 31, 2021. You may recall, that as referenced in his letter, Mr. Cicero, and his colleague, Brian Baldwin, testified at length before the Zoning Board and made submissions to the Board pertinent to your current inquiries.

Also enclosed, likewise as relevant to your inquiries, and to a large portion of recent public comment regarding the ownership and internal operation of the proposed specialty hospital, is a copy of the article of my former law partner, Adam L. Wekstein, Esq., entitled, "Blurred Lines: When Does Zoning Cross the Boundary Between Legitimate Regulation of Land Use and Impermissible Regulation of Owner or Occupant, Form of Ownership, or Internal Business Operations?", published in the March/April 2018 edition of New York Zoning Law and Practice Report. We trust that you will counsel the Planning Board accordingly with respect to its consideration of public comment on matters exceeding the lawful authority of the Board.

Thank you for your consideration.

Very truly yours,

Robert F. Davis

RFD:dds
Enclosures

c: Planning Board
Thomas F. Wood, Esq.

Cicero Consulting Associates VCC, Inc.

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Frank T. Cicero, M.D.
Rose Murphy

Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

August 31, 2021

Robert F. Davis, Esq.
Singleton, Davis & Singleton
120 East Main Street
Mount Kisco, NY 10549

Re: Hudson Ridge Wellness Center, Inc.

Dear Mr. Davis:

This letter is being submitted to you, on behalf of and at the request of our client, Hudson Ridge Wellness Center (Hudson Ridge). Cicero Consulting Associates has been engaged by Hudson Ridge to provide consulting services regarding a potential application to seek approval of the New York State Office of Addiction Services and Supports (OASAS) for a Residential Addiction Treatment Program to be located in the Town of Cortlandt, and to provide expert testimony on behalf of Hudson Ridge with respect to its applications before the Town of Cortlandt.

We have been asked to address Assistant Town Attorney Subin's letter of August 23, 2021 and, in response to his inquiries, to provide information about whether an application to seek approval of OASAS for a Residential Addiction Treatment Program has been submitted and whether a decision has been made by Hudson Ridge Wellness Center on which level(s) of Residential Treatment Services will be provided in the proposed program. These matters have previously been addressed at length before the Town Zoning Board. See Appendices 42 (B) – (E), (G) and (I) to the Applicant's August 2021 Addendum. Nevertheless, with respect to the two (2) aforementioned matters, the following applies:

1. No application has been submitted to OASAS because it is much more reasonable and orderly for Hudson Ridge to resolve local matters with the Town of Cortlandt first. It has been clear from the outset, including, apparently, to OASAS after individuals from the Town interested in the process reached out to OASAS, that this would be a contentious issue before the Town. In such cases, in our experience, OASAS is reluctant to process an application until such local matters have been resolved.

Furthermore, final OASAS approval is dependent on the issuance of a Certificate of Occupancy from the Town of Cortlandt; a necessary precursor to obtaining a Certificate of Occupancy will be receipt by Hudson Ridge of Town of Cortlandt site plan approval and a special permit including a necessary frontage variance. Until this heretofore contentious local process is completed and all necessary Town approvals are secured, it is premature to submit an application to another regulatory body, and wasteful of time and resources, not only for Hudson Ridge but also potentially for OASAS. Although Town of Cortlandt approval may be conditioned on receipt of an OASAS approval, in our experience and in

our expectations for this project, the approval of OASAS will be far more dependent on the approval of the Town of Cortlandt, and more readily issued if and when the Town process is successfully completed by Hudson Ridge.

In summary, in a case like this, it is wiser to resolve an issue that is known to be contentious first. Of course, once Hudson Ridge receives Town approval, it will gladly and rapidly move to submit an application to OASAS.

2. Hudson Ridge Wellness Center has not decided what level(s) of care will be offered at its proposed program. That decision will be made at the time that the OASAS application is submitted. However, the levels of Residential Care, as defined in Part 820 and as may be provided, are:
 - Stabilization
 - Rehabilitation
 - Reintegration

Your April 23, 2019 letter to the Town Attorney and Director of Code Enforcement, presented to the Zoning Board of Appeals, includes the following explanation of the three (3) levels of care:

820.3 Definitions

Unless otherwise indicated, the following terms shall be applicable to all programs certified pursuant to this Part.

(a) **“Residential services”** are 24/7 structured treatment/recovery services in a residential setting provided by Office certified programs to persons recovering from substance use disorder. Services correspond to elements in the treatment/recovery process and are distinguished by the configuration of services, staffing patterns, degree of dysfunction of the individual served in each setting, and patient readiness to transition to a less restrictive program or element of treatment/recovery. Certified residential programs may provide residential services corresponding to one or more of the following elements of the treatment/recovery process:

- (1) Stabilization;
- (2) Rehabilitation;
- (3) Reintegration

(b) **“Stabilization”** provides a safe environment in which a person may stabilize withdrawal symptoms, severe cravings, psychiatric and medical symptoms before referral or transition to another program or element of structured treatment/recovery. Stabilization requires the supervision of a physician and clinical monitoring.

(c) **“Rehabilitation”** provides a structured environment for persons whose potential for independent living is seriously limited due significant functional impairment including social, employment, cognitive and ability to follow social norms that requires restructuring social supports and behaviors in order to develop sufficient skills; these persons require a course of rehabilitative services in a structured environment with staffing to provide monitoring and support and case management.

(d) **“Reintegration”** provides a community living experience in either congregate or scatter-site settings with limited supervision and/or case management; persons appropriate for these services are transitioning to long term recovery from substance use disorder and independent living in the community.

The document attached to Mr. Subin’s August 23, 2021 letter (OASAS Guidelines for Detoxification Triage Using the 48 Hour Observation Bed) is not applicable to this proposed program. It is an old, outdated document, published at a time when OASAS was called the New York State Office of Alcoholism and Substance Abuse Services, and should not be considered by the Town.

Thank you for your consideration of this information.

Sincerely,

Frank M. Cicero

Frank M. Cicero

cc: Mr. Steven Laker, Hudson Ridge Wellness
Mr. Brian M. Baldwin, Cicero Consulting Associates

NEW YORK ZONING LAW AND PRACTICE REPORT



MARCH/APRIL 2018 | VOLUME 18 | ISSUE 5

BLURRED LINES: WHEN DOES ZONING CROSS THE BOUNDARY BETWEEN LEGITIMATE REGULATION OF LAND USE AND IMPERMISSIBLE REGULATION OF OWNER OR OCCUPANT, FORM OF OWNERSHIP, OR INTERNAL BUSINESS OPERATIONS?

*Adam L. Wekstein, Esq.**

I. INTRODUCTION

While three central limitations on the zoning authority of municipalities are deceptively simple to state, they leave “blurred lines” between those regulations and approval conditions which are allowed and those which are proscribed. The Court of Appeals has repeatedly acknowledged the first of the trilogy, stating that it is a “fundamental rule that zoning deals basically with land use and not with the person who owns

*Adam L. Wekstein is a founding partner of Hocherman Tortorella & Wekstein, LLP. His practice concentrates on land use, zoning, environmental and constitutional law and appellate practice. He has handled numerous complex litigation matters on both the trial and appellate levels. He appears regularly before municipal agencies and boards seeking land use approvals and environmental permits. Mr. Wekstein has lectured and/or written articles regarding various zoning, environmental law, property rights, and constitutional issues for the Local and State Government Law and Environmental Law Sections of the New York State Bar Association, Lorman Education Services, the Practising Law Institute, The New York Zoning Law and Practice Report, The Urban Lawyer, the Municipal Law Resource Center of Pace University and the Westchester Municipal Planning Federation. He is a member of the Executive Committee of the Local and State Government Law Section of the New York State Bar Association. Mr. Wekstein graduated from Cornell University and the State University of New York at Buffalo Law School, *cum laude*, where he was an editor of the *Law Review*. He served as a law assistant at the New York State Supreme Court, Appellate Division, Third Department.

IN THIS ISSUE:

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or occupies it.” *Dexter v. Town Bd. of Town of Gates*, 36 N.Y.2d 102, 105, 365 N.Y.S.2d 506, 507, 324 N.E.2d 870 (1975); *See St. Onge v. Donovan*, 71 N.Y.2d 507, 511, 527 N.Y.S.2d 721, 722, 522 N.E.2d 1019 (1988)(recognizing that it had previously held “that although a local zoning board may impose ‘appropriate conditions and safeguards’ in conjunction with a change of zone or a grant of a variance or special permit, those conditions ‘must be reasonable and relate only to the real estate involved without regard to the person who owns or occupies it.’ ”). The other two principles, which closely relate to the first one, provide that zoning cannot be used to regulate: (1) the form of ownership of property (*FGL & L Property Corp. v. City of Rye*, 66 N.Y.2d 111, 495 N.Y.S.2d 321, 485 N.E.2d 986 (1985)); or (2) the internal operations of a business, as opposed to impacts generated by the use of land. *See Sunrise Check Cashing v. Town of Hempstead*, 20 N.Y.3d 481, 964 N.Y.S.2d 64, 986 N.E.2d 898 (2013); *Old Country Burgers Co., Inc. v. Town Bd. of Town of Oyster Bay*, 160 A.D.2d 805, 806, 553 N.Y.S.2d 843, 844 (2d Dep’t 1990)(stating that conditions imposed in connection with a permit “must relate directly to the proposed use of the property, and not to the manner of the operation of the particular enterprise conducted on the premises”). All three rules are premised on the conclusion that state zoning en-

abling legislation only authorizes the regulation of use and dimensional requirements, not ownership, form of ownership or business operations, as well as being attributed to limitations inherent in the fundamental tenets of zoning.¹ *See Sunrise Check Cashing*, 20 N.Y.3d at 485, 964 N.Y.S.2d at 65-66; *St. Onge*, 71 N.Y.2d at 515-517, 527 N.Y.S.2d at 724-726; *FGL & L Property Corp.*, 66 N.Y.2d at 115-117, 495 N.Y.S.2d at 324-325; *Dexter*, 36 N.Y.2d at 105, 365 N.Y.S.2d at 507- 508. The inconsistencies in the application of such constraints on zoning authority not only provide the basis for an interesting doctrinal discussion, but have real-world implications with respect to, among other things, amendments of zoning laws and the nature of conditions which can be imposed in connection with special permits, site plan approvals and variances.

II. ZONING REGULATES THE USE NOT THE USER

That zoning regulates land use, rather than the identity of the owner or user of the land, would seem to constitute a straight-forward concept that is simple to apply. Such certainly is the case if a zoning provision identifies a party specifically—e.g., any corporation can occupy offices so long as its initials are “I.B.M.” [*Spoiler alert—such a restriction would be no good*]. However, as zoning provisions or conditions deviate from expressly identifying a party, to ones which are in varying degrees related to the nature of the owner or occupant of the property, the outcome becomes less certain. At least a few decisions suggest that absent explicit identification of a specific individual entity or person a zoning regulation or condition linked to ownership or occupancy may be sustainable; others cut strongly against such an outcome.

A. EXPRESS IDENTIFICATION OF THE OCCUPANT OR USER OF PROPERTY IS INVALID.

A prototypical example of, and one of the leading cases on, the proscription of regulation grounded on the identity of the owner or occupant of property is *Dexter, supra*. In *Dexter*, the Court of Appeals considered a challenge to a rezoning which imposed a condi-

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tion providing that the application for “the construction of a retail supermarket by Wegman Enterprises, Inc., and related commercial structures, shall inure to the benefit of Wegman Enterprises, Inc., only, and for that specific purpose only.” *Dexter*, 36 N.Y.2d at 104, 365 N.Y.S.2d at 507. Naturally, the Court held that the condition was personal to Wegman’s supermarket solely and did not relate to the use of property or zoning thereof. Therefore, *Dexter* annulled the rezoning as improper and unauthorized by law. In its analysis the Court recognized that while zoning must regulate land use and not the person who owns or occupies the land, the reality is more complicated. The decision reads as follows:

While it is a fundamental principle of zoning that a zoning board is charged with the regulation of land use and not with the person who owns or occupies it . . . we recognize that customarily, as is here illustrated, when a change of zone, a variance or a special permit is sought, there is a specific project sponsored by a particular developer which is the subject of the application. As a practical matter, the application is usually predicated on a particular type structure, often accompanied by architectural renderings, for a particular use by a specific intended user. In the usual case, the application and accompanying graphic material come to constitute a series of representations frequently bolstered at the hearing by additional promises or assurances made to meet objections there raised. Throughout, attention focuses on the reputation of the applicant and his relationship to the community and the particular intended use. And all too often the administrative or legislative determination seems to turn on the identity of the applicant or intended user, rather than upon neutral planning and zoning principles.

Dexter, 36 N.Y.2d at 105, 365 N.Y.S.2d at 507-508 (citation omitted).

St. Onge, supra, was actually two consolidated appeals decided in a single opinion.² In *St. Onge* itself, the Court of Appeals reviewed a record in which a prior owner of a property had been granted a variance by the Town of Colonie Zoning Board to use a house in a residential zoning district as a real estate office. A condition to the variance provided that the building was “to be used solely by the applicants and may be used only in connection with their existing real estate office.” *St. Onge*, 71 N.Y.2d at 512, 527 N.Y.S.2d at

722. When contract vendees for the property sought site plan approval, the planning board denied the application, finding that the variance which had been granted was temporary and that transfer of the property to a party other than the variance recipient would terminate it. The zoning board reached the same conclusion, requiring the petitioners to obtain a new variance if they wanted to secure approval for a real estate business on the site.

The Court was careful to confirm that, where appropriate, land use boards have discretionary authority to impose reasonable conditions, but stated that such conditions must be “directly related to and incidental to the proposed use of the property and aimed at minimizing the adverse impact to an area that might result from the grant of a variance or special permit.” *St. Onge*, 71 N.Y.2d at 516, 527 N.Y.S.2d at 725. In contrast, the decision specified that a board may not impose conditions which are unrelated to the purposes of zoning or to the relief sought in the application, require dedication of land that is not the subject of the variance or seek to regulate the details of the operation of an enterprise, rather than the land use.³ *St. Onge* struck down the variance condition because it was tied to an existing business, explaining its rationale in the following passage:

the condition imposed on the variance granted by the Town Zoning Board in 1977 clearly relates to the landowner rather than the use of the land. By its terms, the condition purports to terminate the variance automatically if any persons other than the original applicants use the property as a real estate office. *This is precisely the type of personal condition proscribed by [Dexter] for it focuses on the persons occupying the property rather than the use of the land or the possible effects of that use on the surrounding area. As this condition bears no relation to the proper purposes of zoning, therefore, it was properly ruled invalid.*

St. Onge, 71 N.Y.2d at 517, 527 N.Y.S.2d at 725 (emphasis added).⁴ See *Weinrib v. Weisler*, 27 N.Y.2d 592, 313 N.Y.S.2d 407, 261 N.E.2d 406 (1970) (invalidating a building code’s prohibition against the assignment of building permits as unconstitutional because it attempted to control ownership and the transfer of property, rather than its use); *Middleland, Inc. v. City Council of City of New York*, 14 Misc.3d 1223(A), 836

N.Y.S.2d 486 (Sup. Ct., Kings Co. 2006)(annulling as an impermissible regulation of user, rather than use, a restrictive covenant, imposed as a condition of a rezoning, limiting use of property to a parking lot for an adjoining IBM facility); *Countryman v. Schmitt*, 176 Misc. 2d 736, 673 N.Y.S.2d 521 (Sup. Ct., Monroe Co. 1998)(invalidating zoning provisions governing special permits for cell towers based largely on ownership of the property on which the antenna would be sited—e.g., giving high priority to land owned by the Town and fire department—because with narrow exceptions “it relates solely to the fortuitous circumstance of ownership . . .”)

B. DIFFERENT ZONING TREATMENT OF OWNER-OCCUPIED VERSUS ABSENTEE-OWNED DWELLING UNITS.

Although imposing divergent zoning regulations on dwelling units occupied by their owners and those which are rental units could be classified as a distinction based on the user, rather than the land use, courts have upheld such differential treatment. In a generic sense, whether a two-bedroom apartment is occupied by its owner or rented to a tenant, the use is the same. Nonetheless, the courts have accepted the theory that it is rational to conclude that rental units, because they tend to be run on a “commercial” basis, may have different impacts than dwelling units occupied by their owners and, therefore, may be regulated differently.

For example, in *Kasper v. Town of Brookhaven*, 142 A.D.2d 213, 535 N.Y.S.2d 621 (2d Dep’t 1988), the court upheld against a number of constitutional and statutory challenges a local law which permitted only homeowners who occupied their residences to apply for permits to rent a portion of their house as an accessory apartment, while not providing the same option to absentee owners. In rejecting the contention that the provision was an improper regulation of the users of property, rather than of the land use, the Appellate Division acknowledged that as a practical matter many zoning laws extend beyond the mere regulation of properties to affect the owners and users. *Kasper*, 142 A.D.2d at 222, 535 N.Y.S.2d at 627. To support its conclusion, *Kasper* relied on the observation that the challenged zoning did not attach a personal condition

to any individual land owner and was not unrelated to the use of property. *Kasper*, 142 A.D.2d at 223, 535 N.Y.S.2d at 627.⁵ See *Spilka v. Town of Inlet*, 8 A.D.3d 812, 815, 778 N.Y.S.2d 222, 225 (3d Dep’t 2004)(deciding that a zoning amendment requiring special use permits for rental of non-owner-occupied dwellings for periods of less than four months, that imposed no similar restriction on owner-occupied dwellings, does not improperly distinguish between homeowners who occupy their premises and those who do not).⁶

C. RESTRICTIONS ON CLASSES OF RESIDENTS.

Restrictions on the characteristics of a resident who is permitted to occupy a dwelling unit may or may not be upheld depending on the nature of the attributes of the occupant which invokes the zoning restriction, and, perhaps, policy considerations. Not surprisingly, in *Maldini v. Ambro*, 36 N.Y.2d 481, 369 N.Y.S.2d 385, 330 N.E.2d 403 (1975), the Court of Appeals upheld a zoning amendment establishing a retirement community district which allowed, among other uses, multiple residences designed to provide living/dining accommodations, including social, health care and other supportive services and facilities for senior citizens, which were to be owned and operated by a nonprofit corporation.⁷ The Court analyzed the issue (and reinforced the thesis of this article) as follows:

[t]hat the ‘users’ of the retirement community district have been considered in creating the zoning classification does not necessarily render the amendment suspect, nor does it clash with traditional ‘use’ concepts of zoning. Including *the needs of potential ‘users’ cannot be disassociated from sensible community planning based upon the ‘use’ to which property is to be put. The line between legitimate and illegitimate exercise of the zoning power cannot be drawn by resort to formula, but as in other areas of the law, will vary with surrounding circumstances and conditions . . .* Therefore it cannot be said that the board acted unreasonably in this case in making special provision for housing designed for the elderly, one of the major groupings within our population.

Maldini, 36 N.Y.2d at 487-488, 369 N.Y.S.2d at 391-392 (emphasis added; citation omitted).

The Court bolstered its holding by reasoning that:

'Senior citizenship' may be more appropriately regarded as a stage in life within the normal expectancy of most people than as an unalterable or obstinate classification like race . . . Therefore, providing for land use suitable for the elderly may, as here, be viewed as a nondiscriminatory exercise of the power to provide for the general welfare of all people, especially since, even if the validity of that zoning classification were 'fairly debatable, (the town board's) legislative judgment must be allowed to control.'

Maldini, 36 N.Y.2d at 487-488, 369 N.Y.S.2d at 391-392. While this latter rationale could be more relevant to an equal protection analysis, as opposed to the demarcation of the line between use and user, it certainly underscores the pivotal role that policy considerations play where courts demarcate the sometimes blurred line between *ultra vires* and permissible regulation based on characteristics of the occupant. See also *Greens at Half Hollow Home Owners Ass'n, Inc. v. Greens Golf Club, LLC*, 131 A.D.3d 1108, 17 N.Y.S.3d 158 (2d Dep't 2015), leave to appeal dismissed in part, denied in part, 27 N.Y.3d 1077, 35 N.Y.S.3d 299, 54 N.E.3d 1171 (2016)(holding that the creation of a community restricted to residents 55 years of age or older and limiting use of recreational facilities and the clubhouse only to those senior residents living in the community, did not violate the prohibition against regulating users rather than use); *Campbell v. Barraud*, 58 A.D.2d 570, 394 N.Y.S.2d 909 (2d Dep't 1977).

In contrast, the Second Department exhibited hostility toward a subspecies of senior-citizen zoning regulation which imposed a durational residency requirement. In *Allen v. Town of North Hempstead*, 103 A.D.2d 144, 478 N.Y.S.2d 919 (2d Dep't 1984), the ordinance, which established a 'Golden Age Resident District' to facilitate multi-family housing for senior citizens, included the requirement that to qualify for such housing a prospective resident must have resided within the Town for at least one year. Interestingly, applying a slightly different perspective than *Maldini*, *Allen* characterized zoning for senior citizen housing as falling within the "limited exceptions" to the general prohibition against zoning ordinances regulating users or owners of property. *Allen*, 103 A.D.2d at 146, 478 N.Y.S.2d at 921. Relying on this mode of analysis,

the court held that durational residency requirement was not within the ambit of those exceptions. The court also viewed the durational limitation, favoring, as it did, Town residents, to be exclusionary. *Allen*, 103 A.D.2d at 146-147, 478 N.Y.S.2d at 921-922. As such, *Allen* concluded that the challenged zoning was illegal both as exclusionary and an impermissible regulation which was premised on the identity of the users or owners of property. Again, it should be readily apparent that policy considerations played a significant role in *Allen's* outcome.

D. AMORTIZATION BASED ON CHANGE OF OWNERSHIP.

Logically a mere change in the ownership of property should not affect the right to continue a nonconforming use authorized by zoning, as evidenced by the invalidation in *Weinrib* of the building code provision prohibiting assignment of building permits and the annulment in *St. Onge* of a variance condition making the variance ineffective on transfer of the subject property. However, the Court of Appeals eschewed such reasoning in *Village of Valatie v. Smith*, 83 N.Y.2d 396, 610 N.Y.S.2d 941, 632 N.E.2d 1264 (1994)

Generally, a municipality may require the elimination of a nonconforming use after providing a so called "amortization period" which allows the owners of the property to phase out their operations, while giving them an opportunity to recoup all or at least a significant portion of their investment. See *Town of Islip v. Caviglia*, 73 N.Y.2d 544, 542 N.Y.S.2d 139, 540 N.E.2d 215 (1989); *Modjeska Sign Studios, Inc. v. Berle*, 43 N.Y.2d 468, 402 N.Y.S.2d 359, 373 N.E.2d 255 (1977). The validity of an amortization period depends on whether it is reasonable. *Town of Islip v. Caviglia, supra*.⁸

Village of Valatie upheld a law linking the termination of the preexisting legally nonconforming use of mobile homes to the transfer of ownership of either the mobile home or the land on which it was situated. The Court started its analysis by noting that the challenger to the law did not attack the provision's constitutionality under the balancing test for amortization periods—that is the standard of reasonableness as informed by

whether the individual loss outweighs the public benefit. *Village of Valatie*, 83 N.Y.2d at 401, 610 N.Y.S.2d at 944. It also took pains to point out that in some instances no amortization is required and that a variety of events and time periods can serve as grounds for requiring discontinuance of a nonconforming use, including ones that are unpredictable, such as the destruction of a building by fire or other casualty. *Village of Valatie*, 83 N.Y.2d at 401, 610 N.Y.S.2d at 944.

The Court then distinguished the use-versus-user authority embodied in cases such as *Dexter*, *supra*, attributing the basis for the principle to be the proscription against *ad hominem* zoning. Specifically, the decision reads as follows:

The hallmark of cases like *Dexter* and *Fuhs*⁹ (*supra*) is that an identifiable individual is singled out for special treatment in land use regulation. No such individualized treatment is involved in the present case. All similarly situated owners are treated identically. The same is true for all prospective buyers. The only preferential treatment identified by defendant is that the owner in 1968 has rights that no future owner will enjoy. But the law has long recognized the special status of those who have a preexisting use at the time land controls are adopted. Indeed, the allowance of a nonconforming use in the first instance is based on that recognition. To the extent that defendant's argument is an attack on special treatment for the owners of nonconforming uses it flies in the face of established law.

In fact, what defendant is actually arguing is that the Village should not be allowed to infringe on an owner's ability to transfer the right to continue a nonconforming use . . . It is true that, in the absence of amortization legislation, the right to continue a nonconforming use runs with the land . . .¹⁰ However, once a valid amortization scheme is enacted, the right ends at the termination of the amortization period. As a practical matter, that means the owner of record during the amortization period will enjoy a right that cannot be transferred to a subsequent owner once the period passes.

Village of Valatie, 83 N.Y.2d at 403-404, 610 N.Y.S.2d at 945-946.

To the extent the broad language employed by the Court could be read to require zoning to identify a particular user in order to run afoul of the user versus use distinction, the author submits that it should not be

extrapolated to regulatory situations outside of the limited context of nonconforming uses. The conclusion in *Village of Valatie* is clearly shaped by the only grudging acceptance of nonconforming uses, the public policy favoring their eventual elimination and the earlier acceptance by the courts of a wide variety of events and time periods as a basis to terminate such uses. In the resolution of issues unrelated to nonconforming uses, *Maldini* should provide the applicable, more flexible approach: "[t]he line between legitimate and illegitimate exercise of the zoning power cannot be drawn by resort to formula, but . . . will vary with surrounding circumstances and conditions." *Maldini*, 36 N.Y.2d at 487-488, 369 N.Y.S.2d at 391-392. In fact, as should be apparent, a decision such as *Weinrib* does not invalidate the challenged provisions because they identified a specific user, but because they merely prevented transfer of a land use approval—no "identifiable individual [was] singled out for special treatment." See also *Sunrise Check Cashing*, ((discussed in more detail below) which invalidated a prohibition of a particular type of business as, *inter alia*, an impermissible regulation based on ownership, where no specific owner or occupant was identified by the challenged law).

III. ZONING CANNOT REGULATE THE FORM OF OWNERSHIP

Of the triad of legal principles discussed in this article, the prohibition against regulating form of ownership is the easiest to apply. The rule is clear cut; it cannot be done. In *FGL & L Property Corp.*, *supra*, the City of Rye required that any development of property, which was a site of the historic "Jay Mansion" and an associated carriage house, be retained on a minimum 22-acre lot, that an undeveloped "viewway" be maintained near the mansion, that the interiors of the buildings be converted to residential units and, most importantly, that the applicant submit a draft condominium offering plan for the units. The Court invalidated the law as mandating the form of ownership. It analyzed the issue in the context of the state enabling provision, Section 20(24) of the General City Law, in the following passage:

Nothing in that subdivision speaks to ownership rather than use, and while it does not expressly forbid provi-

sions relating to ownership, the City suggests nothing within the spirit of zoning legislation generally or this subdivision specifically that offers justification for implying such power. Indeed, the cases are legion, in this State and elsewhere, which hold that “zoning . . . in the very nature of things has reference to land rather than to owner” . . . and that it is a “fundamental rule that zoning deals basically with land use and not with the person who owns or occupies it” . . . Most of the out-of-State cases hold, as did the *North Fork Motel* case, that a zoning ordinance cannot be used to exclude a condominium. The City correctly notes that exclusion of condominiums is a different proposition than requiring that property in a given area be held in condominium ownership. However, we agree with the Appellate Division’s conclusion that the distinction is without a difference, or, if difference there is, that there exists no independent justification within the spirit of subdivision 24’s zoning provision from which the power to *require* condominium ownership can be implied.

FGL & L Property Corp., 66 N.Y.2d at 116-117, 495 N.Y.S.2d at 324-325.¹¹

In *BLF Associates, LLC v. Town of Hempstead*, 12 N.Y.3d 714, 883 N.Y.S.2d 797, 911 N.E.2d 860 (2009), the Court similarly invalidated provisions in a zoning ordinance that required a recreational facility in a senior citizen housing complex to be owned by a homeowners association and that the dwellings themselves be cooperative units.¹² It stated that such requirements were “*ultra vires* and void” and violated the fundamental rule that zoning deals with land use and not the person who owns or occupies it.

As addressed in the discussion in *FGL & L*, it matters little whether a regulation seeks to mandate or proscribe the form of ownership; in either case it is still invalid. In *P.O.K. RSA, Inc. v. Village of New Paltz*, 157 A.D.2d 15, 555 N.Y.S.2d 476 (3d Dep’t 1990), the court was faced with an ordinance that prohibited the conversion of the units in multiple dwellings to condominium or cooperative ownership until the village building inspector determined that the structure complied with the New York State Building Code and all applicable building laws, rules and regulations, and issued a new certificate of occupancy authorizing the change. The Village implemented the law putatively based on a determination that the sponsors of the

conversion of the units had no intention of correcting existing violations prior to selling them and that the law was needed, therefore, to protect potential buyers. Although the Third Department upheld the law against a number of challenges, it found that it was an impermissible regulation of the form of ownership. The court stated:

The Village does not have the legislative power to regulate the conversion of property ownership which does not involve an alteration in the owner’s use of the property. Municipalities have no inherent capacity to mandate the manner in which property may be owned or held . . .

P.O.K. RSA, Inc., 157 A.D.2d at 20, 555 N.Y.S.2d at 479; *see North Fork Motel, Inc. v. Grigonis*, 93 A.D.2d 883, 461 N.Y.S.2d 414, 415 (2d Dep’t 1983) (“[z]oning ordinances cannot be employed by a municipality to exclude condominiums or discriminate against condominium ownership, for it is use rather than form of ownership that is the proper concern and focus of zoning and planning regulations”)¹³

IV. ZONING REGULATES THE LAND USE RATHER THAN THE OPERATION OF THE ENTERPRISE LOCATED ON THE LAND

The third of the principles addressed in this article is that zoning regulates the use of the land, rather than the operations of an entity located thereon. Again, this limitation on the zoning power is closely related to the truism that zoning relates to use but not the person who owns or occupies the land. *Sunrise Check Cashing*, 20 N.Y.3d at 485, 964 N.Y.S.2d at 66. As evidenced by case law, it also may be the most difficult of the three rules to apply in a consistent fashion.

A. GENERAL APPLICATION OF THE PRINCIPLE.

1. Zoning Laws

The Court of Appeals’ most recent application of the rule foreclosing the use of zoning to regulate internal operations is *Sunrise Check Cashing*. Therein, the highest Court invalidated a provision of the Town of Hempstead’s Zoning Ordinance which, among other things, prohibited check cashing businesses in that

town's business district. It held that the regulation was impermissible, both because it was based on the identity of the user rather than the use of the land and constituted an attempt to regulate business operations. The administrative record established that the putative purposes of the zoning were to encourage young people and the poor to utilize more conventional banking institutions, rather than, what the town attorney characterized as, "seedy" check cashing businesses and to eliminate predatory and exploitive finance enterprises from commercial areas in order to mitigate the adverse impacts which could be associated with such businesses. *Sunrise Check Cashing*, 20 N.Y.3d at 484, 964 N.Y.S.2d at 65.

The decision explained that the prohibition was beyond the authority granted under Town Law § 261 to, among other things, regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residences or other purposes. *Sunrise Check Cashing*, 20 N.Y.3d at 485, 964 N.Y.S.2d at 65. While the Court expressly declined to rule on the soundness of the municipality's objectives, it held that they could not be achieved through zoning. The decision explained:

Whatever the merits of this view as a policy matter, it cannot be implemented through zoning [The regulation] is obviously concerned not with the use of land but with the business done by those who occupy it. It is true that there are cases in which the nature of the business is relevant to zoning because of the business' "negative secondary effects" on the surrounding community; this is true of so-called "adult entertainment" uses . . . the town has not tried to show and does not argue that check-cashing services are in a similar category.

Sunrise Check Cashing, 20 N.Y.3d at 485, 964 N.Y.S.2d at 66 (emphasis added; citation omitted).

Louhal Properties, Inc., v. Strada, 191 Misc.2d 746, 743 N.Y.S.2d 810 (Sup. Ct., Nassau Co. 2002), aff'd and remanded, 307 A.D.2d 1029, 763 N.Y.S.2d 773 (2d Dep't 2003), also employed the prohibition against regulating internal business operations to invalidate a

law purporting to regulate hours of operation. In *Louhal*, the municipality enacted zoning: (1) prohibiting the operation of businesses located within 100 feet of property zoned for residential use between the hours of 11:00 P.M. and 6:00 A.M.; and (2) requiring a special permit to operate during such hours for businesses located anywhere else within the community. A 7-Eleven convenience store sued to invalidate the restrictions. The court began its analysis with reference to the state zoning enabling legislation (Village Law § 7-700) recognizing that the items subject to regulation thereunder "have one thing in common—they bear some relation to the physical use of land." It then explained:

Applicable case law draws a dichotomy between those regulations that directly relate to the physical use of land and those that regulate the manner of operation of a business or other enterprise. . . . In the first group are regulations relating either to the use of land or to the potential impact of land use on neighboring properties. Courts generally uphold such regulations, including those directed at physical externalities such as light, air quality, safety, population density and traffic, and even less tangible externalities such as property values, aesthetic or environmental values. . . . In the second group are those regulations that restrict the "details of operation or manner of on-site use, . . . which do not impose externalities on nearby land." . . .

Louhal Properties, Inc., 191 Misc.2d at 751, 743 N.Y.S.2d at 814.

The *Louhal* court held that the proscription/restriction of overnight business operations, in fact, fell into the second category as an impermissible attempt to regulate the internal business operations. The decision placed particular emphasis on its observation that the legislative record was devoid of evidence showing that overnight business operations have a greater impact on neighboring properties *per se* than such activities during regular hours.

Among the cases addressing the difference between permissible regulation of use and inappropriate interference with internal business operations, *Mead Square Commons, LLC v. Village of Victor*, 97 A.D.3d 1162, 948 N.Y.S.2d 514 (4th Dep't 2012), is likely the most difficult to reconcile with the governing principle. It is the author's opinion that this Fourth Department case,

which reviewed legislation attempting to exclude fast food restaurants from a portion of a Village, misapplied the applicable legal rules and that it is quite possible that the outcome would have been different if decided by another department of the Appellate Division or the Court of Appeals. As it is, *Mead Square Commons* merely contributes to the blurring of lines between legitimate zoning regulation and *ultra vires* action.

In *Mead Square Commons*, the plaintiff attacked a zoning prohibition against “formula fast food restaurants” (“FFFRs”) in the Central Business District, contained in Section 170-13 of the Village of Victor’s Code. FFFR was defined in the following manner:

“[a]ny establishment, required by contract, franchise or other arrangements, to offer two or more of the following: [1] Standardized menus, ingredients, food preparation, and/or uniforms[;] [2] Prepared food in ready-to-consume state[;] [3] Food sold over the counter in disposable containers and wrappers[;] [4] Food selected from a limited menu[;] [5] Food sold for immediate consumption on or off premises [;] [6] Where customer pays before eating.” The stated purpose of section 170-13(C)(1)(a) is “to maintain [defendant’s] . . . unique village character, the vitality of [its] commercial districts, and the quality of life of [its] residents.”

Mead Square Commons, LLC, 97 A.D.3d at 1163, 948 N.Y.S.2d at 515.

The plaintiff, the owner of property which it sought to lease to a Subway restaurant, argued both that the prohibition was invalid because it was based upon the ownership or control of property and not its use, and that it impermissibly regulated the business operations. The court rejected the plaintiff’s position, reasoning that:

unlike in *Dexter*, the challenged Ordinance section does not single out a particular property owner for favorable or unfavorable treatment . . . Rather, all property owners in the Central Business District are treated the same under section 170-13 inasmuch as all property owners are prohibited from operating an FFFR . . . Contrary to plaintiff’s related contention, we conclude that section 170-13 regulates the use, not the ownership, of the subject property. Indeed, plaintiff is not an FFFR, nor does it seek to operate an FFFR.

Instead, plaintiff is a property owner that seeks to rent commercial space to an FFFR. Thus, it is plaintiff’s use of the property that is being regulated, and its ownership status is irrelevant.

We further conclude that the court properly determined that Ordinance

§ 170-13 does not improperly regulate the manner of plaintiff’s business operations. *Mead Square Commons, LLC*, 97 A.D.3d at 1163-1164, 948 N.Y.S.2d at 516 (citations omitted).¹⁴

Aside from the fact that it is at best doubtful whether items 1 through 6 in the paragraph defining FFFR—e.g., standardized menus, ingredients, food preparation, and/or uniforms, prepared food in ready-to-consume state; and food selected from a limited menu—all relate to the land use, as opposed to the restaurant business itself, the clause limiting FFFRs only to those businesses which are required by contract, franchise or other arrangements, to meet several of those criteria, can only reasonably be viewed as relating to internal operations and/or the identity of the user. Why should an independent restaurant owned and operated by a local resident be permitted, when one that is operationally identical to it is prohibited, just because the latter is a franchise or operated by or has a contractual arrangement with a national chain? The author contends that the answer should have been that “it cannot.”

2. Permit Conditions

The restriction against regulating internal business operations applies with vigor in the context of permit conditions. For example, in the widely-cited case, *Summit School v. Neugent*, 82 A.D.2d 463, 442 N.Y.S.2d 73 (2d Dep’t 1981), the Second Department applied the prohibition to invalidate certain conditions in a special permit, albeit against the backdrop of a school use. The court stated the rule that special permit conditions must “relate directly to, and be incidental to, the proposed use of the real property and not to the manner of operation of the particular enterprise conducted on the premises . . .” *Summit School*, 82 A.D.2d at 467, 442 N.Y.S.2d at 76-77. It held that conditions limiting the total number of students in the school, mandating a ratio of staff members per student, controlling the times of day when classes were held,

providing that athletic activities were to be of secondary importance to education and held indoors or sufficiently distant from school boundaries, confining student activities, to the extent possible, to school grounds and requiring suitable supervision for students leaving school grounds, constituted improper interference with operations of the enterprise or educational processes.¹⁵ It also held that conditions requiring the school to be non-profit and non-sectarian had “no rational relationship to the manner of how land may be used and is not a legitimate special permit condition.” *Summit School*, 82 A.D.2d at 47, 442 N.Y.S.2d at 79.¹⁶ See *Province of Meribah Soc. of Mary, Inc. v. Village of Muttontown*, 148 A.D.2d 512, 538 N.Y.S.2d 850 (2d Dep’t 1989)(annulling conditions imposed in connection with a variance for a religious retreat house, because they failed to adhere to the rule that they “must be reasonable and relate only to the real estate involved without regard to the person who owns or occupies it” and not to the internal operations of the user rather than the land use itself and its effect on surrounding land); *Schlosser v. Michaelis*, 18 A.D.2d 940, 238 N.Y.S.2d 433 (2d Dep’t 1963) (invalidating conditions imposed by a zoning board in connection with a permit issued to a florist which limited the number of employees and business hours, because they impermissibly related to the details of the operation of the business and not to the zoning use of the property); see generally, *Amerada Hess Corp. v. Town of Oyster Bay*, 36 A.D.3d 729, 828 N.Y.S.2d 536 (2d Dep’t 2007) (holding that a prohibition of the sale of alcoholic beverages at a convenience store was both preempted by state law and unenforceable by the Town because it was an impermissible attempt to regulate the details of the plaintiff’s enterprise); *Blue Island Development, LLC v. Town of Hempstead*, 131 A.D.3d 497, 15 N.Y.S.3d 807 (2d Dep’t 2015), (finding viable a claim that a restrictive covenant requiring a developer to sell 172 waterfront units as condominiums that had been imposed as a condition to a rezoning, was illegal because it regulated the ability of the property owner to rent the units, rather than regulating the use of the land itself.)

The Second Department’s decision in *Town of Huntington v. Sudano*, 42 A.D.2d 791, 346 N.Y.S.2d 582 (2d Dep’t 1973), order aff’d, 35 N.Y.2d 796, 362

N.Y.S.2d 459, 321 N.E.2d 549 (1974), presents a good example of the difference between legitimate and impermissible conditions. In *Town of Huntington*, the defendants operated a kennel in a residential district that had been authorized by special permit issued 17 years prior to the defendants’ acquisition of the facility. The permit allowed operation of “a dog kennel on the following terms: for the purpose of training dogs, limited to a maximum of ten (10) dogs at any time; it is understood that the training of the dogs is for the purpose of leading the blind.” *Town of Huntington*, 42 A.D.2d at 790, 346 N.Y.S.2d at 583. As the defendants apparently had difficulties with math or an unhealthy disregard for the law, they housed as many as 45 dogs on the premises. The Appellate Division ruled that the zoning board had properly limited the number of dogs on the site because the restriction directly impacted the use and enjoyment of neighboring land and was not an improper regulation of the business. *Town of Huntington*, 42 A.D.2d at 792, 346 N.Y.S.2d at 583-584. However, it invalidated the condition limiting the use of the facility to the training of dogs for the blind, reasoning that it “does not bear on the use of the land, but rather on the operation of the business and hence is impermissible.” *Town of Huntington*, 42 A.D.2d at 792, 346 N.Y.S.2d at 583-584.¹⁷

Similarly, *Edson v. Southold Town Zoning Bd. of Appeals*, 102 A.D.3d 687, 957 N.Y.S.2d 724 (2d Dep’t 2013), illustrates the same distinction. Therein, a zoning board authorized a farm stand on the applicant’s farm. The building exceeded the applicable 3,000 square-foot limitation, but the portion devoted to sales was restricted to that area by partitioning off the remaining 4,826 square feet of the structure. In granting the approval, the board imposed a condition dictating that only inventory produced on the farm, and not any incidental accessory items imported from offsite, could be stored in the latter area. The Second Department annulled that requirement, deciding that while the board could have required all storage to be included within the main 3,000 square-foot-area, it lacked authority to distinguish between inventory produced on the farm and products coming from other locations. It also rejected the zoning board’s imposition of a condition limiting farm stand operations to a particular

season or specific dates, because there was authority to do so neither in the Town Law nor local zoning, and there was no evidentiary support for the condition.

B. REGULATION OF HOURS OF OPERATION.

Sometimes the restriction of hours of operation of an enterprise and/or its parking facilities is upheld, whether contained in a regulation or imposed as a permit condition. Other times it is annulled as an impermissible regulation of internal business operations. There is no bright line for determining whether a limitation warrants one treatment or the other. In short, the distinction between valid and invalid restrictions on hours may be the fuzziest of the blurred lines. A key question is whether the record establishes that the restriction is necessary to mitigate impacts of the land use itself on its surroundings. As was discussed above, *Louhal Properties* invalidated a zoning ordinance's prohibition/regulation of overnight hours of operation as an impermissible attempt to regulate internal business operations, rather than the use. The outcome was reached, in large measure, because there was no evidence before the local legislature that overnight business operations have a greater impact on neighboring properties than business activities during permitted hours. *Louhal Properties* appears to set a high bar for judging the propriety of legislative regulation of business hours; it would seem difficult for a legislative body to find support for the blanket conclusion that overnight operations "*per se*" have greater impacts than activities occurring during regular business hours. See *Louhal Properties, Inc.*, 191 Misc.2d at 752-753, 743 N.Y.S.2d at 814-815.

Westbury Trombo, Inc. v. Board of Trustees of Village of Westbury, 307 A.D.2d 1043, 763 N.Y.S.2d 674 (2d Dep't 2003), decided on the same day that the Appellate Division issued its decision in *Louhal*, held invalid the same law annulled in *Louhal*. In confirming the law's fundamental defect, the court stated:

Assuming, without deciding, that Village Law § 7-700 authorized the Board to enact a local law prohibiting a restaurant or "fast food" business from operating within its jurisdiction, or subjecting such a business to an otherwise inapplicable requirement that it obtain a

special use permit or variance, based solely on the fact that the business would operate between the hours of 11:00 P.M. and 6:00 A.M. . . . the exercise of such power must be supported, at the very least, by evidence showing that the "atmosphere of the surrounding area" would be adversely affected by the presence of such an overnight business . . . Because "generalized . . . concerns of the neighboring community . . . uncorroborated by any empirical data" are not probative of any such potential detriment . . . and the petitioner's property rights should not be impaired based on the "whims of an articulate minority . . . of the community" . . . and because the record in this case does not otherwise contain sufficient evidence in this respect, the local laws under review should not be upheld as a valid exercise of the Board's powers under Village Law § 7-700.

Westbury Trombo, Inc., 307 A.D.2d at 676, 307 N.Y.S.2d at 1044-1045 (citations omitted).¹⁸

The proscription against imposing permit conditions regulating hours of operation based on an unsubstantiated belief that such limitations will mitigate the impacts of the land use, is also exemplified by *Old Country Burgers Co., Inc. v. Town Bd. of Town of Oyster Bay*, 160 A.D.2d 805, 553 N.Y.S.2d 843 (2d Dep't 1990). In *Old County Burgers*, the town board imposed a condition on the operation of a drive-through window at a fast food restaurant which forbade operations between 8 A.M. and 9:30 A.M.; 12 Noon through 1:30 P.M.; and 5 P.M. through 6:30 P.M. The court held that the condition violated the rule that special permit conditions "must relate directly to the proposed use of the real property, and not to the manner of operation of the particular enterprise conducted on the premises." *Old Country Burgers*, 160 A.D.2d at 806, 553 N.Y.S.2d at 844. The decision reads as follows:

The zoning board attempted to justify this restriction by claiming that the operation of this window would significantly increase the existing traffic flow. However we note in this respect that there was no showing that the proposed use would have a greater impact on traffic than other uses which are unconditionally permitted in the area . . . We find the imposition of this condition was no more than an impermissible attempt to regulate the details of the operation of the petitioner's enterprise (see, *Matter of Summit School v. Neugent, supra*), and conclude that upon this record it cannot be said that the so-called "meal-time restriction" was proper.

Old Country Burgers, 160 A.D.2d at 806, 553 N.Y.S.2d at 844 (citations omitted). See *Home Depot, U.S.A.*, *supra* (invalidating permit conditions restricting the hours of store operations and parking lot maintenance because there was a lack of proof or findings that they were designed to address impacts on surroundings); *Schlosser*, 18 A.D.2d at 941, 238 N.Y.S.2d at 434-435 (holding that a zoning board's imposition of conditions regulating the hours of operations of the business and the timing of deliveries was beyond the authority granted under the zoning ordinance as it was an impermissible attempt to regulate the internal operations of the business rather than the zoning use of the premises); cf. *Edson*, 102 A.D.3d at 688, 957 N.Y.S.2d at 726 ("there is no authority under the Town Law or the Town Code, or any evidentiary basis, for the imposition of the condition limiting the operation of the proposed farm stand to a particular season or to specific dates.").

As alluded to above, courts certainly have upheld permit conditions limiting hours of operation where they are reasonable and directly related and incidental to the proposed use of the property and are aimed at minimizing the adverse impact that might result from the grant of the approval. For example, in *Twin Town Little League Inc. v. Town of Poestenkill*, 249 A.D.2d 811, 813, 671 N.Y.S.2d 831, 833 (3d Dep't 1998), the court confirmed a zoning board's imposition of conditions regulating the operations of a baseball complex with outdoor lighting, which among other things, limited the time of year when night games were allowed, required operations to cease at 9:30 P.M. or as soon as practicable after completion of a game and mandated that a particular bank of lights be turned off by a specified time. In pertinent part, the court stated:

there is record evidence that the neighboring property owners raised concerns regarding the depreciation of the value of their property due to the noise and traffic associated with the ballgames and the intrusiveness of the lighting. In our view, the challenged conditions represent a reasonable attempt to alleviate these concerns and, as they relate directly to the use of the land, we find them to be proper . . .

Twin Town Little League, Inc., 249 A.D.2d at 813, 671 N.Y.S.2d at 833 (citation omitted).

Milt-Nik Land Corp. v. City of Yonkers, 24 A.D.3d 446, 806 N.Y.S.2d 217 (2d Dep't 2005), also upheld a variance condition which limited a pizzeria's hours, finding that it related directly to the use of the property and was intended to protect the neighboring residential properties from possible adverse effects, such as increase in traffic congestion, parking problems and noise.¹⁹ Similarly, in *1833 Nostrand Ave. Corp. v. Chin*, 302 A.D.2d 460, 754 N.Y.S.2d 581 (2d Dep't 2003), the Second Department confirmed a variance condition which limited a store's proposed hours of operation, determining that there was a rational basis and substantial evidence supporting the board's conclusion that the limitation insured that the store would "conform to the surrounding retail and residential character." Unfortunately, the decision described neither the operational characteristics of the store and conditions in the surrounding neighborhood nor the proof in the administrative record regarding potential impacts related to the store's business hours.

The most recent example of a decision upholding a restriction on the hours of operation is *Bonefish Grill, LLC v. Zoning Bd. of Appeals of Village of Rockville Centre*, 153 A.D.3d 1394, 61 N.Y.S.3d 623 (2d Dep't 2017). Therein, the court considered a parking variance application to allow the demolition of an existing structure and the construction of a 5,400-square-foot restaurant. The variance sought by the applicant would have allowed it to provide no off-street parking, where the local ordinance would have required 54 spaces. The applicant proposed to remedy the 100% deficiency by merging the lot with an adjoining property. In fact, the joining of the two lots never occurred, prompting the applicant to offer to grant the restaurant the exclusive right to use the parking spaces on the adjoining lot between the hours of 4:00 P.M. and 12:30 A.M. during the week. The zoning board granted the variance, but limited the restaurant's operating hours to 4:00 P.M. to 12:30 A.M. and mandated that valet parking be provided. The court held that the conditions related directly to the use of the land and were intended to protect neighboring properties from an anticipated increase in traffic congestion and parking. In particular, the court relied on the fact that the zoning board's decision was supported by both empirical and testimo-

nial evidence, including testimony of the local store owners which did not constitute merely “generalized and conclusory community opposition.” It also was supported by the applicant’s own expert and the personal knowledge of the zoning board members of the area in question.

Other cases which upheld conditions on usage of off-street parking areas include *Voetsch v. Craven*, 48 A.D.3d 585, 852 N.Y.S.2d 225 (2d Dep’t 2008)(upholding a condition to parking variances that prohibited overnight parking in the lot as being directly related to the use and designed to minimize adverse impacts on neighboring property, but invalidating the requirement that the lot entrance be chained); and *Plandome Donuts, Inc. v. Mammima*, 262 A.D.2d 491, 692 N.Y.S.2d 111 (2d Dep’t 1999)(holding that a condition requiring a parking lot be open to retail and restaurant customers between 10 A.M. and 6 P.M. on Saturdays related directly to the land use and was intended to protect neighboring commercial land owners from adverse impacts of the petitioner’s operation).

ENDNOTES:

¹For example, Town Law § 261 provides, in pertinent part, the following:

For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by local law or ordinance to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes . . .

Town Law § 261. Town Law Section 262 reinforces this authority in defining a town’s power to establish and impose regulations applicable to zoning districts. The analogous provisions of the General City Law (Sections 24 and 25) and the Village Law (Sections 7-700 and 7-702) are in relevant respects substantially similar.

²The second case was *Driesbaugh v. Gagnon*.

³The court did list examples of what might be proper conditions, such as those relating “to fences, safety devices, landscaping, screening, access roads relating to period of use, screening, outdoor lighting and noises, enclosure of buildings, emission of odors,

dust, smoke, refuse matter, vibration noise and other factors incidental to comfort, peace, enjoyment, health or safety of the surrounding area.” *St. Onge*, 71 N.Y.2d at 516, 527 N.Y.S.2d at 725.

⁴In the companion appeal, *Driesbaugh*, the petitioner owned two automobile repair shops in the Town of Fenton—one was grandfathered as a legally pre-existing nonconforming use, while the other violated the applicable restrictions of the zoning ordinance. The zoning board granted a use variance to allow continuation of the illegal use of the latter establishment, but imposed conditions restricting and ultimately requiring the phasing out of the grandfathered use located on separate property. The Court held that as the variance only related to one of the two properties, any condition imposed must relate solely to that property. It elucidated that “the Board has imposed a requirement completely unrelated to either the use of the land at issue or to the potential impact of that use on neighboring properties.” *St. Onge*, 71 N.Y.2d at 517, 527 N.Y.S.2d at 726. The ownership of the land was dismissed by the Court as immaterial to the municipality’s power to regulate, the decision stating: “[t]he fact that the two separate parcels here are held in common ownership is purely a matter of personal circumstance, and does not furnish a basis for regulating the parcel which is not a subject of the variance . . .” *St. Onge*, 71 N.Y.2d at 518, 527 N.Y.S.2d at 726.

⁵It also furthered its determination by observing that by its very nature an accessory use normally attaches to the occupancy of premises, rather than to mere ownership thereof. *Kasper*, 142 A.D.2d at 223, 535 N.Y.S.2d at 627.

⁶The practitioner is cautioned, however, that when the distinction between owner-occupied and non-owner-occupied dwellings triggers different dimensional or bulk (including parking) requirements it will likely violate the uniformity provisions of state enabling legislation (Town Law Section 262; Village Law Section 7-702 and General City Law Section 20(24)). See *Tupper v. City of Syracuse*, 93 A.D.3d 1277, 941 N.Y.S.2d 383 (4th Dep’t 2012)(invalidating an ordinance which, among other things, imposed different off-street parking regulations on owner-occupied and non-owner occupied dwellings as violating the uniformity requirement).

⁷The question of whether a senior housing ordinance is legal under New York State zoning, is entirely separate from the issue of whether it is exempt from the federal Fair Housing Act’s prohibition against discrimination based on familial status or fits within the exemptions from that proscription established to accommodate “housing for older persons” found at 42 U.S.C.A. § 3607(b) and 24 C.F.R. 100.303-100.308.

⁸The Court of Appeals summarized the test for as-

sessing the validity of an amortization period as follows:

Reasonableness is determined by examining all the facts, including the length of the amortization period in relation to the investment and the nature of the use. The period of amortization will normally increase as the amount invested increases or if the amortization applies to a structure rather than a use. Presumptively, amortization provisions are valid unless the owner can demonstrate that the loss suffered is so substantial that it outweighs the public benefit gained by the exercise of the police power.

Town of Islip, 73 N.Y.2d at 561, 542 N.Y.S.2d at 148.

⁹*Fuhst v. Foley*, 45 N.Y.2d 441, 382 N.Y.S.2d 56 (1978), decided that under the now-replaced practical difficulty standard for area variances, the variance could not be based on the personal difficulties of the applicant but had to relate to the land itself. The law, in that respect, does not appear to have been displaced when the practical difficulties standard was superseded by the statutory area variance criteria.

¹⁰*See Iazzetti v. Village of Tuxedo Park*, 145 Misc.2d 78, 82, 546 N.Y.S.2d 295, 297-298 (Sup. Ct. Orange Co. 1989)(invalidating a zoning board's determination that where the user of a property had changed the use was no longer a legal nonconforming use, explaining that "change in use that would justify termination relates directly to the use itself. It is the use which must change, not the ownership of the use.")

¹¹*FGL & L Property Corp.* also found that the historic preservation provisions of the General Municipal Law did not provide a basis to mandate form of ownership.

¹²The court also invalidated a provision in that ordinance requiring construction of a 9,000 square foot community center with specific amenities on a specified land area, stating that "Zoning Ordinances can go no further than determining what may or may not be built and that [the challenged zoning] is unnecessarily and excessively restrictive leads us to conclude that it was not enacted for legitimate zoning purposes." *BLF Associates, LLC*, 59 A.D.3d at 55, 870 N.Y.S.2d at 426. *Town of Huntington v. Beechwood Carmen Bldg. Corp.*, 82 A.D.3d 1203, 1206-07, 920 N.Y.S.2d 198, 200-201 (2d Dep't 2011)(finding that a zoning regulation requiring construction of a particular amenity, a swimming pool and community center, would be beyond the power conferred by state enabling legislation.)

¹³The continued viability of so much of the holding in *North Fork*, as determined that a municipality cannot use the change in the form of ownership—in that case, from cooperative to condominium—as a basis to eliminate a valid nonconforming use, may be in doubt in the face of the Court of Appeals subsequent

decision in *Village of Vallatie, supra*.

¹⁴Notably, the plaintiff did not preserve for the Fourth Department's review the argument that no rational basis exists for distinguishing between FFFRs and non-FFFRs that meet two or more of the criteria in the regulation. This question could have been a central consideration in determining if the Village's regulations were defensible.

¹⁵The rationale for the court's conclusion rested in varying degrees (and in some instances not at all) on the exclusive authority of State to regulate educational activities under the New York State Education Law.

¹⁶In contrast, *Summit School*, upheld conditions proscribing commercial activities and requiring signage to conform to the zoning ordinance.

¹⁷Another example is *Home Depot, U.S.A. v. Town Bd. of Town of Hempstead*, 63 A.D.3d 938, 881 N.Y.S.2d 160 (2d Dep't 2009), which was a split decision (figuratively, not literally) in assessing the validity of a number of conditions imposed on site plan approval to remodel a building to house a Home Depot store. It invalidated those conditions which it found to be unsupported either by proof or findings in the record establishing that they were designed to address impacts on surroundings. These included restrictions on hours of store operations and parking lot cleaning and a requirement that a closed circuit recording system be installed to monitor the parking area. *Home Depot, U.S.A.*, 63 A.D.3d at 939, 881 N.Y.S.2d at 161. In contrast, the court upheld requirements relating to the location of a loading zone and the truck entry route, based on the express authorization in the Town Law to consider such issues in the context of site plan review and the board's judgment that the measures were appropriate to mitigate impacts surrounding roadways. *Home Depot, U.S.A.*, 63 A.D.3d at 939-940, 881 N.Y.S.2d at 161. It also held that a fencing requirement was appropriate to protect the interests of nearby residents to preserve "a peaceful and pleasant residential environment." *Home Depot, U.S.A.*, 63 A.D.3d at 940, 881 N.Y.S.2d at 161.

¹⁸Notably, the court also held that the village lacked authority under its general police powers to impose such a condition because "there is insufficient evidence to support the conclusion that the existence of a retail business that operates 24 hours a day in the vicinity of a residential area has any detrimental impact on the health, safety, welfare or morals of the community." *Westbury Trombo, Inc.*, 307 A.D.2d at 676, 307 N.Y.S.2d at 1045.

¹⁹The court did, however, invalidate several conditions, including one limiting the number of seats in the restaurant, finding that to the extent it merely reiterated occupancy requirements in the city's code, it was unnecessary, and to the extent it imposed a more

stringent requirement, it was unlawful. *Milt-Nik Land Corp.*, 24 A.D.3d at 449, 806 N.Y.S.2d at 220.

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APPENDIX 69



Site Planning
Civil Engineering
Landscape Architecture
Land Surveying
Transportation Engineering

Environmental Studies
Entitlements
Construction Services
3D Visualization
Laser Scanning

January 25, 2022

Loretta Taylor, Chair
Town of Cortlandt Planning Board
Town Hall
1 Heady Street
Cortlandt Manor, NY 10567

RE: JMC Project 14088
Proposed Specialty Hospital
2016 Quaker Ridge Road
Town of Cortlandt, New York

Dear Chairperson Taylor:

This letter responds to comments contained in the letter from Zarin & Steinmetz, dated August 23, 2021, regarding “Hudson Ridge Wellness Center, Inc. Case No. 6-15, CRHISD’s Comments on Responses to Public Hearing Comments”.

The proposed project has recently undergone changes as a result of the Applicant’s meeting directly with the neighbors/neighborhood groups. While the original action proposed a maximum of 92 residential clients, with full occupancy expected after 5 years and an expected initial occupancy of 42 clients, the revised project will have a maximum 56 residential clients upon renewal of the Special Permit, with a maximum of 49 clients permitted by the initial approval, or such lesser number as the New York State Office of Addiction Services and Supports (OASAS) may require. The 56 clients represent a reduction of 39% from the initial 92 proposed.

The attached List of Stipulated Conditions previously submitted to the Planning Board remain in effect. In addition, an augmented draft settlement agreement has been submitted to the neighbors for their consideration and pending agreement on the final landscaping design.

The below responses reflect the current project with the reduced maximum of 56 clients.

Comment No. 1

Floor Plans Demonstrating Viability of Proposal

CRHISD has asked repeatedly for floor plans demonstrating that 92 beds, together with all the other spaces needed for this proposed high-end, Betty Ford-like program, are viable within the existing buildings on the site. The Applicant erroneously contends that the "Planning Board has no authority over this issue." (Addendum at 4). We hope the Board had a chance to review the Town's Special Permit requirements, which mandate that this information be made available so that the Planning Board (and public) can

properly evaluate the "intensity of operation and character" of the proposed facility. Zoning Code § 307-42A.

Rather than supply the required floor plans, the Applicant's consultants (Cicero Consulting), who seem to specialize in assisting healthcare clients apply for certificates of need not architectural or building design-provided a letter that appears to simply recite OASAS's minimum square footage requirements for the spaces required in the proposed facility. This allegedly totals 24,497 sf. They then conclude that there is "almost double the required square footage for the proposed 92 bed facility" because the seven existing buildings total 45,560 sf. (Appendix 54). This is not just an oversimplification but a completely flawed analysis. The question is not whether OASAS's minimum requirements are less than what the existing buildings offer.

The question is how the Applicant is going to fit 92 Betty Ford-style beds and other high-end services into that square footage. CRHISD's experts say it can't. The Applicant had a chance to prove them wrong by simply offering floor plans or architectural drawings to substantiate its claim. It didn't. No one on behalf of the Applicant made any effort whatsoever to lay out the actual proposed program to see if and how it would fit within the existing buildings. All they did was provide a flawed mathematic calculation that does not credibly answer the question.

We also note that the Addendum suddenly increases the available square footage within the seven existing buildings on the site by over 18% to 45,560 sf. The Applicant's March 2019 CEEAR states that the seven buildings "comprise a total of approximately 38,560 sf." (CEEAR at 37). While according to CRHISD's architect the outcome remains the same as under either scenario the existing square footage cannot accommodate a Betty Ford-like program, which is it? Shouldn't the Applicant know this basic information? If it is getting this basic information wrong, what else is it getting wrong?

Response No. 1

As noted above, as a result of direct discussions with the neighbors/neighborhood groups, the project has reduced its maximum number of residential clients from 92 to 56, a 39% decrease. This would increase the square footage per patient, further exceeding the minimum square footage requirements of OASAS. OASAS will determine if the floor plans are adequate for 56 beds.

The Applicant and its architect had several meetings with the neighbors and their architect, and the Applicant has made numerous modifications to the floorplans based on those discussions.

Comment No. 2

OASAS Communications

The Applicant finally provided its communications with OASAS. The Applicant promised those communications would vindicate its failure to advance its OASAS application because OASAS asked that this local process play out first. The communications show nothing of the sort. OASAS apparently has hardly any information about this project. (Addendum Appendix 53).

During the May 4th meeting, Planning Board Member Kessler rather explicitly requested each communication-emails, texts, letters, phone calls, etc.-that corroborated Mr. Baldwin's statement that

OASAS instructed the Applicant to complete the Town's review processes before conducting a prior consultation meeting with OASAS.

The letters and emails in the Addendum confirm that OASAS did not advise the Applicant of this (no phone log or text messages were provided). There is also no evidence that OASAS truly understands the extent of public controversy and concern over this proposal to locate an OASAS facility on a site in a residential neighborhood that does not comply with zoning. It appears the only knowledge that OASAS has about this project comes primarily from a newspaper article in 2016 and the Applicant's own website. (Addendum Appendix 53).

As CRHISD has been telling the Board accurately, the communications between the Applicant and OASAS concern the Applicant oddly asking OASAS whether it needs certification under Article 32 of the Mental Hygiene Law. And OASAS won't answer this basic question until the Applicant submits a Certification Application, which it has not done. OASAS said: "OASAS has not seen any proposal from Hudson Ridge." (See Addendum Appendix 53, OASAS's August 23, 2019 letter). There is nothing in these communications about the Applicant seeking a prior consultation meeting. At no point is the Applicant ever told to stand down until the local process plays out. Indeed, OASAS never told the Applicant anything other than to submit its Certification Application.

The Applicant represented to the Planning Board and public that OASAS has weighed in, and that it had documentation to prove its claim; yet, the Applicant has nothing. (See Video of May 4th Meeting, beginning at 1:06:52). So the question remains, why hasn't the Applicant proceeded before OASAS? And why did it misrepresent this fact?

Moreover, enclosed as Exhibit "A" is a Memorandum from County Legislator Vedat Gashi confirming that the Applicant has not had any contact with the Westchester County Department of Community Mental Health ("DCMH"). Again, why not? CRHISD submitted a letter previously from Steven Rabinowitz, a former OASAS employee, explaining that applicants customarily seek initial feedback from OASAS and DCMH first, before embarking on the full local land use review process. The Applicant is insisting on doing it backwards, and after all this time it is still not clear why. One thing is now certain: it is not because OASAS (or DCMH) told the Applicant to do it this way.

To be clear, this isn't a game of "gotcha" (although trust and credibility issues are not going away). This issue is important because we all may be wasting our time on a proposal that has no real shot at coming to fruition—at least not in the format it is being presented—if it cannot pass muster with OASAS and DCMH. Just like when the Planning Board asks applicants to obtain conceptual feedback from outside agencies during the land use review process, the Board should insist that this Applicant do so here. The Applicant has not even tried.

Response No. 2

OASAS is the authority issuing operating certificates to new chemical dependence treatment programs and to inspect and regulate those programs once they are established. Prior consultation with OASAS's Field Office and Local Governmental Unit is set-up to occur after local issues have been resolved, if possible, so that State and County regulatory bodies do not spend their time on a project that will either be changed (such as with the recent reduction from 92 to 56 beds) or is

unable to proceed locally. Please see also the Applicant's submission of September 3, 2021 for further information regarding this issue, another copy of which is submitted herewith.

Comment No. 3

Community Character

CRHISD has devoted a lot of attention during this Public Hearing process to describing how the proposed 92-bed facility and its 120 daily traffic trips and other impacts would negatively harm the quality of life of the residents. (See, e.g., February 22, 2021 and March 23, 2021 submissions). CRHISD has submitted extensive evidence, both orally and in writing, demonstrating that the proposed use is incompatible with the character of Quaker Ridge Road and the established single-family residential neighborhood that has grown up around the site since Dr. Lamb operated a sanitarium a century ago. We trust the Board is familiar with CRHISD's community character concerns, and refer the Board to its prior submissions.

The Applicant's response in its Addendum boils down to two main arguments: that the proposed specialty hospital (i) is consistent with the hospital that last existed on the site around 1948, and the other institutional uses that existed thereafter until around 1980, and (ii) is "not fundamentally different than any of the other non-residential uses permitted in the neighborhood." (Addendum at 15).

The first argument fails because it completely ignores that the residential character of the community has changed drastically between 1948 and today, and thus the proposed facility would be wholly inconsistent with the present-day character of the neighborhood. We refer the Board again to the Maps submitted as Exhibit F to CRHISD's March 23rd submission-they depict how the area has transformed into a residential community over the past 40+ years.

The Applicant ignores this irrefutable evidence about the surrounding residential community, relying instead on comparing the proposed facility only to prior historical uses on this site itself. This analysis is too narrow. Community character analysis is broader and focuses on whether a proposed use would harmonize within the surrounding community-in this case, one that has established itself as firmly residential for the past 4 decades. (See cites to Town Comprehensive Plan, SEQRA Handbook, and Town Zoning Ordinance in CRHISD's February 23, 2021 submission).

The second argument fails because other non-residential uses, such as schools, places of worship, and country clubs, would all serve the local community and offer destinations where residents could congregate and feel part of the community. They would contribute to the residents' sense of place and quality of life within their community. In contrast, the proposed wellness center is "fundamentally different" because it would not be integrated with the community; it would be off-limits to everyone except the affluent individuals who fly in from around the country for their stay. We remind the Board that "[r]esidential districts are intended to be free from uses other than residential uses, except those which are both compatible with and convenient to the residents of such districts." Zoning Ordinance § 307-S(A) (emphasis added). Again, this is a laudable concept, it just isn't allowed on this site under the Town's residential zoning.

Notably, the Addendum does not address the hardship that the Applicant brought upon itself when it voluntarily acquired this site in a residential zoning district for its proposed "specialty hospital" even though this site does not satisfy the "frontage on a state road" special permit requirement. CRHISD has pointed

out many times that this requirement was adopted in 2004-6 years before the Applicant acquired the site. The Addendum does not explain why the Applicant took the risk it did (and then did nothing to get to know its neighbors and their concerns).

Response No. 3

The applicant and its professionals in conjunction with Town staff have studied, analyzed and concluded that a facility with 92 beds and accompanying staff will have no significant impact on traffic, water or character. The agreed upon reduction of beds from 92 to 56 will further reduce any perceived impacts.

No new buildings are proposed, so the scenic character of Quaker Ridge Road will be unchanged. Landscaping on the property will be significantly enhanced, screening neighboring views into the site. The existing open space (approximately 75% of the property) will remain intact. An enhanced landscaping design is being reviewed by the neighbors.

Comment No. 4

Recreational Use and Enjoyment of Quaker Ridge Road

Related to community character, the Addendum contains bicycle and pedestrian traffic counts along Quaker Ridge Road for 2 days in April (a Saturday and Tuesday), for a 3-hour period each in the early to mid-afternoon, to purportedly support its claim that the area roadways are not heavily utilized by bicycles or pedestrians. (CEEAR at 29). The Addendum alleges that during the six hours of counts, there was an average of 3 .67 bicycle trips and 1.17 pedestrian trips. (Addendum at 13).

These limited counts go against the overwhelming public testimony during the Public Hearings that the area roadways are enjoyed frequently by residents and visitors to Greater Teatown for bike riding, walking, jogging, and other recreation. Indeed, some Planning Board Members and other attendees at the Site Visit on April 18 observed usage of Quaker Ridge Road greater than what these counts portray. Something seems wrong with these counts. No information was submitted regarding who conducted the counts. Nor was the back-up data provided to verify that the information in Addendum Table Bis accurate. Perhaps these 6 hours are not a sufficient sample size.

CRHISD asks the Board to use its common sense to disregard the Addendum's counts in favor of the personal knowledge and experiences of the residents-who have been using the local roadways for recreation for decades, not 6 hours-and know first-hand how these roadways are used. See, e.g., Michelson v. Warshavsky, 653 N.Y.S.2d 622, 623 (2d Dep't 1997) (affirming denial of 3-lot subdivision where the planning board applied its "discretion and commonsense judgments" to the facts presented by owners of adjacent and neighboring parcels regarding flooding; the "long-term personal observations" by the neighbors were not general objections, but rather were "sufficient to raise legitimate and serious questions about the effect of the proposed subdivision").

The Applicant's basic lack of understanding how area residents and visitors to Greater Teatown use and enjoy Quaker Ridge Road for its scenery and natural setting, including the nearby Aqueduct trail, invalidates all the Applicant's conclusions about community character and the residents' quality of life in their neighborhood.

Response No. 4

See Response 3.

Comment No. 5

Traffic - Supplemental Report from Bernard Adler, P.E.

Enclosed as Exhibit "B" is a Supplemental Traffic Report, prepared by Bernard Adler, P.E., of The Chazen Companies, concluding that none of his comments in his prior Report (March 23, 2021) have been adequately addressed in the Addendum. For brevity's sake, the Board is referred to this Supplemental Report.

CRHISD again urges the Planning Board to seek guidance on these issues from its traffic consultant (Provident Design Engineering). PDE should also be asked to confirm if the Applicant's responses to its last review memorandum, dated April 17, 2019, are satisfactory.

Response No. 5

See Response 3.

Comment No. 6

Building Code Compliance and Lighting - Supplemental Report from Ed Larkin, P.E.

Enclosed as Exhibit "C" is a Supplemental Code Compliance Report, prepared by Ed Larkin, P.E., of The Chazen Companies, concluding that his comments in his prior Report (March 23, 2021) have either been ignored in the Addendum or not completely answered. The Board is also referred to Mr. Larkin's Supplemental Report. We have also enclosed both Mr. Adler's and Mr. Larkin's March 23rd Reports together with their Supplemental Reports for the Board's convenience.

In sum, Mr. Larkin opines that the deficiencies in the Addendum include:

- failure to submit a photometric plan
- failure to submit sufficient information about the project's HV AC system and emergency generators (including their fuel truck delivery/storage requirements)
- failure to submit a construction schedule and sequencing plan for bringing the old buildings into compliance with the NYS Building Code

These matters relate directly to the Planning Board's SEQRA/Site Plan considerations. They cannot be punted to building permit review.

Response No. 6

The Town of Cortlandt Building Inspector will review the drawings for compliance with Building Code and Fire Code in order to obtain a Building Permit. As noted in Response No. 1, floorplans for the formerly proposed 92-bed facility were supplied to the CRHISD neighborhood group which were reviewed by CRHISD's architect.

Comment No. 7

Shuttle Program and Staffing

CRHISD requested that the Applicant update Table S I, entitled "Number of Employees Entering/Exiting the Site by Shift," to state definitively how many employees would be expected to use the shuttle and when. Related to this, CRHISD also asked for the staffing schedule to be confirmed because the Applicant had presented a new, different, and less specific schedule to the ZBA in October 2019 (it did not show FTEs by shift) (See Exhibit J to CRHISD's March 23, 2021 submission, and reproduced in Addendum Appendix 42D). All this information would allow the Board, its traffic consultant, and the public to understand and opine on the shuttle program, as well as the project's traffic, community character, noise, and other impacts related to new cars at new times on the local, narrow, and dark rural roads.

The Applicant provided none of this. The Addendum instead simply references Appendix 37 in its March 2019 CEEAR, and recites the hours for the 4 shifts. This information predates the new staffing schedule submitted to the ZBA in October 2019-which also appears to contain more than 4 shifts as employees would be coming and going early in the morning and late at night, including a shift starting at midnight. (See Addendum Appendix 42D).

Neither the Addendum nor CEEAR Appendix 37 answer the question: how many employees will be using the 2 shuttle vans per shift? The Addendum (p. 7) says the number will "vary," and Appendix 37 says it would be used by a "substantial portion" of lower-level employees. Table S I previously specified the actual number of employees that would use the shuttle-only it was prepared in 2016 and had other inconsistencies pointed out in our March 23rd submission. (Table S I is attached as Exhibit "D").

And the inconsistencies continue here too. The Addendum says on page 8 that "there is no shuttle for the 10:00 PM entering and 6:00 AM exiting employee shift," but the Addendum also says on pages 9 and 20 that "there are limited employee arrivals/departures at the night shift change at 10:00 PM with the use of the two shuttle vans." (Emphasis added).

In short, Table S I must be updated based on a definitive staff schedule and be free of contradictions.

Additionally, we refer the Board to Mr. Adler's Reports for comments about demonstrating the viability of using FDR Park and other off-site locations for shuttle parking, which CRHISD also raised in its July 8, 2021 submission. The Applicant did not provide this information either.

Response No. 7

Since the use of the shuttle vans will be a condition of the project's approval, the Applicant will be responsible for continuously securing a sufficient off-site staging area(s) for employee parking, as required. It is expected that certain employees would use public transportation and would be transported between the site and the public transportation by the shuttle vans.

In addition, with the reduction in the number of beds there will also be a reduction of parking needs, with the reduction in the number of employees.

Comment No. 8

Proposed Use and Size of Each Building

The information provided in the Addendum (p. 8) regarding the proposed uses of each building do not match the uses identified on the Title Sheet of the 2019 Site Plan. And as mentioned above, the square footages shown on the Title Sheet do not correspond to the square footages identified in Addendum Appendix 55. All this information must be reconciled and resubmitted so that the Board and public knows the size and proposed use for each building. Without this information, the impacts relating to the use of each building on adjoining neighbors – some of whom are just steps away-cannot be evaluated.

Response No. 8

The reduction from 92 to 56 beds will lessen the intensity of use of Building #1 in particular, which would house the majority of the patients. The use of other buildings with regard to providing ancillary housing for patients is to be reviewed given the reduction of beds. There will also be a reduction in the number of employees.

Comment No. 9

Without belaboring the point, CRHISD has repeatedly called upon the Applicant to reveal who is behind the project and what qualifications and experience he/she has to operate this facility modeled after the Betty Ford Clinic. This was a chance for the Applicant to put those questions to rest. Instead, it again obfuscated and told this Board and the public that they shouldn't care about experience because "full-time, experienced professional management" will run the facility under the regulation of OASAS. (Addendum at 6).

Were this not a Special Permit Use, maybe the answer would be sufficient. If the Applicant did not need an OASAS license, possibly the Applicant could ignore the inquiry. But in the land use context before your Board (and the ZBA), these issues must be addressed and answered. With the mounting inconsistencies and misrepresentations each time the Applicant provides a new submission, it becomes all the more important to know who is behind this facility and why he/she should be trusted to develop it. Given the persistent unanswered questions, and the unrefuted data showing that the proposal is not feasible, all indications are that the Applicant cannot be.

Response No. 9

The Applicant has been in active, direct, and personal discussions with the neighbors/neighborhood groups for several months. This comment is therefore no longer pertinent.

Sincerely,

JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC

Robert B. Peake

Robert B. Peake, AICP
Planner

p:\2014\14088\admin\ltcomment-response 12-20-2021.docx

APPENDIX 70

SUB-APPENDIX A

August 8, 2016

Ms. Diane Gerdon
Certification Specialist
Bureau of Certification & System Management
1450 Western Avenue
Albany, NY 12203-3526

Re: Letter of Inquiry Regarding Program Services

Dear Ms. Gerdon,

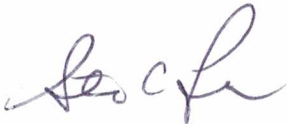
We received your letter dated July 13, 2016 from the New York State Office of Alcoholism and Substance Abuse Services (OASAS) regarding Hudson Ridge Wellness Center, Inc. and a recent article that you received.

Please note that at this time that we are not an operational facility. The buildings on the former Hudson Institute are not currently in the condition to house anyone at this time.

However, Hudson Ridge Wellness Center, Inc. is planning to seek certification in the near future from OASAS and has recently hired Shari Noonan to assist with this matter.

We thank you for your note and look forward to working with your agency in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Laker', written in a cursive style.

Steven Laker
Vice President
Hudson Ridge Wellness Center, Inc.

CC: Shari Noonan

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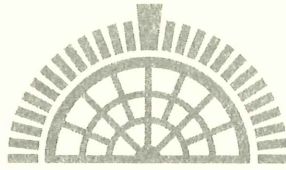
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SUB-APPENDIX B



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September 3, 2021

Joshua B. Subin, Esq.
Office of Town Attorney
Town Hall
1 Heady Street
Cortlandt Manor, NY 10567

*Re: Hudson Ridge Wellness Center, Inc. and Hudson Education and Wellness Center
2016 Quaker Ridge Road, Town of Cortlandt*

Dear Mr. Subin:

This letter is in response to your letter of August 23, 2021. In answer to the inquiries in your letter, enclosed is the letter of the Applicants' State licensing consultant, Frank M. Cicero, principal of Cicero Consulting Associates VCC, Inc., dated August 31, 2021. You may recall, that as referenced in his letter, Mr. Cicero, and his colleague, Brian Baldwin, testified at length before the Zoning Board and made submissions to the Board pertinent to your current inquiries.

Also enclosed, likewise as relevant to your inquiries, and to a large portion of recent public comment regarding the ownership and internal operation of the proposed specialty hospital, is a copy of the article of my former law partner, Adam L. Wekstein, Esq., entitled, "Blurred Lines: When Does Zoning Cross the Boundary Between Legitimate Regulation of Land Use and Impermissible Regulation of Owner or Occupant, Form of Ownership, or Internal Business Operations?", published in the March/April 2018 edition of New York Zoning Law and Practice Report. We trust that you will counsel the Planning Board accordingly with respect to its consideration of public comment on matters exceeding the lawful authority of the Board.

Thank you for your consideration.

Very truly yours,

Robert F. Davis

RFD:dds
Enclosures

c: Planning Board
Thomas F. Wood, Esq.

Cicero Consulting Associates VCC, Inc.

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Charles F. Murphy, Jr.
James Psarianos
Michael D. Ungerer
Noelia Chung
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Rose Murphy

Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

August 31, 2021

Robert F. Davis, Esq.
Singleton, Davis & Singleton
120 East Main Street
Mount Kisco, NY 10549

Re: Hudson Ridge Wellness Center, Inc.

Dear Mr. Davis:

This letter is being submitted to you, on behalf of and at the request of our client, Hudson Ridge Wellness Center (Hudson Ridge). Cicero Consulting Associates has been engaged by Hudson Ridge to provide consulting services regarding a potential application to seek approval of the New York State Office of Addiction Services and Supports (OASAS) for a Residential Addiction Treatment Program to be located in the Town of Cortlandt, and to provide expert testimony on behalf of Hudson Ridge with respect to its applications before the Town of Cortlandt.

We have been asked to address Assistant Town Attorney Subin's letter of August 23, 2021 and, in response to his inquiries, to provide information about whether an application to seek approval of OASAS for a Residential Addiction Treatment Program has been submitted and whether a decision has been made by Hudson Ridge Wellness Center on which level(s) of Residential Treatment Services will be provided in the proposed program. These matters have previously been addressed at length before the Town Zoning Board. See Appendices 42 (B) – (E), (G) and (I) to the Applicant's August 2021 Addendum. Nevertheless, with respect to the two (2) aforementioned matters, the following applies:

1. No application has been submitted to OASAS because it is much more reasonable and orderly for Hudson Ridge to resolve local matters with the Town of Cortlandt first. It has been clear from the outset, including, apparently, to OASAS after individuals from the Town interested in the process reached out to OASAS, that this would be a contentious issue before the Town. In such cases, in our experience, OASAS is reluctant to process an application until such local matters have been resolved.

Furthermore, final OASAS approval is dependent on the issuance of a Certificate of Occupancy from the Town of Cortlandt; a necessary precursor to obtaining a Certificate of Occupancy will be receipt by Hudson Ridge of Town of Cortlandt site plan approval and a special permit including a necessary frontage variance. Until this heretofore contentious local process is completed and all necessary Town approvals are secured, it is premature to submit an application to another regulatory body, and wasteful of time and resources, not only for Hudson Ridge but also potentially for OASAS. Although Town of Cortlandt approval may be conditioned on receipt of an OASAS approval, in our experience and in

our expectations for this project, the approval of OASAS will be far more dependent on the approval of the Town of Cortlandt, and more readily issued if and when the Town process is successfully completed by Hudson Ridge.

In summary, in a case like this, it is wiser to resolve an issue that is known to be contentious first. Of course, once Hudson Ridge receives Town approval, it will gladly and rapidly move to submit an application to OASAS.

2. Hudson Ridge Wellness Center has not decided what level(s) of care will be offered at its proposed program. That decision will be made at the time that the OASAS application is submitted. However, the levels of Residential Care, as defined in Part 820 and as may be provided, are:
 - Stabilization
 - Rehabilitation
 - Reintegration

Your April 23, 2019 letter to the Town Attorney and Director of Code Enforcement, presented to the Zoning Board of Appeals, includes the following explanation of the three (3) levels of care:

820.3 Definitions

Unless otherwise indicated, the following terms shall be applicable to all programs certified pursuant to this Part.

(a) **“Residential services”** are 24/7 structured treatment/recovery services in a residential setting provided by Office certified programs to persons recovering from substance use disorder. Services correspond to elements in the treatment/recovery process and are distinguished by the configuration of services, staffing patterns, degree of dysfunction of the individual served in each setting, and patient readiness to transition to a less restrictive program or element of treatment/recovery. Certified residential programs may provide residential services corresponding to one or more of the following elements of the treatment/recovery process:

- (1) Stabilization;
- (2) Rehabilitation;
- (3) Reintegration

(b) **“Stabilization”** provides a safe environment in which a person may stabilize withdrawal symptoms, severe cravings, psychiatric and medical symptoms before referral or transition to another program or element of structured treatment/recovery. Stabilization requires the supervision of a physician and clinical monitoring.

(c) **“Rehabilitation”** provides a structured environment for persons whose potential for independent living is seriously limited due significant functional impairment including social, employment, cognitive and ability to follow social norms that requires restructuring social supports and behaviors in order to develop sufficient skills; these persons require a course of rehabilitative services in a structured environment with staffing to provide monitoring and support and case management.

(d) **“Reintegration”** provides a community living experience in either congregate or scatter-site settings with limited supervision and/or case management; persons appropriate for these services are transitioning to long term recovery from substance use disorder and independent living in the community.

The document attached to Mr. Subin’s August 23, 2021 letter (OASAS Guidelines for Detoxification Triage Using the 48 Hour Observation Bed) is not applicable to this proposed program. It is an old, outdated document, published at a time when OASAS was called the New York State Office of Alcoholism and Substance Abuse Services, and should not be considered by the Town.

Thank you for your consideration of this information.

Sincerely,

Frank M. Cicero

Frank M. Cicero

cc: Mr. Steven Laker, Hudson Ridge Wellness
Mr. Brian M. Baldwin, Cicero Consulting Associates

NEW YORK ZONING LAW AND PRACTICE REPORT



MARCH/APRIL 2018 | VOLUME 18 | ISSUE 5

BLURRED LINES: WHEN DOES ZONING CROSS THE BOUNDARY BETWEEN LEGITIMATE REGULATION OF LAND USE AND IMPERMISSIBLE REGULATION OF OWNER OR OCCUPANT, FORM OF OWNERSHIP, OR INTERNAL BUSINESS OPERATIONS?

*Adam L. Wekstein, Esq.**

I. INTRODUCTION

While three central limitations on the zoning authority of municipalities are deceptively simple to state, they leave “blurred lines” between those regulations and approval conditions which are allowed and those which are proscribed. The Court of Appeals has repeatedly acknowledged the first of the trilogy, stating that it is a “fundamental rule that zoning deals basically with land use and not with the person who owns

*Adam L. Wekstein is a founding partner of Hocherman Tortorella & Wekstein, LLP. His practice concentrates on land use, zoning, environmental and constitutional law and appellate practice. He has handled numerous complex litigation matters on both the trial and appellate levels. He appears regularly before municipal agencies and boards seeking land use approvals and environmental permits. Mr. Wekstein has lectured and/or written articles regarding various zoning, environmental law, property rights, and constitutional issues for the Local and State Government Law and Environmental Law Sections of the New York State Bar Association, Lorman Education Services, the Practising Law Institute, The New York Zoning Law and Practice Report, The Urban Lawyer, the Municipal Law Resource Center of Pace University and the Westchester Municipal Planning Federation. He is a member of the Executive Committee of the Local and State Government Law Section of the New York State Bar Association. Mr. Wekstein graduated from Cornell University and the State University of New York at Buffalo Law School, *cum laude*, where he was an editor of the *Law Review*. He served as a law assistant at the New York State Supreme Court, Appellate Division, Third Department.

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or occupies it.” *Dexter v. Town Bd. of Town of Gates*, 36 N.Y.2d 102, 105, 365 N.Y.S.2d 506, 507, 324 N.E.2d 870 (1975); *See St. Onge v. Donovan*, 71 N.Y.2d 507, 511, 527 N.Y.S.2d 721, 722, 522 N.E.2d 1019 (1988)(recognizing that it had previously held “that although a local zoning board may impose ‘appropriate conditions and safeguards’ in conjunction with a change of zone or a grant of a variance or special permit,’ those conditions ‘must be reasonable and relate only to the real estate involved without regard to the person who owns or occupies it.’ ”). The other two principles, which closely relate to the first one, provide that zoning cannot be used to regulate: (1) the form of ownership of property (*FGL & L Property Corp. v. City of Rye*, 66 N.Y.2d 111, 495 N.Y.S.2d 321, 485 N.E.2d 986 (1985)); or (2) the internal operations of a business, as opposed to impacts generated by the use of land. *See Sunrise Check Cashing v. Town of Hempstead*, 20 N.Y.3d 481, 964 N.Y.S.2d 64, 986 N.E.2d 898 (2013); *Old Country Burgers Co., Inc. v. Town Bd. of Town of Oyster Bay*, 160 A.D.2d 805, 806, 553 N.Y.S.2d 843, 844 (2d Dep’t 1990)(stating that conditions imposed in connection with a permit “must relate directly to the proposed use of the property, and not to the manner of the operation of the particular enterprise conducted on the premises”). All three rules are premised on the conclusion that state zoning en-

abling legislation only authorizes the regulation of use and dimensional requirements, not ownership, form of ownership or business operations, as well as being attributed to limitations inherent in the fundamental tenets of zoning.¹ *See Sunrise Check Cashing*, 20 N.Y.3d at 485, 964 N.Y.S.2d at 65-66; *St. Onge*, 71 N.Y.2d at 515-517, 527 N.Y.S.2d at 724-726; *FGL & L Property Corp.*, 66 N.Y.2d at 115-117, 495 N.Y.S.2d at 324-325; *Dexter*, 36 N.Y.2d at 105, 365 N.Y.S.2d at 507- 508. The inconsistencies in the application of such constraints on zoning authority not only provide the basis for an interesting doctrinal discussion, but have real-world implications with respect to, among other things, amendments of zoning laws and the nature of conditions which can be imposed in connection with special permits, site plan approvals and variances.

II. ZONING REGULATES THE USE NOT THE USER

That zoning regulates land use, rather than the identity of the owner or user of the land, would seem to constitute a straight-forward concept that is simple to apply. Such certainly is the case if a zoning provision identifies a party specifically—e.g., any corporation can occupy offices so long as its initials are “I.B.M.” [*Spoiler alert—such a restriction would be no good*]. However, as zoning provisions or conditions deviate from expressly identifying a party, to ones which are in varying degrees related to the nature of the owner or occupant of the property, the outcome becomes less certain. At least a few decisions suggest that absent explicit identification of a specific individual entity or person a zoning regulation or condition linked to ownership or occupancy may be sustainable; others cut strongly against such an outcome.

A. EXPRESS IDENTIFICATION OF THE OCCUPANT OR USER OF PROPERTY IS INVALID.

A prototypical example of, and one of the leading cases on, the proscription of regulation grounded on the identity of the owner or occupant of property is *Dexter, supra*. In *Dexter*, the Court of Appeals considered a challenge to a rezoning which imposed a condi-

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tion providing that the application for “the construction of a retail supermarket by Wegman Enterprises, Inc., and related commercial structures, shall inure to the benefit of Wegman Enterprises, Inc., only, and for that specific purpose only.” *Dexter*, 36 N.Y.2d at 104, 365 N.Y.S.2d at 507. Naturally, the Court held that the condition was personal to Wegman’s supermarket solely and did not relate to the use of property or zoning thereof. Therefore, *Dexter* annulled the rezoning as improper and unauthorized by law. In its analysis the Court recognized that while zoning must regulate land use and not the person who owns or occupies the land, the reality is more complicated. The decision reads as follows:

While it is a fundamental principle of zoning that a zoning board is charged with the regulation of land use and not with the person who owns or occupies it . . . we recognize that customarily, as is here illustrated, when a change of zone, a variance or a special permit is sought, there is a specific project sponsored by a particular developer which is the subject of the application. As a practical matter, the application is usually predicated on a particular type structure, often accompanied by architectural renderings, for a particular use by a specific intended user. In the usual case, the application and accompanying graphic material come to constitute a series of representations frequently bolstered at the hearing by additional promises or assurances made to meet objections there raised. Throughout, attention focuses on the reputation of the applicant and his relationship to the community and the particular intended use. And all too often the administrative or legislative determination seems to turn on the identity of the applicant or intended user, rather than upon neutral planning and zoning principles.

Dexter, 36 N.Y.2d at 105, 365 N.Y.S.2d at 507-508 (citation omitted).

St. Onge, supra, was actually two consolidated appeals decided in a single opinion.² In *St. Onge* itself, the Court of Appeals reviewed a record in which a prior owner of a property had been granted a variance by the Town of Colonie Zoning Board to use a house in a residential zoning district as a real estate office. A condition to the variance provided that the building was “to be used solely by the applicants and may be used only in connection with their existing real estate office.” *St. Onge*, 71 N.Y.2d at 512, 527 N.Y.S.2d at

722. When contract vendees for the property sought site plan approval, the planning board denied the application, finding that the variance which had been granted was temporary and that transfer of the property to a party other than the variance recipient would terminate it. The zoning board reached the same conclusion, requiring the petitioners to obtain a new variance if they wanted to secure approval for a real estate business on the site.

The Court was careful to confirm that, where appropriate, land use boards have discretionary authority to impose reasonable conditions, but stated that such conditions must be “directly related to and incidental to the proposed use of the property and aimed at minimizing the adverse impact to an area that might result from the grant of a variance or special permit.” *St. Onge*, 71 N.Y.2d at 516, 527 N.Y.S.2d at 725. In contrast, the decision specified that a board may not impose conditions which are unrelated to the purposes of zoning or to the relief sought in the application, require dedication of land that is not the subject of the variance or seek to regulate the details of the operation of an enterprise, rather than the land use.³ *St. Onge* struck down the variance condition because it was tied to an existing business, explaining its rationale in the following passage:

the condition imposed on the variance granted by the Town Zoning Board in 1977 clearly relates to the landowner rather than the use of the land. By its terms, the condition purports to terminate the variance automatically if any persons other than the original applicants use the property as a real estate office. *This is precisely the type of personal condition proscribed by [Dexter] for it focuses on the persons occupying the property rather than the use of the land or the possible effects of that use on the surrounding area. As this condition bears no relation to the proper purposes of zoning, therefore, it was properly ruled invalid.*

St. Onge, 71 N.Y.2d at 517, 527 N.Y.S.2d at 725 (emphasis added).⁴ See *Weinrib v. Weisler*, 27 N.Y.2d 592, 313 N.Y.S.2d 407, 261 N.E.2d 406 (1970) (invalidating a building code’s prohibition against the assignment of building permits as unconstitutional because it attempted to control ownership and the transfer of property, rather than its use); *Middleland, Inc. v. City Council of City of New York*, 14 Misc.3d 1223(A), 836

N.Y.S.2d 486 (Sup. Ct., Kings Co. 2006)(annulling as an impermissible regulation of user, rather than use, a restrictive covenant, imposed as a condition of a rezoning, limiting use of property to a parking lot for an adjoining IBM facility); *Countryman v. Schmitt*, 176 Misc. 2d 736, 673 N.Y.S.2d 521 (Sup. Ct., Monroe Co. 1998)(invalidating zoning provisions governing special permits for cell towers based largely on ownership of the property on which the antenna would be sited—e.g., giving high priority to land owned by the Town and fire department—because with narrow exceptions “it relates solely to the fortuitous circumstance of ownership . . .”)

B. DIFFERENT ZONING TREATMENT OF OWNER-OCCUPIED VERSUS ABSENTEE-OWNED DWELLING UNITS.

Although imposing divergent zoning regulations on dwelling units occupied by their owners and those which are rental units could be classified as a distinction based on the user, rather than the land use, courts have upheld such differential treatment. In a generic sense, whether a two-bedroom apartment is occupied by its owner or rented to a tenant, the use is the same. Nonetheless, the courts have accepted the theory that it is rational to conclude that rental units, because they tend to be run on a “commercial” basis, may have different impacts than dwelling units occupied by their owners and, therefore, may be regulated differently.

For example, in *Kasper v. Town of Brookhaven*, 142 A.D.2d 213, 535 N.Y.S.2d 621 (2d Dep’t 1988), the court upheld against a number of constitutional and statutory challenges a local law which permitted only homeowners who occupied their residences to apply for permits to rent a portion of their house as an accessory apartment, while not providing the same option to absentee owners. In rejecting the contention that the provision was an improper regulation of the users of property, rather than of the land use, the Appellate Division acknowledged that as a practical matter many zoning laws extend beyond the mere regulation of properties to affect the owners and users. *Kasper*, 142 A.D.2d at 222, 535 N.Y.S.2d at 627. To support its conclusion, *Kasper* relied on the observation that the challenged zoning did not attach a personal condition

to any individual land owner and was not unrelated to the use of property. *Kasper*, 142 A.D.2d at 223, 535 N.Y.S.2d at 627.⁵ See *Spilka v. Town of Inlet*, 8 A.D.3d 812, 815, 778 N.Y.S.2d 222, 225 (3d Dep’t 2004)(deciding that a zoning amendment requiring special use permits for rental of non-owner-occupied dwellings for periods of less than four months, that imposed no similar restriction on owner-occupied dwellings, does not improperly distinguish between homeowners who occupy their premises and those who do not).⁶

C. RESTRICTIONS ON CLASSES OF RESIDENTS.

Restrictions on the characteristics of a resident who is permitted to occupy a dwelling unit may or may not be upheld depending on the nature of the attributes of the occupant which invokes the zoning restriction, and, perhaps, policy considerations. Not surprisingly, in *Maldini v. Ambro*, 36 N.Y.2d 481, 369 N.Y.S.2d 385, 330 N.E.2d 403 (1975), the Court of Appeals upheld a zoning amendment establishing a retirement community district which allowed, among other uses, multiple residences designed to provide living/dining accommodations, including social, health care and other supportive services and facilities for senior citizens, which were to be owned and operated by a nonprofit corporation.⁷ The Court analyzed the issue (and reinforced the thesis of this article) as follows:

[t]hat the ‘users’ of the retirement community district have been considered in creating the zoning classification does not necessarily render the amendment suspect, nor does it clash with traditional ‘use’ concepts of zoning. Including *the needs of potential ‘users’ cannot be disassociated from sensible community planning based upon the ‘use’ to which property is to be put. The line between legitimate and illegitimate exercise of the zoning power cannot be drawn by resort to formula, but as in other areas of the law, will vary with surrounding circumstances and conditions . . .* Therefore it cannot be said that the board acted unreasonably in this case in making special provision for housing designed for the elderly, one of the major groupings within our population.

Maldini, 36 N.Y.2d at 487-488, 369 N.Y.S.2d at 391-392 (emphasis added; citation omitted).

The Court bolstered its holding by reasoning that:

'Senior citizenship' may be more appropriately regarded as a stage in life within the normal expectancy of most people than as an unalterable or obstinate classification like race . . . Therefore, providing for land use suitable for the elderly may, as here, be viewed as a nondiscriminatory exercise of the power to provide for the general welfare of all people, especially since, even if the validity of that zoning classification were 'fairly debatable, (the town board's) legislative judgment must be allowed to control.'

Maldini, 36 N.Y.2d at 487-488, 369 N.Y.S.2d at 391-392. While this latter rationale could be more relevant to an equal protection analysis, as opposed to the demarcation of the line between use and user, it certainly underscores the pivotal role that policy considerations play where courts demarcate the sometimes blurred line between *ultra vires* and permissible regulation based on characteristics of the occupant. See also *Greens at Half Hollow Home Owners Ass'n, Inc. v. Greens Golf Club, LLC*, 131 A.D.3d 1108, 17 N.Y.S.3d 158 (2d Dep't 2015), leave to appeal dismissed in part, denied in part, 27 N.Y.3d 1077, 35 N.Y.S.3d 299, 54 N.E.3d 1171 (2016)(holding that the creation of a community restricted to residents 55 years of age or older and limiting use of recreational facilities and the clubhouse only to those senior residents living in the community, did not violate the prohibition against regulating users rather than use); *Campbell v. Barraud*, 58 A.D.2d 570, 394 N.Y.S.2d 909 (2d Dep't 1977).

In contrast, the Second Department exhibited hostility toward a subspecies of senior-citizen zoning regulation which imposed a durational residency requirement. In *Allen v. Town of North Hempstead*, 103 A.D.2d 144, 478 N.Y.S.2d 919 (2d Dep't 1984), the ordinance, which established a 'Golden Age Resident District' to facilitate multi-family housing for senior citizens, included the requirement that to qualify for such housing a prospective resident must have resided within the Town for at least one year. Interestingly, applying a slightly different perspective than *Maldini*, *Allen* characterized zoning for senior citizen housing as falling within the "limited exceptions" to the general prohibition against zoning ordinances regulating users or owners of property. *Allen*, 103 A.D.2d at 146, 478 N.Y.S.2d at 921. Relying on this mode of analysis,

the court held that durational residency requirement was not within the ambit of those exceptions. The court also viewed the durational limitation, favoring, as it did, Town residents, to be exclusionary. *Allen*, 103 A.D.2d at 146-147, 478 N.Y.S.2d at 921-922. As such, *Allen* concluded that the challenged zoning was illegal both as exclusionary and an impermissible regulation which was premised on the identity of the users or owners of property. Again, it should be readily apparent that policy considerations played a significant role in *Allen's* outcome.

D. AMORTIZATION BASED ON CHANGE OF OWNERSHIP.

Logically a mere change in the ownership of property should not affect the right to continue a nonconforming use authorized by zoning, as evidenced by the invalidation in *Weinrib* of the building code provision prohibiting assignment of building permits and the annulment in *St. Onge* of a variance condition making the variance ineffective on transfer of the subject property. However, the Court of Appeals eschewed such reasoning in *Village of Valatie v. Smith*, 83 N.Y.2d 396, 610 N.Y.S.2d 941, 632 N.E.2d 1264 (1994)

Generally, a municipality may require the elimination of a nonconforming use after providing a so called "amortization period" which allows the owners of the property to phase out their operations, while giving them an opportunity to recoup all or at least a significant portion of their investment. See *Town of Islip v. Caviglia*, 73 N.Y.2d 544, 542 N.Y.S.2d 139, 540 N.E.2d 215 (1989); *Modjeska Sign Studios, Inc. v. Berle*, 43 N.Y.2d 468, 402 N.Y.S.2d 359, 373 N.E.2d 255 (1977). The validity of an amortization period depends on whether it is reasonable. *Town of Islip v. Caviglia, supra*.⁸

Village of Valatie upheld a law linking the termination of the preexisting legally nonconforming use of mobile homes to the transfer of ownership of either the mobile home or the land on which it was situated. The Court started its analysis by noting that the challenger to the law did not attack the provision's constitutionality under the balancing test for amortization periods—that is the standard of reasonableness as informed by

whether the individual loss outweighs the public benefit. *Village of Valatie*, 83 N.Y.2d at 401, 610 N.Y.S.2d at 944. It also took pains to point out that in some instances no amortization is required and that a variety of events and time periods can serve as grounds for requiring discontinuance of a nonconforming use, including ones that are unpredictable, such as the destruction of a building by fire or other casualty. *Village of Valatie*, 83 N.Y.2d at 401, 610 N.Y.S.2d at 944.

The Court then distinguished the use-versus-user authority embodied in cases such as *Dexter*, *supra*, attributing the basis for the principle to be the proscription against *ad hominem* zoning. Specifically, the decision reads as follows:

The hallmark of cases like *Dexter* and *Fuhs*⁹ (*supra*) is that an identifiable individual is singled out for special treatment in land use regulation. No such individualized treatment is involved in the present case. All similarly situated owners are treated identically. The same is true for all prospective buyers. The only preferential treatment identified by defendant is that the owner in 1968 has rights that no future owner will enjoy. But the law has long recognized the special status of those who have a preexisting use at the time land controls are adopted. Indeed, the allowance of a nonconforming use in the first instance is based on that recognition. To the extent that defendant's argument is an attack on special treatment for the owners of nonconforming uses it flies in the face of established law.

In fact, what defendant is actually arguing is that the Village should not be allowed to infringe on an owner's ability to transfer the right to continue a nonconforming use . . . It is true that, in the absence of amortization legislation, the right to continue a nonconforming use runs with the land . . .¹⁰ However, once a valid amortization scheme is enacted, the right ends at the termination of the amortization period. As a practical matter, that means the owner of record during the amortization period will enjoy a right that cannot be transferred to a subsequent owner once the period passes.

Village of Valatie, 83 N.Y.2d at 403-404, 610 N.Y.S.2d at 945-946.

To the extent the broad language employed by the Court could be read to require zoning to identify a particular user in order to run afoul of the user versus use distinction, the author submits that it should not be

extrapolated to regulatory situations outside of the limited context of nonconforming uses. The conclusion in *Village of Valatie* is clearly shaped by the only grudging acceptance of nonconforming uses, the public policy favoring their eventual elimination and the earlier acceptance by the courts of a wide variety of events and time periods as a basis to for terminate such uses. In the resolution of issues unrelated to nonconforming uses, *Maldini* should provide the applicable, more flexible approach: "[t]he line between legitimate and illegitimate exercise of the zoning power cannot be drawn by resort to formula, but . . . will vary with surrounding circumstances and conditions." *Maldini*, 36 N.Y.2d at 487-488, 369 N.Y.S.2d at 391-392. In fact, as should be apparent, a decision such as *Weinrib* does not invalidate the challenged provisions because they identified a specific user, but because they merely prevented transfer of a land use approval—no "identifiable individual [was] singled out for special treatment." See also *Sunrise Check Cashing*, ((discussed in more detail below) which invalidated a prohibition of a particular type of business as, *inter alia*, an impermissible regulation based on ownership, where no specific owner or occupant was identified by the challenged law).

III. ZONING CANNOT REGULATE THE FORM OF OWNERSHIP

Of the triad of legal principles discussed in this article, the prohibition against regulating form of ownership is the easiest to apply. The rule is clear cut; it cannot be done. In *FGL & L Property Corp.*, *supra*, the City of Rye required that any development of property, which was a site of the historic "Jay Mansion" and an associated carriage house, be retained on a minimum 22-acre lot, that an undeveloped "viewway" be maintained near the mansion, that the interiors of the buildings be converted to residential units and, most importantly, that the applicant submit a draft condominium offering plan for the units. The Court invalidated the law as mandating the form of ownership. It analyzed the issue in the context of the state enabling provision, Section 20(24) of the General City Law, in the following passage:

Nothing in that subdivision speaks to ownership rather than use, and while it does not expressly forbid provi-

sions relating to ownership, the City suggests nothing within the spirit of zoning legislation generally or this subdivision specifically that offers justification for implying such power. Indeed, the cases are legion, in this State and elsewhere, which hold that “zoning . . . in the very nature of things has reference to land rather than to owner” . . . and that it is a “fundamental rule that zoning deals basically with land use and not with the person who owns or occupies it” . . . Most of the out-of-State cases hold, as did the *North Fork Motel* case, that a zoning ordinance cannot be used to exclude a condominium. The City correctly notes that exclusion of condominiums is a different proposition than requiring that property in a given area be held in condominium ownership. However, we agree with the Appellate Division’s conclusion that the distinction is without a difference, or, if difference there is, that there exists no independent justification within the spirit of subdivision 24’s zoning provision from which the power to *require* condominium ownership can be implied.

FGL & L Property Corp., 66 N.Y.2d at 116-117, 495 N.Y.S.2d at 324-325.¹¹

In *BLF Associates, LLC v. Town of Hempstead*, 12 N.Y.3d 714, 883 N.Y.S.2d 797, 911 N.E.2d 860 (2009), the Court similarly invalidated provisions in a zoning ordinance that required a recreational facility in a senior citizen housing complex to be owned by a homeowners association and that the dwellings themselves be cooperative units.¹² It stated that such requirements were “*ultra vires* and void” and violated the fundamental rule that zoning deals with land use and not the person who owns or occupies it.

As addressed in the discussion in *FGL & L*, it matters little whether a regulation seeks to mandate or proscribe the form of ownership; in either case it is still invalid. In *P.O.K. RSA, Inc. v. Village of New Paltz*, 157 A.D.2d 15, 555 N.Y.S.2d 476 (3d Dep’t 1990), the court was faced with an ordinance that prohibited the conversion of the units in multiple dwellings to condominium or cooperative ownership until the village building inspector determined that the structure complied with the New York State Building Code and all applicable building laws, rules and regulations, and issued a new certificate of occupancy authorizing the change. The Village implemented the law putatively based on a determination that the sponsors of the

conversion of the units had no intention of correcting existing violations prior to selling them and that the law was needed, therefore, to protect potential buyers. Although the Third Department upheld the law against a number of challenges, it found that it was an impermissible regulation of the form of ownership. The court stated:

The Village does not have the legislative power to regulate the conversion of property ownership which does not involve an alteration in the owner’s use of the property. Municipalities have no inherent capacity to mandate the manner in which property may be owned or held . . .

P.O.K. RSA, Inc., 157 A.D.2d at 20, 555 N.Y.S.2d at 479; *see North Fork Motel, Inc. v. Grigonis*, 93 A.D.2d 883, 461 N.Y.S.2d 414, 415 (2d Dep’t 1983) (“[z]oning ordinances cannot be employed by a municipality to exclude condominiums or discriminate against condominium ownership, for it is use rather than form of ownership that is the proper concern and focus of zoning and planning regulations”)¹³

IV. ZONING REGULATES THE LAND USE RATHER THAN THE OPERATION OF THE ENTERPRISE LOCATED ON THE LAND

The third of the principles addressed in this article is that zoning regulates the use of the land, rather than the operations of an entity located thereon. Again, this limitation on the zoning power is closely related to the truism that zoning relates to use but not the person who owns or occupies the land. *Sunrise Check Cashing*, 20 N.Y.3d at 485, 964 N.Y.S.2d at 66. As evidenced by case law, it also may be the most difficult of the three rules to apply in a consistent fashion.

A. GENERAL APPLICATION OF THE PRINCIPLE.

1. Zoning Laws

The Court of Appeals’ most recent application of the rule foreclosing the use of zoning to regulate internal operations is *Sunrise Check Cashing*. Therein, the highest Court invalidated a provision of the Town of Hempstead’s Zoning Ordinance which, among other things, prohibited check cashing businesses in that

town's business district. It held that the regulation was impermissible, both because it was based on the identity of the user rather than the use of the land and constituted an attempt to regulate business operations. The administrative record established that the putative purposes of the zoning were to encourage young people and the poor to utilize more conventional banking institutions, rather than, what the town attorney characterized as, "seedy" check cashing businesses and to eliminate predatory and exploitive finance enterprises from commercial areas in order to mitigate the adverse impacts which could be associated with such businesses. *Sunrise Check Cashing*, 20 N.Y.3d at 484, 964 N.Y.S.2d at 65.

The decision explained that the prohibition was beyond the authority granted under Town Law § 261 to, among other things, regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residences or other purposes. *Sunrise Check Cashing*, 20 N.Y.3d at 485, 964 N.Y.S.2d at 65. While the Court expressly declined to rule on the soundness of the municipality's objectives, it held that they could not be achieved through zoning. The decision explained:

Whatever the merits of this view as a policy matter, it cannot be implemented through zoning [The regulation] is obviously concerned not with the use of land but with the business done by those who occupy it. It is true that there are cases in which the nature of the business is relevant to zoning because of the business' "negative secondary effects" on the surrounding community; this is true of so-called "adult entertainment" uses . . . the town has not tried to show and does not argue that check-cashing services are in a similar category.

Sunrise Check Cashing, 20 N.Y.3d at 485, 964 N.Y.S.2d at 66 (emphasis added; citation omitted).

Louhal Properties, Inc., v. Strada, 191 Misc.2d 746, 743 N.Y.S.2d 810 (Sup. Ct., Nassau Co. 2002), aff'd and remanded, 307 A.D.2d 1029, 763 N.Y.S.2d 773 (2d Dep't 2003), also employed the prohibition against regulating internal business operations to invalidate a

law purporting to regulate hours of operation. In *Louhal*, the municipality enacted zoning: (1) prohibiting the operation of businesses located within 100 feet of property zoned for residential use between the hours of 11:00 P.M. and 6:00 A.M.; and (2) requiring a special permit to operate during such hours for businesses located anywhere else within the community. A 7-Eleven convenience store sued to invalidate the restrictions. The court began its analysis with reference to the state zoning enabling legislation (Village Law § 7-700) recognizing that the items subject to regulation thereunder "have one thing in common—they bear some relation to the physical use of land." It then explained:

Applicable case law draws a dichotomy between those regulations that directly relate to the physical use of land and those that regulate the manner of operation of a business or other enterprise. . . . In the first group are regulations relating either to the use of land or to the potential impact of land use on neighboring properties. Courts generally uphold such regulations, including those directed at physical externalities such as light, air quality, safety, population density and traffic, and even less tangible externalities such as property values, aesthetic or environmental values. . . . In the second group are those regulations that restrict the "details of operation or manner of on-site use, . . . which do not impose externalities on nearby land." . . .

Louhal Properties, Inc., 191 Misc.2d at 751, 743 N.Y.S.2d at 814.

The *Louhal* court held that the proscription/restriction of overnight business operations, in fact, fell into the second category as an impermissible attempt to regulate the internal business operations. The decision placed particular emphasis on its observation that the legislative record was devoid of evidence showing that overnight business operations have a greater impact on neighboring properties *per se* than such activities during regular hours.

Among the cases addressing the difference between permissible regulation of use and inappropriate interference with internal business operations, *Mead Square Commons, LLC v. Village of Victor*, 97 A.D.3d 1162, 948 N.Y.S.2d 514 (4th Dep't 2012), is likely the most difficult to reconcile with the governing principle. It is the author's opinion that this Fourth Department case,

which reviewed legislation attempting to exclude fast food restaurants from a portion of a Village, misapplied the applicable legal rules and that it is quite possible that the outcome would have been different if decided by another department of the Appellate Division or the Court of Appeals. As it is, *Mead Square Commons* merely contributes to the blurring of lines between legitimate zoning regulation and *ultra vires* action.

In *Mead Square Commons*, the plaintiff attacked a zoning prohibition against “formula fast food restaurants” (“FFFRs”) in the Central Business District, contained in Section 170-13 of the Village of Victor’s Code. FFFR was defined in the following manner:

“[a]ny establishment, required by contract, franchise or other arrangements, to offer two or more of the following: [1] Standardized menus, ingredients, food preparation, and/or uniforms[;] [2] Prepared food in ready-to-consume state[;] [3] Food sold over the counter in disposable containers and wrappers[;] [4] Food selected from a limited menu[;] [5] Food sold for immediate consumption on or off premises [;] [6] Where customer pays before eating.” The stated purpose of section 170-13(C)(1)(a) is “to maintain [defendant’s] . . . unique village character, the vitality of [its] commercial districts, and the quality of life of [its] residents.”

Mead Square Commons, LLC, 97 A.D.3d at 1163, 948 N.Y.S.2d at 515.

The plaintiff, the owner of property which it sought to lease to a Subway restaurant, argued both that the prohibition was invalid because it was based upon the ownership or control of property and not its use, and that it impermissibly regulated the business operations. The court rejected the plaintiff’s position, reasoning that:

unlike in *Dexter*, the challenged Ordinance section does not single out a particular property owner for favorable or unfavorable treatment . . . Rather, all property owners in the Central Business District are treated the same under section 170-13 inasmuch as all property owners are prohibited from operating an FFFR . . . Contrary to plaintiff’s related contention, we conclude that section 170-13 regulates the use, not the ownership, of the subject property. Indeed, plaintiff is not an FFFR, nor does it seek to operate an FFFR.

Instead, plaintiff is a property owner that seeks to rent commercial space to an FFFR. Thus, it is plaintiff’s use of the property that is being regulated, and its ownership status is irrelevant.

We further conclude that the court properly determined that Ordinance

§ 170-13 does not improperly regulate the manner of plaintiff’s business operations. *Mead Square Commons, LLC*, 97 A.D.3d at 1163-1164, 948 N.Y.S.2d at 516 (citations omitted).¹⁴

Aside from the fact that it is at best doubtful whether items 1 through 6 in the paragraph defining FFFR—e.g., standardized menus, ingredients, food preparation, and/or uniforms, prepared food in ready-to-consume state; and food selected from a limited menu—all relate to the land use, as opposed to the restaurant business itself, the clause limiting FFFRs only to those businesses which are required by contract, franchise or other arrangements, to meet several of those criteria, can only reasonably be viewed as relating to internal operations and/or the identity of the user. Why should an independent restaurant owned and operated by a local resident be permitted, when one that is operationally identical to it is prohibited, just because the latter is a franchise or operated by or has a contractual arrangement with a national chain? The author contends that the answer should have been that “it cannot.”

2. Permit Conditions

The restriction against regulating internal business operations applies with vigor in the context of permit conditions. For example, in the widely-cited case, *Summit School v. Neugent*, 82 A.D.2d 463, 442 N.Y.S.2d 73 (2d Dep’t 1981), the Second Department applied the prohibition to invalidate certain conditions in a special permit, albeit against the backdrop of a school use. The court stated the rule that special permit conditions must “relate directly to, and be incidental to, the proposed *use* of the real property and not to the manner of operation of the particular enterprise conducted on the premises . . .” *Summit School*, 82 A.D.2d at 467, 442 N.Y.S.2d at 76-77. It held that conditions limiting the total number of students in the school, mandating a ratio of staff members per student, controlling the times of day when classes were held,

providing that athletic activities were to be of secondary importance to education and held indoors or sufficiently distant from school boundaries, confining student activities, to the extent possible, to school grounds and requiring suitable supervision for students leaving school grounds, constituted improper interference with operations of the enterprise or educational processes.¹⁵ It also held that conditions requiring the school to be non-profit and non-sectarian had “no rational relationship to the manner of how land may be used and is not a legitimate special permit condition.” *Summit School*, 82 A.D.2d at 47, 442 N.Y.S.2d at 79.¹⁶ See *Province of Meribah Soc. of Mary, Inc. v. Village of Muttontown*, 148 A.D.2d 512, 538 N.Y.S.2d 850 (2d Dep’t 1989)(annulling conditions imposed in connection with a variance for a religious retreat house, because they failed to adhere to the rule that they “must be reasonable and relate only to the real estate involved without regard to the person who owns or occupies it” and not to the internal operations of the user rather than the land use itself and its effect on surrounding land); *Schlosser v. Michaelis*, 18 A.D.2d 940, 238 N.Y.S.2d 433 (2d Dep’t 1963) (invalidating conditions imposed by a zoning board in connection with a permit issued to a florist which limited the number of employees and business hours, because they impermissibly related to the details of the operation of the business and not to the zoning use of the property); see generally, *Amerada Hess Corp. v. Town of Oyster Bay*, 36 A.D.3d 729, 828 N.Y.S.2d 536 (2d Dep’t 2007) (holding that a prohibition of the sale of alcoholic beverages at a convenience store was both preempted by state law and unenforceable by the Town because it was an impermissible attempt to regulate the details of the plaintiff’s enterprise); *Blue Island Development, LLC v. Town of Hempstead*, 131 A.D.3d 497, 15 N.Y.S.3d 807 (2d Dep’t 2015), (finding viable a claim that a restrictive covenant requiring a developer to sell 172 waterfront units as condominiums that had been imposed as a condition to a rezoning, was illegal because it regulated the ability of the property owner to rent the units, rather than regulating the use of the land itself.)

The Second Department’s decision in *Town of Huntington v. Sudano*, 42 A.D.2d 791, 346 N.Y.S.2d 582 (2d Dep’t 1973), order aff’d, 35 N.Y.2d 796, 362

N.Y.S.2d 459, 321 N.E.2d 549 (1974), presents a good example of the difference between legitimate and impermissible conditions. In *Town of Huntington*, the defendants operated a kennel in a residential district that had been authorized by special permit issued 17 years prior to the defendants’ acquisition of the facility. The permit allowed operation of “a dog kennel on the following terms: for the purpose of training dogs, limited to a maximum of ten (10) dogs at any time; it is understood that the training of the dogs is for the purpose of leading the blind.” *Town of Huntington*, 42 A.D.2d at 790, 346 N.Y.S.2d at 583. As the defendants apparently had difficulties with math or an unhealthy disregard for the law, they housed as many as 45 dogs on the premises. The Appellate Division ruled that the zoning board had properly limited the number of dogs on the site because the restriction directly impacted the use and enjoyment of neighboring land and was not an improper regulation of the business. *Town of Huntington*, 42 A.D.2d at 792, 346 N.Y.S.2d at 583-584. However, it invalidated the condition limiting the use of the facility to the training of dogs for the blind, reasoning that it “does not bear on the use of the land, but rather on the operation of the business and hence is impermissible.” *Town of Huntington*, 42 A.D.2d at 792, 346 N.Y.S.2d at 583-584.¹⁷

Similarly, *Edson v. Southold Town Zoning Bd. of Appeals*, 102 A.D.3d 687, 957 N.Y.S.2d 724 (2d Dep’t 2013), illustrates the same distinction. Therein, a zoning board authorized a farm stand on the applicant’s farm. The building exceeded the applicable 3,000 square-foot limitation, but the portion devoted to sales was restricted to that area by partitioning off the remaining 4,826 square feet of the structure. In granting the approval, the board imposed a condition dictating that only inventory produced on the farm, and not any incidental accessory items imported from offsite, could be stored in the latter area. The Second Department annulled that requirement, deciding that while the board could have required all storage to be included within the main 3,000 square-foot-area, it lacked authority to distinguish between inventory produced on the farm and products coming from other locations. It also rejected the zoning board’s imposition of a condition limiting farm stand operations to a particular

season or specific dates, because there was authority to do so neither in the Town Law nor local zoning, and there was no evidentiary support for the condition.

B. REGULATION OF HOURS OF OPERATION.

Sometimes the restriction of hours of operation of an enterprise and/or its parking facilities is upheld, whether contained in a regulation or imposed as a permit condition. Other times it is annulled as an impermissible regulation of internal business operations. There is no bright line for determining whether a limitation warrants one treatment or the other. In short, the distinction between valid and invalid restrictions on hours may be the fuzziest of the blurred lines. A key question is whether the record establishes that the restriction is necessary to mitigate impacts of the land use itself on its surroundings. As was discussed above, *Louhal Properties* invalidated a zoning ordinance's prohibition/regulation of overnight hours of operation as an impermissible attempt to regulate internal business operations, rather than the use. The outcome was reached, in large measure, because there was no evidence before the local legislature that overnight business operations have a greater impact on neighboring properties than business activities during permitted hours. *Louhal Properties* appears to set a high bar for judging the propriety of legislative regulation of business hours; it would seem difficult for a legislative body to find support for the blanket conclusion that overnight operations "*per se*" have greater impacts than activities occurring during regular business hours. See *Louhal Properties, Inc.*, 191 Misc.2d at 752-753, 743 N.Y.S.2d at 814-815.

Westbury Trombo, Inc. v. Board of Trustees of Village of Westbury, 307 A.D.2d 1043, 763 N.Y.S.2d 674 (2d Dep't 2003), decided on the same day that the Appellate Division issued its decision in *Louhal*, held invalid the same law annulled in *Louhal*. In confirming the law's fundamental defect, the court stated:

Assuming, without deciding, that Village Law § 7-700 authorized the Board to enact a local law prohibiting a restaurant or "fast food" business from operating within its jurisdiction, or subjecting such a business to an otherwise inapplicable requirement that it obtain a

special use permit or variance, based solely on the fact that the business would operate between the hours of 11:00 P.M. and 6:00 A.M. . . . the exercise of such power must be supported, at the very least, by evidence showing that the "atmosphere of the surrounding area" would be adversely affected by the presence of such an overnight business Because "generalized . . . concerns of the neighboring community . . . uncorroborated by any empirical data" are not probative of any such potential detriment . . . and the petitioner's property rights should not be impaired based on the "whims of an articulate minority . . . of the community" . . . and because the record in this case does not otherwise contain sufficient evidence in this respect, the local laws under review should not be upheld as a valid exercise of the Board's powers under Village Law § 7-700.

Westbury Trombo, Inc., 307 A.D.2d at 676, 307 N.Y.S.2d at 1044-1045 (citations omitted).¹⁸

The proscription against imposing permit conditions regulating hours of operation based on an unsubstantiated belief that such limitations will mitigate the impacts of the land use, is also exemplified by *Old Country Burgers Co., Inc. v. Town Bd. of Town of Oyster Bay*, 160 A.D.2d 805, 553 N.Y.S.2d 843 (2d Dep't 1990). In *Old County Burgers*, the town board imposed a condition on the operation of a drive-through window at a fast food restaurant which forbade operations between 8 A.M. and 9:30 A.M.; 12 Noon through 1:30 P.M.; and 5 P.M. through 6:30 P.M. The court held that the condition violated the rule that special permit conditions "must relate directly to the proposed use of the real property, and not to the manner of operation of the particular enterprise conducted on the premises." *Old Country Burgers*, 160 A.D.2d at 806, 553 N.Y.S.2d at 844. The decision reads as follows:

The zoning board attempted to justify this restriction by claiming that the operation of this window would significantly increase the existing traffic flow. However we note in this respect that there was no showing that the proposed use would have a greater impact on traffic than other uses which are unconditionally permitted in the area We find the imposition of this condition was no more than an impermissible attempt to regulate the details of the operation of the petitioner's enterprise (see, *Matter of Summit School v. Neugent, supra*), and conclude that upon this record it cannot be said that the so-called "meal-time restriction" was proper.

Old Country Burgers, 160 A.D.2d at 806, 553 N.Y.S.2d at 844 (citations omitted). See *Home Depot, U.S.A.*, *supra* (invalidating permit conditions restricting the hours of store operations and parking lot maintenance because there was a lack of proof or findings that they were designed to address impacts on surroundings); *Schlosser*, 18 A.D.2d at 941, 238 N.Y.S.2d at 434-435 (holding that a zoning board's imposition of conditions regulating the hours of operations of the business and the timing of deliveries was beyond the authority granted under the zoning ordinance as it was an impermissible attempt to regulate the internal operations of the business rather than the zoning use of the premises); cf. *Edson*, 102 A.D.3d at 688, 957 N.Y.S.2d at 726 ("there is no authority under the Town Law or the Town Code, or any evidentiary basis, for the imposition of the condition limiting the operation of the proposed farm stand to a particular season or to specific dates.").

As alluded to above, courts certainly have upheld permit conditions limiting hours of operation where they are reasonable and directly related and incidental to the proposed use of the property and are aimed at minimizing the adverse impact that might result from the grant of the approval. For example, in *Twin Town Little League Inc. v. Town of Poestenkill*, 249 A.D.2d 811, 813, 671 N.Y.S.2d 831, 833 (3d Dep't 1998), the court confirmed a zoning board's imposition of conditions regulating the operations of a baseball complex with outdoor lighting, which among other things, limited the time of year when night games were allowed, required operations to cease at 9:30 P.M. or as soon as practicable after completion of a game and mandated that a particular bank of lights be turned off by a specified time. In pertinent part, the court stated:

there is record evidence that the neighboring property owners raised concerns regarding the depreciation of the value of their property due to the noise and traffic associated with the ballgames and the intrusiveness of the lighting. In our view, the challenged conditions represent a reasonable attempt to alleviate these concerns and, as they relate directly to the use of the land, we find them to be proper . . .

Twin Town Little League, Inc., 249 A.D.2d at 813, 671 N.Y.S.2d at 833 (citation omitted).

Milt-Nik Land Corp. v. City of Yonkers, 24 A.D.3d 446, 806 N.Y.S.2d 217 (2d Dep't 2005), also upheld a variance condition which limited a pizzeria's hours, finding that it related directly to the use of the property and was intended to protect the neighboring residential properties from possible adverse effects, such as increase in traffic congestion, parking problems and noise.¹⁹ Similarly, in *1833 Nostrand Ave. Corp. v. Chin*, 302 A.D.2d 460, 754 N.Y.S.2d 581 (2d Dep't 2003), the Second Department confirmed a variance condition which limited a store's proposed hours of operation, determining that there was a rational basis and substantial evidence supporting the board's conclusion that the limitation insured that the store would "conform to the surrounding retail and residential character." Unfortunately, the decision described neither the operational characteristics of the store and conditions in the surrounding neighborhood nor the proof in the administrative record regarding potential impacts related to the store's business hours.

The most recent example of a decision upholding a restriction on the hours of operation is *Bonefish Grill, LLC v. Zoning Bd. of Appeals of Village of Rockville Centre*, 153 A.D.3d 1394, 61 N.Y.S.3d 623 (2d Dep't 2017). Therein, the court considered a parking variance application to allow the demolition of an existing structure and the construction of a 5,400-square-foot restaurant. The variance sought by the applicant would have allowed it to provide no off-street parking, where the local ordinance would have required 54 spaces. The applicant proposed to remedy the 100% deficiency by merging the lot with an adjoining property. In fact, the joining of the two lots never occurred, prompting the applicant to offer to grant the restaurant the exclusive right to use the parking spaces on the adjoining lot between the hours of 4:00 P.M. and 12:30 A.M. during the week. The zoning board granted the variance, but limited the restaurant's operating hours to 4:00 P.M. to 12:30 A.M. and mandated that valet parking be provided. The court held that the conditions related directly to the use of the land and were intended to protect neighboring properties from an anticipated increase in traffic congestion and parking. In particular, the court relied on the fact that the zoning board's decision was supported by both empirical and testimo-

nial evidence, including testimony of the local store owners which did not constitute merely “generalized and conclusory community opposition.” It also was supported by the applicant’s own expert and the personal knowledge of the zoning board members of the area in question.

Other cases which upheld conditions on usage of off-street parking areas include *Voetsch v. Craven*, 48 A.D.3d 585, 852 N.Y.S.2d 225 (2d Dep’t 2008)(upholding a condition to parking variances that prohibited overnight parking in the lot as being directly related to the use and designed to minimize adverse impacts on neighboring property, but invalidating the requirement that the lot entrance be chained); and *Plandome Donuts, Inc. v. Mammima*, 262 A.D.2d 491, 692 N.Y.S.2d 111 (2d Dep’t 1999)(holding that a condition requiring a parking lot be open to retail and restaurant customers between 10 A.M. and 6 P.M. on Saturdays related directly to the land use and was intended to protect neighboring commercial land owners from adverse impacts of the petitioner’s operation).

ENDNOTES:

¹For example, Town Law § 261 provides, in pertinent part, the following:

For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by local law or ordinance to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes . . .

Town Law § 261. Town Law Section 262 reinforces this authority in defining a town’s power to establish and impose regulations applicable to zoning districts. The analogous provisions of the General City Law (Sections 24 and 25) and the Village Law (Sections 7-700 and 7-702) are in relevant respects substantially similar.

²The second case was *Driesbaugh v. Gagnon*.

³The court did list examples of what might be proper conditions, such as those relating “to fences, safety devices, landscaping, screening, access roads relating to period of use, screening, outdoor lighting and noises, enclosure of buildings, emission of odors,

dust, smoke, refuse matter, vibration noise and other factors incidental to comfort, peace, enjoyment, health or safety of the surrounding area.” *St. Onge*, 71 N.Y.2d at 516, 527 N.Y.S.2d at 725.

⁴In the companion appeal, *Driesbaugh*, the petitioner owned two automobile repair shops in the Town of Fenton—one was grandfathered as a legally pre-existing nonconforming use, while the other violated the applicable restrictions of the zoning ordinance. The zoning board granted a use variance to allow continuation of the illegal use of the latter establishment, but imposed conditions restricting and ultimately requiring the phasing out of the grandfathered use located on separate property. The Court held that as the variance only related to one of the two properties, any condition imposed must relate solely to that property. It elucidated that “the Board has imposed a requirement completely unrelated to either the use of the land at issue or to the potential impact of that use on neighboring properties.” *St. Onge*, 71 N.Y.2d at 517, 527 N.Y.S.2d at 726. The ownership of the land was dismissed by the Court as immaterial to the municipality’s power to regulate, the decision stating: “[t]he fact that the two separate parcels here are held in common ownership is purely a matter of personal circumstance, and does not furnish a basis for regulating the parcel which is not a subject of the variance . . .” *St. Onge*, 71 N.Y.2d at 518, 527 N.Y.S.2d at 726.

⁵It also furthered its determination by observing that by its very nature an accessory use normally attaches to the occupancy of premises, rather than to mere ownership thereof. *Kasper*, 142 A.D.2d at 223, 535 N.Y.S.2d at 627.

⁶The practitioner is cautioned, however, that when the distinction between owner-occupied and non-owner-occupied dwellings triggers different dimensional or bulk (including parking) requirements it will likely violate the uniformity provisions of state enabling legislation (Town Law Section 262; Village Law Section 7-702 and General City Law Section 20(24)). See *Tupper v. City of Syracuse*, 93 A.D.3d 1277, 941 N.Y.S.2d 383 (4th Dep’t 2012)(invalidating an ordinance which, among other things, imposed different off-street parking regulations on owner-occupied and non-owner occupied dwellings as violating the uniformity requirement).

⁷The question of whether a senior housing ordinance is legal under New York State zoning, is entirely separate from the issue of whether it is exempt from the federal Fair Housing Act’s prohibition against discrimination based on familial status or fits within the exemptions from that proscription established to accommodate “housing for older persons” found at 42 U.S.C.A. § 3607(b) and 24 C.F.R. 100.303-100.308.

⁸The Court of Appeals summarized the test for as-

sessing the validity of an amortization period as follows:

Reasonableness is determined by examining all the facts, including the length of the amortization period in relation to the investment and the nature of the use. The period of amortization will normally increase as the amount invested increases or if the amortization applies to a structure rather than a use. Presumptively, amortization provisions are valid unless the owner can demonstrate that the loss suffered is so substantial that it outweighs the public benefit gained by the exercise of the police power.

Town of Islip, 73 N.Y.2d at 561, 542 N.Y.S.2d at 148.

⁹*Fuhst v. Foley*, 45 N.Y.2d 441, 382 N.Y.S.2d 56 (1978), decided that under the now-replaced practical difficulty standard for area variances, the variance could not be based on the personal difficulties of the applicant but had to relate to the land itself. The law, in that respect, does not appear to have been displaced when the practical difficulties standard was superseded by the statutory area variance criteria.

¹⁰*See Iazzetti v. Village of Tuxedo Park*, 145 Misc.2d 78, 82, 546 N.Y.S.2d 295, 297-298 (Sup. Ct. Orange Co. 1989)(invalidating a zoning board's determination that where the user of a property had changed the use was no longer a legal nonconforming use, explaining that "change in use that would justify termination relates directly to the use itself. It is the use which must change, not the ownership of the use.")

¹¹*FGL & L Property Corp.* also found that the historic preservation provisions of the General Municipal Law did not provide a basis to mandate form of ownership.

¹²The court also invalidated a provision in that ordinance requiring construction of a 9,000 square foot community center with specific amenities on a specified land area, stating that "Zoning Ordinances can go no further than determining what may or may not be built and that [the challenged zoning] is unnecessarily and excessively restrictive leads us to conclude that it was not enacted for legitimate zoning purposes." *BLF Associates, LLC*, 59 A.D.3d at 55, 870 N.Y.S.2d at 426. *Town of Huntington v. Beechwood Carmen Bldg. Corp.*, 82 A.D.3d 1203, 1206-07, 920 N.Y.S.2d 198, 200-201 (2d Dep't 2011)(finding that a zoning regulation requiring construction of a particular amenity, a swimming pool and community center, would be beyond the power conferred by state enabling legislation.)

¹³The continued viability of so much of the holding in *North Fork*, as determined that a municipality cannot use the change in the form of ownership—in that case, from cooperative to condominium—as a basis to eliminate a valid nonconforming use, may be in doubt in the face of the Court of Appeals subsequent

decision in *Village of Vallatie, supra*.

¹⁴Notably, the plaintiff did not preserve for the Fourth Department's review the argument that no rational basis exists for distinguishing between FFFRs and non-FFFRs that meet two or more of the criteria in the regulation. This question could have been a central consideration in determining if the Village's regulations were defensible.

¹⁵The rationale for the court's conclusion rested in varying degrees (and in some instances not at all) on the exclusive authority of State to regulate educational activities under the New York State Education Law.

¹⁶In contrast, *Summit School*, upheld conditions proscribing commercial activities and requiring signage to conform to the zoning ordinance.

¹⁷Another example is *Home Depot, U.S.A. v. Town Bd. of Town of Hempstead*, 63 A.D.3d 938, 881 N.Y.S.2d 160 (2d Dep't 2009), which was a split decision (figuratively, not literally) in assessing the validity of a number of conditions imposed on site plan approval to remodel a building to house a Home Depot store. It invalidated those conditions which it found to be unsupported either by proof or findings in the record establishing that they were designed to address impacts on surroundings. These included restrictions on hours of store operations and parking lot cleaning and a requirement that a closed circuit recording system be installed to monitor the parking area. *Home Depot, U.S.A.*, 63 A.D.3d at 939, 881 N.Y.S.2d at 161. In contrast, the court upheld requirements relating to the location of a loading zone and the truck entry route, based on the express authorization in the Town Law to consider such issues in the context of site plan review and the board's judgment that the measures were appropriate to mitigate impacts surrounding roadways. *Home Depot, U.S.A.*, 63 A.D.3d at 939-940, 881 N.Y.S.2d at 161. It also held that a fencing requirement was appropriate to protect the interests of nearby residents to preserve "a peaceful and pleasant residential environment." *Home Depot, U.S.A.*, 63 A.D.3d at 940, 881 N.Y.S.2d at 161.

¹⁸Notably, the court also held that the village lacked authority under its general police powers to impose such a condition because "there is insufficient evidence to support the conclusion that the existence of a retail business that operates 24 hours a day in the vicinity of a residential area has any detrimental impact on the health, safety, welfare or morals of the community." *Westbury Trombo, Inc.*, 307 A.D.2d at 676, 307 N.Y.S.2d at 1045.

¹⁹The court did, however, invalidate several conditions, including one limiting the number of seats in the restaurant, finding that to the extent it merely reiterated occupancy requirements in the city's code, it was unnecessary, and to the extent it imposed a more

stringent requirement, it was unlawful. *Milt-Nik Land Corp.*, 24 A.D.3d at 449, 806 N.Y.S.2d at 220.

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SUB-APPENDIX C

CHALLENGES OF NON-RESIDENTIAL DEVELOPMENT IN A R-80 ZONE DISTRICT

Edward Kim

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Cortlandt, NY 10520

NON-RESIDENTIAL DEVELOPMENT IN R-80 ZONE REQUIRE SPECIAL CONSIDERATIONS

- The former Hudson Institute's 20.83-acre parcel should be carefully evaluated for any non-residential development due to the lack of water and sewage infrastructure in this R-80 zone area.
- Any high-density non-residential equivalent, such as the Hudson Ridge Wellness Center, in a R-80 zoned district is simply too big of a facility to operate, without proper infrastructure to handle such demand, especially in an environmentally sensitive area like the Teatown area.
- Even the Applicants have highlighted in their submission the Town's 2004 Master Plan's decision to eliminate SRC (Special Reuse and Conservation Development) zoning of the former Hudson Institute site in Policy 34, because of the lack of infrastructure in the area to support the increased housing density.
- **The Applicants must illustrate how a hospital, without access to municipal water and sewage services, can properly operate without severely impacting its surrounding neighborhoods and environmentally sensitive area.**

WATER USAGE

APPLICANTS ERRONEOUS WATER USAGE ASSESSMENT

SINGLETON, DAVIS & SINGLETON PLLC

Hon. Loretta Taylor, Chairperson and Members of the Board

March 23, 2021

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neighborhood. There can be little doubt that the neighbors would object to *any* reasonable development of the Applicants' combined parcels of almost 50 acres. The Applicants have demonstrated that the traffic and water usage generated by the hospital would be similar to that of a 20-24 lot subdivision, to which the neighbors would no doubt object as well. In the time honored epitome of NIMBYism, the neighbors give lip service to what a laudable use the hospital is – as long as it is not located in their neighborhood.

APPLICANTS ERRONEOUS WATER USAGE ASSESSMENT

Alternative Development

An alternative use of the properties (combined total of 48.6 acres) would be a residential development. Based on zoning requirements mandating a minimum lot size of 80,000 square feet, a minimum of 20 and a maximum of 24 homes could potentially be developed on the two parcels.

Assuming a water demand of 550 gpd per home (NYSDOH Wastewater Treatment Standards Residential *Onsite Systems – Appendix 75-A, March 16, 2016*) the water demand of the residential development would range from 11,000 gpd (7.6 gpm) to 13,200 gpd (9.2 gpm). The consumptive demand (after 85% return through the septic systems) would range from 1,650 gpd to 1,980 gpd. This range in consumptive demand is similar to the projected consumptive demands (1,900 gpd) of the proposed HRWC.

Cortland Planning Board should only focus on the 20 acre parcel and not the combined 48.6 acres, since Cortlandt does not have jurisdiction of New Castle's 28 acre parcel.

The Applicant's used NYSDOH Wastewater Treatment Standards, where NYSDOH states - *Designs for new construction shall be based upon a minimum daily flow of 110 gallons per day per bedroom.*

BUT this is for wastewater treatment standard, not the actual household water usage.

LEWISBORO GROUND WATER SUPPLY REPORT/ WESTCHESTER DEPT OF HEALTH GUIDELINES

Based on the 2000 Census data, the Town population is approximately 12,324. Westchester County Department of Health guidelines indicate the average daily water demand per person is 75 gallons. For an average family size of 3.25 people per household, the average potable use is approximately 250 gpd (gallons per day), or approximately 925,000 gpd for the entire town.

HOW SHOULD WATER USAGE BE COMPARED?

- Cortlandt Planning Board should only consider the 20-acre parcel, not the 48+ acres the Applicants state, since the 28+ acres are within New Castle's jurisdiction.
- Cortlandt's 20-acre parcel is in a R-80 zone, thus the maximum sub-divisions would be 10.
- Town of Cortlandt's average family size is 2.8 people per household, based on 2010 Census.
- **And if we apply the following data to calculate a residential water usage:**
 - **The average number of people per household of 3**
 - **10 single-family dwellings in the 20 acre lot**
 - **75 gallons of daily water use per person**

WATER USAGE COMPARISON

Proposed Hudson Ridge Wellness Center Water Usage Calculation

Usage Type	Number	Usage Rate (gpd) ^{1/}	Water Demand (gpd)
Hospital Beds	92	110	10,120
Staff	86	15	1,290
Garage/Office Building	400 sf	0.1 gpd/sf	40
Outbuilding Beds	6 ^{2/}	110	660
Staff Residence	3 bedrooms	110 gpd/bdr	330
Building 2 ^{3/}			220
Total Average Daily Flow (gpd) ^{4/}			12,660
Total Average Daily Flow (gpm)			8.8

Source: Consolidated EEA Report FINAL 03-28-2019, page 131

HRWC Water Usage Calculation based on revised submission

Usage Type	Number	Usage Rate (gpd) ^{1/}	Water Demand (gpd)
Hospital Beds	58	110	6,380
Staff	43	15	645
Garage/Office Building	400 sf	0.1 gpd/sf	40
Outbuilding Beds	6 ^{2/}	110	660
Staff Residence	3 bedrooms	75 gpd/bdr	225
Building 2 ^{3/}			220
Total Average Daily Flow (gpd) ^{4/}			8,170
Total Average Daily Flow (gpm)			5.7

Residential Home Water Usage (based on Cortlandt's Avg HH Size)

Usage Type	Parcel Size (Acres)	# of Homes	Avg HH Size ¹	Usage Rate Per Person (gpd) ²	Water Demand (gpd)	% of HRWC Water Usage @ 92 Beds	% of HRWC Water Usage @ 58 Beds
Residential Home (Cortlandt Only)	20.83	10	3	75	2,250	563%	363%
Residential Home (Cortlandt Only)	20.83	10	6	75	4,500	281%	181%

¹ Average Household Size in Town of Cortlandt (Source: Town of Cortlandt Population, released December 2012)

² The WCDH assumes an average daily usage of 75 gallons per person per day for new residential housing supplied by a metered community supply or by individual domestic wells.

WATER USAGE

- The propose number of 92 patients + 86 staff employees would be more than 5x of residential water usage.
- Even at the reduced number of 58 patients + unknown number of employees, Hudson Ridge Wellness Center will most likely use 3x of residential water usage.

The Applicant's water use claim has not clearly demonstrated that they are equivalent to residential use, not even "similar."

WATER USAGE CONCLUSION

What the Applicants have demonstrated is the impact of daily water usage to the nearby residential well water levels, based on a 72 hour water pumping test, but what is the long-term effect of a hospital using 3x – 5x of residential water usage on a 20-acre parcel?

SEPTIC SYSTEM COMPARISON

PROPOSED HRWC SEPTIC SYSTEM

RALPH G. MASTROMONACO, PE., P.C.

Consulting Engineers

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Civil / Site / Environmental

www.rgmpepc.com

Extraordinary Wastewater Treatment Processes at the HEWC Site

Hudson Wellness and Education Center
Quaker Ridge Road, Town of Cortlandt, New York

March 20, 2019

The proposed wastewater disposal system for the project has the approval of the Westchester County Department of Health and a (SPDES) discharge permit from the Department of Environmental Conservation.

The proposed system is unique in that there are several important features that greatly enhance the reliability of the treatment process, far above that of a typical septic system. These additional or supplemental features were not required by any agency and were voluntarily provided by the applicant at its expense. These are described as follows:

- 1. Galley Disposal Chambers:** Instead of small pipes as found in typical septic systems, the HEWC plant uses 2100 linear feet of 4 x 4 x 4 foot concrete chambers to store and distribute the treated wastewater. The storage volume of the chambers is about 250,000 gallons which is significantly more than the few thousand gallons of storage if this had been designed as a conventional septic system. Further, for context when compared to the daily flow of about 12,400 gallons per day, the raw storage in the subsurface system is equivalent to 20 days of wastewater flow. This is a significant advantage to regulating the diurnal peaks of flow.

The Applicants have proposed a wastewater disposal system with multi-storage chambers of about 250,000 gallons, based on 12,400 gallons per day with equivalent to 20 days of wastewater flow.

Why do the Applicants need a system that can hold 250,000 gallons of wastewater with 20 days storage capacity?

RESIDENTIAL SEPTIC SYSTEM

- If we compare 10 residential homes on Cortlandt's 20-acre parcel, the Applicants' septic system would be 20x greater than that of 10 residential size septic systems (based on standard 1,250-gallon capacity tank).
- Any damage or leakage from the septic system would severely impact the surrounding environment and the nearby watershed area, in fact a portion of the new septic system will be within the periphery of the Indian Brook Reservoir watershed.
- A single residential home septic system failure would not severely impact the surrounding land but what would happen if Hudson Ridge Wellness Center's 250,000 gallon septic system fails?
 - 250,000 gallon septic system would be equivalent to 200 homes in the R-80 zoned district – that would require 400 acres, not 20 acres.

TRAFFIC VOLUME CONSIDERATION

TRAFFIC VOLUME CONSIDERATION

- The Applicants state a 92-bed hospital would generate far less traffic than the additional capacity of Quaker Ridge Road would absorb, based on their estimate of 60 cars/120 trips per day.
- The Applicants also state “the proposed use will generate much less traffic than other non-residential uses permitted on the property as-of-right – such as religious, school, and government uses.”
- While the Applicants’ traffic volume estimate would be below Quaker Ridge Road’s 800 trip capacity, the Planning Board should also consider the following:
 - the average residential traffic volume of 10 homes or less within the 20-acre parcel, where it would be approximately 20 cars (assume 2 cars per house) for a total of 40 trips per day.
 - Other non-residential uses would not operate on a 24/7 basis
 - All commercial truck deliveries and garage/recycling pickups should be included in the assessment
- **A residential development of less than 10 homes would generate 67% less traffic volume than Hudson Ridge Wellness Center.**

NEW CASTLE PARCEL

NEW CASTLE PARCEL SHOULD NOT BE CONSIDERED

- What recourse does Town of Cortlandt have if the Applicant's decide to sell the 28-acre parcel in New Castle to a non-affiliated buyer, who then decides to sub-divide and develop the New Castle lot with residential homes?
- Town of Cortlandt must make its determination based solely on the 20-acre parcel.
- Greatest environmental impact will be on the Cortlandt parcel, since all the buildings/patients are located in Cortlandt with no new structures planned for New Castle parcel.

WHY POSITIVE DECLARATION IS NEEDED

WHY THE PLANNING BOARD SHOULD MAKE A POSITIVE DECLARATION

There are many issues and concerns our community have raised to the Planning Board about a non-residential development in a R-80 zoned district, and the Applicants have provided inconsistent or no response to our concerns, such as:

- Need for proper comparison of Residential and Hospital water usage and septic system
- Traffic volume concerns, especially commercial deliveries and increased passenger car traffic
- Lack of clarity on their staffing, parking and shuttle service plans
- Potential 24/7 lighting plans will completely change the overall character of the “bucolic and tranquil” part of the Teatown area.
- Non-expansion of current buildings and non-use/non-sales of adjoining property in New Castle agreement

APPENDIX

Policy 34: Eliminate the Special Reuse and Conservation Development (SRC) from the Zoning Ordinance

The SRC district was established to “*enable and encourage successful and beneficial redevelopment of large institutional properties which become available for reuse...*” for a number of scenic, aesthetic, and environmental purposes. Among the uses that would be permitted are single family, two family and multifamily dwellings. The minimum lot area per dwelling unit would be one dwelling/5,000 square feet. This zone was intended to be applied to the FDR VA Hospital property or the Hudson Institute property. However, given the current status of the VA Hospital and continued use for veteran and age-related senior housing, and the lack of infrastructure to develop the Hudson Institute property, the SRC district has never been applied to either property.

After much discussion and analysis of this issue, it was determined by the Town Board that they wished to eliminate the Special Reuse and Conservation Development (SRC) from the Master Plan.

APPLICANT'S WATER USE FOOTNOTES

Usage Type	Number	Usage Rate ^{1/} (gpd)	Water Demand (gpd)
Hospital Beds	92	110	10,120
Staff	86	15	1,290
Garage/Office Building	400 sf	0.1 gpd/sf	40
Outbuilding Beds	6 ^{2/}	110	660
Staff Residence	3 bedrooms	110 gpd/bdr	330
Building 2 ^{3/}			220
Total Average Daily Flow (gpd) ^{4/}			12,660
Total Average Daily Flow (gpm)			8.8

1/ Usage rate approved by WCDH in a letter dated December 14, 2017. A copy of the approval letter is included in Appendix 13.D. sub-appendix V.

2/ Note that the six outbuilding beds are to serve the maximum 92 patients, but because they are located in different buildings, WCDH requires a separate accounting of each bed.

3/ Note that because of the low flow demands, Building 2 is anticipated to use an existing septic system which is located away from any restrictive distances in order to minimize site disturbance.

4/ Note that the average daily flow for the first year is estimated at 6,855 gpd (4.8 gpm) based on 41 patients and 73 staff.

TOWN OF CORTLANDT POPULATION ESTIMATES



The Town of Cortlandt

CORTLANDT MANOR
WEATHER



64°F
clear sky

HOME

DEPARTMENTS

TOWN GOVERNMENT

CALENDAR OF EVENTS

DEPARTMENTS

- ▲ Department of Environmental Services
 - Highway Division
 - Parks Division
 - Sanitation Division
 - Water Division
- ▲ Department of Technical Services
 - Code Enforcement Division

Latest News

Town of Cortlandt Population

Release Date: December 12, 2012

Town of Cortlandt Population – Outside Villages, 31,292 (2010 Census)
Housing Units – 11,976 (2010 Census)
Household size – 2.8 people (city-data.com)
Median Family Income - \$123,333 (American Community Survey 2005-2009)
Median Household Income - \$91,587 (city-data.com)
Median age – 38.9 (city-data.com)
Median Home Price - \$443,688 (city-data.com)

[← Back to Article List](#)

APPENDIX 75-A

WASTEWATER TREATMENT STANDARDS - RESIDENTIAL ONSITE SYSTEMS

(Statutory Authority: Public Health Law, 201(1)(l))

(b) Designs for new construction shall be based upon a minimum daily flow of 110 gallons per day per bedroom. Other design flows listed in Table 1 may be applicable for systems receiving wastewater from dwellings equipped with older plumbing fixtures or waterless toilets.

TABLE 1 DAILY DESIGN FLOWS	
Plumbing Fixtures (based on manufactured date)	Minimum Design Flow (gallons per day per bedroom)
Post-1994 Fixtures 1.6 gallons/flush toilets 2.5 gallons/minute faucets & showerheads	110
Pre-1994 Fixtures 3.5 gallons/flush toilets 3.0 gallons/minute faucets & showerheads	130
Pre-1980 Fixtures 3.5+ gallons/flush toilets 3.0+ gallons/minute faucets & showerheads	150
Waterless Toilets (e.g., composter) (graywater discharge only)	75

SUB-APPENDIX D

Received at 1/26/21
MCH

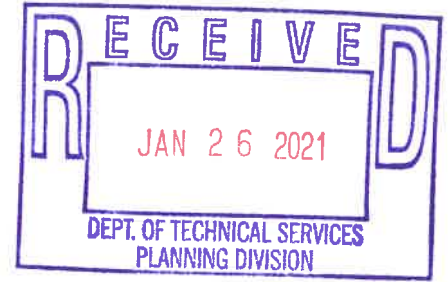
**Millwood-West End Advisory Board
c/o Town of New Castle
200 South Greeley, Chappaqua, NY 10514**

November 29, 2021

RE: Hudson Ridge Wellness Center

TO: Jeremy Saland, Acting Supervisor, Town of New Castle, NY

CC: All Town Board members; Sabrina Charney Hull, Town Planner;
Jill Shapiro, Town Administrator; and Kellan Cantrell, Assistant Town Planner



FROM: Millwood-West End Advisory Board, Town of New Castle, NY

Dear Town Board:

As you are keenly aware (as evidenced by your many associated activities, including the Memorandum from Sabrina Charney Hull and Kellan Cantrell to all members of the New Castle Town Board dated October 7, 2021), for several years, an as yet undisclosed group of investors has been seeking approval from the leaders of the town of Cortlandt (and more specifically, the Cortlandt Planning Board) to establish and run a 92-bed addiction rehab center at 2016 Quaker Ridge Road, just off of Glendale Road, where Ossining, New Castle and Cortlandt meet, (an area in the West End of New Castle that you know can also be referred to as Greater Teatown).

The Cortlandt Planning Board could approve this hospital, called the Hudson Ridge Wellness Center, at its next scheduled meeting on December 7, 2021.

Whether the leaders and residents of New Castle would welcome this hospital/rehab center in this residential neighborhood on the border of New Castle or not, we are writing about the pending decision that the members of the Cortlandt Planning Board will make, and to ask you to confer with the appropriate parties in the town of Cortlandt (including the members of the Cortlandt Planning Board), and to share with them that the Millwood-West End Advisory Board, which most recently met on November 18, 2021, is opposed to the granting of the variance necessary for a hospital to operate on Quaker Ridge Road. A hospital in this specific location in Cortlandt will have negative externalities that will at least equally, if not more impact the residents of New Castle than the residents of Cortlandt

THE ISSUES:

For the hospital to be viable, the Cortlandt Planning Board will need to approve the site development plan and also grant a variance to the investors so that they can develop a hospital/rehab center in this location. The investors need a variance from the Cortlandt Planning Board because hospitals in residential zones are required to be on state roads. Quaker Ridge Road is not a state road. Without this variance, the hospital could not be allowed.

LIMITED INFORMATION: Lawyers for the investors say they don't need to disclose to the interested community or the Cortlandt Planning Board or other related agencies (including those of New Castle) or the residents and surrounding community detailed development plans. They claim that they will not change the size or configuration of existing buildings and therefore do not need to submit architectural and engineering drawings. Further, the investors' attorneys will not disclose the property owner's identity, their business plans beyond general information, nor what specific company, managers or individuals they will outsource to run the hospital—all areas of justifiable

**Millwood-West End Advisory Board
c/o Town of New Castle
200 South Greeley, Chappaqua, NY 10514**

concerns for the residents in this environmentally sensitive residential district where Cortland, New Castle and Ossining meet.

TRAFFIC and LIGHTING: If the investors receive approval and a variance from the Cortlandt Planning Board, and then meet the requirements of licensure from the State of New York, soon there will be many more private cars, planned staff shuttle buses, ambulances, delivery trucks, and other vehicles coming and going to the hospital on what are very small roads, most in New Castle and Ossining. They will have staff and clients of at least 180 people — plus, they say, visitation for patients. They plan to construct about 50 parking spaces on the current site. There will be commercial outdoor lighting after dark in an area now totally residential.

WATER and SEWAGE: A small study of neighboring wells showed that, when the property's two wells were drawing at full stream over the course of a 72 hour pump test, residential neighbors saw the water level of their wells fall by 20 feet. The hospital will be dependent on the use of well water and onsite disposal of sewage in a septic system that will have to support daily use of water by at least 180 people a day. They will draw on the water and issue sewage into an area in the watershed and aquifers that currently supply water to the West-End residents of New Castle and the watershed that drains into the Indian Brook Reservoir that supplies the town of Ossining with its drinking water. The potential impact on these watersheds is of particular concern to hundreds of area residents. Compounding these concerns is the close proximity of the Sunshine Home and the proposed hospital and their combined impacts on water usage and sewage output, which has yet to be studied.

FUTURE USE: These investors also bought a large adjoining parcel of land that forms the corner of Quaker Ridge and Glendale Roads, in New Castle. Going the other direction, they also bought property that will allow them access to Quaker Hill Drive. In their filings, they say that they won't make use of easements granted by and between the now mutual owners of the properties to allow vehicles to and from the hospital site via Quaker Hill Drive and onto Glendale Road — "so long as the subject property is used as a hospital." But so far as we can tell, none of those promises have been made to the Town of New Castle, which will govern curb cuts, etc. onto Glendale Road. No deed restrictions for the parcels in New Castle have been made.

For these reasons we write to the Town Board members and Supervisor of New Castle so that you have an opportunity to confer with your colleagues in the Town of Cortlandt before the Cortlandt Planning Board renders a decision to grant a variance that will have a material negative impact on the natural resources and property values (lowering them) of the community in the West End of New Castle. Further, given that the adjoining 27.8 acre property in the Town of New Castle is zoned as residential, it is critical that this land is not converted to commercial use in support of the hospital through the granting of new means of access, egress, or commercial-use building improvements.

As of this writing, the next Cortlandt Planning Board meeting is on Tuesday, December 7 at 7 P.M. in the Nyberg Meeting Room, 1 Heady Street, Cortlandt Manor. Masks are required.

For these reasons we ask you to confer with the Cortlandt Planning Board to convey our opposition to a hospital that, if permitted, will not be on a state road.

Sincerely,
Millwood-West End Advisory Board

Hello,

My name is David Valdez, I am a member of New Castle's Millwood West-End Advisory Board, and I've been asked to speak on behalf of the Board at this very important public hearing.

For background: The Millwood West-End Advisory Board reviews the applications that impact residents of the Town of New Castle with Millwood or Ossining addresses. We also look at the actions of neighboring towns when there is an impact on New Castle, as is the case here.

We have reviewed the Cortlandt Planning Board's work and minutes to date, as well as the applicant's materials and responses related to their application for a variance and Special Permit to reoccupy buildings to operate a hospital on Quaker Ridge Road

The Millwood West End Advisory Board is opposed to this application for very sound practical reasons, which I will quickly summarize. The Millwood West End Advisory Board strongly urges the Cortlandt Planning Board not to grant the Special Permit the applicant has requested for the following 5 specific reasons:

1. Quaker Ridge Road is not a State Road, and as such, it was not designed or intended to handle the traffic, cars, buses and ambulances that will come with the proposed hospital facility. Hospitals in Westchester have to be on a State Road. A variance is necessary, and it is within the purview of the Cortland Planning Board not to grant it.

2. All of the streets and roads leading to Quaker Ridge Road are similarly small residential streets. Consultants studies show that Glendale Road in New Castle will become the main way in and out of the hospital. Granting a variance which will result in hospital service traffic here isn't appropriate or consistent with the immediate and adjoining neighborhood.

3. Lighting. The immediate area around both parcels has no commercial signs or lighting. Much of the neighborhood has no street lights at all. Pitch-dark-at-night is a defining feature of the community, particularly in the West End of New Castle, which the hospital, when operating, will destroy. With the increasingly well recognized environmental benefits of darkness at night, we cannot emphasize enough the value

and importance the area residents place on it being dark at night.

4. Water and Sewage Capacity and Use: The hospital will depend on the shared use of ground water and the onsite disposal of sewage in a septic system that will have to support daily use of water by more than one hundred people a day. The hospital will not only draw on ground water but also issue sewage into a septic system near a watershed that is known to drain into the Indian Brook Reservoir, which supplies the town of Ossining with its drinking water.

In this residential neighborhood — surrounding properties have septic systems and wells designed to support family-sized households. The applicant's proposal initially indicated that there would be as many as 180 inhabitants using the property on a daily basis, 90 professional staff and 90 patients — *plus* visitors. We understand that number may be reduced, but even so, ground water use and the resulting septic system waste water for a commercial enterprise is not consistent with current neighborhood owner use of ground water the residents share in this area.

The well water use test, a test of short duration, showed extreme draw-down on neighboring wells by as much as 20 feet. THIS IS A VERY MATERIAL CONCERN.

5. Future Use of Owned Land. The applicant has also purchased and owns additional adjoining property that is in New Castle, which could allow for future access to the main Cortlandt side site and open Glendale Road to being a main artery for getting to and from the hospital. Easements allowing cross traffic from the Cortlandt side to the New Castle side within the two parcels were granted and later withdrawn. The developer has said that the property on the New Castle side will not be exploited to re-grant an easement — *as long as* the main property is used as a hospital. But the applicant has not filed any deed restrictions which would prevent them from reestablishing new road access rights with easements that will impact the New Castle community, including the real possibility of curb cuts, **COMMERCIAL AND LIT SIGNS ON Glendale Road.**

Overall, we think granting this application would be unprecedented. **The Millwood West End Advisory Board is**

opposed to the approval of this application FOR THESE REASONS.

A separate summary of the concerns of the Millwood West-End Advisory Board, opposing this application, dated November 21, 2001 was submitted to the Town of New Castle, which was SUBMITTED TO THE members of the Cortlandt Planning Board. I am providing you with a copy, for the public record.

Thank you for giving us this opportunity to have you consider why this application should not be approved.

SUB-APPENDIX E

Good evening, Chairperson Taylor and Members of the Planning Board.

My name is Edward Kim and I live on 3 Quaker Hill Ct East, near the Applicants' proposed non-residential facility. I have reviewed the Applicants' submitted materials and have noticed some inconsistencies that I would like to address on water usage, septic system and traffic volume.

Slide 2 - I know the Planning Board has discussed and heard about the well water testing from both the Applicants' and community's hydrologists, and other experts on the environmental impact of the 20-acre parcel for the past 6, now 7, years; but I would like to identify some the inconsistencies in the Applicants' submissions and why a high-density non-residential development should not be allowed in a R-80 zone district, especially in an environmentally sensitive area such as the former Hudson Institute. Even the Town has decided to eliminate "Special Reuse and Conservation Development" zoning of the former Hudson Institute site due to the lack of infrastructure to support the increased housing density, in the Town's 2004 Master Plan.

The proposed site development is simply too big when compared to an equivalent residential housing alternative, based on the R-80 zoning requirements the maximum residential housing development would be less than 10 homes. If we apply Cortlandt's average household size of 2.8, the total number of people residing on a 20-acre parcel would be 28 – a much higher number of non-resident patients plus employees will definitely impact the water usage, septic system and traffic volume.

The Applicants must illustrate how a non-residential facility without access to municipal water and sewage services can properly operate without severely impacting its surrounding neighborhoods and the environment.

Water Supply:

Slide 4 - "The Applicants claim they have demonstrated that the traffic and water usage generated by the hospital would be similar to that of 20-24 lot subdivision." But I believe this is incorrect.

Slide 5 - In the Applicants' *Consolidated Expanded Environmental Assessment Report*, they have stated the following – "an alternative use of the properties (combined total of 48.6 acres) would be a residential development. Based on zoning requirements mandating a minimum lot size of 80,000 square feet, a minimum of 20 and a maximum of 24 homes could potentially be developed on the two parcels." This assumes all of the 48.6 acres are usable land, no water or wetlands are on the parcels, which we know is not true.

"Assuming a water demand of 550 gpd per home (NYSDOH Wastewater Treatment Standards Residential Onsite Systems – Appendix 75-A, March 16, 2016) the water demand of the residential development would range from 11,000 gpd (7.6 gpm) to 13,200 gpd (9.2 gpm). The consumptive demand (after 85% return through the septic systems) would range from 1,650 gpd to 1,980 gpd. This range in consumptive demand is similar to the projected consumptive demands (1,900 gpd) of the proposed HRWC."

However, there are a few inconsistencies to the Applicants' calculations, such as:

- 1) The Planning Board should make its determination based on how a non-residential facility's impact to the surrounding environment would compare to a maximum residential development within Cortlandt's 20-acre parcel, which would be less than 10 homes, NOT 20-24 homes. The Cortlandt Planning Board would not have any jurisdiction of New Castle's 28-acre parcel, unless there is an agreement between the two towns to review and jointly make a determination.
- 2) The Applicants assumed a water demand of residential dwellings to be 550 gpd per home, but this is incorrect. The Applicants used the standard residential septic system requirement, NOT the standard water demand per household – which is 75 gpd per person.
- 3) **Slide 6** – I based the 75 gallons per day per person from Lewisboro's Ground Water Supply Report, where it referenced Westchester County Department of Health guidelines indicate the average daily water demand per person is 75 gallons.

- 4) **Slide 7** - I have also referenced the same 75 gallons per person per day from State of Minnesota, as you can see on the slide. Also, if you'll notice Hospital water usage is much higher at 150-250 gallons per bed per day.
- 5) **Slide 8** – If we apply the following data to calculate a residential water usage:
 - a. Average number of people per household in Cortlandt is 2.8, let's round it to 3
 - b. 10 single-family dwellings in the 20-acre lot
 - c. 75 gallons per person per day
- 6) **Slide 9** - If we compare the Applicants' daily water usage of 12,660 gpd to 10 residential home water usage, you can see the proposed facility's demand for water is more than 550%. **Even at the reduced number of patients of 58, the proposed facility would use more than 300% than the residential homes.**
- 7) **Slide 10** - The Applicants' water usage claim has not clearly demonstrated that they are equivalent to residential use, not even "similar."
- 8) **Slide 11** – While the water testing was conducted over a 72-hour period, however, if the proposed facility uses 6 times the residential water usage over a long-term period, we need to better understand the full impact of the Applicants' water demand. Ultimately, if the well water supply is significantly reduced due to overuse, what is the recourse and will the Town or the Applicants have a contingency plan to remediate the water supply for the nearby homes?

Septic System:

Slide 13 - Another concern I would like to point out is the Applicants' proposed wastewater disposal system of using multiple chambers totaling 250,000 gallons of wastewater storage capacity of 20 days.

Slide 14 - Again, if we compare to equivalent 10 homes on Cortlandt's 20-acre parcel, the Applicants' septic system would be 20x greater than that of the 10 residential size septic systems (based on standard 1,250-gallon capacity tank per residential home). Any damage

or leakage from the proposed facility's septic system would severely impact the surrounding environment and the nearby watershed area, in fact a portion of the new septic system will be within the periphery of the Indian Brook Reservoir watershed. A single residential home's septic system failure would not severely impact the surrounding land but imagine 200 homes all having septic system failure at the same time (which would be the equivalent to Hudson Ridge's new septic systems) – to put that into perspective, 200 homes in the R-80 zone district would be more than 400 acres – that would be a significant environmental impact.

Traffic Volume:

Slide 16 - The Applicants have stated the proposed facility would generate far less traffic than the additional capacity of Quaker Ridge Road would absorb, based on their estimate of 60 cars/120 trips per day.

- 42.** In any event, we will generate far less traffic than the additional capacity of Quaker Ridge Road would absorb. We will be using only about 15% of that extra capacity. (120 trips (60 cars) over 24 hours vs. 800 trip capacity).

While the Applicant's traffic volume estimate would be below Quaker Ridge Road's 800 trip capacity, the Planning Board should also consider the average residential traffic volume of 10 homes which would be about 20 cars (assume 2 cars per house) @ 40 trips per day. A residential development of less than 10 homes would generate 67% less traffic volume than Hudson Ridge Wellness Center.

Slide 18 - And lastly, the Planning Board must make its determination solely on the 20-acre parcel in Cortlandt, while coordinating with Town of New Castle to ensure the Applicants and their affiliates do not sell the New Castle parcel to a non-affiliate if the proposed facility is approved by both towns.

Slide 20 - Please note, I am not objecting to the Applicants' desire to develop a treatment facility in Cortlandt, but I am objecting to a non-residential development that would have greater environmental stress on a 20-acre parcel in a R-80 residential zone district. A high-density non-residential housing equivalent, such as a 92-bed (or 58-bed) facility is simply too big to operate, without proper water and sewage infrastructure to handle such demand, especially in an environmentally sensitive area such as the Teatown region.

The Planning Board should, and must, consider how a non-residential development that would exceed the equivalent residential dwellings could impact on the environment and its surrounding neighborhoods in a R-80 zone district that lack any water and sewage infrastructure. I ask the Planning Board to make a positive declaration.

Thank you for your consideration.

SUB-APPENDIX F

Vedat Gashi

Legislator, 4th District
Chair, Public Works & Transportation
Vice Chair, Budget & Appropriations



Member of Committees
on Law & Major Contracts
and Legislation Committee

January 26, 2022

Dear Neighbor,

Please find attached hereto an updated report from the Westchester County Department of Community Mental Health, confirming that, as of January 25, 2022, there has been no contact or communication by Hudson Ridge Wellness Center, Inc, with Westchester County or NYS OASAS.

Should you have any further questions or need assistance, please feel to reach out we will do all we can to help.

Sincerely,

ct

Enclosure.

Gashi, Vedat

From: Orth, Michael <mmo6@westchestergov.com>
Sent: Wednesday, January 26, 2022 5:13 PM
To: Gashi, Vedat
Subject: Fwd: FW: Hudson Ridge Wellness Center, Inc.

From: Orth, Michael <mmo6@westchestergov.com>
Sent: Tuesday, January 25, 2022 4:29 PM
To: LoBello, Elizabeth <es11@westchestergov.com>; Glazer, Joseph <JGlazer@westchestergov.com>
Subject: RE: Hudson Ridge Wellness Center, Inc.

Hi
Thank you for reaching out. Our department has not had any contact from provider or NYS OASAS. We will keep you/Legislator posted if we are contacted.
Have a great evening.

Michael

Michael Orth, (he/him/his)
Commissioner
Westchester County Department of Community Mental Health
112 East Post Road - 2nd Floor
White Plains, New York 10601
Tel. (914) 995-5225
Email: mmo6@westchestergov.com

Jill Costa, Executive Secretary to Commissioner Tel. (914) 995-5244
Email: jzca@westchestergov.com
www.westchestergov.com

Follow DCMH on Twitter @WestchesterDCMH

DCMH's Directory and GIS based map of behavioral health services in Westchester:
<https://dcmhservices.westchestergov.com/DCMHservices/index.jsp>

About Westchester County

Westchester County, located in the heart of the historic Hudson Valley, covers 500 square miles and has a population of just under a million. Originally home to Native Americans, who were members of the Lenape tribe, it is today a rich mix of many cultures and landscapes. The County is a blend of bustling cities, quaint villages and picturesque towns as well as open spaces and a network of beautiful parks. Westchester is made up of 6 cities, 19 towns and 20 villages. Westchester County is known for top-notch public schools, and a high quality of life. The County is also an intellectual capital, boasting a highly educated workforce, competitive colleges and universities, Fortune 500 companies, world changing non-profits, and cutting-edge research centers. Westchester is led by County Executive George Latimer, who took office in January 2018 as the ninth County Executive. Using inclusion and openness as a foreground, Latimer is fighting to make Westchester a destination for all people to live, work and enjoy. Learn more about Westchester County by visiting www.westchestergov.com

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-----Original Message-----

From: LoBello, Elizabeth <esl1@westchestergov.com>

Sent: Tuesday, January 25, 2022 1:50 PM

To: Orth, Michael <mmo6@westchestergov.com>; Glazer, Joseph <JGlazer@westchestergov.com>

Subject: Hudson Ridge Wellness Center, Inc.

Good Afternoon,

Please see attached memo re Hudson Ridge Wellness Center from Legislator Vedat Gashi.

Thank you.

Beth LoBello, Committee Coordinator
Westchester County Board of Legislators
Committees on Parks & Recreation,
Human Services, Human Rights & Equity,
Seniors & Youth and Rules
(914) 995-2809 - Fax (914) 995-3884
esl1@westchestergov.com

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TOWN OF NEW CASTLE

200 S. Greeley Avenue, Chappaqua, New York 10514 • Ph. (914) 238-4723 • Fax (914) 238-5177 •

Email: building@mynewcastle.org

**Building, Engineering, Planning
& Zoning Departments**

MEMORANDUM

Director of Planning
Sabrina D. Charney Hull, AICP

TO: New Castle Town Board

Town Engineer
Robert J. Cioli, P.E.

**FROM: Sabrina Charney Hull, Director of Planning
Kellan Cantrell, Assistant Planner**

Building Inspector
Tom DePole III

Environmental Coordinator
Dennis Corelli

RE: Hudson Ridge Wellness Center

DATE: October 7, 2021

As the Town Board is aware, the Hudson Ridge Wellness Center Inc., located at 2016 Quaker Ridge Road, is currently under review by the Town of Cortlandt Planning Board. The Applicant is proposing a new Specialty Hospital to be located at the former 20.83 Acre Hudson Institute property which includes the revitalization and reuse of seven (7) existing buildings comprising 38,560 Square Feet of space for a 91-bed private residential treatment program for individuals recovering from chemical dependency. The proposed site consists of two properties, one 27.8 Acre parcel located in the Town of Cortlandt and a 20.83 Acre property located in the Town of New Castle at 35 Quaker Ridge Road.. At this time, the property owner is not proposing any development on the parcel in New Castle. As part of this project the property located within the Town of New Castle will be used as a “buffer” for the proposed use and will remain **undisturbed**¹.

The existing buildings, located on the 27.83 Acre property in Cortlandt, are to being brought into compliance with current building code requirements, including fire and safety improvements. It is our understanding that the Application requires a Special Use Permit from the Cortlandt Planning Board and a variance regarding state road frontage from the Cortlandt Zoning Board of Appeals.

Our office has been following the project as it proceeds through the Town of Cortlandt approval process and has recently reviewed the following documents related to the subject application:

- Document titled, “Hudson Ridge Wellness Center, Inc., Expanded Environmental Assessment”, dated July 20, 2015;
- Document titled, “Expanded Environmental Assessment”,



¹ Memorandum from Cuddy & Feder LLP, prepared on behalf of Hudson Ridge Wellness Center, Inc, Dated June 28, 2021.

prepared by JMC Planning, Engineering, Landscape Architecture and Land Surveying, PLLC, dated October 6, 2016;

- Document titled, “2nd Addendum to Expanded Environmental Assessment Report”, dated October 6, 2016;
- Document titled, “Addendum to Expanded Environmental Assessment Report”, dated October 6, 2017;
- Document titled, “Transportation Management Plan”, prepared by JMC Planning, Engineering, Landscape Architecture and Land Surveying, PLLC, dated February 22, 2018, last revised December 17, 2018.
- Plan titled, “Site Plan/Grading Plan/Tree Plan-13% Max Grade (Sheet 1)”, prepared by Ralph G. Mastromonaco, P.E., P.C. Consulting Engineers, dated January 8, 2018 and last revised March 20, 2019;
- Plan titled, “Site Plan/Utility Plan (Sheet 2)”, prepared by Ralph G. Mastromonaco, P.E., P.C. Consulting Engineers, dated January 8, 2018 and last revised March 20, 2019;
- Plan titled, “Driveway Improvement Plan (Sheet 3)”, prepared by Ralph G. Mastromonaco, P.E., P.C. Consulting Engineers, dated January 8, 2018 and last revised March 20, 2019;
- Plan titled, “Site Plan/Lighting Plan (Sheet 4)”, prepared by Ralph G. Mastromonaco, P.E., P.C. Consulting Engineers, dated January 8, 2018 and last revised March 20, 2019;
- Plan titled, “Site Plan/Fire Access Plan (Sheet 5)”, prepared by Ralph G. Mastromonaco, P.E., P.C. Consulting Engineers, dated January 8, 2018 and last revised March 20, 2019;
- Plan titled, “Site Plan/Proposed Disturbance Plan (Sheet 6)”, prepared by Ralph G. Mastromonaco, P.E., P.C. Consulting Engineers, dated January 8, 2018 and last revised March 20, 2019;
- Plan titled, “Site Plan/Erosion Control Plan/Details/Notes (Sheet 7)”, prepared by Ralph G. Mastromonaco, P.E., P.C. Consulting Engineers, dated January 8, 2018 and last revised March 20, 2019;
- Document titled, “Consolidated Expanded Environmental Assessment Report (Volume I)”, prepared by JMC Planning, Engineering, Landscape Architecture and Land Surveying, PLLC, dated March 2019;
- Document titles, “August 2021 Addendum to March 2019 Consolidated Expanded Environmental Assessment Report (Volume I)”, prepared by JMC Planning, Engineering, Landscape Architecture and Land Surveying, PLLC, dated August 2021.

It is important to note that this property is located in the Hudson Highlands Biotic Corridor and as such has been identified as an area of sensitivity. The New Castle Planning Department has examined potential transportation, parking, stormwater, groundwater, and lighting impacts associated with the proposed use in relation to properties within the Town of New Castle. A more detailed summary of the aforementioned concerns were provided to the Town of Cortlandt in November 2017 and are further discussed below along with updated information from the Hudson Wellness Center representative(s) provided as responses in italics where applicable.

Transportation

The Wellness Center will be accessed from its existing driveway on Quaker Ridge Road in the Town of Cortlandt. In New Castle, Quaker Ridge Road intersects with Glendale Road (via Glendale Road Extension) which runs in an East/West direction connecting it with Spring Valley Road, Allapartus Road and NYS Route 134. The Applicant has provided analysis that indicates that at full capacity, the

Wellness Center will employ approximately 86 staff for up to 91 clients. It is anticipated that the 86 staff members will be divided between four “shifts” on a daily basis. The shifts are designed to run from 6:00AM to 2:00PM, 9:00AM to 5:00PM, 2:00PM to 10:00PM and 10:00PM to 6:00AM. Discussion in the submitted application material states that the existing Levels of Service (LOS) of the surrounding roadways will not change and that there will be minimal traffic impact from the proposed use. The majority of the site-generated traffic volumes are comprised of staff and spread over four “shifts”. The submitted traffic information indicates that traffic associated with the Sunshine Children’s Home has been analyzed in relation to this application. It is also important to note that the Town of Ossining has approved of a 52-unit condominium development on Hawkes Avenue (Hawkes Crossing). The potential traffic associated with this development does not appear to be part of any transportation studies submitted as part of this Application and as such the impacts that both the subject application and the Hawkes Crossing project will have on New Castle are unknown at this time.

Based upon our experience and familiarity with the area, the most probable travel routes to the Wellness Center for staff and visitors would be the Taconic State Parkway and Route 9A, which would direct cars onto Allapartus and Spring Valley Roads prior to reaching Glendale Road and ultimately Quaker Ridge Road. It is also important to note that traffic coming off the Taconic State Parkway will use Allapartus Road as a cut through. The Town of Ossining hired Frederick P. Clarke (FPC) to review the traffic impact on Ossining Roadways. In the communications provided to the Town of Ossining, FPC indicated that “the larger [traffic] impact will be within the Town of New Castle and specifically to Glendale Road between Quaker Ridge Road near the site to the Spring Valley Road Intersection.” Previously, the Town of New Castle asked the Town of Cortlandt for more information regarding this point.

The most recent available documentation regarding transportation for the site is from the submitted Transportation Management Plan, prepared by JMC Planning, Engineering, Landscape Architecture & Land Surveying, PLLC, dated February 22, 2018, last revised December 17, 2018. Below is a summary of those findings as they pertain to the Town of New Castle.

1. The estimated number of vehicles the Applicant anticipates during the weekend visitations;
 - *25 percent of patients will have visitors any one weekend, no detailed numbers are given;*
2. Information regarding construction traffic routing and timing during renovation of the site (regardless of how limited it may be).
 - This question was not answered.
3. Identify on a plan, the vendor delivery routes and times for the once weekly deliveries. It would also be helpful to obtain a list of vendors who will be servicing the site.
 - *5-6 food deliveries weekly (truck size depends on the vendor, but food deliveries aren't made using tractor trailers to this type of account).*
 - *1 garbage service weekly, which also picks up recycling*
 - *1 laundry service pick-up/drop-off weekly*
 - *1 /day UPS pick-up, total of 5 weekly.*
 - *The delivery vehicles will be directed to access the property from NY 9A and US 9 and travel through Crotonville via Old Albany Post Road to Quaker Bridge Road to Quaker Ridge Road. Old Albany Post Road, Quaker Bridge Road, and Glendale Road have weight restrictions for vehicles over 5 tons, except for local deliveries, which therefore do not preclude trucks*

associated with the site from using the roadways. The delivery vehicle drivers will be directed to not travel along the Quaker Bridge Road one-lane bridge over the Croton River.

- *While the specific vendors and associated delivery vehicles have not been determined, it is expected that most vehicles will be a SU-30 (total length of 30 feet) or shorter and any larger vehicle would not exceed an SU-40 (total length of 40 feet). No tractor trailers will be permitted to make deliveries to the hospital. Only approximately 5% of traffic is anticipated to approach the site from the north on Quaker Ridge Road.*
4. Provide weekly waste disposal schedule, including times and routes.
 - *No deliveries by 3rd party service providers, such as deliveries of food/perishables, pharmacy, paper/office supplies, garbage collection, laundry, etc., will occur on weekends.*
 5. Designation of the route for the collector shuttle.
 - *Two shuttle vans will be provided, for required use by a substantial portion of the employees, primarily lower level non-professional employees, who will be shuttled to and from several transit hub locations outside the immediate area, including, but not limited to the FDR Park park and ride lot, the Croton Harmon train station or other stations on the Harlem line such as White Plains, and the vans will also transport clients for pick-up from and drop-off at their home, train station, or bus stops as necessary and to be determined, or other locations as may be required. The Applicant has coordinated with the FDR NYS Park Director regarding the use of the existing underutilized park and ride lot within the Park, located in Yorktown, for the 6:00 AM and 2:00 PM shifts.*
 6. More information as to the method / system that will ensure that only 25% of the client's potential visitors will be permitted each weekend should be provided.
 - *There will generally be no visitors. Family weekends will be scheduled for only one day every weekend for family member visitation, family education and group counseling. These family weekends will be staggered, so as the facility approaches and reaches full capacity, only one quarter of the client population will have their family weekend each weekend of the month.*
 7. More explanation as to how the client shuttle will operate (i.e hours of operation, distance to travel, trips per day/week, etc.)
 - *This question was not answered.*
 8. Information as to origin/destination surveys for employees. In addition, the use dictates that there will be different traffic impacts related to the time of day (more staff during the day than at night). More information should be provided regarding staff scheduling and associated traffic impacts.
 - *The majority of site generated traffic volumes will be comprised of staff spread over 4 shifts. Two shuttle vans will be provided, for required use by a substantial portion of the employees, primarily lower level non-professional employees, who will be shuttled to and from the FDR Park park and ride lot, the Croton Harmon train station or another station on the Harlem line such as White Plains, and the vans will also transport clients for pick-up from and drop-off at their home, train station, or bus stops as necessary and to be determined, or other locations as may be required. The Applicant has coordinated with the FDR NYS Park Director regarding the use of the existing underutilized park and ride lot within the Park, located in Yorktown, for the 6:00 AM and 2:00 PM shifts. The shuttle would likely use the Taconic State Parkway for part of its trip.*
 - *The Applicant will monitor traffic volumes when the patient occupancy reaches 75 percent and for 2 years after 75 percent occupancy, to compare actual future volumes to the projected volumes. Automatic Traffic Recorders (ATR) will record 24-hour directional volumes along the site access driveway (entering and exiting) as well as along Quaker Ridge Road northbound*

and southbound, both north and south of the site access driveway. The details of the traffic monitoring protocol will be coordinated with the Town staff and traffic consultant.

9. Information related to the analysis of traffic in conjunction with the 52-Condominium Development located on Hawkes Avenue in the Town of Ossining.
 - *The area intersections currently operate without significant delays and the projected volumes with and without the proposed use will also be processed with little or no delay, even while making various conservative assumptions to provide for an ultraconservative analysis.*

Parking and Stormwater

The Proposed Action includes new and improved parking and access to the existing structures. The Town of Cortlandt requires 132 parking spaces for the proposed use. The Applicant is requesting that 67 parking spaces be land banked while 13 are constructed and 52 are existing. The site topography declines steeply in a southeasterly direction into the Town of New Castle. There are several wetlands located to the south and east of the existing development which are contiguous to the Town of New Castle. All site work is proposed to occur outside of a 100-foot wetlands buffer within the Town of Cortlandt. It is important to note that the Town of New Castle requires a 150' wetlands buffer within the Town of New Castle and the wetlands on the site in Cortlandt are contiguous to wetlands in New Castle. No detailed information has been provided concerning the treatment of stormwater from the proposed impervious surfaces or the potential path of runoff from failing septic systems. There are several single-family homes located to the southeast of the parcel, in the Town of New Castle, which are down-gradient to areas on the site proposed to be actively disturbed.

The most recent available documentation regarding parking and stormwater for the site is from the August 2021 Addendum to March 2019 Consolidated Expanded Environmental Assessment Report (Volume I), prepared by JMC Planning, Engineering, Landscape Architecture and Land Surveying, PLLC, dated August 2021. Below is a summary of those findings as they pertain to the Town of New Castle.

10. In light of these issues and potential impacts, the Town of New Castle requested additional information as to how the on-site stormwater associated with new impervious surfaces and septic systems will be controlled to ensure that no off-site impacts are felt by the surrounding New Castle property owners. Further, the New Castle Town Engineer is following through with communications to the Cortlandt Town Engineer.
 - *The Applicant will monitor the parking utilization of the site biannually until two years subsequent to the full occupancy of the facility, and will construct additional spaces in the unlikely event the existing spaces are 90% occupied during the monitoring studies, subject to amended site plan approved by the Planning Board.*
 - *Site work activities will result in temporary disturbances of the property of less than one acre. Prior to any walkway installation, sediment and erosion controls will be installed on the downslope side of the construction activity to prevent any sediment transport. The sediment and erosion control structures, which will include hay bales and silt fencing, will be installed prior to initiating disturbance activities. Disturbed areas not to be repaved will be seeded and mulched until permanent grass cover is established. No permanent or long-term impact to water quality associated with proposed driveway widening or walkway installation is expected.*

Ground Water

The subject site historically contained three (3) wells, two of which were determined not to meet the current New York State Department of Health requirements for public water supply for the hospital use currently being proposed by the Applicant. In order to fulfill the required water usage amounts for the proposed use, two (2) new wells were constructed in August of 2015, leaving two noncompliant wells to be used for fire protection purposes. The two new wells, combined with one older well, will serve as the drinking water supply for the proposed hospital use. The two remaining unused wells will be used for fire protection only, not drinking water. The total water recharge for the proposed project site and the adjacent site is 30,500 gallons per day (gpd) under normal precipitation conditions. The projected water demand for the hospital use is expected to be 12,660 gpd. The sewage system, composed of subsurface treatment, including leach fields, will increase the groundwater recharge under the site. On an annual basis, approximately 85 percent of the water used indoors will be returned to the ground through percolation from the septic leach fields. Approximately 15 percent or 1,900 gpd of the average water used will be lost and not re-introduced into the groundwater.

The most recent available documentation regarding groundwater for the site is from the Town of Cortlandt hydrogeologic consultant, HydroEnvironmental Solutions Inc. (HES), dated April 11, 2019. Below is a summary of those findings as they pertain to the Town of New Castle.

11. The Town provided that the Applicant should provide information substantiating the 30,500 gpd usage in relation to the number of beds, number of employees, estimated irrigation, etc.
 - *HES is satisfied with the water demand of 110 gpd, per bed, for the proposed Hudson Wellness Center. The WCDOH approved this demand, and the demand is site-specific in that the facility is not considered a hospital and has lesser demand. The Applicant demonstrated to the WCDOH and to HES that the proposed use was not a typical hospital, and that the per bed water use of 110 gpd was justified. If the agency responsible for estimating water use approves of the calculated demand that is the demand that should be used to estimate the water budget. It should be noted that HES attempted to find an applicable Standard Industrial Code (SIC) for the proposed use at the site, and none was found, therefore, relying on the WCDOH approved water use per bedroom is acceptable. Additionally, the proposed use for the site does not include on-site laundry or irrigation. However, when it comes to estimating project demand HQ cites the NYSDEC water use numbers for a hospital at 175 gpd per bed, yet when it comes to pumping test protocol, HQ wishes to use their own interpretation of stabilization and protocols not the NYSDEC Water Supply Testing Guidelines. Regulations and Guidelines are promulgated by state and county agencies for a reason, they are not open for interpretation by professional hydrogeologists as a matter of convenience.*
12. The Town of New Castle requested that the Applicant conduct a trace analysis and pump test (while monitoring neighboring wells (including those in New Castle) to determine if the three drinking water wells (one existing and two newly constructed) on the Applicant's site will have any effect on the groundwater of the adjacent properties located in the Town of New Castle.
 - *Sixty-seven property owners were solicited to participate in the off-site monitoring program. 16 wells were monitored out of the 18 owners who were interested in the program (two wells were deemed inaccessible). The results from the off-site program indicate that off-site impacts were limited to only two wells. The Greenstein and Shapiro wells at 83 and 78 Quaker Ridge Road would be solicited as part of the program based on the drawdown effects documented at these wells during the pumping test.*

- *HES agrees with LBGHES that the 16 off-site homeowner wells provided sufficient coverage, and a total of sixty-seven (67) off-site surrounding well owners were notified and solicited to participate in the well monitoring program. The two impacted wells contained ample available drawdown in the wells at the end of testing (475 feet and 175 feet), demonstrating ample water will be available in the wells during drought conditions. As noted in the site-wide water budget, even under severe drought conditions (30-year drought), recharge to the bedrock aquifer is substantially greater than the water demand for the project.*
13. The Town noted concern about the relationship of the aquifer(s) that serve the Sunshine Children's Home, located at 15 Spring Valley Road, to the Hudson Wellness Center. As you know, the Sunshine Children's Home is currently under construction on a substantial expansion of that facility. The Town asked if the Applicant explored the existence of any hydrologic relationship between the aquifer(s) supporting groundwater wells on his site and those supporting the Sunshine Children's Home and nearby private residential wells in the Town of New Castle. If not, we requested that the Applicant be directed to study any such potential relationship and subsequent impacts.
- *The Applicant has proposed a well monitoring plan, akin to that provided by the Sunshine Children's Home. The monitoring plan would begin three to six months before the facility's certificate of occupancy is issued and continue for up to two years after 75 percent occupancy has been achieved. The program as proposed by the Applicant would monitor up to six wells using pressure transducer data loggers as was done during the pumping test. The Greenstein and Shapiro wells at 83 and 78 Quaker Ridge Road would be solicited as part of the program based on the drawdown effects documented at these wells during the pumping test. Off-site monitoring data would be compiled by LBGHES and submitted to the Town as semi-annual reports which would also include water level data and pumping volumes from on-site wells which will be metered. The Applicant has also proposed sending monthly operational reports, including pumping volumes, to the Town and WCDOH.*
 - *HES does not recommend any additional hydrogeologic testing at this, other than implementing a long-term monitoring plan which should be put in place following project approval.*

Lighting

The most recent available documentation regarding lighting for the site is from the August 2021 Addendum to the March 2019 Consolidated Expanded Environmental Assessment Report (Volume I), prepared by JMC Planning, Engineering, Landscape Architecture and Land Surveying, PLLC, dated August 2021. Below is a summary of those findings as they pertain to the Town of New Castle.

14. Proposed lighting specifications and locations on the site.

- *All exterior lighting fixtures² will be residential in character, downward directed and dark sky compliant so there is no light trespass onto adjoining properties. Low level bollard-type lighting will be used in the parking areas and sidewalks. The proposed lighting will not impair the established character of the adjoining properties, in conformance with Section 307-73.C of the Town of Cortlandt Zoning Code. Lights out for the residents is 10:30 PM. Also, there are limited employee arrivals/departures at the night shift change at 10:00 PM with the use of the two shuttle vans. The nearest residence is approximately 320 feet distant and upgradient from*

² Appendix 8.A within Volume 2 of the CEEAR

Building #1 (the main treatment building), and buffered by a solid 6-foot high fence on the Specialty Hospital property and by a wooded buffer on the residential property.

It should be noted that the proposed lighting is a bollard style³ that stands approximately 42” tall with the nearest proposed lighting on the site to any New Castle housing unit being more than 500 feet away.

At this time it is our understanding that the project has been adjourned from meeting with the Cortlandt Planning Board. My office will continue to review and update the New Castle Town Board on any new developments regarding this application.

cc: Jill Simon Shapiro, Town Administrator
Tiffany White, Assistant to the Town Administrator
Christina Papes, Town Clerk
Edward Phillips, Esq. Town Counsel
Robert Cioli, P.E., Town Engineer

³ Plan labelled, “Site Plan/Lighting Plan (Sheet 4 of 7)”, prepared by Ralph G. Mastromonaco, P.E., dated January 8, 2018.



Village and Town of Ossining

16 Croton Avenue
Ossining, NY 10562



Tel. (914) 941-3554
Fax (914) 941-5940
www.villageofossining.org

July 12, 2021

Via email

Town of Cortlandt
Department of Technical Services
Planning Division
Town Hall Office # 4
1 Heady Street
Cortlandt Manor, New York 10567
Attention: Chris Kehoe, AICP, Deputy Director of Planning

Re: 2016 Quaker Ridge Road
Hudson Ridge Wellness Center

Dear Deputy Director Kehoe:

On behalf of the Town of Ossining and Village of Ossining please accept this letter regarding the proposed Hudson Ridge Wellness Center at 2016 Quaker Ridge Road in the Town of Cortlandt. We note that on May 17, 2021, the Appellate Division Second Judicial Department in Matter of Hudson Ridge Wellness Center v. Zoning Board of Appeals of the Town of Cortlandt, denied the application by nonparty-appellant Responsible Hudson Institute Site Development, Inc. staying the Town of Cortlandt from further processing land use applications submitted by Hudson Ridge Wellness Center ("Hudson Ridge"). Since it is presumed that the application will proceed at both the town's Planning Board and Zoning Board of Appeals, we wanted to forward this letter to you now.

Initially it should be noted that approximately 75% of the Hudson Ridge property is within the Indian Brook Watershed. The Work Plan for the proposed Indian Brook/Croton Gorge Overlay Zone, which project is being managed through your department notes the following:
The Indian Brook-Croton Gorge watershed is located across the five municipalities in northern Westchester County. The watershed is approximately 3,400 acres/5.3 square miles. Located within the watershed is the Indian Brook Reservoir, the drinking water source for the Town and Village of Ossining as well as the Croton-on-Hudson water aquifer. The area is an important tributary to the Hudson River and is characterized by large areas of wetland, several waterbodies, a diversity of plant and animal species and several areas of steep slope....
The proposed overlay zone will specifically target the Indian Brook-Croton Gorge Watershed. The intended target of the overlay zone is the residents and visitors to the watershed. The overlay zone will provide a uniform set of environmental regulations across jurisdictions which is the best way to protect the important resource. Conformity in wetland and wetland buffer regulations, agreed upon limits to new impervious surfaces, potential land use/zoning modifications across jurisdictions provide the best opportunity to protect the resource.

The recently received Project Approach document from consultant Weston and Sampson further defines the scope of work. The consultant will, "conduct a complete maximum build-out analysis based on the existing underlying zoning. This analysis will be used to understand how development is likely to impact not only water resources, but terrestrial habitats and landscape ecotypes."



In response to a FOIL request, you provided drawings for the Hudson Ridge project. Those drawings raise concerns for the protection of the Indian Brook Watershed, Indian Brook Reservoir and the drinking water available to residents and businesses in the Town of Ossining and Village of Ossining. Those concerns include:

- Much of the sanitary collection system is in the Indian Brook Watershed.
- The On-Site Wastewater Treatment System (OTWS) and at least one-half of the primary OWTS are proposed to be located in the Indian Brook Watershed. The provided drawings did not indicate if the OTWS included a subsurface disposal system.
- The location for the proposed recycle/refuse dumpsters near existing Main Building 1 is in the Indian Brook Watershed which has the potential to impact water quality.
- The existing water system (to be abandoned) is in the Indian Brook Watershed as well as well 1 (potable). An increase in water use at the project site can impact the Indian Brook Reservoir. Please forward current and planned water consumption information. If such information is unavailable, please confirm.
- Site work including roadway widening and new walkways will increase surface runoff which may impact water quality.
- If a stormwater management plan (SWPPP) has been prepared, please provide that document for review by village and town representatives.

While a more detailed review of project documents is necessary, there are concerns that the proposed development at 2016 Quaker Ridge Road will negatively impact the Indian Brook Watershed and reservoir and lead to increased traffic. We request that a copy of this letter be forwarded to the members of the Town of Cortlandt's land use boards considering the pending application for development. The protection of the watershed and the drinking water for the residents of the Town of Ossining is of paramount concern. Further, we request that as neighboring municipalities, that we be made aware when the applications will be on the agendas of the town's land use boards and/or town board.

Regarding traffic, it is our understanding that much of the traffic to and from the property will go through the Town of Ossining leading to increased carbon emissions, runoffs and additional wear and tear to the area roadways. A considerable amount of time has passed since the 2016 traffic study and conditions including increased commercial and truck traffic on Old Albany Post Road have changed. Additionally, Albany Post Road has a five-ton weight limit and therefore cannot be considered as a viable means of access for vehicles exceeding the weight limit to enter/exit the property. Further, while the Crotonville area of the Town of Ossining has been characterized as industrial, that is not the case as there are several residential properties in the area most of which do not have sidewalks, are very close to Old Albany Post Road and are regularly placed in a hazardous condition by the ever increasing number of vehicles traversing the road. It is notable that the applicant will require a variance from the Town of Cortlandt's Zoning Board for a special permit that hospitals be on a state road. That the Town of Cortlandt recognizes that there are appropriate locations for such facilities proving sufficient access for vehicles, indicates that the planned location for the Hudson Ridge Wellness Center may be inappropriate.

We shall continue to monitor this development as it proceeds. Thank you.

Very truly yours,

Dana Levenberg
Supervisor Town of Ossining

Rika Levin
Mayor Village of Ossining

cc: Town of Cortlandt Planning Board
Town of Cortlandt Zoning Board of Appeals
Town Board, Town of Ossining
Board of Trustees, Village of Ossining
Village Manager Karen D'Attore
Village Engineer Paul Fraioli
Village Water Superintendent Andy Tiess

Steven Rabinowitz
d.b.a. SIR Consulting
19 Byron Avenue
White Plains, NY 10606
steverabinowitz55@gmail.com
914-645-7936

March 1, 2021

Hon. Loretta Taylor
Chairperson of the Town of Cortlandt Planning Board
and Members of the Planning Board
Town Hall
1 Heady Street
Cortlandt Manor, NY 10567

Re: Hudson Ridge Wellness Center, Inc.
Comments on behalf of CRHISD

Dear Planning Board,

By way of introduction, I served with what is now the NY State Office of Addiction Services and Supports (OASAS) for 30 years, the last 12 of which I served as the Director of Downstate Field Operations, until my retirement at the end of November, 2016. In that role I oversaw the performance of approximately 250 substance abuse prevention, treatment and recovery support providers, with services at well over 1000 sites, along with budgeting oversight of approximately \$250 million in State Aid in the area. I supervised a staff of 30 professionals who regularly visited and interacted with those providers and who reported to me regularly on their status.

With regard to Hudson Ridge Wellness Center, I do not recall, nor am I aware of, any case during my 30 years of service at OASAS of any situation such as this, nor have I come across anything else like it in the years since where I have served as a consultant and on the board of several advocacy organizations. The normal process is for a potential service provider to submit a form called Attachment 1A (see attached) to OASAS and the designated Local Government Unit (LGU), in this case the Westchester County Department of Mental Health. This form addresses the stated need for the proposed service, basic information about who the proposed provider is, their target population and basic service approach, along with an initial operating budget.

As standard operating procedure, OASAS and the County would then hold a prior consultation meeting with the applicant to review the application, determine the need for the service and review all other information about the applicant and the proposed program, and then if both agree, authorize them to go forward with submitting the full application. In all cases that I am aware of the treatment facility will have first received the approval to submit the application prior to seeking local zoning and land use approval, which is addressed in the site review section of the full application.

In addition to enabling the lead State and County Agencies to assess the application, the approach outlined above makes efficient and rational use of resources at the local level. Because the applicant will have OASAS and County input based on clear operating information and a review of the local need for the specific types of services offered, Boards such as this Board and the Cortlandt Zoning Board are then able to use this information to assess the potential impacts. Without initial OASAS and County input, local Boards risk wasting valuable resources and making decisions based on incomplete operational data. Thus, I would strongly recommend that the Planning Board adjourn this hearing and refer the applicant to both OASAS and the Westchester County Department of Mental Health for a prior consultation meeting before proceeding with this process.

I am available for any further questions with regard to my statement above at another time.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steven Rabinowitz", written in black ink.

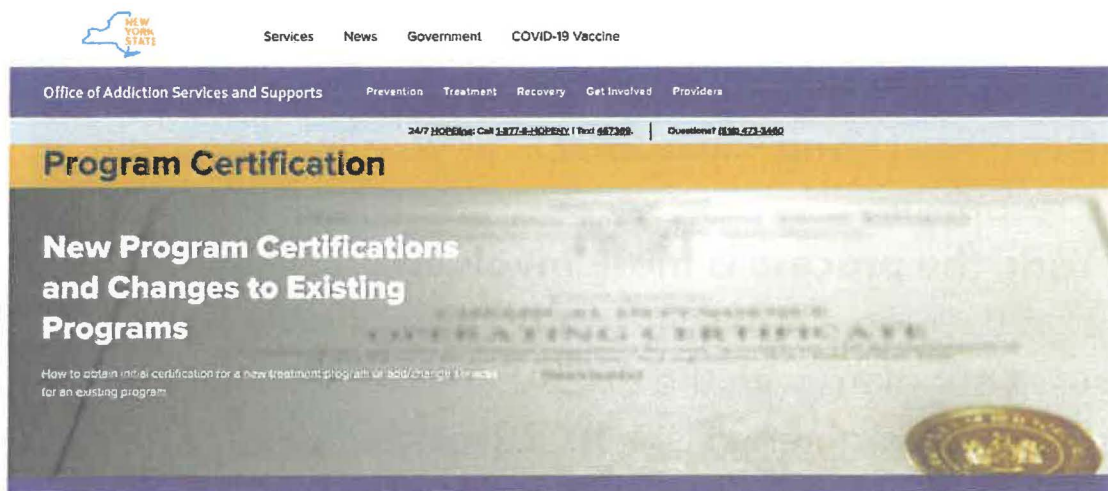
Steven Rabinowitz

<https://behavehealth.com/blog/2021/12/7/how-to-start-an-addiction-treatment-center-in-new-york>

How to Open an Addiction Treatment Center in New York

December 7, 2021 Ben Weiss

All Addiction Treatment Providers and Centers in New York Must be Certified by OASAS



The [New York State Office of Addiction Services and Supports](https://www.oasas.ny.gov/) (OASAS) oversees all certification and regulation of addiction treatment providers in the state.

Unlike some states, certification in New York is not optional for addiction treatment providers. Skip this step at your peril!

Getting Your Addiction Treatment Program Certified in New York is a Three Step Process

STEPS TO CERTIFICATION

Regional Office Representatives are Here to Help

Prior Consultation

Arrange for a discussion of the conceptual basis of your proposal with both the OASAS Regional Office (RO) and Local Governmental Unit (LGU) in the jurisdiction where services are being proposed. Both parties will render a recommendation on the applicant's proposal.

Endorsement

Sign-off from both parties is required for most prospective/existing providers to complete the [Prior Consultation Form](#). The only applications that do not require the form are minor relocations, capital projects; adding a Supportive Living Site, and changes to prevention sites.

Application Submission

Once you receive a recommendation to move forward, submit signed copies of the completed application to OASAS Certification Bureau (1450 Western Ave, Albany, NY 12203), the OASAS Regional Office, and LGU in the jurisdiction of the proposed program.

In many states, you simply submit your application to the appropriate office (along with a check for your fees) and you wait for a response.

In New York, the process is more involved.

First, you go through a "consultation phase," where you meet and discuss your plans with the OASAS Regional Office (RO) and the Local Governmental Unit (LGU) for your location. After the initial consultation conversation, both the RO and the LGU make a recommendation for how (and if) to move forward. Next, you obtain your official endorsement from both the RO and LGU. This is called the "**endorsement phase.**"

Finally, after consultation and endorsement, you can finally submit an application to the OASAS Certification Bureau, the OASAS Regional Office and the LGU you've been working with. Congratulations, you've reached the "application phase."

- Description of services
- Assessment of need
- Description of areas to be served
- Philosophy statement
- Planned performance measures
- Policies and procedures manual
- Resource Allocation
- Detailed revenue projections, including client/patient fees, TANF income, Medicaid income, Federal and State grants, etc
- Detailed expenses projections, including salaries, wages, benefits, consultation services, equipment costs, property expenses, etc

Some of these items - like entity information and zoning compliance - are completely standard in nearly every state. The financial transparency requirements, however, are unusual. Most states do not require the level of financial detail that New York asks of new applicants.

OASAS does provide a [Quick Reference Guide to the OASAS Chemical Dependence Certification Application](#), which sorts out what forms you'll need to submit and in what order to become a new OASAS provider. Think of it as a handy checklist for the process.

And, yes, the [complete OASAS Chemical Dependence Certification Application](#) is 24 pages long, including various appendices which you may or may not be required to fill out depending on the specifics of your program.

Before You Start the Application Process for Certification of Your Addiction Treatment Center in New York, Do Your Due Diligence

NYS OASAS
Treatment Availability Dashboard
Search For State Certified Outpatient Or Bedded Programs

Check all that apply [Help](#)

Type of Program Show only Programs with Availability Show all Programs

Gender All Male Female Transgender

Age Group Adult (Age 18 and above) Adolescent (Under age 18)

City, County or Zip Code
▲ Location is required

Within 5 Miles 10 Miles 25 Miles 50 Miles 100 Miles

It's a good idea to read up on the many regulations the state of New York has placed on substance abuse treatment providers. If you need more specific legal information about the rules and regulations that govern "Substance Use Disorder Inpatient Rehabilitation Services" in New York, you can read all of the relevant sections of "mental hygiene law" [here](#).

It's also smart to check out the competition and survey the market for holes and opportunities. OASAS also offers a [handy searchable database](#) of all addiction treatment providers in the state, sorted by target population age, gender and location that's suited to this very purpose.

The Application for Addiction Treatment Center Certification in New York is 24 Pages Long

NEW YORK STATE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES OASAS CHEMICAL DEPENDENCE CERTIFICATION APPLICATION

APPLICATION SUMMARY

Applicant's Consultation			
The Certification Proposal – Prior Consult form (ATTACHMENT #1A) must be completed and included with the certification application submission as proof of prior consultation with the Local Governmental Unit and Field Office.			
Entity/Administrative Headquarters Mailing Address			
Applicant's Legal Name			
Street	Room/Suite	Floor	PO Box or Postal Route
City, Town, Village		State NY	Zip Code + 4
Summary of Application			
Check the appropriate category and provide a brief summary of the purpose for submitting this application.			
<input type="checkbox"/> New OASAS Provider	<input type="checkbox"/> New Sponsor	<input type="checkbox"/> New Treatment Service	<input type="checkbox"/> Capacity Increase
<input type="checkbox"/> Minor Relocation	<input type="checkbox"/> Relocation	<input type="checkbox"/> Space Expansion	<input type="checkbox"/> Additional Location
<input type="checkbox"/> Merger	<input type="checkbox"/> Transfer of Ownership	<input type="checkbox"/> Capital Project	<input type="checkbox"/> Change in Ownership Status

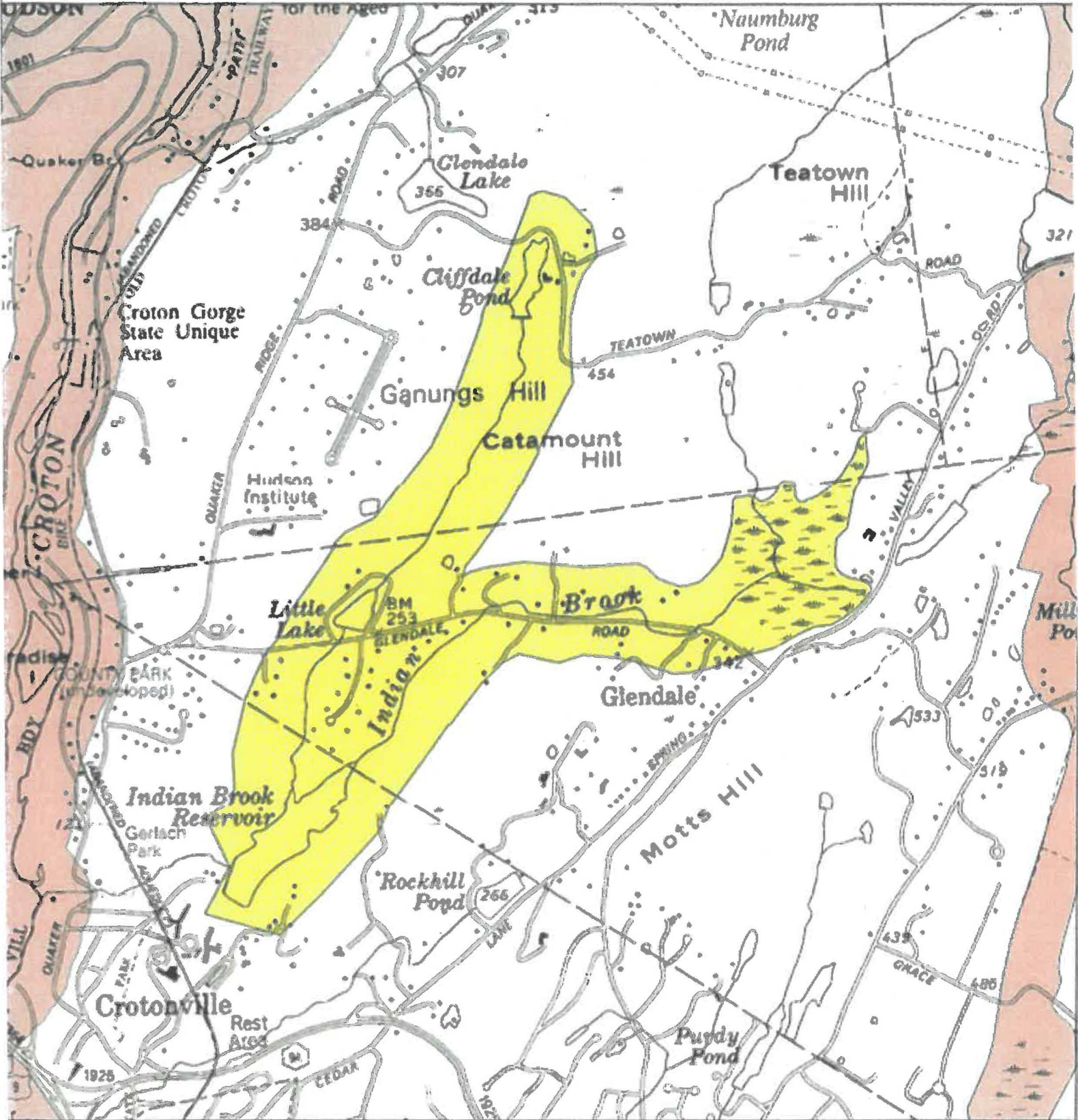
Once you've moved to the application phase, you'll need to provide an incredibly large amount of information to the state, including:

- "Entity" or Corporate structure information
- OASAS number
- Any existing licenses, certifications or accreditations you've received
- An explanation of the "owners and principals" experience in chemical dependence services
- Site information
- Zoning classification and compliance
- Certificate of occupancy

Indian Brook Reservoir Critical Environmental Area (CEA)

Effective Date of Designation: 1-31-90

Designating Agency: County of Westchester



- Legend**
- Adjacent CEA
 - Indian Brook Reservoir CEA



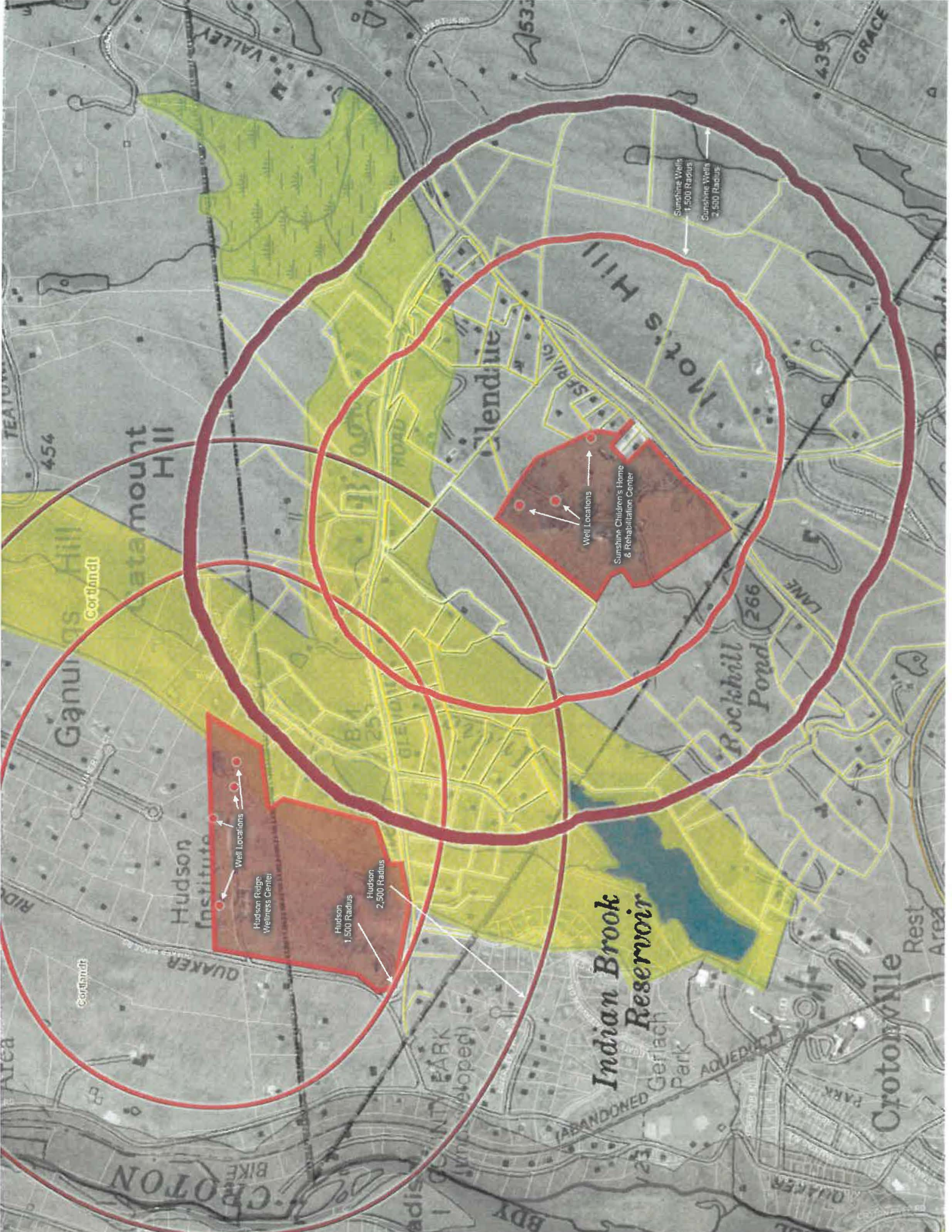
1 inch equals 1,500 feet

For Adjacent CEAs see map:
 Hudson River CEA
 Croton Point Park CEA
 County & State Park Lands CEA



Base Map: DOT 1:24,000 Planimetric Images

Disclaimer: This map was prepared by the New York State Department of Environmental Conservation using the most current data available. It is deemed accurate but is not guaranteed. NYS DEC is not responsible for any inaccuracies in the data. Please contact the designating authority for



SUB-APPENDIX G



Honorable Loretta Taylor
Chairman of the Town of Cortlandt Planning Board
And Members of the Planning Board
Town of Cortlandt
1 Heady Street, Cortlandt Manor, NY 10567

February 3, 2022

I am writing to clarify and update our previous comments related to Hudson Ridge Wellness Center's application before the Town of Cortlandt. Given the parcel's proximity to Teatown Lake Reservation's 1,000-acre nature preserve and the shared natural resources impacting the ecological and recreational value of our protected land, we continue to take a deep interest in the application and related public proceedings.

The proposed development and associated activities have the worrisome potential to affect critical environmental resources and functions on our preserve and surrounding areas including:

Indian Brook Reservoir Critical Environmental Area (IBR CEA) and Water Quality

Westchester County's Indian Brook-Croton Gorge Watershed Conservation Action Plan notes that this property, if developed, "could negatively impact the water quality of the watershed by increasing impervious surfaces and stormwater runoff." The most recent iteration of the site plans includes the addition of tennis courts, a pool, and associated pathways. These additions will further increase the amount of impervious surface thus increasing the rate of stormwater runoff and likelihood of pollutants being carried into nearby waterways while decreasing the ability of the soil to absorb and filter those pollutants being introduced by increased landscaping practices and vehicle traffic.

According to the Action Plan,

"Pollutants such as metals and toxins from cars, soil from land development and earth moving practices and pesticides and fertilizers applied to lawns can end up in drinking water sources and waterbodies. Assessing the potential impacts that various land uses can have on drinking water and waterbodies is of primary importance when quantifying the health of a watershed and determining actions that should be taken to restore and protect drinking water sources and waterbodies."



Habitat Quality

The property in question was identified in the Town of Cortlandt's 2004 Open Space Plan as environmentally sensitive for its wildlife habitat and migration corridors. Significant impacts to the quality of wildlife habitat such as border fencing, the lack of native species and species diversity in the proposed landscaping plan, and artificial lighting creating sky-glow brighter than existing area conditions should be examined so that appropriate alternatives may be considered to minimize harm.

Community Character

Southeast Cortlandt, as identified in Cortlandt's Master Plan, *Envision Cortlandt*, is largely residential with a small number of community-oriented businesses. The existing businesses, like Teatown, enhance the quality of life for neighbors and serve to protect the environmental and recreational value of the community. Moreover, the Quaker Ridge Area is widely recognized as a scenic resource. The addition of a luxury specialty hospital at this location is in sharp contrast with surrounding land use and will thus significantly impact community character. The proposed action is inconsistent with local land use zoning and therefore the impacts are of high enough importance to warrant further review.

In consideration of the environmental comments in this letter and Teatown's earlier written comments, the Town is asked to seriously consider issuing a Positive Declaration requiring the applicant to prepare an Environmental Impact Statement. Additional evaluation of possible environmental impacts should assure that the outcome is in line with the Town's and Teatown's shared goal of environmental protection.

We thank the Town of Cortlandt for its commitment to conservation and consideration of the complex ecological and community concerns which affect this application.

Sincerely,

Kevin Carter
Executive Director

SUB-APPENDIX H

February 6, 2022

By E-Mail

Hon. Loretta Taylor
Chairperson of the Town of Cortlandt Planning Board
And Members of the Planning Board
Town Hall
1 Heady Street
Cortlandt Manor, New York 10567

Re: **Hudson Ridge Wellness Center: Case No. 6-15**

Dear Chairperson Taylor and Members of the Planning Board

I appreciated the opportunity to speak before the Planning Board on Wednesday January 26th. It was the first time I had spoken before the Planning Board or the Zoning Board. I spoke about the extremely poor tax payment history of the applicant because I believe that it highlights the community's concerns about the credibility and trustworthiness of the applicant and this application. How can anyone expect them to fulfill their many representations (concerning water usage, well testing and mitigation, light pollution, traffic congestion and environmental impacts), when they have repeatedly twenty-five (25) times failed to carry out such a basic obligation as paying their real estate taxes in a timely manner?

I was also quite surprised to learn how often the applicant has appeared before either the Planning or Zoning Board, while seriously delinquent in tax payments. For example, if we look at the 2019 School Tax payment history for the 2016 Quaker Ridge Road property, we see that the first payment was due on September 1, 2019, and was not paid until October 27, 2020. There was a tax lien placed on the property and a tax sale was scheduled for July 1, 2020. During this period, the applicant's proposal appeared on the Agenda of the Zoning Board five times: 10/16/2019, 11/20/2019, 1/15/2020, 2/19/2020, and 4/15/2020. Given the applicant's casual disregard for its fiscal and community obligations, should they have been permitted to proceed with their applications while in such serious tax delinquencies? I don't believe they should have been on the docket at all.

I have included below the actual data that I spoke about on January 26th (which was obtained from the website of either “Town of Cortlandt—Reciever of Taxes” (2016 Quaker Ridge Road and 81 Quaker Hill Drive) or “Town of New Castle” (35 Quaker Ridge Road).

Hudson Ridge Wellness Tax History

A. 2016 Quaker Ridge Road

TYPE OF TAX	DUE DATE	DATE PAID	PAYEE	PENALTY AMOUNT
1: 2021 School Tax				
2 nd Installment	1/31/2022	1/27/22	Hudson Ridge Wellness	
* 1 st Installment	9/30/2021	11/16/2021	Pierpont Capital Corp	\$1077.93
2: 2021 Town Tax				
	4/30/2021	4/28/2021	Hudson Ridge Wellness	
3: 2020 School Tax				
* 1 st Installment	9/30/2020	10/16/2020	Hudson Ridge Wellness	\$423.62
* 2 nd Installment	2/1/2021	2/28/2021	Crichton House	\$2,118.08
4: 2020 Town Tax				
	4/30/2020	4/30/2020	Kevin Cassidy	
5: * 2019 School Tax				
	Tax Lien	10/27/2020	Ridge Hudson	
	9/30/19 Interest: \$956.64, Penalty: \$2,933.99, Advertising Fee: \$25.00			
6: * 2019 Town Tax				
	4/30/2019	5/17/2019	Hudson Ridge	\$332.87
7: 2018 School Tax				
1 st Installment	10/01/2018	10/01/2018	Kevin Cassidy	
2 nd Installment	2/01/2019	1/31/2019	Ridge Hudson	
8: 2018 Town Tax				
	4/30/2018	4/30/2018	Ridge Hudson	
9: 2017 School Tax				
1 st Installment	9/30/2017	9/06/2017	Ridge Hudson	
2 nd Installment	2/01/2018	12/27/2017	Kevin Cassidy	
10: 2017 Town Tax				
	5/1/2017	4/28/2017	Hudson Ridge	
11: 2016 School Tax				
1 st Installment	9/30/2016	9/30/2016	Hudson Ridge Wellness	

2 nd Installment	2/01/2017	1/31/2017	Ridge Hudson	
12: 2016 Town Tax	5/02/2016	4/28/2016	Hudson Ridge	
13: 2015 School Tax				
1 st Installment	9/30/2015	9/30/2015	Hudson Ridge Wellness	
2 nd Installment	2/02/2016	2/02/2016	Hudson Ridge Wellness	
14: 2015 Town Tax	4/30/2015	4/09/2015	Hudson Ridge Wellness	
15: 2014 School Tax				
*1 st Installment	9/30/2014	10/02/2014	Hudson Ridge Wellness	\$394.54
2 nd Installment	2/02/2015	10/02/2014	Hudson Ridge Wellness	
16:* 2014 Town Tax	4/30/2014	5/16/2014	Hudson Ridge Wellness	\$316.43
17: 2013 School Tax				
* 1 st Installment	9/30/2013	11/08/2013	Hudson Ridge Wellness	\$966.51
2 nd Installment	1/31/2014	1/31/2014	Hudson Ridge Wellness	
18: *2013 Town Tax	4/30/2013	5/23/2013	Hudson Ridge Wellness	\$318.84
19: 2012 School Tax				
* 1 st Installment	10/01/2012	2/12/2013	Hudson Ridge Wellness	\$1891.33
*2 nd Installment	1/31/2013	2/12/2013	Hudson Ridge Wellness	\$1891.33
20: * 2012 Town Tax	5/01/2012	8/20/2012	L & G Capital	\$1095.25
				Memo Fee \$5.00
21:* 2011 School Tax	Tax Lien	8/20/2012	L & G Capital	
	9/30/11	Interest: \$643.20, Penalty: \$2,629.92, Advertising Fee: \$25.00		
22: 2011 Town Tax	5/02/2011	4/30/2011	L & G Capitol	

B. 35 Quaker Ridge Road

TYPE OF TAX	DUE DATE	DATE PAID	PAYEE	PENALTY AMOUNT
1. 2021 School Tax				
1 st Installment	9/30/2021	11/15/2021	Credit Card	\$441.69
2 nd Installment	1/31/2022	1/18/2022	Credit Card	

2. 2021 Town Tax	4/30/2021	Not Paid	? (Assume incorrect)	\$664.69
3. 2020 School Tax				
1 st Installment	9/30/2020	10/20/2020	Hudson Ridge Wellness	\$183.20
2 nd Installment	1/31/2021	2/26/2021	Online Checking	\$915.99
4. 2020 Town Tax	4/30/2020	4/16/2020	Hudson Ridge Wellness	
5. 2019 School Tax				
1 st Installment	9/30/2019	10/07/2019	Online Checking	\$183.02
2 nd Installment	1/31/2020	Appears to still be outstanding ?		
6. 2019 Town Tax	4/30/2019	5/01/2019	Online Checking	\$110.39
7. 2018 School Tax				
1 st Installment	10/01/2018	9/30/2018	Online Checking	
2 nd Installment	1/31/2019	1/31/2019	Online Checking	
8. 2018 Town Tax	4/30/2018	4/30/2018	Online Checking	
9. 2018 School Tax				
1 st Installment	9/30/2017	9/08/2017	Hudson Wellness	
2 nd Installment	1/31/2018	12/27/2017	Online Checking	
10. 2017 Town Tax	4/30/2017	4/30/2017	Online Checking	
11. 2016 School Tax				
1 st Installment	9/30/2016	9/30/2016	Hudson Wellness	
2 nd Installment	1/31/2017	1/31/2017	Online Checking	
12. 2016 Town Tax	4/30/2016	4/29/2016	Online Checking	
13. 2015 School Tax				
1 st Installment	9/30/2015	9/30/2015	Hudson Wellness	
2 nd Installment	1/31/2016	1/31/2016	Online Checking	
14. 2015 Town Tax	4/30/2015	4/09/2015	Hudson Wellness	
15. 2014 School Tax				

1 st Installment	9/30/2014	9/30/2014	Hudson Wellness	
2 nd Installment	1/31/2015	3/13/2015	Hudson Wellness	\$881.1

C. 81 Quaker Hill Drive

TYPE OF TAX	DUE DATE	DATE PAID	PAYEE	PENALTY AMOUNT
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1. 2020 School Tax

1 st Installment	9/30/2020	2/08/2021	Critchton House Holding	\$1078.67?
2 nd Installment	2/01/2021	2/08/2021	Critchton House Holding	\$1078.67?

2. 2020 Town Tax 4/30/2020 3/27/2020 Quaker Hill Drive LLC

3. 2019 School Tax

1 st Installment	9/30/2019	2/09/2020	Kevin Cassidy	\$1279.77?
2 nd Installment	1/31/2020	2/09/2020	Kevin Cassidy	\$1279.77?

4. 2019 Town Tax 4/30/2019 5/16/2019 Kevin Cassidy \$176.25

4. 2018 School Tax

1 st Installment	10/01/2018	10/01/2018	Quaker Hill Drive LLC	
2 nd Installment	2/01/2019	1/23/2019	Quaker Hill Drive LLC	

5. 2018 Town Tax 4/30/2018 4/30/2018 Ridge Hudson

6. 2017 School Tax

1 st Installment	9/30/2017	By Previous Owner		
2 nd Installment	2/01/2018	12/27/2017	Hudson Ridge	

For 81 Quaker Hill Drive the ? for 2020 and 2019 School Tax is due to the fact that the payee paid additional amount, but the town did not list it as a penalty.

Respectfully Submitted

Joel Greenstein

Joel Greenstein
 83 Quaker Hill Drive
 Croton on Hudson, New York 10520

SUB-APPENDIX I

Chris Kehoe

From: Jayne Karlin <jkarlin@byramhills.org>
Sent: Sunday, February 6, 2022 6:31 PM
To: Chris Kehoe
Subject: Hudson Wellness- special permit application

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

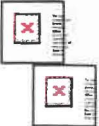
We would like to share our reasons as to why the Planning Board should vote and issue a positive special permits to operate in a R-80 zone district.

My husband and I have lived and raised our family at 4 Quaker Hill Court West for just about 25 years. There are many things that would make this application a major problem for this area and community.

1. Wells- our well is 660 feet deep and we have already had to replace it twice at great expense. We are concerned about the impact on all of the wells in this area. If our well is affected by the Wellness Center's consumption it is important to know how we will be supplied with water? There is no public water system in our area. It is important to be providing such a system to our area. This has the potential to truly affect our resale value if we ever sell.
2. Emergency Services- we have had to call 911 at least 4 times for medical emergencies and each time it has been a great personal risk to get here. One time due to downed trees an ambulance could not make it here but an EMT in their personal vehicle had to make a great personal risk to get here. This is not an area for a wellness center /hospital which surely will have a great impact on the area.
3. Roads- we have trees which literally fall year round dependent upon the weather which make the roads dangerous. When the trees coming down we also have power lines which also come down causing numerous power outages. The roads are never plowed and salted historically which is not safe for residents, never mind commercial vehicles and it is a great risk to a hospital.

There is no viable reason to put this center in the middle of a rural residential area. It will truly affect the peace and quiet of this beautiful area and with the knowledge that there could not be any commercial development. This area is not zoned for the use that Hudson Ridge is seeking a variance and should not be changed as it would affect the environment and local wildlife.

Thank you for your time,
Jayne and Lee Karlin



ReplyForward

SUB-APPENDIX J

Michael G. Shannon
2022 Quaker Ridge Road
Croton-on-Hudson, NY 10520
(914) 271-0997

February 7, 2022

Hon. Loretta Taylor
Chairperson and Members of the Town of Cortlandt Planning Board
Town Hall
1 Heady Street
Cortlandt Manor, New York 10567

Re: Hudson Ridge Wellness Center
Case 6-15

Dear Chairperson Taylor and Members of the Planning Board:

I reside at 2022 Quaker Ridge Road which is the property adjoining the northern side of the Applicant's site. I appreciate the time and attention you have given this matter and your consideration of my prior submissions and oral comments at the public hearings.

I will limit this submission to two discrete points which I believe require that you either deny the application outright or issue a Positive Declaration under SEQRA.

I. The Standards of SEQRA § 617 Preclude a Negative Declaration

Under the structure and specific language of 6 NYCRR Part 617 a Positive Declaration should issue whenever the lead agency determines "that the action *may* include the *potential* for at least *one* significant adverse environmental impact" § 617.7(a) (emphasis added). As the italicized words indicate, this encompasses situations far more broadly than findings that some proposed action *will* have such an effect. By its language, this covers cases where the impact may be doubtful or uncertain. If the lead agency determines that the action "*may* include the *potential*" for even "*one*" significant adverse environmental impact, it *must* issue a Positive Declaration.

The standards for the two Declarations are vastly different. To issue a Negative Declaration, the lead agency needs to be much more certain in its determination and find that "there *will be no adverse environmental impacts* or that the identified adverse environmental impacts *will not be significant*" 6 NYCRR Part 617(a)(2) (emphasis added). Under this language, the lead agency needs to be quite sure of its findings that there will not be even one single significant adverse impact.

Part 617(c) contains an "illustrative, not exhaustive" list of criteria for determining if an action may have a significant adverse impact on the environment. Some of the more relevant ones applicable here are:

- (i) a substantial adverse change in existing . . . ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for . . . drainage problems;
- (iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;
- (v) the impairment of the character or quality of . . . existing community or neighborhood character;
- (viii) a substantial change in the use, or intensity of use, of land . . .; and
- (ix) the . . . attracting of a large number of people to a place . . . for more than a few days; compared to the number of people who would come to such place absent the action.

As the lead agency, you are charged as the “stewards” of the resources, with an obligation to protect the environment for future generations § 617.1(a). In doing so, you must not only look at the impact on water, air and such traditional environmental issues, but also the “existing community or neighborhood character;” here a bucolic residential area. No matter what mitigants the Applicant may propose, the bottom line is that it is seeking to operate a large for profit commercial facility in a residential area.

The facts presented – and the questions never answered by the Applicant - preclude the Board from issuing a Negative Declaration. A large part of this is because the Applicant has refused to proceed with any application before the Office of Alcoholism and Substance Abuse Services (OASAS). That the Applicant has refused to do so over the 12 years since Mr. Cassidy's LLC acquired the property in 2010 is bewildering by itself. But the consequence to the issues before you is fatal to the Applicant's position because it deprives the Board members of facts needed to your analysis, facts without which you cannot issue a Negative Declaration.

In the extensive record before you, CRHISD and many residents of the community have raised serious environmental and quality of life concerns, including, but not limited to: 1) water usage, impact on nearby wells, and the watershed (which is simultaneously being taxed by the Sunshine Home); 2) traffic; 3) lighting and 4) the very character of the residential community.

I will not rehash the submissions. Suffice it to say here that on any one of these topics you should conclude that the Applicant's action “may” have the “potential” for at least one significant adverse environmental impact. The facts presented against the Applicant on the issues should at the very least cast enough doubt that you cannot conclude that the adverse impacts “will not” happen.

At the last hearing, the Applicant's attorney, Mr. Davis, was pressed about the Applicant's failure to consult with OASAS and said “We don't have a defined project to contact them with.” (Video at 2:10:45). That statement – and the issues which OASAS

would have required the Applicant to have addressed – make it impossible for you to issue a Negative Declaration.

Furthermore, the Applicant's failure to have pursued the OASAS process or even taken the step of discussing its conceptual program to procure a recommendation much less have provided any of this information to OASAS also deprives this Board of data which it would need to make a Negative Declaration. For example, this Board cannot find that traffic of staff and visitors coming and going will not have a significant adverse impact *when there is not even an Operator identified. It is the Operator – not Mr. Cassidy or Mr. Davis – who should have the function of determining staffing levels, shift changes and requirements and the necessary frequency of and manner of conducting any family counselling sessions.* While Mr. Davis may argue that “maybe” the family counselling sessions will be by Zoom and/or limited to a certain percentage or number of the residents' families, it is not for him to say; much less for him to speculate. An experienced and qualified Operator may have totally different program features. Since you do not have that information, you cannot measure the impact of the operations.

II. The Applicant's Failure to Consult with OASAS Precludes A Negative Declaration

The initial OASAS steps are not at all complicated and certainly not too expensive as Mr. Davis suggested and the Applicant should already have engaged in the OASAS process – “[a] . . . prospective provider of substance use disorder services is required to obtain the *prior approval of the Commissioner [of OASAS]* before establishing, *incorporating* and/or constructing a facility or offering a service” (emphasis added).

“The first step” requires “prospective applicants” to contact the Local Government Unit . . . to arrange for a *discussion of the conceptual basis for the application* These discussions are required and the prospective applicants must complete the Certification Proposal – Prior Consult Form . . . and submit it with the application submission. At the conclusion of these discussions, the [LGU and field office of OASAS] will render a recommendation on the Applicant's proposal. Yet, you are here being asked to decide on the application without even the benefit of a recommendation from either agency as to the Applicant's concept for treatment.

By its own admission, the Applicant never took this required first step. There was no discussion of the “conceptual basis;” there was no completion of the Certification Proposal and there has certainly been no “recommendation” that the Application's proposal proceed.

As an entity new to OASAS, the Applicant would need to complete a summary of its project as well as provide the information required under parts I, II, III; IV and Appendices I, IV and V. If the Applicant pursued an application with OASAS, it would need to describe and prove its outreach efforts with the local community and summarize the community's concerns and report the recommendations of local community officials. It would need to specifically list the services it would provide; it would have to list the organizations which have licensed or accredited the Applicant; it would need to substantiate its prior experience of its owners and principals; list its governing group of

individuals and holders of 10% or more of its shares; it would need to disclose the source of funds to purchase the site; submit detailed operational policies and procedures (H); identify the key staff set forth and projected expenses; work schedules; and be subject to criminal background checks (where, as here, the Applicant is a for-profit entity “all individuals with an ownership interest are subject to the criminal history review,”) etc., etc.

In short, the Applicant’s refusal to have conferred with OASAS not only makes its credibility suspect,¹ but it is reason in and of itself to deny the Application outright. Despite the length of Mr. Davis’ many submissions, the Applicant has not yet even consulted with OASAS about the conceptual nature of the profitable program it envisions, much less obtained a recommendation from either required agency.

And, this failure has another consequence. Even if you were to ignore it and allow the cart to pull the horse, the Applicant has deprived you of the most basic (and only reliable) source of answers to the questions – what does the Operator (whoever that may be) plan to do? Mr. Davis’ arguments are not facts upon which you can base a decision and his beliefs about what some undisclosed potential operator may do cannot provide you with any level of comfort on the issues; and certainly not the reliable basis on which to conclude that there “will not” be “any” “potential” significant adverse impact required for a Negative Declaration.

Respectfully, the Planning Board should deny the Application or, at the very least, issue a Positive Declaration.

Respectfully yours,

Michael DShannon

¹ In my prior submissions, I have provided you with ample evidence of the multiple criminal convictions of the Applicant’s principal Kevin Cassidy, convictions which include money laundering and fraud. I have also cited you to multiple sources for the proposition that drug rehabilitation facilities are frequently devices for money laundering. These facts should compound the concerns about the Applicant’s avoidance of the OASAS process and failure to identify an Operator for the facility.