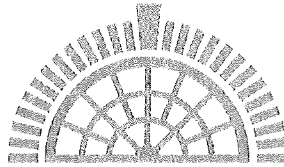


SINGLETON, DAVIS & SINGLETON PLLC

ATTORNEYS AT LAW

THOMAS J. SINGLETON, 1930-2015
ROBERT F. DAVIS
WHITNEY W. SINGLETON*

ALEXANDER D. SALVATO

* ALSO MEMBER CONNECTICUT & FLORIDA BARS

120 EAST MAIN STREET
MOUNT KISCO, NY 10549

914.666.4400
FAX: 914.666.6442
WWW.SDSLAWNY.COM

March 23, 2021

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
Response to neighbors' counsel's letter dated February 22, 2021

Dear Chairperson Taylor and Members of the Board:

This letter is in response to the letter of neighbors' counsel, dated February 22, 2021.

Introduction

At the outset, we note that, in large part, the claims raised in counsel's letter, particularly with respect to his purported "unanswered questions", have previously been raised and addressed by the Applicants many times during the past 6 years before the Planning and Zoning Boards. In part, it appears that counsel is attempting to "relitigate" the issues resolved against the neighbors in the Zoning Board proceedings, or to now overcome their failures in those proceedings, by concocting still new reasons to deny the Applicants' specialty hospital.

Having unsuccessfully made the spurious claim before the Zoning Board that the State road frontage variance required by the Applicants is a use variance rather than an area variance and then, after 5 years of review, and seeing that the Applicants had satisfied the Town's experts on the principal issues of wells and traffic, the equally unsuccessful and spurious claim that the proposed use is not a "hospital", the neighbors now have yet a new approach. Despite the demonstrated lack of well, traffic and other impacts on the neighborhood, they now raise their "community character" concerns, based on their subjective personal opinion about their "sense of place" and how they "perceive" their community. They are using social media to coordinate with others to take this new approach before the Board. (See, e.g., the announcement from the neighborhood group's website, annexed hereto as **Exhibit 1**.)

Quite simply, the neighbors now wish to substitute their own subjective standard for the review of the Applicants' proposed use, in place of an objective and legal standard, based on expert analysis. Of course, the subjective opinion of a neighborhood opposition group is one which neither the Applicants nor *any* applicant could ever hope to satisfy. That is why the Board's review is governed by the requirements of State and local law – and in this case, Federal law as well - which include the requirements that its decisions not be arbitrary and capricious or unsupported by the substantial evidence, that expert evidence takes precedence over neighborhood opposition, and in this case, under the Americans with Disabilities Act, that reasonable accommodations be made for the Applicants and their prospective patients. As the Board well knows, its determination must be in accordance with law, not neighborhood opinion, with which, not surprisingly, the law rarely seems to coincide.

With respect to counsel's request for a post-hearing submission period, we respectfully request that whatever such period is provided, as is appropriate, the Applicants be afforded the opportunity of final response.

The responses below are organized to correspond to the pages of counsel's February 22nd letter.

Page 1 of counsel's letter -

On page 1 of his letter, counsel, to illustrate his statement regarding his clients' properties "immediately abutting the site with backyards and decks having a direct view into the site", offers 83 Quaker Hill Drive and photo Exhibit A depicting a portion of its backyard as an example. This is misleading. The Board should note that the house at 83 Quaker Hill Drive, similar to the houses on the other adjoining properties on Quaker Hill Drive, is located at a much higher elevation than the Applicants' property, and approximately 300 feet from the Applicants' nearest ancillary building. Likewise, it is located approximately 800 feet from the Applicants' main hospital building on the other side of the Applicants' property, which does not adjoin any neighbors, but only a 27.8 acre parcel in New Castle controlled by the Applicants.

The ancillary, residential-style building in question will be used mainly for offices and meetings, as the patients will principally stay on the opposite side of the property. The subject ancillary building has been there and used for institutional purposes since the 1920's, before the construction of the houses on Quaker Hill Drive. Its setback is legally non-conforming.

Notably, since the submission of their application in 2015, the Applicants have observed that the owners of adjoining properties, including 83 Quaker Hill Drive, have cleared a substantial number of trees and other vegetation from their adjoining rear yards, in what appears to be an attempt to be able to look directly into the Applicants' property. In any event, these adjoining owners have intentionally made the Applicants' property much more visible from their own properties – a self-created "hardship". This includes Mr. Shannon residing at 2022 Quaker Ridge Road, who invited the Board to see the view from his residence.

Counsel then claims that "the Applicant proclaims [its hospital] would 'target affluent adults' from New York City and across the country". This is also a misleading statement. In selectively paraphrasing a paragraph regarding the specialty hospital's "market area" from the Applicants' consultant's 2015 "Project Narrative Description," contained in its original 2015 Expanded Environmental Assessment Report, counsel conveniently omits the introductory statement of the paragraph that: "The primary market area for Hudson Education and Wellness Center Addiction Treatment Services is defined as the region around New York City."

Counsel also conveniently omits the Applicants' representation from the outset that they will provide special preference to Cortlandt residents, including by reserving beds for them, providing them some annual scholarships, and providing them a favorable fee structure. The Applicants have also represented from the outset that they will work closely with the Town and local schools and organizations to address the substance abuse epidemic, providing speakers and programs as requested.

Notwithstanding, while the Applicants' emphasis, as expected, will be on serving people from the Town and surrounding area, the patients *could* be from anywhere. When counsel raised the spurious claim before the Zoning Board that hospitals in Town should be limited to Town residents, I addressed it, in pertinent part, in my letter of October 4, 2019 to the Zoning Board in pertinent part as follows:

> First, the Town's zoning enabling authority under Town Law Article 16 affords the Town authority with respect to land use matters only. As such, it is a fundamental principle of zoning law as set forth by the Court of Appeals that the Town, including its Zoning Board, has the authority only to regulate the land use, not its owners or occupants, i.e., to regulate the use, not the users. See, e.g., *St. Onge v. Donovan,* 71 N.Y.2d 507, 527 N.Y.S.2d 721 (1988); *Sunrise Check Cashing v. Town of Hempstead,* 20 N.Y.3d 481, 964 N.Y.S.2d 64 (2013). As stated in *Sunrise:*

> A town's power to adopt zoning regulations derives from Town Law §261, which authorizes town boards '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' (*see also* Town Law §263 [listing the purposes of zoning]).
>
> Our cases make clear that the zoning power is not a general police power, but a power to regulate land use: '[I]t 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' (*Matter of Dexter v. Town Bd. of Town of Gates,* 36 N.Y.2d 102, 105, 365 N.Y.S.2d 506, 324 N.E.2d 870 [1975] [citation omitted]; *see also Matter of St. Onge v. Donovan,* 71 N.Y.S.2d 507, 515, 517, 527 N.Y.S.2d 721, 522 N.E.2d 1019 [1988]).
>
> 964 N.Y.S.2d, *supra,* at 65-66.
>
> Likewise, any such interpretation as suggested by Mr. Steinmetz, would violate the principle of law that the Town, including the Zoning Board, may not regulate the internal operations of a business. . . . (citations omitted)
>
> Finally, to the extent the interpretation posited by Mr. Steinmetz would prohibit a hospital from having out-of-state patients, it would violate the Commerce Clause of the United States Constitution. *See, e.g., Tennessee Wine & Spirits Retailers Assoc. v. Thomas,* 139 S.Ct. 2449 (2019).

<u>Pages 2-3 of counsel's letter</u> -

On Page 2 of his letter, counsel commences his above-referenced discussion of the neighbors' "sense of place" and "community character". From the outset, the Applicants have been extremely sensitive to preserving the neighborhood character and contributing to the community. They have great respect for the Town and their neighbors, as well as the environment and their beautiful property. That is why, for example, they are: **(1)** preserving the 75% existing open space on the 20.83 acre property and the entire adjacent 27.8 acre parcel they control, **(2)** proposing a use that is not only consistent with the historic institutional use of the property, but which has far less impacts than other uses permitted without any variance and **(3)** expressing a deep commitment to working with the community to address the health crisis of addiction.

In addition, as part of their local outreach, the Applicants will designate a neighborhood/community liaison, who will, among other duties, invite neighborhood representatives to open meetings no less than twice a year to keep them apprised of hospital operations and to address any questions or concerns. That person will also be available to the neighbors to call at any time if there is ever a more immediate matter. The Applicants will also provide appropriate municipal authorities with a staffed 24-hour access line. (See, March 2019 Consolidated Expanded Environmental Assessment Report ("CEEAR"), Vol. 1, p. 16).

In considering how to respond to counsel's newly constructed "sense of place" claims, I realized that it is not feasible to do so in the context of any relatively concise letter submission. Indeed, it could reasonably be argued that the Applicants' *entire* 4-volume CEEAR and our February 22, 2021 submission updating same constitute the Applicants' exhaustive and demonstrably effective effort to ensure that the character of the neighborhood is maintained, including by infusing their application with dozens of voluntary mitigative measures and conditions of approval in order to do so. Just for example, see, CEEAR, Vol. 1, pp. 25-26, 55-72, 75-78, 85-93 and 106-112. A few specific points, discussed in depth throughout the CEEAR, warrant noting in this regard:

- The property was designed and used and/or approved for more intensive institutional purposes from the 1920's through the 1980's. Notably, a hospital was approved for the site in 1989, when the neighborhood was fully developed as it is today – by court order – with a special permit that allowed 225 people on site at one time, far more than will ever be the case for the proposed specialty hospital. Thus, the adjoining homes were constructed next to what was already an institutional property.

- The Applicants are not building anything new, but are utilizing the existing buildings, which they have refurbished and will continue to refurbish, which have always been dedicated to these institutional purposes.

- The Applicants are maintaining the existing 75% of the property which is open space, as well as the adjoining 27.8 acres of open space on the adjoining parcel.

- The Applicants' site work, which will not have any appreciable effect on the appearance of the property, will involve less than 1 acre of disturbance of already disturbed areas, and will involve no sensitive environmental areas.

- The Applicants have added fencing and much landscape screening near the closest residences, to which they will continue to add.

- There are many non-residential/commercial uses permitted in the Zoning District, many as-of-right, and many which would have far greater impact, including by way of traffic and/or elimination of open space, than the Applicants' proposed use. (See CEEAR, Vol. 1, pp. 50-52.)

- There are already a number of non-residential/commercial uses in the neighborhood. (See, CEEAR, Vol. 1, p. 25.)

- The Applicants have demonstrated that there will be no adverse impact on Quaker Ridge Road as a designated "historic road". (See, e.g., CEEAR, Vol. 1, pp. 9, 59.)

- The Applicants have demonstrated at great length that the proposed use is consistent with the Town's Comprehensive Plans and its Open Space Plan, particularly with respect to their express references to the property. (See, e.g., CEEAR, Vol. 1, pp. 7-18, 55-67, 75-78.)

- The Applicants have demonstrated through comprehensive expert analysis, to the satisfaction of the Town's respective experts, that the proposed use will have no significant adverse impact on traffic or off-site wells. Indeed, the Applicants have demonstrated that there will be no significant adverse impact on the neighborhood at all. Notably, the Applicants fully involved the neighborhood in its well pump testing and as a result, have invited two neighboring property owners to participate in their volunteered post-approval well monitoring program.

- The Applicants have also offered to provide the Town with on-going post-approval reporting and monitoring of water usage, traffic and parking matters.

- Other than the need for the State road frontage variance, the property generally far exceeds all bulk requirements for the hospital use. The Applicants have an application before the Zoning Board for the necessary area variance and have explained why the State road requirement is not really even relevant to the specialty hospital, a much more limited use than a general hospital or nursing home. (See, e.g., CEEAR, Vol. 1, pp. 81-82, 86.)

Several specific points raised by counsel on pp. 2-3 of his letter bear noting as well:

Counsel essentially claims that the neighbors would prefer there to be a use of the property which they could participate in, such as a religious or educational use. I am quite sure they would prefer a public park. Notwithstanding that, as mentioned above, the Applicants will have a neighborhood community liaison on staff, who will regularly arrange for neighbors to meet at the property, there is no legal requirement or consideration under SEQRA that private property owners must utilize their property for a use which opens the property to the neighborhood and community. The law is clear that the Applicants may not be compelled to do so.

There is little doubt that the neighbors would likewise oppose any reasonable permitted use of the property, including those they reference, on the basis of the higher traffic levels as compared to the Applicants' proposed use and otherwise. When they say they would rather see residential use, does that mean a handful of homes on the combined parcels of almost 50 acres, or the 20-24 homes, which would legally be permitted? It is not difficult to guess the answer.

When counsel claims that the Town did not expect a hospital to be "entrenched" among residential homes, the Town most certainly *would* have expected that when it permitted hospitals and numerous other non-residential uses, whether as-of-right or by special permit, within residential zoning districts. While due regard should and has been given – indeed, given to an extensive degree – to mitigating adverse impacts on neighbors, the application is governed by Federal, State and local law, not by a "balancing of equities", with a few neighbors, as counsel contends. Indeed, pursuant to Federal law, under the Americans with Disabilities Act, any such equities will be skewed in favor of the Applicants and their prospective patients.

The property has not been "unoccupied for 50 years" as counsel claims. It was fully utilized into the 1980's by the Hudson Institute and a representative of the Applicants has resided there for many years since the Applicants' purchase of the property in 2010. Upon its purchase in 2010, the Applicants ended years of constant unlawful use and occupancy by destructive trespassers. The neighborhood was essentially fully developed by the 1980's, throughout a period when the institutional use of the premises was continuing or had just recently ended, with another significant hospital use approved in 1989.

With respect to the issue of "large trucks (S.U.-40)" purportedly exiting the site, as referenced in the last paragraph on p. 2 of counsel's letter, the Applicants have pointed out, to the satisfaction of the Town's traffic consultant that:

> 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 vehicles would not exceed SU-40 (total length of 40 feet). No tractor trailers will be permitted to make deliveries to the hospital. 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. (Emphasis added.) (See, CEEAR, Vol. 1, p. 104.)

In essence, as the Applicants have pointed out, there will be only 5-6 deliveries to the hospital per week, with once a week garbage pick-up and laundry service and probably once a day UPS pick up. Delivery vehicles would be similar in size to the typical Peapod or other trucks serving neighbors today. Tractor trailers will be prohibited. There will be no weekend deliveries. Delivery vehicles will be directed to take specific routes from Route 9 and 9A, over the safest and most efficient local roadways, with 95% of traffic approaching from the south and New Castle and only 5% from the north on Quaker Ridge Road in Cortlandt. As noted in the Applicants' final April 25, 2019 traffic consultant's letter, upon which the Town's traffic consultant has signed off, security staff will only be needed to assist with delivery vehicle exit to the north, notwithstanding that all delivery vehicles will be directed to the south.

Counsel constantly protests that the neighbors are not engaging in "NIMBYism". To paraphrase a famous line from Shakespeare's Hamlet, "he doth protest too much". For the past 6 years, counsel and the neighborhood group have clearly demonstrated that they will say or do anything to prevent the specialty hospital from achieving fruition, as they are now doing with their new "sense of place" approach. As soon as the Applicants overcome one spurious argument, they raise yet another, over and again. The entire record produced by the Applicants' and the Town's experts to date demonstrates nothing but the Applicants' respect for the neighbors and their herculean efforts to mitigate any potential adverse impacts on the

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.

<u>Page 3 – The Court Decisions against the neighbors</u> -

Counsel claims, without citing any basis therefor, that "there seems to be some misperception during the last Planning Board meeting [February 2, 2021] that the Court may already have rejected CRHISD's concerns and decided the substantive issues now before your Board." I attended the same meeting and do not believe the Board had any such misperception. The Board is represented by counsel from the Town Attorney's Office, who participated in the Court proceedings involving the Zoning Board.

For clarity, as the neighbors' counsel knows, since the neighbors' first case against the Zoning Board, in which they incorrectly claimed that the frontage variance is a use variance rather than an area variance, which was dismissed for lack of "ripeness", the courts have clearly ruled that the State road frontage variance is an area variance. See, *Route 17K Real Estate, LLC v. Zoning Board of Appeals of the Town of Newburgh,* 168 A.D.3d, 1065, 93 N.Y.S.3d 107 (2d Dep't. 2019), leave to appeal denied, 33 N.Y.3d 905, 101 N.Y.S.3d 740 (2019); *Manocherian v. Zoning Board of Appeals of the Town of New Castle,* Westchester County Index No.: 66342/2016, S.Ct., Westchester Cty, Order and Judgment of Hon. Paul I. Marx, J.S.C., May 16, 2018.

With respect to the second case, we have provided the Board a copy of the Supreme Court's determination that the proposed use is, in fact, a permitted "hospital".

While Judge Cacace's two Decisions did not directly address the issues now before the Board, she expressly recognized the delays and obstruction to which the Applicants have been subjected. Moreover, her Decisions against the neighbors should certainly bear on the credibility of the continued claims.

Counsel's claim that "Now is the time for the Planning Board to conduct its thorough planning, engineering, and environmental review", seems rather disingenuous, to say the least, in light of the 6 years worth of review to which the Applicants have already been subjected, as demonstrated by the 4-volume CEEAR and our February 22, 2021 addendum thereto.

Pages 4-5 of counsel's letter -

At pp. 4-5, counsel expands on his new "community character"/"sense of place" theme discussed above. While those concepts are mentioned, to be balanced against many others, in the various provisions he cites, clearly they must be applied in an objective, not subjective matter. The subjective opinions of neighbors may not supersede the applicable law or the expert analysis provided by the Applicants' and the Town's professional consultants. The Applicants have satisfied the Town's experts with respect to the major initial concerns of the neighborhood regarding traffic and wells. Thus, the neighbors are left grasping at the straw of their subjective concern about "community character" and "sense of place".

While there has not been a formal public hearing before the Planning Board, the neighbors have already been permitted to speak extensively at prior meetings, including the very first Planning Board meeting in August 2015, as well as the hearings before the Zoning Board, as has their counsel, and they have submitted numerous written comments through various media – all of which have been addressed to date in the CEEAR.

The Applicants' responses to public comment and their expert submissions have demonstrated that their proposed use will *best* preserve the community character, particularly as compared to other permitted uses, and that they have gone to herculean lengths in order to do so. There is no objective basis in the record to support any claim that the proposed use will in any way ruin the character of the neighborhood. Any "perceptions" of the neighbors to the contrary must be unavailing.

One would expect that the neighbors' counsel, in their course of regularly and concurrently representing developers of large scale projects before the Town, with much greater impacts, likewise near or within residential neighborhoods, in addressing similar neighborhood opposition to their own clients' projects would respond similarly.

Pages 6-7 of counsel's letter – Purported "Unanswered Questions"

At the conclusion of his letter, the neighbors' counsel poses what he purports are "unanswered questions" to be raised by the Board. In fact, as he well knows, he has raised the same questions before, they have already been addressed, and he knows the answers. To a large extent, the issues he raises are not within the proper and legal purview of the Planning Board, in any event.

Counsel's First "Unanswered" Question -

In his first "question", counsel asks "who will be the actual operator of the proposed hospital?" In asking the question, counsel himself expressly recognizes that the basic principle of zoning law is that it regulates "the use of property and not the user". Accordingly, in the context of its review of another matter at the February 2, 2021 meeting, Deputy Town Attorney Cunningham accurately advised the Board that it should not delve into who would be operating a particular business. Like his other questions, this is not the first time counsel has raised this one. We previously responded to it, for example, in my letter to the Planning Board of February 5, 2019, copied to counsel, which states on page 6 as follows:

> As the Applicant has expressly stated from the outset, e.g., in its Addendum to its Expanded Environmental Assessment, dated April 10, 2017:
>
> We know of no other zoning application where there was a discussion of the Board of Directors or Officers of the corporate entity. Zoning Law focuses on the use, not the user. The issuance of an area variance [or site plan/special permit approval] has nothing to do with the internal business operation of the use, and that is not an appropriate topic within the jurisdiction of the Board in any event.
>
> The Applicant has represented from the outset that its principal's owners/investors will not be operating the Specialty Hospital. Rather, the Hospital will be managed by a nationally recognized firm in the field, such as Brown Consulting, Ltd., with whom the Applicant has worked to date, or a firm of similar experience, reputation and stature. Steve Laker, a Principal and a Cortlandt resident, is a representative for the property's investors, and there will be a Board of Directors of suitable experience, a professional staff, and a 24/7 contact name in addition to Steve Laker. The use is regulated by the New York State Office of Alcoholism and Substance Abuse Services (OASAS), as well as the County Health Department. In this regard the identity of the Applicant is not relevant.

Further, as reflected in the extensive record of the 2019-2020 Zoning Board proceedings and the ensuing Article 78 proceeding in Supreme Court, Westchester County, the Applicants extensively augmented the foregoing information regarding the management of the hospital within an extensive discussion of their professional staff, which will include at least 42 medical and health care professionals. In particular, the Applicants explained at length that the OASAS Regulations applicable to the hospital require it to have a physician to act as Medical Director of the hospital. Copies of the expert reports submitted to the Zoning Board and the Court which describe in exhaustive detail the management and operation of the hospital are annexed to this letter as **Exhibits 1-7**. The neighbors' counsel fully participated in these proceedings and received copies of all of these submissions.

<u>Counsel's Second "Unanswered" Question</u> -

In his second purported "unanswered question", counsel asks "what exactly is the Planning Board being asked to review", which he augments by his false assertion that "the applicant's proposed staffing and services continue to change by the minute depending upon the forum".

First, as Deputy Town Attorney Cunningham, once again, pointed out to the Planning Board at the February 2, 2021 meeting, with respect to another matter, it is not within the Planning Board's legal purview to review the internal operations of the hospital. Counsel knows this. I pointed out the basic law, alluded to Mr. Cunningham, in my letter to the Zoning Board of October 4, 2019, in which I cited the basic principle, with case citations. See, e.g., *Old Country Burgers, Co., Inc. v. Town Board of the Town of Oyster Bay,* 160 A.D.2d 805, 553 N.Y.S.2d 843 (2d Dep't 1990) (conditions on a special permit "must relate directly to the proposed use of the real property, and not to the manner of the operation of the particular enterprise conduced on the premises"); *Summit School v. Neugent,* 82 A.D.2d 463, 442 N.Y.S.2d 73 (2d Dep't 1981).

Accordingly, as the internal operations of the hospital are generally not a matter within the Boards' purview, the Applicants did not go into extensive detail in that regard in their initial 2015 Expanded Environmental Assessment Report, which general discussion was carried over to its March 2019 CEEAR at pp. 37-46. In my January 4, 2021 letter to the Planning Board, in response to counsel's request in his December 31, 2020 letter that "the Board and staff should also thoroughly review the representations made by the Applicants to the ZBA regarding the programmatic elements of the proposed [specialty hospital] to confirm whether any newly proposed services would affect the Planning Board SEQRA and land use reviews", I stated that "there have been no such program changes, and certainly none that would be relevant to the Planning Board's SEQRA and land use reviews or within the legitimate purview of the Board's site planning and special permit authority." In that letter, I clarified the specific issue of "detoxification" as raised by neighbor's counsel.

Notwithstanding the legal requirement that the Boards not involve themselves in the internal operations of the hospital, a unique exception to the rule necessarily arose in the 2019-2020 Zoning Board proceedings, wherein the Applicants appealed the erroneous determination of the Director of Code Enforcement that their proposed use is not a permitted "hospital" under the Zoning Code. In order to appeal that determination, and to address the arguments of neighbor's counsel in support of it, it was necessary for the Applicants to demonstrate to the Zoning Board that the use is a "permitted hospital", which necessarily involved a detailed analysis of its internal operations.

This was the first time an expansive analysis of the hospital's internal operations was even called for or relevant. Accordingly, that analysis before the Zoning Board did not constitute "changing" the Applicants' staffing and services "by the minute depending upon the forum", as counsel falsely claims, but only a much more detailed discussion, clarification and updating by medical and health care professionals, as relevant to that particular proceeding before the Zoning Board, of the more generic presentation in the initial environmental submissions of the Applicants' planning and engineering consultants six years earlier. Nonetheless, although not legally relevant to the Planning Board's review, the above-referenced **Exhibits 1-7** hereto set forth in minute detail, the Applicants' "concrete proposal", as requested by neighbors' counsel, for its operation of the hospital, which is in accord with the governing OASAS Regulations. The neighbors' counsel is well aware of all of this information. Notably, the Zoning Board submissions were submitted to and expressly addressed by Supreme Court, Westchester County, in reversing the Zoning Board's "default denial" of the Applicants' appeal from the Director of Code Enforcement's determination and in holding that, based thereon, the Applicants' proposed use *is* a permitted "hospital".

In his second "unanswered question", counsel also states that the Board should require the Applicants to present a site plan. The Applicants submitted a site plan and other plans in support of their application in July 20, 2015. Those plans have been exhaustively reviewed by the Town's professional staff and consultants and have been revised on a number of occasions. The plans are referenced in the public hearing notice.

In answer to counsel's question regarding "what exactly is the Planning Board being asked to review", the Planning Board is being asked to review the Applicants' voluminous environmental submissions thus far, including the March 2019 4-volume CEEAR and the subsequent submissions I provided to the Board on February 2, 2021, along with the Applicants' latest revised plans. While beyond the Board's legal purview, should it wish to review the nature of the Applicants' internal operations, it may also review Zoning Board **Exhibits 2-8** hereto. **Exhibit 5**, in particular, includes detailed schedules of the hospital's proposed staffing, services, and patient activities.

Counsel's Third "Unanswered" Question -

In his third purported "unanswered question", counsel once again repeats a question which has been asked and answered in the past, *i.e.*, "why has the Applicant not yet submitted a certification application to OASAS under Article 32 of the Mental Hygiene Law?"

I previously answered this same question in my letter to the Planning Board of February 5, 2019, stating:

> The Group's counsel attempts to create additional mystery and obfuscation with respect to OASAS licensure. The simple response to that matter, over which the Town has no jurisdiction, is that as the Applicant has stated from the outset as referenced above, the specialty hospital requires State licensure from OASAS. [See, e.g., CEEAR, Vol. 1., p. 46]. Accordingly, the Applicant has expressly recognized from the outset that such State licensure will be a condition of approval. As the OASAS process requires input from the municipality regarding its position with respect to the specialty hospital – the most relevant demonstration of which would be its granting of approvals for same – the Applicant's full engagement in the OASAS licensure process awaits Town action on the application.

Counsel attempts to buttress the validity of his repeated question, despite the fact that it has been previously answered, by repeating a false claim he has made over and again through the various proceedings, i.e., that the Applicants have confused the relationship of Article 28 of the Public Health Law and Article 32 of the Mental Hygiene Law, citing and misconstruing a reference to these Laws from the Applicants' original 2015 Expanded Environmental Assessment Report, which was carried over, without all of the subsequent clarification that has taken place before the Zoning Board, in the Applicants' March 2019 CEEAR, p. 53.

I specifically addressed counsel's same misleading contention, for example, in my letters to the Planning Board, dated February 5, 2019, to the Town Attorney and Director of Code Enforcement, dated April 23, 2019, (and in the letter from the Applicants' health care consultant, Frank Cicero, of that same date, attached as **Exhibit 3** thereto), and to the Zoning Board, dated June 14, 2019, (and Mr. Cicero's letter of that same date attached thereto), October 4, 2019, October 22, 2019, and November 6, 2019, respectively, all responding to counsel's prior claims regarding the relationship between these statutes – which are not even relevant to the Planning Board's review. The neighbors' counsel is well aware of these numerous previous "answers" to his continued, supposedly "unanswered question" in this regard.

As reflected in these submissions, and as demonstrated in the Zoning Board's proceedings, it was not the Applicants, but the neighbors' counsel and their consultants who confused these statutes. The most cogent explanation of the relationship between these two statutes was presented in our legal consultant, Peter Millock's presentation to the Zoning Board, annexed as **Exhibit 2** hereto, i.e., Article 28 of the Public Health Law is a jurisdictional statute, which in its definition of the term "hospital" for purposes of that statute, expressly delegates the responsibility for various referenced health care facilities among different State statutes and agencies, including delegating facilities such as the specialty hospital to the provisions of the Mental Hygiene Law, including Article 32 and other Articles therein. Mr. Millock, an attorney specializing in health care law, is the former General Counsel to the New York State Department of Health, and was personally involved in drafting these applicable laws. Mr. Millock testified on this matter before the Zoning Board in September 2019 and his analysis was part of the subsequent Article 78 proceeding and was relied upon by the Court.

In a further attempt to prop up his third "unanswered question", which has been answered numerous times, counsel contends that "to make matters more confusing", the Applicants did not include in their 2015 Table of "Project Approvals and Permits Required", their State licensing authority, OASAS, and he thereby questions the propriety of Board's "coordinated review" under SEQRA. Notwithstanding even if the Applicants' omission of OASAS from said Table was an inadvertent error, as counsel well knows, the Applicants have represented from the outset that the hospital requires a license from OASAS. See, e.g., CEEAR, p. 46. Accordingly, on June 15, 2017, the Planning Board properly sent notice of its designation as Lead Agency to OASAS, along with all of the other involved agencies. (See **Exhibit 9** annexed hereto.) Thus, counsel's claim in this regard is moot. The Applicants have expressly recognized from the outset that OASAS licensure will be a condition of Planning Board approval, just as any approvals required from any other agencies.

<u>Counsel's Fourth "Unanswered" Question</u> -

In his fourth "unanswered question", counsel asks whether the hospital can comply with the applicable New York State Building and Fire Codes and audaciously states that the "Planning Board should require the applicant to provide a full analysis of the building system" required by the Codes "as part of its review".

Counsel offers two more false statements in support of his question. First, he states "there was a lot of back and forth before the ZBA regarding compliance with NYS Building Code requirements." That is not true. The issue before the Zoning Board had nothing to do with whether the Applicants' renovation and ultimate use of the property will comply with the

Building and Fire Codes. The issue arose from the Director of Code Enforcement's erroneous utilization of certain definitions and provisions of the Building Code to support his opinion that the proposed use is not a permitted "hospital", but rather some type of custodial care use. His opinion was rejected by the Court.

Counsel also claims that "the Applicant has taken different positions regarding its occupancy group designation". To the contrary, as counsel well knows, and as documented at length before the Zoning Board and the Court, the Applicants have classified their proposed use as I-2 Occupancy – the category for hospitals – since virtually the outset of their application, as far back as August 2015.

Most importantly, as the Board well knows, the Building and Fire Code issue are generally not within the Board's purview, but are within the jurisdiction of the Director of Code Enforcement in the context of the Building Permit and Certificate of Occupancy phase, following the necessary Board approvals. It is not the Board's practice or within its legal purview to require a "full analysis of the building system". It is within the Board's purview to review related site issues, as acknowledged by counsel, such as "Fire Department access" – an issue which has already been reviewed exhaustively by the Town's professional staff and its traffic consultant and implemented in the Applicants' submitted revised plans.

Counsel's Fifth "Unanswered" Question -

In his fifth and last "unanswered question" – which likewise has already been previously answered – counsel again asks "why is the site listed for sale?" Counsel previously raised this question in his clients' unsuccessful motion to reargue their previously denied motion to intervene before the Supreme Court, Westchester County in the prior Article 78 proceeding between the Applicants and the Zoning Board. In my submission in that proceeding, I answered that question on behalf of the Applicants as follows:

> In regard to the issue of prejudicial delay, counsel offers an irrelevant and misleading reference in his Affirmation at footnote 13 to the Property currently being listed for sale – in fact, it has actually been so listed for some five years, throughout the approval process. Such listing is merely in the ordinary course of business of many, if not most, business property owners, whose properties are always for sale – but only, at the right, significantly motivating price, i.e., the proverbial offer they cannot refuse. In noting the listing, counsel misleadingly states that the Property is not listed as a "wellness center". What he neglects to advise the Court is that the listing describes the Property as: "**Excellent for medical facility, an assisted living**

> **estate, religious institution or a school.**" As the Court well knows, the fact that the Property is routinely listed for sale has not in any way dampened the Applicant's zealous pursuit of its approvals before the Planning and Zoning Boards and this Court. Indeed, those approvals would only enhance the value of the Property. In any event, it is a fundamental principle that zoning law regulates the *use* of property, not the *user*. The routine listing of the Property is irrelevant to this proceeding.

My statement to the Court is equally applicable to the Planning Board.

On the basis of the foregoing, the principal arguments raised in counsel's February 22, 2021 letter are demonstrably without merit.

Thank you for your consideration.

Very truly yours,

Robert F. Davis

RFD:dds
Enclosures

c: Thomas F. Wood, Esq. (via e-mail)
Josh Subin (via e-mail)
Chris Kehoe, AICP (via e-mail)
Michael Preziosi, P.E. (via e-mail)
Brad Schwartz, Esq. (via e-mail)

EXHIBIT 1

From website of Neighborhood Group -

On March 2nd at 7pm the Cortlandt Planning Board is holding a public hearing via Zoom regarding a proposed 92 bed facility that will operate 24 hours a day with 86 staff members. As you probably know, the location of the project is 2016 Quaker Ridge Road.

You do NOT need to be a Cortlandt resident to JOIN or be heard at this meeting. This may be your only opportunity to ask questions and/or raise any concerns you may have. A link to the meeting is at the bottom of this email.

We encourage you to join the Zoom meeting on Tuesday, March 2, and to speak about your concerns and ask questions. As you prepare your comments, please include your address and a little bit about why you moved to / live in this wonderful community. At this meeting, the Planning Board is looking to determine if there are "potential significant environmental impacts" that have not already been studied. We believe there are several impacts that have not been adequately studied. Environmental impacts include but are not limited to traffic, water, sewer, light, noise, odors, wildlife, and community character.

Community character is defined by all the man-made and natural features of the area. It includes the visual character, and its visual landscape; but also includes the buildings and structures and their uses, the natural environment, activities, town services, and local policies that are in place. These combine to create a sense of place or character that defines the area.

As you prepare your comments, please keep in mind that all patients are protected under the Americans with Disabilities Act. Thus, both because it is the right thing to do and because of the protection the Act offers, comments should not focus on the patients or the nature of their illness.

Below is the Zoom link and dial-in number to join the meeting on Tuesday, March 2nd, at 7pm. Please attend the Planning Board's Public Hearing even if you don't plan to speak as we need to show the Planning Board how we are all connected and integral within the greater Teatown community .

EXHIBIT 2

HUDSON RIDGE WELLNESS CENTER
PRESENTATION BY PETER MILLOCK TO THE TOWN OF CORTLANDT ZBA
SEPTEMBER 18, 2019

1. Good evening. I am Peter Millock, special counsel for Hudson Ridge Wellness Center (the "Applicant"). I have been asked to address the meaning of "hospital" as that term is used in the Town Zoning Code.

2. Bob Davis just reiterated how the meaning of "hospital," which is undefined in the Town Zoning Code, is derived through the Standard Industrial Classification Manual (the "SIC Manual"), as mandated by the Zoning Code. Bob demonstrated how "specialty hospital" in SIC Code Group 80 covers the type of facility proposed by the Applicant. That alone should be sufficient to settle the question of what "hospital" means for the purposes of the Zoning Code.

3. The Code Enforcement Officer, however, insists that the Applicant's proposed facility does not fit under SIC Code Group 80 for a "specialty hospital," but rather under SIC Code Group 83 for custodial social services.

4. The Applicant has rebutted this assertion. Permit me to reiterate our main points on the Applicant's behalf:

   - The proposed facility will be staffed by two (2) physicians, fifteen (15) nurses, two (2) psychologists and 23 social workers/counselors/technicians.

   - The proposed facility will provide medical services to treat the diseases of alcoholism and drug addiction including, among other services, diagnostic assessments, health and physical examinations, treatment, drug screening, psychiatric assessments, and medication management.

   - These medical services are fundamental to the purposes and operations of the proposed facility.

   - These clinical services are far more extensive than mere custodial room and board or assistance with the activities of daily living offered by a group home or an unregulated sober home , both incorrectly cited by the Code Enforcement Officer as facilities comparable to the Applicant's.

   - The Applicant is seeking the approval of the State Office of Alcoholism and Substance Abuse Services ("OASAS") as a provider of Residential Substance Abuse Treatment Services under 14 NYCRR Part 820.

   - Under OASAS regulations (14 NYCRR Sections 820.3 et seq.), such providers offer treatment/recovery services in a residential setting, which is exactly what the Applicant's proposed facility will offer.

- We emphasize that the regulatory phrase "treatment/recovery services in a residential setting" should be read as a whole. The "setting" may be "residential" but the facility is not merely a "residence" where individuals live for an extended period. Rather individuals will reside for a limited period (generally 28-45 days) at the proposed facility and will receive substantial clinical "treatment" and "recovery" services as mandated by OASAS regulations.

- The proposed facility fits squarely within the definition of "Specialty Hospital" in SIC Code Group 80 because it will be providing diagnostic services, treatment and other medical services for persons afflicted with alcoholism and/or drug addiction. These services are far from "incidental". The Code Enforcement Officer is incorrect.

5. The simple question about the meaning of "hospital" and the simple answer provided by the Applicant may be further confused by what we expect to be the contention of the opponents to the Application that the Zoning Board should ignore the Zoning Code's cross-reference to the SIC Manual and, instead, follow the New York Public Health Law definition of "hospital".

6. The Town Zoning Code does not link the term "hospital" to the New York Public Health Law in general and or to the definition of "hospital" in Section 2801(1) of the Public Health Law in particular. Like other undefined terms in the Zoning Code, as Bob Davis has shown, "hospital" is defined through the SIC Manual.

7. In my opinion, the Public Health Law definition of "hospital," is irrelevant to the Zoning Board's deliberations. The definition of "hospital" in Public Health Law § 2801(1) was enacted in 1965 as part of the omnibus division of state agency responsibilities for approval and monitoring health and health related facilities. The facilities referenced in Section 2801(1), include among many other facilities, nursing homes, clinics, general hospitals, and facilities providing services for mental disabilities like alcoholism and drug addiction. Most of the facilities were reassigned from the State Department of Social Welfare to the State Department of Health; oversight of facilities and services for persons with mental disabilities was left to what was then the Department of Mental Hygiene and later its successor agencies, the Office of Persons with Developmental Disabilities, the Office of Mental Health and OASAS. Like the facilities assigned to the Department of Health, in Section 2801(1) the facilities assigned to the Department of Mental Health Hygiene are, as Section 2801(1) describes all facilities referenced in that section, under the supervision of a physician "for the prevention, diagnosis and treatment of human disease...." In sum, the definition of "hospital" in the Public Health Law was designed to divide jurisdiction and authority among state agencies, and nothing more.

8. After its initial enactment in 1965, Section 2801(1) was amended several times. Some amendments added facility types to the jurisdiction of the Department of Health (e.g., dental dispensaries in 1968; outpatient lodges in 1975). Some changes deleted facilities (e.g., outpatient lodges serving other than cancer patients in 1977 and certain facilities

supervised by religious institutions in 1983). These changes were jurisdictional in nature, and certainly not related to the land use impacts of different facilities.

9. The irrelevance of the Public Health Law definition of "hospital" is further illustrated by the broad range of disparate facilities covered by the definition. The definition includes nursing homes, clinics, acute care hospitals, dental dispensaries, etc. These facilities have very different staffing and offer very different services. Some of these facilities (e.g., outpatient lodges), are much more custodial than medical, and bear no resemblance to an acute care hospital or the specialty hospital proposed by the Applicant. Most importantly for the Zoning Board's purposes, the facilities which are all under the definition of "hospital" in the Public Health Law have very different impacts on community land use. To lump them together by reference in and use by the Zoning Code would lead to nonsensical results.

10. Another expected contention of the opponents to the Application is that when the Town used the term "hospital" in the Zoning Code, it really meant "general hospital" as defined in Section 2801(10) of the Public Health Law (i.e., something much more like an acute care hospital). However, the Zoning Code does not use the term "general hospital." And, if it had seen fit, the Town had many opportunities to specify that term since the definition of "general hospital" was added to the Public Health Law in 1980, 13 years before the Zoning Code was adopted.

11. In sum, the fact that the proposed facility may not be a "hospital" or "general hospital" as defined in the New York Public Health Law does not mean the proposed facility is not a "hospital" for purposes of the Town Zoning Code. The New York Public Health Law definitions were not enacted to be used for defining facilities for local zoning purposes. Rather, and specifically for the Town's zoning purposes, the SIC Manual furnishes the relevant definition. As demonstrated by the Applicant, its proposed facility fits precisely within that definition.

EXHIBIT 3

HUDSON RIDGE WELLNESS CENTER
BRIAN BALDWIN PRESENTATION FOR TOWN OF CORTLANDT ZBA
SEPTEMBER 18, 2019

Good Evening, members of the Board. I'm Brian Baldwin. In my 50-year career as a counselor and a social worker I have been a mental health and substance use treatment clinician in both inpatient and outpatient settings, a program Director, a New York State OMH and OASAS Quality Assurance Regulator and more recently a Consultant, assisting healthcare organizations in developing mental health and substance use treatment programs and maintaining excellent clinical quality and compliance with NYS Regulations.

At issue today is the question of what is the substance use treatment program that is being proposed by Hudson Ridge Wellness Center. Tonight, I will try to help you understand what the proposed program is and which health services will be provided to the people who seek treatment there for their substance use illness. I use the word illness because a person who is addicted to alcohol or other substances is suffering from an illness that is eligible for treatment paid for by their health insurance. In fact, those Town of Cortlandt employees who have the Empire Plan as their health insurance, are eligible for treatment at a residential substance use treatment program. In addition, the federal law known as the Mental Health Parity and Addiction Equity Act mandates that Mental Health and Addiction treatment must be provided on an equal basis with medical treatment under all health insurance plans.

The definition of chemical dependence from section 1.03(44) of the Mental Hygiene Law is as follows:

" "Chemical Dependence" means the repeated use of alcohol and/or one or more substances to the extent that there is evidence of physical or psychological reliance on alcohol and/or substances, the existence of physical withdrawal symptoms from alcohol and/or one or more substances, pattern of compulsive use, and impairment of normal development or functioning due to such use in one or more of the major life areas including but not limited to the social, emotional, familial, educational, vocational, and physical."

The American Society of Addiction Medicine (ASAM), founded in 1954, is a professional **medical** society representing over 6,000 physicians, clinicians and associated professionals in the field of addiction medicine. ASAM provides advocacy to increase access and to improve the quality of addiction treatment. It also is involved in educating physicians and the public, supporting research and prevention, and promoting the appropriate role of physicians in the care of patients with addiction. The ASAM Criteria is recognized as the preeminent reference for substance use treatment professionals.
ASAM has defined addiction as follows:

"Addiction is a primary chronic disease of brain reward, motivation, memory, and related circuitry dysfunction in these circuits, which leads to characteristic biological, psychological, social, and spiritual manifestations. This is reflected in an individual pathologically pursuing reward and or relief by substance use and other behaviors. Addiction is characterized by inability to consistently abstain, impairment in behavioral control, cravings, diminished recognition of significant problems with one's behaviors and interpersonal relationships, and a dysfunctional emotional response. Like other chronic diseases, addiction often involves cycles of relapse and remission. Without treatment or engagement in recovery activities, addiction is progressive and can result in disability or premature death."

Unfortunately, most of us in this room have seen the effect of the illness of addiction on friends and neighbors and on members of our own family. Perhaps some of us have been instrumental in convincing that friend, neighbor or family member to seek medical treatment in a New York State licensed substance use treatment program. This proposed substance use residential treatment program requires licensure by the NYS OASAS.

Perhaps they will decide to enter a residential substance use treatment program, which is the type of program that is being proposed by Hudson Ridge Wellness Center. There are 210 residential substance use treatment programs licensed by the New York State Office of Alcoholism and Substance Abuse Services in New York State and four (4) in Westchester County. If a person is admitted to a residential substance use treatment program and they have health insurance, their treatment at the residential program will be eligible for payment by their health insurance if they meet what is called "MEDICAL NECESSITY CRITERIA". Medical Necessity Criteria must be met by persons treated at a Residential Substance Abuse Treatment program.

To help you understand medical treatments that are provided at a residential substance use treatment program, such as the program proposed by Hudson Ridge Wellness Center, I will describe the experience of a person entering such a program for medical treatment of his/her addiction.

The first step in the process is the assessment. A person seeking or having been referred to a treatment program, such as the one proposed by Hudson Ridge Wellness Center, will have an initial assessment made by a qualified health professional or other clinical staff under the supervision of a qualified health professional. A qualified health professional is defined under the New York State OASAS regulations as one of the following clinicians:

- A professional licensed and currently registered as such by the New York State Education Department to include:
    - A physician who has received the Doctor of Medicine (M.D.) or doctor of osteopathy (D.O.) degree;
    - A physician's assistant (PA);
    - A certified nurse practitioner;
    - A registered professional nurse (RN);
    - A psychologist;
    - An occupational therapist;
    - A social worker (LMSW; LCSW),
    - a mental health practitioner including: a licensed mental health counselor (LMHC), a marriage and family therapist (LMFT), a creative arts therapist (LCAT), and licensed psychoanalyst; and any mental health practitioner with a Limited Permit.
- A credentialed alcoholism and substance abuse counselor (CASAC).
- A counselor certified by and currently registered as such with the National Board for Certified Counselors;
- A rehabilitation counselor certified by the Commission of Rehabilitation Counselor Certification;
- A therapeutic recreation therapist.

The purpose of the assessment is to identify each person's strengths and deficits, to determine the nature and extent of the person's addiction, including their history of previous addiction treatment attempts and to determine if the person meets the Medical Necessity and admission criteria for a residential substance use treatment program. An important part of the assessment by the physician or nurse practitioner is to determine the level of withdrawal symptoms that each person is experiencing, including his/her cravings to use substances. Assessment is an ongoing process that not only is provided upon admission, but which continues throughout treatment.

The information in the assessment, including the effect of the addiction on his/her functioning at work, in school and in their family and personal life, will inform the preparation of the treatment or recovery plan that is prepared with the input of the person seeking treatment.

The treatment/recovery plan is prepared by a qualified health professional with the input of the person seeking treatment. The recovery plan seeks to identify specific goals and objectives that can be agreed upon to pursue in the treatment program and to design specific interventions or treatments that will be provided, including the names of the clinicians that will be providing the services and frequency of the services.

In a residential substance use treatment program, the following services are provided by the staff of qualified health professionals:

- Medication assisted treatment. This stabilization and withdrawal service will be provided to persons who are experiencing mild or moderate withdrawal symptoms or post-acute withdrawal symptoms from alcohol or drugs on a daily basis by the physician, nurse practitioner or registered nurse.
- Medication therapy. This treatment is provided for the alleviation of symptoms of mental illness such as anxiety and/or depression, frequently found in persons with addictions on a daily basis by the physician, nurse practitioner or registered nurse.
- Initial and ongoing drug and alcohol screening.
- Individual counseling is provided by the counselor, social worker or psychologist on a weekly basis or as needed.
- Group counseling is provided by the counselor, social worker or psychologist on a daily basis.
- Family counseling is provided by the counselor, social worker or psychologist on a weekly basis.
- Structured activity and recreation are provided by the activities therapist on a daily basis.
- Chemical abuse and dependence awareness education is provided on a weekly basis.
- Chemical dependence relapse prevention is provided on a weekly basis.
- Healthcare services are provided as needed.
- HIV and AIDS education, risk assessment, Supportive counseling and referral are provided on a weekly basis.

Once a person has been admitted to a residential substance use treatment program they are assigned to a primary counselor and a schedule of treatments and activities based on their individual treatment and recovery plan is developed with frequencies as described above.

So, we see that the proposed program does constitute a "Hospital" in the Town of Cortlandt land use regulations, based on New York State laws and regulations, as well as industry standards. Most

importantly for purposes of the Zoning Codes, the Standard Industrial Classification (SIC) definition of "Specialty Hospital" is "Establishments primarily engaged in providing diagnostic services, treatment and other hospital services for specialized categories of patients, except mental. Psychiatric Hospitals are classified in the SIC Code as 8063." The SIC code for "Specialty Hospital" is 8069. The extended code for Specialty Hospitals includes the following:

- 80690100 – Substance Abuse Hospitals
- 80690101 – Alcoholism Rehabilitation Hospital
- 80690102 - Drug Addiction Rehabilitation Hospital

The proposed program meets the definitions above in that it is a Residential Substance Abuse Treatment Program, offering the Stabilization and Rehabilitation levels of care, which is subject to NYS OASAS licensure under Part 820 of Title 14 NYCRR. The term Residential means that the patients reside at the program and are supervised by staff on a 24/7 basis during their 28-45-day treatment stay. It is most definitely not, by any stretch of the imagination, a program where merely custodial care is provided, or where medical care is merely "incidental". Rather, it is a site where active medical treatment is provided every day to every patient.

In conclusion, the above citations and definitions from the New York State Mental Hygiene Law, the New York State Office of Alcoholism and Substance Abuse Services (OASAS) regulations, the American Society of Addiction Medicine Criteria, Third Edition clearly demonstrate that the proposed Residential Substance Abuse Treatment Program of Hudson Ridge Wellness Center is a program to treat the medical illness of alcoholism and substance abuse, using a staff of healthcare professionals and clinicians. The proposed program of medical services is not "incidental" to the residential component of the program; rather, the medical services are inherent, instrumental and indubitable as to their necessity in order to deliver the proposed program. In my opinion, and in the opinion of Cicero Consulting Associates, the proposed program of Hudson Ridge Wellness Center therefore meets the definition of a Hospital as defined by the Town of Cortlandt regulations, based on its meeting the definition of 'Hospital" and its subcategory, "Specialty Hospital" under the SIC Manual, which governs the definition of undefined terms in the Town Zoning Code.

EXHIBIT 4

HUDSON RIDGE WELLNESS CENTER
PRESENTATION BY PETER MILLOCK TO THE TOWN OF CORTLANDT ZBA
OCTOBER 16, 2019

Good evening. I am Peter Millock, special counsel for Hudson Ridge Wellness Center (the "Applicant"). I have been asked to respond to several statements made at the Town Zoning Board of Appeals ("ZBA") on September 18, 2019, on behalf of the opponents to the proposed Hudson Ridge Wellness Center.

1. Ms. Zambri described the corporate practice of medicine prohibition in New York and appeared to claim that only a facility certified under Article 28 of the Public Health Law may employ physicians. Ms. Zambri: "The only way I can do that [hire doctors to provide medical care] is to get an Article 28 the license from New York State Department of Health." ZBA, 9/18/19 at page 117.

   Response:

   Mrs. Zambri was incorrect.

   The prohibition against the corporate practice of medicine in New York is based on the principle that corporations should not provide health care services or influence the delivery of such services because they are not licensed and regulated by the State for the delivery of health care services. The doctrine is based upon statutes and regulations that mandate that only licensed professionals may provide medical care, with the exception of (a) certain entities such as partnerships and professional corporations of which only licensed professionals are partners or stockholders and (b) providers that been certified to provide medical care by the State.

   Hudson Ridge will fall under the second category since it is seeking certification to provide Office of Addiction Services and Supports (OASAS) covered services. OASAS regulations require licensed and registered physicians to be hired as medical directors of OASAS programs (14 NYCRR §800.3(d)). The medical director has non-delegatable overall responsibility for among other things, the medical services to be provided by the program and supervision of the medical staff in the performance of medical services. OASAS regulations specifically require that residential service programs offering stabilization and rehabilitation programs, like Hudson Ridge, have a medical director. (14 NYCRR §820.6(b)(2)). Mandated medical staff for these programs include physicians, nurse practitioners, and physician assistants (14 NYCRR §820.6(b)(2)).

   Thus, to be certified as an OASAS facility, Hudson Ridge must engage physicians and other licensed medical professionals to provide medical services. Facilities across the State certified by OASAS for residential service programs do so.

2. Ms. Zambri asserted that only facilities regulated under the Public Health Law may provide medical care. Ms. Zambri: "In New York State, what we...like to do is regulate medical care through the New York State Department of Health." ZBA, 9/18/19 at page 114

Response:

If Ms. Zambri was implying that only the Department of Health regulates "medical care", she was incorrect.

The Mental Hygiene Law defines "alcoholism facility" or "addiction treatment facility" as a facility approved by OASAS to treat suffering from an addictive disorder (MHL §1.03 (17)). The Mental Hygiene Law defines "substance abuse disorder" to include "clinical" and functionally significant impairment to the individual's physical and mental health (MHL §1.03(56)). The operation of a residential program for the treatment of addiction services requires a license from OASAS (MHL §32.05(a)(1)). See also 14 NYCRR §800.3.

Medical care and treatment of addictive disorders including substance use disorders are not limited to DOH and are not the exclusive province of DOH. In fact, the primary licensing and oversight responsibilities of entities addressing those medical conditions are assigned specifically to OASAS under the Mental Hygiene Law.

As we noted in our testimony to the ZBA on 09/18/19, the PHL 2801(1) definition of "hospital" reserves facilities by or under the supervision of a physician for the treatment of mental disability (defined to include alcoholism, substance dependence or chemical dependence) to the Department of Mental Hygiene, a predecessor agency to OASAS.

And just as OASAS licenses medical facilities like Hudson Ridge, so the Department of Health licenses non-medical facilities like adult care facilities.

3. Mr. Laks asserted that patients will not get extensive medical treatment at Hudson Ridge. Mr. Laks: "If they [patients at Hudson Ridge] are in need of extensive medical treatment, they cannot be admitted to this type of 820 residential program and must be sent to a different level of care, particularly an Article 28 general hospital." ZBA, 09/18/19 at page 126

Response:

Mr. Laks's comment was irrelevant.

Here and elsewhere, the opponents argued that patients in need of extensive medical services should not be admitted to Hudson Ridge and, if the need for extensive medical services arises after they are admitted, they must be transferred to another type of facility like an Article 28 general hospital.

We disagree. Hudson Ridge will not be staffed, equipped or licensed to treat severe, acute medical problems of all kinds like a general hospital, but Hudson Ridge, as a specialty hospital, will be required to provide and will provide substantial and extensive medical services for illnesses for which it is responsible. Medical services take many forms. A major component of the services Hudson Ridge will provide are the medical services required by a person suffering from an addiction disorder. They just don't happen to be the services provided in the ER, OR, or ICU of a general hospital.

4. Mr. Laks contended that New York does not permit Hudson Ridge to function as a residential rehabilitation facility. Mr. Laks: "In New York, that type of service [freestanding alcoholism and drug abuse residential rehabilitation facilities providing acute care, withdrawal and stabilization services to treat unstable medical or psychiatric conditions and to qualify as a rehabilitation hospital under the terms of the SIC] is not permitted to be provided. Those services may only be provided by a PHL Article 28 hospital." ZBA, 9/18/19 at page 131.

   Response:

   Mr. Laks's statement is inaccurate.

   The highest level of care for a person with alcohol use disorder (detoxification in a life threatening situation or "medically managed" detoxification) is provided in a general hospital, but the services for alcohol use or substance abuse disorders under stabilization and rehabilitation or "medically supervised" detoxification, as at Hudson Ridge, are routinely provided in facilities approved by OASAS under Part 800.

5. Ms. Zambri concluded that Hudson Ridge will not have a clinical environment common to hospitals. Ms. Zambri: "I suspect that many of these facilities, and I would suspect this one, will not look like a clinical environment. In fact, they try to make it look more like a home environment, try to make it look like some place that people want to be." ZBA, 9/18/19 at page 121.

   Response:

   Ms. Zambri's statement was inaccurate and irrelevant.

   "Clinical environment" is not a defined term in the law and the maintenance of a "clinical environment" is not a requirement of hospitals or any other facility providing medical care in New York. Even the most sophisticated tertiary and quaternary acute care hospitals strive to make their accommodations "home like" to attract patients, to make their stays more comfortable, and to improve outcomes. Being "home like" does not mean being less medical.

   Furthermore, Ms. Zambri's suspicions notwithstanding, Hudson Ridge will be located in an institutional campus like setting, similar to many health facilities in

Northern Westchester. It will operate in space that was used as an addiction treatment hospital for 30 years. It will have a nursing stations and rooms for one or two patients. Initially, it will be staffed by 42 medical treatment professionals for 42 patients, and, ultimately, 86 medical and treatment professionals for 92 patients. It will provide a broad array of medical services. This should constitute more than enough of a clinical environment.

6. Mr. Laks measures the extent of medical services to be offered by Hudson Ridge by the amount of medical waste it will generate. Mr. Laks: "Under the expanded environmental assessment submitted by the applicant, they [the Applicant] describe medical waste as being collected maybe quarterly and consisting of sharps, including needles and lancets for diabetes patients. ZBA, 9/18/19 at page 133-34.

Response:

Mr. Lak's observation is irrelevant.

Nowhere in the law is the amount of medical waste being generated an indicia of the extent of medical care being provided. Even the Public Health Law does not define "hospital" on the basis of medical waste.

We concede that Hudson Ridge will not generate as much medical waste per patient as a hospital like Mount Sinai, Montefiore or Northwell, but again we note that medical care services for addictive disorders are different from the intensive and intrusive medical care provided in an acute care hospital. That does not mean it is not substantive medical care. For example, a psychiatrist counseling a person with an alcohol use disorder or an internist prescribing medication to a person with a substance abuse disorder will not generate nearly as much medical waste as a thoracic surgeon performing an operation. That does not make the services to the person who has an alcohol use disorder or the person with a substance abuse disorder non-medical.

EXHIBIT 5

TOWN OF CORTLANDT
ZONING BOARD OF APPEAL MEETING – OCTOBER 16, 2019
HUDSON RIDGE WELLNESS CENTER
BRIAN BALDWIN – CICERO CONSULTING ASSOCIATES PRESENTATION

My presentation tonight will demonstrate that Hudson Ridge Wellness Center will in fact provide extensive medical services that will actually be required by their OASAS license as a Chemical Dependence Residential Program. I will also demonstrate that the program will be designed as a hospital and function as a hospital. I will begin by refuting two statements made by Mr. Laks and Ms. Zambri. The first is that only the New York State Department of Health licenses programs that employ physicians. The second is that supervised stabilization and withdrawal treatment, otherwise known as detoxification, is not a medical service. First, we will look at the statement that the New York State Department of Health is the only agency that licenses facilities that employ physicians.

The proposed residential substance abuse program provides extensive medical services under the supervision of a physician for the medical illness of substance use disorder defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). The DSM 5 is the principal authority and reference text for mental health and substance abuse professionals, particularly when it comes to diagnoses. The American Psychiatric Association together with the National Institute of Mental Health began work on the DSM 5 in 1999. Their work culminated in the publishing of the DSM 5 in 2013. Part 800 of Title 14 NYCRR mandates that all OASAS licensed programs must have a Medical Director who is a NYS licensed physician who has education, training, and/or experience in substance use disorder services and has overall responsibility for the program. The Hudson Ridge Wellness Center Medical Director will be onsite daily. This refutes the statements by Ms. Zambri that only the NYS Department of Health licenses programs that employ physicians. In addition, the proposed program will also employ an extensive on-site staff of medical professionals, as illustrated in the attached staffing schedule and as required by OASAS. The physicians in a residential substance use treatment facility provide in person assessment and direct medical treatment, not just, as Ms. Zambri has stated, "for screening purposes and otherwise". The nurses, social workers, psychologists and counselors also provide in person medical assessment and direct medical treatment, including individual, group and family counseling.

The treatment environment in which these extensive medical services are provided will not be, as described by the opposition, like a home. It will be designed as a hospital. It will have patient rooms for

one or two patients per room. It will have individual, group and family therapy rooms. It will have offices for physicians and counselors and stations for nurses. It will have Medication Rooms and locked Medication storage cabinets. It will have an electronic medical record for documenting assessment, toxicology tests, laboratory tests, treatment planning and treatment services. There will be a formal Intake process based on medical necessity, an individualized medical treatment program and a formal discharge procedure. Every person seeking admission must be referred and no one can walk in to the facility without going through the Intake process.

REFERENCE Part 800.3(d)

"Medical Director". (1) Each program must have a physician designated by the program sponsor to be the medical director. The medical director shall be a physician licensed and currently registered as such by the New York State Education Department and shall have at least one year of education, training, and/or experience in substance use disorder services. The medical director is a physician who has overall responsibility for the following (this overall responsibility may not be delegated):

(i) medical services provided by the program;

(ii) oversight of the development and revision of policies, procedures and ongoing training for matters including, but not limited to, routine medical care, specialized services, specialized medications, and medical and psychiatric emergency care, screening for, and reporting of, communicable diseases and infection in accordance with law, public health education including prevention and harm reduction;

(iii) collaborative supervision with the program director of non-medical staff in the provision of substance use disorder services;

(iv) supervision of medical staff in the performance of medical services;

(v) assisting in the development of necessary referral and linkage relationships with other institutions and agencies including, but not limited to, general or specialty hospitals and nursing homes, health-related facilities, home health agencies, hospital outpatient departments, diagnostic and treatment facilities, laboratories and related resources;

(vi) ensuring program compliance with all federal, state and local laws and regulations.

Next, we will look at where stabilization and withdrawal services can be provided in New York State. Mr. Laks has stated that medically supervised stabilization and withdrawal services, or detoxification

services, **can** be provided in OASAS licensed residential programs but he states, "That doesn't mean the provision of complex and high-level care". He argues that a person experiencing life endangering withdrawal symptoms would need to be transferred or treated at a facility offering medically managed stabilization and withdrawal treatment, thereby implying that the facility offering medically supervised stabilization and withdrawal treatment is not providing medical services. A facility treating a patient with heart disease, which must transfer him/her to a facility where a heart transplant can be done is not viewed as not providing medical services. Medically Supervised Stabilization and Withdrawal services are required by OASAS and will be provided at the proposed residential facility. This will include Medication Assisted Treatment, which will be provided by physicians and nurses to patients who are experiencing mild or moderate withdrawal symptoms or Post-Acute Withdrawal Syndrome (PAWS).

Mr. Laks also states that the proposed facility "does not primarily provide medical care and extensive medical treatment". Let's look at why that is not correct.

WHAT ARE THE LEVELS OF CARE IN A RESIDENTIAL SUBSTANCE USE TREATMENT PROGRAM?

Part 820 of Title 14 NYCRR mandates that a residential substance abuse facility provides one or more of the three following levels of medical care:

- Stabilization level
- Rehabilitation level
- Reintegration level

The proposed Hudson Ridge Wellness Center will provide the following levels of medical care:

- Stabilization level
- Rehabilitation level

This facility design uses only the most medically intensive levels of care authorized under Part 820. The progress of each individual resident through the stabilization and rehabilitation levels of the Hudson Ridge Wellness Center residential facility will be based on his or her progress towards the attainment of the goals and objectives in their recovery plans. Hudson Ridge Wellness Center will have flexible lengths of stay within the two (2) levels of care.

WHAT ARE THE SERVICES THAT ARE INCLUDED IN THOSE TWO (2) LEVELS OF CARE?

STABILIZATION LEVEL

The term stabilization comes from the name stabilization and withdrawal service, otherwise known as detoxification. The Stabilization Level of Care will include Medication Assisted Treatment, which will be provided to patients who are experiencing mild or moderate withdrawal symptoms or Post-Acute Withdrawal Syndrome (PAWS).

WHAT IS MEDICATION ASSISTED TREATMENT?

Hudson Ridge Wellness Center will offer Medication Assisted Treatment (MAT) to help these patients address their withdrawal symptoms and the potential cravings associated with them. MAT includes:

- Assessment of withdrawal symptoms, which will include ongoing standardized withdrawal evaluation including the use of Clinical Institute Withdrawal Assessment (CIWA) and/or Clinical Opiate Withdrawal Scale (COWS).
- Patients will receive symptom relief and/or addiction medications such as Suboxone, Vivitrol, Buprenorphine and Naltrexone for opiate withdrawal and Librium, Ativan and Valium for alcohol withdrawal. This type of withdrawal management will be a closely managed withdrawal management service which will assist patients through withdrawal using a substance specific taper or induction plan. The plan will include decision points for ending the taper or extending for mild or protracted withdrawal or maintenance therapy. The medical staff in the facility will be assessing and treating residents for the medical effects of possible withdrawal symptoms on their recovery and will be assisting

the residents in managing the emotional aspects of withdrawal through psychosocial interventions including family therapy, if clinically appropriate.

- Regular vital signs monitoring will be provided by medical staff, including a physician.
- Medical staff will follow the Hudson Ridge Wellness Center Stabilization and Withdrawal Protocol, which must be approved by the Medical Director of OASAS.

ASSESSMENT, RECOVERY PLANNING AND SERVICES

Hudson Ridge Wellness Center will conduct a comprehensive medical assessment to obtain the necessary information to develop an individual treatment/recovery plan and to ensure that each patient who is admitted will meet the medical necessity criteria and admission criteria set by OASAS. These medical necessity criteria must be met in order for the patient to receive the required medical treatments necessitated by their medical illness of addiction. The assessment will be coordinated by a qualified health professional in partnership with the resident to address all resident needs for services and supports. The assessment will be based on clinical interviews with the resident and may also include interviews with significant others. This assessment will include a crisis service assessment, an assessment of client risks, and an evaluation of each resident's need for supportive resources. The assessment process will include the use of measurement-based assessment tools such as the Clinical Institute Withdrawal Assessment (CIWA), Clinical Opiate Withdrawal Scale (COWS) and the Modified Mini Screen (MMS). These tools can be used at various points in each patient's treatment to determine progress.

The information obtained from this assessment will result in the formulation of a recovery plan that will match the appropriate needed elements of medical care to the specific medical needs of each resident. These stabilization elements of medical care will include:

- Daily on site medical and clinical staff who are also accessible for emergencies 24/7.
- Medication Assisted Treatment as described on the previous page.
- Psychotropic Medication Therapy for the alleviation of symptoms of mental illness is used in conjunction with the other services provided by Hudson Ridge Wellness Center. The psychiatrist prescribes all medication for residents being treated by Hudson Ridge Wellness

Center. Medication Education is provided in conjunction with Medication Therapy in order to inform residents of the benefits, risks, and possible side effects of medications being prescribed.

- Regular Toxicology Screening for the presence of addictive substances.
- Trauma informed care. Hudson Ridge Wellness Center recognizes that trauma has a profound effect on the lives of people seeking treatment for addiction and realizes that people who have been exposed to trauma are at greater risk for developing addiction and mental health problems. It is committed to be trauma-sensitive and to provide trauma-responsive services. Hudson Ridge Wellness Center will hire clinicians with experience providing trauma-responsive services.

At Hudson Ridge Wellness Center, trauma-informed clinical care practices emphasize safety and support of each client. This begins with using systematic tools for screening. Our clinicians will be trained to consistently practice asking permission to engage and empowering patients through new skills and coping strategies. Hudson Ridge Wellness Center will assume that many residents will have experienced trauma and will use the Stressful Life Experience (SLE) screening tool, the PCL-5 for PTSD and the Intimate Partner Violence Screening Tool to inform the questions to be asked during the Comprehensive Assessment.

Hudson Ridge Wellness Center will assess the effect of possible trauma on each of the residents from the beginning of their treatment experience, acknowledging that trauma may be a factor in the person's substance use disorder and therefore his/her recovery from it. Questions about trauma are a major section in the medical assessment done at intake and in the continuing medical assessment during a person's treatment.

- Individual, group and family counseling provided by licensed health professionals.
- Ongoing use of clinical tools to assess withdrawal, emotional distress, cognitive functioning and cravings.
- Ongoing assessment of housing and recovery needs.
- Incorporation of recovery principles to promote a supportive residential environment.

REHABILITATION LEVEL

A patient entering the rehabilitation level of residential treatment may still require some stabilization and withdrawal services, including Medication Assisted Treatment. The Medication Assisted Treatment will be provided in order to continue to assist the patient with mild to moderate withdrawal symptoms, cravings, as well as post-acute withdrawal syndrome. Hudson Ridge Wellness Center conducts a comprehensive assessment as described previously in the description of the stabilization level of the treatment. The patient proceeds to the rehabilitation level of treatment when his/her mild to moderate withdrawal symptoms and cravings are well-managed in order to permit them to participate fully in the individual, group, family counseling services and other treatment services.

These rehabilitation services will include:

- Daily on-site clinical staff.
- Medication Assisted Treatment as described on page 4.
- Psychotropic Medication Therapy as described on page 5.
- Regular Toxicology Screening.
- Trauma informed care as described on page 6.
- Individual, group and family counseling provided by a licensed health professional.
- Ongoing use of clinical tools to assess social functioning, community engagement, empathy, behavioral control and anger management.
- Ongoing assessment of housing and recovery needs.
- Participation in pre-vocational activities.
- Incorporation of recovery principles to promote a supportive residential environment.
- Identification and mobilization of each resident's strengths, resources and resilience in order to maximize coping mechanisms.

HOW ARE RESIDENTIAL SUBSTANCE USE TREATMENT SERVICES BILLED?

Residential Substance Use Treatment Programs are medical services with Current Procedural Terminology (CPT) codes for coding medical services for payment by a patient's health insurance. Residential Substance Use Treatment is billed using the UB-04 Revenue Code of 1002.

We are submitting the following table, which lists the description of the services provided at the Residential Program and also lists the clinical staff that provide them. We are also submitting a typical complete daily schedule for an individual receiving treatment at the proposed Hudson Ridge Residential Substance Use Treatment Program. The program schedule that was shown by the opposition was not a complete schedule. We are also submitting a staffing schedule illustrating the extensive professional medical staff.

Service	Definition	Staff Responsible
Medical Assessment and Treatment	Clients will receive periodic medical assessments as well as ongoing treatment for medical ailments and chronic diseases and through referral.	MD, RN, LPN
Medication Assisted Treatment	This will be provided to patients who are experiencing mild or moderate withdrawal symptoms or Post-Acute Withdrawal Syndrome (PAWS). This service will be governed by the Hudson Ridge Wellness Center OASAS approved Stabilization and Withdrawal protocol. Patients will receive symptom relief and/or addiction medications such as Suboxone, Vivitrol, Buprenorphine and Naltrexone for opiate withdrawal and Librium, Ativan and Valium for alcohol withdrawal. These medications will be prescribed by an M.D. An RN will supervise medication dispensing and the LPN will dispense the medication.	MD, RN, LPN
Medication Therapy	Medication Therapy for the alleviation of symptoms of mental illness is used in conjunction with the other services provided by Hudson Ridge Wellness Center. The psychiatrist prescribes all medication for residents being treated by Hudson Ridge Wellness Center. Medication Education is provided in conjunction with Medication Therapy in order to inform residents of the benefits, risks, and possible side effects of medications being prescribed.	MD, RN, LPN
Toxicology Testing	Random toxicology will be administered to assess client progress in treatment, adherence to abstinence, and use of medication assisted treatment.	LPN, CASAC
Individual Counseling	Clinical staff will provide this service on a weekly basis. These goal-oriented, face-to-face interventions between	MD, RN, LCSW,

	staff and residents will build on the strengths of the resident as they develop coping skills and progress towards the objectives agreed upon in his/her treatment/recovery plan.	CASAC
Group Counseling	Clinical staff will provide this service on a weekly basis. These goal-oriented, face-to-face interventions between staff and groups of residents will build on the strengths of the resident as they develop coping skills and progress towards the objectives agreed upon in his/her treatment/recovery plan.	MD, RN, LCSW, CASAC
Family Counseling, Including Services to Significant Others	Professional staff will provide this service in a family setting to educate the family on the expected course of recovery, to teach skills to support the recovery of their loved one, to treat the resident's substance use problem, to address family issues that have a direct impact on the symptoms experienced by the resident, and to promote successful problem solving, communication, and understanding between a resident and family members as it relates to the resident's symptoms, treatment, and recovery.	MD, RN, LCSW, CASAC
Recovery Planning	Counselors will provide Assessment and Recovery Planning services in partnership with each resident on an ongoing basis. Hudson Ridge Wellness Center will use the SNAP approach, incorporating each person's Strengths, Needs, Abilities and Preferences. Motivational Interviewing will be incorporated as a treatment technique in assessing residents with co-occurring disorders. A complete and thorough assessment of both the mental illness as well as the substance abuse disorder will be accomplished. The outcome of this service will be much more than arriving at a DSM 5 diagnosis. The outcome will be the development of a comprehensive, individualized, culturally sensitive, goal-oriented treatment/recovery plan. It will identify the both the mental illness and the substance abuse disorder, the symptoms of each, and the effects on the person's ability to function in major life roles. The plan will identify resident strengths that can be built upon to improve important skills necessary for success. Risk factors regarding harm to self or others will be identified and	LCSW, CASAC

	will be assessed on an ongoing basis. Goals and objectives will be mutually agreed upon regarding improvements to be made in attaining skill levels in the living, learning, working, and socializing environments. The ongoing assessment process and the regular review of the treatment/recovery plan will enable the staff and the resident to monitor his/her response to treatment and design modifications when necessary.	
Peer Support in a Group Setting	**Using the milieu and use of peers, clients will provide and receive support from their peers.**	**LCSW, CASAC**
Multi-Family Group Counseling and Psychoeducation	**Multi family groups will be conducted as necessary.**	**MD, RN, LCSW, CASAC**
Evidence-Based Groups	**Clients will attend Evidence Based Best Practice groups to address recovery plan goals. These groups may include wellness self-management, seeking safety and relapse prevention.**	**LCSW, CASAC**
Didactic Seminars	**Informational seminars will be conducted on topics such as community integration, family recovery, parenting, addiction and recovery, management of chronic diseases, meditation, and recovery supports in the community.**	**LCSW, CASAC**
Benefit Assessment	**Benefits will be reassessed, housing applications completed benefit issues resolved.**	**CASAC**
Employment Assessment and Employment Plan	**Unemployment needs will be reassessed, job searches conducted, connection to employment agencies, job retention skills reviewed.**	**LCSW, CASAC**
Personal, social, and community skills training and development	**Residents will receive training in community living skills, personal hygiene and personal care skills as needed by each individual. Such skill development will include, but is not limited to, social interaction and leisure activity.**	**LCSW, CASAC, RN, LPN**

ONE FINAL NOTE

In the presentation by the opposition on September 18, much was made of the name of the proposed facility, the Hudson Ridge Wellness Center. The use of the word Wellness Center by a medical provider, such as a hospital, demonstrates a progressive, modern view of treatment and provides the first step in establishing a welcoming treatment environment that does not judge or reinforce stigma

but makes a statement that overcomes the stigma associated with certain illnesses, including addiction.

I would just like to cite a number of other medical treatment facilities operated by Article 28 hospitals in New York and using the name Wellness in their titles.

- Cancer Treatment and Wellness Center of Northern Westchester Hospital
- Military Families Wellness Center of New York Presbyterian/Columbia Medical Center and New York Presbyterian/Weill Cornell Medical Center
- St. Catherine and St. Charles Health and Wellness Center of Catholic Health Services

HUDSON RIDGE WELLNESS CENTER

DESCRIPTION OF SERVICES

Service	Definition	Staff Responsible
Medical Assessment and Treatment	Clients will receive periodic medical assessments as well as ongoing treatment for medical ailments and chronic diseases and through referral.	MD, RN, LPN
Medication Assisted Treatment	This will be provided to patients who are experiencing mild or moderate withdrawal symptoms or Post-Acute Withdrawal Syndrome (PAWS). This service will be governed by the Hudson Ridge Wellness Center OASAS approved Stabilization and Withdrawal protocol. Patients will receive symptom relief and/or addiction medications such as Suboxone, Vivitrol, Buprenorphine and Naltrexone for opiate withdrawal and Librium, Ativan and Valium for alcohol withdrawal. These medications will be prescribed by an M.D. An RN will supervise medication dispensing and the LPN will dispense the medication.	MD, RN, LPN
Medication Therapy	Medication Therapy for the alleviation of symptoms of mental illness is used in conjunction with the other services provided by Hudson Ridge Wellness Center. The psychiatrist prescribes all medication for residents being treated by Hudson Ridge Wellness Center. Medication Education is provided in conjunction with Medication Therapy in order to inform residents of the benefits, risks, and possible side effects of medications being prescribed.	MD, RN, LPN
Toxicology Testing	Random toxicology will be administered to assess client progress in treatment, adherence to abstinence, and use of medication assisted treatment.	LPN, CASAC
Individual Counseling	Clinical staff will provide this service on a weekly basis. These goal-oriented, face-to-face interventions between staff and residents will build on the strengths of the resident as they develop coping skills and progress towards the objectives agreed upon in his/her treatment/recovery plan.	MD, RN, LCSW, CASAC
Group Counseling	Clinical staff will provide this service on a weekly basis. These goal-oriented, face-to-face interventions between staff and groups of residents will build on the strengths of the resident as they develop coping skills and progress towards the objectives agreed upon in his/her treatment/recovery plan.	MD, RN, LCSW, CASAC
Family Counseling, Including Services to Significant Others	Professional staff will provide this service in a family setting to educate the family on the expected course of recovery, to teach skills to support the recovery of their loved one, to treat the resident's substance use problem, to address family issues that have a direct impact on the symptoms experienced by the resident, and to promote successful problem solving, communication, and understanding between a resident and family members as it relates to the resident's symptoms, treatment, and recovery.	MD, RN, LCSW, CASAC

Recovery Planning	Counselors will provide Assessment and Recovery Planning services in partnership with each resident on an ongoing basis. Hudson Ridge Wellness Center will use the SNAP approach, incorporating each person's Strengths, Needs, Abilities and Preferences. Motivational Interviewing will be incorporated as a treatment technique in assessing residents with co-occurring disorders. A complete and thorough assessment of both the mental illness as well as the substance abuse disorder will be accomplished. The outcome of this service will be much more than arriving at a DSM 5 diagnosis. The outcome will be the development of a comprehensive, individualized, culturally sensitive, goal-oriented treatment/recovery plan. It will identify the both the mental illness and the substance abuse disorder, the symptoms of each, and the effects on the person's ability to function in major life roles. The plan will identify resident strengths that can be built upon to improve important skills necessary for success. Risk factors regarding harm to self or others will be identified and will be assessed on an ongoing basis. Goals and objectives will be mutually agreed upon regarding improvements to be made in attaining skill levels in the living, learning, working, and socializing environments. The ongoing assessment process and the regular review of the treatment/recovery plan will enable the staff and the resident to monitor his/her response to treatment and design modifications when necessary.	LCSW, CASAC
Peer Support in a Group Setting	Using the milieu and use of peers, clients will provide and receive support from their peers.	LCSW, CASAC
Multi-Family Group Counseling and Psychoeducation	Multi family groups will be conducted as necessary.	MD, RN, LCSW, CASAC
Evidence-Based Groups	Clients will attend Evidence Based Best Practice groups to address recovery plan goals. These groups may include wellness self-management, seeking safety and relapse prevention.	LCSW, CASAC
Didactic Seminars	Informational seminars will be conducted on topics such as community integration, family recovery, parenting, addiction and recovery, management of chronic diseases, meditation, and recovery supports in the community.	LCSW, CASAC
Benefit Assessment	Benefits will be reassessed, housing applications completed benefit issues resolved.	CASAC
Employment Assessment and Employment Plan	Unemployment needs will be reassessed, job searches conducted, connection to employment agencies, job retention skills reviewed.	LCSW, CASAC
Personal, social, and community skills training and development	Residents will receive training in community living skills, personal hygiene and personal care skills as needed by each individual. Such skill development will include, but is not limited to, social interaction and leisure activity.	LCSW, CASAC, RN, LPN

HUDSON RIDGE WELLNESS CTR. –
SUBSTANCE USE RESIDENTIAL TREATMENT
STAFFING SCHEDULE

TITLE	SHIFT	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Program Manager (LCSW , Ph.D.) – 1 FTE	9am-5pm	As needed	9am-5pm	9am-5pm	9am-5pm	9am-5pm	9am-5pm	As needed
	4pm-12am	As needed	As needed	As needed	As needed	As needed	As needed	As needed
	12am-8am	As needed	As needed	As needed	As needed	As needed	As needed	As needed
Addiction Psychiatrist/ (MD) – 2.8FTE	9am-5pm	9am-5pm	9am-5pm	9am-5pm	9am-5pm	9am-5pm	9am-5pm	9am-5pm
	4pm-12am	4pm-12am	4pm-12am	4pm-12am	4pm-12am	4pm-12am	4pm-12am	4pm-12am
	12am-8am	As needed	As needed	As needed	As needed	As needed	As needed	As needed
Registered Nurses (RN) - 5 FTE	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm
	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm
	12am-8am	12am-8am	12am-8am	12am-8am	12am-8am	12am-8am	12am-8am	12am-8am
Licensed Practical Nurses (LPN) – 10 FTE	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm
	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm
	12am-8am	12am-8am	12am-8am	12am-8am	12am-8am	12am-8am	12am-8am	12am-8am
Counselors (LCSW , Ph.D.) and (CASAC) – 9 FTE	6am-2pm		6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	
	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm
	10pm-6am							
Counselor Aides (CASAC) – 15 FTE	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm
	2pm-10pm							
	10pm-6am	10pm-6am	10pm-6am	10pm-6am	10pm-6am	10pm-6am	10pm-6am	10pm-6am
Activity Therapist – 1.4 FTE	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm
	4pm-12am							
	12am-8am							
Dining Staff – 9 FTE	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm
	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm
	10pm-6am							
Executive Chef – 1 FTE	6am-2pm	As needed	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	As needed
	2pm-10pm	As needed	As needed	As needed	As needed	As needed	As needed	As needed
	10pm-6am	As needed	As needed	As needed	As needed	As needed	As needed	As needed
Cooks – 3 FTE	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm
	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm
	10pm-6am							
Housekeeping Staff – 6 FTE	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm
	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm	11am-7pm
	10pm-6am							
Administrative Assistants – 3 FTE	9am-5pm	As needed	9am-5pm	9am-5pm	9am-5pm	9am-5pm	9am-5pm	As needed
	12pm-8pm		12pm-8pm	12pm-8pm	12pm-8pm	12pm-8pm	12pm-8pm	
	12am-8am							
Security – 5 FTE	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm	6am-2pm
	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm	2pm-10pm
	10pm-6am	10pm-6am	10pm-6am	10pm-6am	10pm-6am	10pm-6am	10pm-6am	10pm-6am

HUDSON RIDGE WELLNESS CENTER - SAMPLE PATIENT SCHEDULE

HUDSON RIDGE WELLNESS CENTER – SAMPLE PATIENT SCHEDULE

TIME	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
8am-9am - Breakfast							
9am-10am	Medication Assisted Treatment/ Medication Therapy -Vital signs	Medication Assisted Treatment/ Medication Therapy-Vital signs	Medication Assisted Treatment/ Medication Therapy-Vital signs	Medication Assisted Treatment/ Medication Therapy-Vital signs	Medication Assisted Treatment/ Medication Therapy - Toxicology Testing-Vital signs	Medication Assisted Treatment/ Medication Therapy-Vital signs	Medication Assisted Treatment/ Medication Therapy-Vital signs
10am-11am	Group Counseling	Group Counseling	Group Counseling	Group Counseling	Group Counseling	Activity Therapy/Family Visiting	Activity Therapy/Family Visiting
11am-12pm	Addiction Awareness Group	Addiction Awareness Group	Addiction Awareness Group	Addiction Awareness Group	Addiction Awareness Group		
12pm-1pm - Lunch							
1pm-2pm	Activity Therapy	Activity Therapy	Activity Therapy	Activity Therapy	Activity Therapy		
2pm-3pm	Group Counseling – Trauma Focused Treatment	Group Counseling – Trauma Focused Treatment	Individual Counseling – Cognitive Behavioral Therapy	Group Counseling – Trauma Focused Treatment	Individual Counseling- Recovery Planning	Family Counseling – Family Psychoeducation	Family Counseling
3pm-4pm	Psychiatric Assessment	Group Counseling - Relapse Prevention	Group Counseling - Relapse Prevention	Group Counseling - Relapse Prevention	Group Counseling - Relapse Prevention	Activity Therapy/Family Visiting	Activity Therapy/Family Visiting
4pm-5pm	Group Counseling	Group Counseling	Group Counseling	Group Counseling	Group Counseling		
5pm-6pm - Dinner							
6pm-7pm	Activity Therapy-Family Visiting	Activity Therapy	Activity Therapy-Family Counseling-Family Psychoeducation	Activity Therapy	Activity Therapy	Recreational Activities	Recreational Activities
7pm-8pm	NA/AA Mtgs.	NA/AA Mtgs.	NA/AA Mtgs.-	NA/AA Mtgs.	NA/AA Mtgs.	NA/AA Mtgs.	NA/AA Mtgs.

EXHIBIT 6

October 28, 2019

Hon. David Douglas, Chairman
and Members of the Zoning Board
Town of Cortlandt
1 Heady Street
Cortlandt Manor, NY 10567
Attn.: Chris Kehoe

Re: Hudson Ridge Wellness Center, Inc.

Dear Mr. Douglas and Members of the Board:

This letter is being submitted to you, on behalf of and at the request of Hudson Ridge Wellness Center, in order to summarize the information that I provided at your October 16, 2019 hearing, relative to New York State Alcoholism and Substance Abuse Services (NYSOASAS) licensed Chemical Dependence facilities and the extensive medical services being provided at those facilities.

To reiterate my background, my name is Ernst Jean, M.D. I am a physician licensed by New York State since 1986, with well over 20 years of experience in the chemical dependence services field. For the past 4 years, I have served as Vocational Instruction Project (VIP) Community Services' Medical Director of its NYSOASAS licensed Part 820 Chemical Dependence Residential Treatment facility in the Bronx. That program is the exact type of program proposed by Hudson Ridge Wellness Center.

As Medical Director, I have overall responsibility for the VIP facility. This facility only admits patients with a diagnosis of the medical illness of Alcohol and/or Substance Use Disorder, as designated in the Diagnostic and Statistical Manual of Mental Disorders -- 5th Edition (DSM 5), who lack a safe and supportive option in the community to achieve changes in their substance use disorder. These patients require medical treatment in a 24/7 structured setting to help them recover. This is active medical treatment and is definitely not custodial care. Patients cannot be admitted if they are not seriously ill, i.e., there must be a medical necessity for them to be admitted.

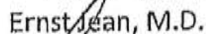
I oversee a staff of medical professionals, including other Physicians, Registered Nurses, Licensed Practical Nurses, Social Workers and Counselors. The medical services we provide to patients on a daily basis include:

- General Medical Treatment
- Medication Assisted Treatment
- Regular Toxicology Screening for the presence of addictive substances
- Trauma informed care
- Psychotropic Medication Therapy for the alleviation of symptoms of mental illness
- Individual, group and family counseling by licensed professionals
- Ongoing use of clinical tools to assess withdrawal, emotional distress, cognitive functioning and cravings
- Ongoing assessment of housing and recovery needs
- Incorporation of recovery principles to promote a supportive residential environment

As I discussed, the patients we serve have significant medical co-morbidities that we must manage and treat, such as diabetes, cardiovascular disease and many other physical ailments attendant to what has usually been a long period of substance or alcohol use. In addition to the specialty medical services we provide regarding their addiction, we are treating the medical issues exhibited by these patients throughout their stay with us. In short, we operate in a specialty hospital environment in which our patients are treated with the goal of recovery and return to the community as soon as possible, subsequent to recovery, no different than other hospitals.

I hope that this information will be helpful to you in reaching a decision. Thank you.

Sincerely,



Ernst Jean, M.D.

cc: Mr. Steven Laker, Hudson Ridge Wellness Center
Robert Davis, Esq., Davis, Singleton, Davis
Peter Millock, Esq., Nixon Peabody
Mr. Frank Cicero, Cicero Consulting Associates
Mr. Brian Baldwin, Cicero Consulting Associates

VIP Community Services
1910 Arthur Avenue
Bronx, NY 10457 Ph: 718-583-5150 ext. 8305 Fax: 718-731-2453

Cicero Consulting Associates
VCC, Inc.

701 Westchester Ave. • Suite 210W • White Plains, NY 10604
Tel: (914) 682-8657 • Fax: (914) 682-8895
cicero@ciceroassociates.com

White Plains Unit
Frank M. Cicero
Charles F. Murphy, Jr.
James Psarianos
Rose Murphy
Michael D. Ungerer
Noelia Chung
Brian Baldwin
Michael F. Cicero
Karen Dietz
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Martha H. Pofit
Frank T. Cicero, M.D.

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

October 28, 2019

Hon. David Douglas, Chairman
and Members of the Zoning Board
Town of Cortlandt
1 Heady Street
Cortlandt Manor, NY 10567
Attn.: Chris Kehoe

Re: Hudson Ridge Wellness Center, Inc.

Dear Chairman Douglas and Members of the Zoning Board:

This letter is being submitted to you, on behalf of my client, Hudson Ridge Wellness Center, Inc. (Hudson Ridge), in order to provide factual information that supports the contention that Hudson Ridge's proposed Chemical Dependence Residential facility meets the criteria of a "Specialty Hospital" as defined in the Standard Industrial Classification (SIC) definition of "Specialty Hospital", and specifically that the facility will provide extensive medical care and function as a hospital with respect to its specialties in alcoholism and substance use treatment. To begin, the definition of "Specialty Hospital" in the SIC is:

Establishments primarily engaged in providing diagnostic services, treatment, and other hospital services for specialized categories of patients, except mental. Psychiatric hospitals are classified in Industry 8063.

- *Alcoholism rehabilitation hospitals*
- *Cancer hospitals*
- *Children's hospitals*
- *Chronic disease hospitals*
- *Drug addiction rehabilitation hospitals*
- *Eye, ear, nose, and throat hospitals: in-patient*
- *Hospitals, specialty: except psychiatric*
- *Maternity hospitals*
- *Orthopedic hospitals*
- *Rehabilitation hospitals: drug addiction and alcoholism*
- *Tuberculosis and other respiratory illness hospitals*

The central issue in your recent hearings regarding Hudson Ridge's proposed facility has been the level of medical care that will be provided. The opposition has argued that the medical care in the proposed Chemical Dependence Residential facility is not "substantial", is not more than "incidental" and is not "significantly medical". Based on the evidence, we strongly differ with that opinion.

The opposition's latest reasons for their opinion, articulated by Ms. Zambri at your Board's October 16, 2019 hearing, include:

1. Medication can be prescribed outside of "this type of facility or at a pharmacy".
2. Indigent patients on Medicaid can obtain reimbursement for a taxi ride to a medical appointment through their Medicaid coverage.
3. Patients in a Chemical Dependence Residential Program must be capable of self-preservation.

All of these statements are true but none of them establishes that the proposed Chemical Dependence Residential facility is not a "Specialty Hospital", as defined above, or that it does not provide extensive medical care. In fact, as part of a continuing pattern of obfuscation, they have nothing to do with the matter at hand.

In addition, Mr. Rogers – while admittedly deciding not to carefully review materials we provided describing the medical care that will be provided every day at Hudson Ridge's facility – has correctly stated that a "group home" does not provide medical care and that "if you are a group home, then there is no medical care provided". Similarly, Ms. Zambri has equated the proposed facility with an assisted living facility. Both comparisons are grossly incorrect, based on the evidence.

Hudson Ridge's proposed Chemical Dependence Residential Program will not be a "group home", as supposed by Mr. Rogers, nor will it be an "assisted living facility", as supposed by Ms. Zambri. Critically, the New York State Office of Mental Health (NYSOMH) regulations at 14 NYCRR Parts 594 and 595 and the New York State Office for People with Developmental Disabilities (NYSOPWDD) regulations at Part 686 governing "community residences" or "group homes" do not require a Medical Director. Further, the New York State Department of Health (NYSDOH) regulations at 10 NYCRR Part 1001 governing assisted living residences and the New York State Department of Social Services (NYSDSS) regulations at 18 NYCRR Part 494 governing assisted living programs (which, with assisted living residences, constitute the entire realm of assisted living facilities) do not require a Medical Director.

But the New York State Office of Alcoholism and Substance Abuse Services (NYSOASAS) regulations at 14 NYCRR Parts 800 and 820, which will govern Hudson Ridge's facility, do require a Medical Director, one who is a New York State licensed physician with education, training and/or experience in substance use disorder services. That Medical Director will have overall responsibility for the program. There is a reason for the difference: A Medical Director is required in order to oversee and ensure the quality of the extensive medical services that will be provided. Where medical services are extensive – as in general hospitals, rehabilitation hospitals, nursing homes, medical clinics and specialty hospitals such as that proposed by Hudson Ridge – regulations require a medical director. Where medical services are either not provided, or where care is custodial, or where medical services are incidental, regulations do not require a medical director. Plain and simple language: when medical services are a big deal, you need a supervisor to make sure they are properly delivered.

We have previously submitted, in order to support our argument, a description of the medical services to be provided in the proposed program, as well as a typical daily schedule of medical services and a complete weekly staffing schedule for all medical staff. Those documents are evidence of the extensive nature of the medical services to be provided.

We have also provided testimony supporting our position from a Medical Director of a NYSOASAS Part 820 program (Dr. Jean) and another individual (Mr. Baldwin) who has regulated and worked in the NYSOASAS environment.

In stark contrast to our evidence-based documents and expert testimony, as pointed out by Mr. Davis, the opposition has not offered any support from experts for their arguments, relying instead on summary suppositions by people who are not clinicians or substance use services experts.

On a separate matter, we point out that the idea that patients in a hospital must be incapable of self-preservation is in the Fire Prevention and Building Code only, for the obvious purpose of fire safety requirements. It is certainly not a criterion for admission to an Article 28 hospital, and many inpatients in Article 28 hospitals are indeed capable of self-preservation. The requirement that patients in a Chemical Dependence Residential program must be capable of self- preservation does not negate the fact that the facility provides far more than incidental medical treatment, or the fact that the proposed facility meets the SIC code definition of a Specialty Hospital. Further, the capability of self-preservation negates Mr. Rogers' claim that this is custodial care.

In closing, we state, once again, that the material in this letter, together with the information previously submitted, clearly demonstrates that the proposed Residential Substance Abuse Treatment Program of Hudson Ridge Wellness Center is a program to treat the medical illness of alcoholism and substance use, using a staff of healthcare professionals and clinicians in a hospital setting and context. The proposed program of medical services is not "incidental" to the residential component of the treatment program; rather, the medical services are inherent, instrumental and indubitable as to their necessity in order to deliver the proposed treatment program, and they will be delivered by people, including doctors and nurses, who have inhabited hospitals since the term "hospital" was first coined. In my opinion, and in the opinion of my firm, the proposed program of Hudson Ridge Wellness Center therefore meets the definition of a Specialty Hospital as defined by the Town of Cortlandt regulations.

Thank you for your consideration of this information.

Sincerely,

Frank M. Cicero

cc: Mr. Steven Laker, Hudson Ridge Wellness Center
Robert Davis, Esq., Davis, Singleton, Davis
Peter Millock, Esq., Nixon Peabody
Mr. Brian Baldwin, Cicero Consulting Associates

EXHIBIT 7

NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Peter J. Millock
Partner
T 518-427-2651
pmillock@nixonpeabody.com

677 Broadway, 10th Floor
Albany, NY 12207-2996
518-427-2650

November 7, 2019

Hon. David Douglas, Chairman
Members of the Town of Cortlandt Zoning Board of Appeals
1 Heady Street
Cortlandt Manor, NY 10567
Attn.: Chris Kehoe

Re: <u>Hudson Ridge Wellness Center, Inc.</u>

Dear Chairman Douglas and Members of the Zoning Board of Appeals:

This letter is submitted on behalf of my client, Hudson Ridge Wellness Center, Inc. (Hudson Ridge), in response to letters recently submitted by the opponents to the Hudson Ridge project. I am specifically responding to statements in the November 5, 2019 letters of Ms. Zambri and Mr. Rabinowitz, and of Mr. Steinmetz, who incorporated the comments of Ms. Zambri and Mr. Rabinowitz.

In response to the opponents' insistence that Hudson Ridge will not be a hospital, allow me focus on what I think are the two central questions before you:

(1) Is Hudson Ridge a hospital? That must be answered by you in accordance with your Code. I submit that Mr. Davis has laid out the proper path to the answer, directly to the Standard Industrial Classification (SIC) definition of "Specialty Hospital". The answer does not depend on Article 28 of the New York Public Health Law (PHL), or any other external source, nor should it. No matter how often statements are made by the opposition regarding compliance with Article 28 of the PHL, the fact remains that the Town of Cortlandt has its own definition of "hospital"; that definition is clear and includes the type of facility proposed by Hudson Ridge; and that definition does not have to comport with the Article 28 definition of hospital or any other definition. Further discussion of Article 28 is wasteful and distracting.

(2) Will Hudson Ridge provide services that are custodial and medically incidental OR medically extensive? We believe that the testimony of Dr. Jean, a medical director of a Part 820 program under the Office of Addiction Services and Supports (OASAS) regulations, was definitive in that regard, as is the fact that the Part 820 program requires a medical director. If the care and services were custodial and medically incidental in nature, would a medical director be needed? No, as the regulations for custodial, non-medical programs which do not

require a medical director show in the alternative. Programs with extensive medical services, such as the OASAS Part 820 program, require medical direction and have medical directors.

Rather than address every point in the voluminous submission by the opponents, permit me to make a few points that I hope will make your decision easier. Having stated our belief regarding the definition of "hospital", I will focus on the medical nature of the services provided and the incorrect assumptions and statements of Mr. Rabinowitz and Ms. Zambri in that regard.

To begin, the statements by Ms. Zambri and Mr. Rabinowitz that the medical services provided by Hudson Ridge will not be "major" "but only minor" (Ms. Zambri) and "which are not medically intensive" (Mr. Rabinowitz) are incorrect and, more importantly, off the point. Nowhere in your Zoning Code or the SIC (or even Article 28, for that matter), does it say that medical care must be "major" or "intensive". The established standard is "extensive", and not custodial or incidental in nature. That is the dividing line. The extensive nature of the medical care at Hudson Ridge is something we have previously demonstrated beyond question.

Turning to a statement by Mr. Rabinowitz on this matter is instructive. Mr. Rabinowitz suggests that Hudson Ridge will solely provide Medication Assisted Treatment (MAT) as a medical service. That is not even near the truth. Rather, as per our written and verbal testimony, including that of Dr. Jean, Hudson Ridge will provide MAT and daily treatment of significant medical conditions such as cardiovascular disease, diabetes, chronic obstructive pulmonary disease and multiple other health issues endemic to the service population, which has typically had its health compromised by a significant period, often decades, of substance use. It will also provide medical assessment services, medical monitoring and therapeutic services through a psychiatrist, who by definition will be a physician licensed by the State of New York. That is what Dr. Jean stated, and that is the fact, regardless of Mr. Rabinowitz's statements to the contrary. It is why Dr. Jean has his job, to protect the patients in his OASAS Part 820 Program. The attempt by the opponents to divert your attention from the many hours of medical care that each resident will receive each day, including attempting to say that medical therapeutic services for the treatment and recovery of these patients are not medical care, is wrong.

We have previously addressed such red herring issues as water usage and medical waste. See, e.g., Mr. Davis's letter of April 23, 2019, pp 14-15 and Ex. 11. Further, the generalized statements of the Applicant's engineers summarizing the proposed use in the context only of environmental impact review in other proceedings should not be used to obfuscate the detailed discussion of the Applicant's medical and health care experts of the Applicant's internal operations in this proceeding.

Here are some other comments by the opponents that bear direct rebuttal:

The Rabinowitz Letter

- Mr. Rabinowitz acknowledges that the proposed program is a Chemical Dependence Residential Treatment Program under Article 32 of the Mental Hygiene Law and Part 820 of Title 14 NYCRR.
- He confirms that Medication Assisted Treatment (MAT) is provided at a Chemical Dependence Residential Treatment Program.
- He confirms that the Chemical Dependence Residential Treatment Program must have an OASAS-approved Detoxification Protocol, approved by the OASAS Medical Director (and

which will be administered by Hudson Ridge's Medical Director).

- As noted above, he mistakenly claims that Medication Assisted Treatment is the only medical treatment provided at a Chemical Dependence Residential Treatment Program and, with Ms. Zambri, he attempts to exclude consideration of the medical therapeutic services from the extensive medical services that will be provided at Hudson Ridge. In fact, psychotropic medication therapy, individual, group, and family counseling, regular toxicology screening, trauma-informed care and ongoing use of clinical tools by the 42 medical and health care professionals on staff to assess withdrawal, emotional distress, cognitive functioning and cravings are all medical services provided by Qualified Health Professionals in a Chemical Dependence Residential Treatment Program.
- He states that "A large number of those patients who require MAT will have already been started on the medication prior to admission and in those cases the role of the program physician is simply to review the prior prescription and continue it." This is not correct. First, he has no knowledge of the mix of patients and whether any of them will have already started MAT. Second, even in the case of those patients who have begun MAT, each patient will receive ongoing daily individualized medical assessment by the physician, as well as individualized adjustments to the MAT regimen, based on his/her individual medical needs.
- He states that most of the Center's 92 clients will not be receiving MAT. He has no basis for that statement, which is clearly incorrect. Hudson Ridge has stated that its proposed program will provide the Stabilization Level of Care, where MAT is required, and the Rehabilitation Level of Care, where MAT can be provided. In fact, most of Hudson Ridge's patients will be receiving MAT.
- He states in reference to the schedule, "This is consistent with the 1 hour each day set aside for MAT for those limited number of clients who are receiving MAT. 1 hour would not be enough time if a majority of the Center's clients were on MAT". The program schedule submitted by Hudson Ridge is for a single typical patient only, not for every patient who will receive MAT. The 1 hour per day is per patient and as noted, it is expected that most patients will be receiving MAT as part of the Stabilization Level of Care.
- He describes the medical treatment services listed on the patient schedule as "recreational, social and educational activities". These are medically necessary services provided by medical staff to treat the illness of substance use disorder as described in our previous material. The services are not trivial (or custodial) and trivializing the services is misleading at best.
- He mistakenly states that "The required staffing for a Part 820 program is not primarily or even in large part made up of medical providers". 14 NYCRR Part 800 defines the staff that Hudson Ridge has listed in its staffing as "Qualified Health Professionals" (QHPs). Those QHPs, who will make up the majority of Hudson Ridge's staff, are medical providers.
- His statement that a client to be admitted "appears to not need acute hospital care, acute psychiatric care, or other intensive services", is correct but does not prove that medical services are not provided at a Chemical Dependence Residential Treatment Program.
- As with other key codes noted above, - 14 NYCRR Section 816.6 does not use the language "major medical service" to describe Medically Managed Stabilization and Withdrawal. Those are Mr. Rabinowitz's words. He is correct, and we have never disputed that Medically Managed Stabilization and Withdrawal can only be provided in an Article 28 hospital. That does not mean or prove that the services in a Part 820 Program are not medical.
- He also states that "lesser forms of detoxification, which are not medically intensive, such as medically supervised or medically monitored withdrawal and stabilization services, may take place in an Article 32 residential treatment program if permitted by OASAS". The phrases

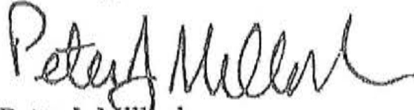
"lesser forms of detoxification" and "which are not medically intensive" are not contained in Part 816 of 14 NYCRR. Again, these are his words. Part 820 states, and Mr. Rabinowitz confirms, that medically supervised stabilization and withdrawal services are appropriate for persons suffering from mild to moderate withdrawal symptoms, coupled with unstable living environments, or who are unable to detox on their own without withdrawal complications. The services to address those patient issues are medical in nature and are overseen by a medical director.

The Zambri Letter

- The footnote on page 3 of Ms. Zambri's letter stating that Hudson Ridge will only accept commercial insurance and not Medicaid is just not true. Hudson Ridge will accept Medicaid, which is a type of insurance; Hudson Ridge has said all along that it will accept patients with insurance, and that has always included an assumption of service to Medicaid patients.
- Ms. Zambri insists that the illness of substance use and dependence is somehow "minor and incidental", "not major" and therefore not equal to physical illnesses. This is in direct conflict with the Federal Mental Health Parity and Addiction Act (MHPAA), New York's "Timothy's Law" and the recently enacted Behavioral Health Parity Reporting Act, which we have cited previously. Each of these laws requires that health insurance plans treat these illnesses equally with regards to access to and payment for treatment.
- Ms. Zambri incorrectly states that "the Wellness Center would not automatically be permitted to provide MAT by being licensed as a Part 820 facility." As part of the OASAS PPD-5 application for licensure, Hudson Ridge will be required to submit its Detoxification Protocol and, after it receives its NYS OASAS license, it will be approved to provide MAT. The citation by Ms. Zambri (14 NYCRR Section 816.5(e)(5)) refers to the use of opioid full agonist treatment, which means the use of methadone, which does require additional approvals but does not prohibit the program from providing MAT, using buprenorphine, suboxone or other medications.
- Ms. Zambri incorrectly states that Medication Therapy is defined as "continuation of medications prescribed by the patient prior to admission." The psychiatrist (again, a specialist physician) at Hudson Ridge will provide ongoing assessment of each resident for possible co-occurring mental illness and will prescribe psychotropic medications as needed. This has been described clearly in previous submissions as medication therapy. The continuation of medications prescribed for the patient prior to admission will be evaluated by the physician after consulting with the physician who prescribed the medication.
- Similarly, Ms. Zambri's attempt to distinguish medical from therapeutic services is not correct from a medical standpoint and again, as the opponents have done in the past, ignores the fact that Hudson Ridge will be caring for individuals with a recognized disease which requires medical treatment that can be provided in the form of therapeutic services, as described in more detail above in my responses to Mr. Rabinowitz's letter.
- Finally, Ms. Zambri's attempt to find a contradiction regarding Hudson Ridge's services with respect to patients detoxing elsewhere is also without merit, particularly as it pertains to whether Hudson Ridge will be providing medical care. Just as there are levels of acute hospital care, there are levels of chemical dependency treatment. Just because a patient does not detoxify at a facility such as Hudson Ridge does not mean that that facility is not providing medical care; in fact, as we have testified and described at length, the central focus of this program is the medical treatment, by and under the supervision of a physician, of a recognized disease. In any event, Hudson Ridge will be providing medically supervised detoxification services.

In closing, we hope that in your deliberations you will not be misled by the opposition away from your own Code or confused by the opposition with respect to the extensive medical nature of the services that Hudson Ridge Wellness Center will provide. Thank you for your consideration.

Sincerely,



Peter J. Millock,

cc: Mr. Steven Laker, Hudson Ridge Wellness Center
Robert Davis, Esq., Davis, Singleton, Davis
Mr. Frank M. Cicero, Cicero Consulting Associates
Mr. Brian Baldwin, Cicero Consulting Associates

REVISED

Applicants' Hearing Record/List of Zoning Board Submissions, March 2019 to Date

1. Four-volume "Consolidated Expanded Environmental Assessment Report", dated March 28, 2019, including the Applicants' expert's "Project Narrative Description" as Appendix B to Vol. 2.

2. Letter from Robert F. Davis, Esq. to Town Attorney Wood and Director of Code Enforcement Rogers, dated April 23, 2019, summarizing Applicants' rebuttal of Mr. Rogers' Zoning Opinion dated March 21, 2019 and requesting his withdrawal or modification of same (1st of two letters of April 23).

3. Letter from Robert F. Davis, Esq. to Town Attorney Wood and Director of Code Enforcement Rogers, dated April 23, 2019, summarizing Applicants' rebuttal of Mr. Rogers' Zoning Opinion dated March 21, 2019 (2nd letter of April 23), with Exhibits 1-14, including expert reports and curriculum vitae as Exhibits 2 and 3.

4. Letter from Robert F. Davis, Esq. to Hon. David Douglas, Chairman and Members of the Zoning Board, dated May 16, 2019 (1st of two letters of that date), accompanying Zoning Board of Appeals Application, dated May 17, 2019, challenging Mr. Rogers' Zoning Opinion dated March 21, 2019 and his Determination dated May 16, 2019.

5. Letter from Robert F. Davis, Esq. to Hon. David Douglas, Chairman and Members of the Zoning Board, dated May 16, 2019 (2nd letter of that date), accompanying Amended Zoning Board of Appeals Application, dated May 17, 2019.

6. Letter from Robert F. Davis, Esq. to Hon. David Douglas, Chairman and Members of the Zoning Board, dated June 14, 2019, rebutting Mr. Rogers' Determination dated May 16, 2019, with Exhibits 15-19, in further support of Applicants' Appeal to the Zoning Board, including an additional expert report as Exhibit 17.

7. Applicants' counsel's June 19, 2019 meeting presentation outline.

8. Letter of Robert Schonfeld, Esq. to David Douglas, Chairman, Zoning Board of Appeals, dated August 12, 2019, regarding Americans with Disabilities Act.

9. Applicants' counsel's August 21, 2019 hearing presentation outline.

10. Letter of Robert F. Davis, Esq. to Hon. David Douglas, Chairman, and Members of the Zoning Board, dated August 27, 2019, regarding recusal of Member Franco (1st of two letters of that date).

11. Letter of Robert F. Davis, Esq. to Hon. David Douglas, Chairman, and Members of the Zoning Board, dated August 27, 2019 (2nd letter of that date), regarding Zoning Board's review authority on appeal from Code Enforcement Officer.

12. Curriculum Vitae of one of the Applicants' experts, Brian M. Baldwin, LCSW, submitted September 6, 2019.

13. Letter from Robert F. Davis, Esq. to Hon. David Douglas, Chairman, and Members of the Zoning Board, dated September 12, 2019, regarding SIC Manual references in the Table of Permitted Uses (1st of two letters of that date).

14. Letter from Robert F. Davis, Esq. to Hon. David Douglas, Chairman, and Members of the Zoning Board, dated September 12, 2019, regarding the definition of "hospital" in other Zoning Codes (2nd letter of that date).

15. Applicants' confidential questions for Director of Code Enforcement Officer, submitted September 16, 2019.

16. Applicants' counsel's September 18, 2019 hearing presentation outline.

17. September 18, 2019 hearing presentation outline of Peter J. Millock, Esq., expert health law counsel.

18. September 18, 2019 hearing presentation outline of expert, Brian M. Baldwin, LCSW.

19. Letter from Robert F. Davis to Hon. Douglas Davis, Chairman and Members of the Board, dated October 4, 2019, rebutting presentation of opposing counsel at September 18 meeting on "hospital" definition issue.

20. Applicants' counsel's October 16, 2019 hearing presentation outline.

21. October 16, 2019 hearing presentation outline of Peter J. Millock, Esq., expert health law counsel.

22. October 16, 2019 hearing presentation outline of expert, Brian Baldwin.

23. Letter of Robert F. Davis, Esq. to David Douglas, Chairman and Members of the Zoning Board dated October 22, 2019, in response to letter of William Scherer regarding *Mercy Hospital* case.

24. Letter of expert, Dr. Ernst Jean to the Zoning Board, dated October 28, 2019, summarizing his October 16 presentation to the Board regarding medical treatment and hospital use, based on his experience as Medical Director of Part 820 Facilities.

25. Letter of expert, Frank M. Cicero, Cicero Consulting Associates to the Zoning Board, dated October 28, 2019, further addressing certain issues relating to medical treatment and hospital use.

26. Letter of Robert F. Davis, Esq. to David Douglas, Chairman, and Members of the Zoning Board regarding the record of proceedings, with Applicants' Hearing Record/List of Zoning Board Submissions, dated November 4, 2019.

27. Letter of Robert F. Davis, Esq. to David Douglas, Chairman, and Members of the Zoning Board, with proposed Findings of Fact, dated November 4, 2019.

28. Stenographic Transcripts of September 18 and October 16, 2019 public hearing sessions.

29. Letter of Robert F. Davis, Esq. to David Douglas, Chairman and Members of the Zoning Board regarding Zarin & Steinmetz submission, dated November 6, 2019.

30. Letters of Robert F. Davis, Esq. and Peter J. Millock, Esq. to David Douglas, Chairman and Members of the Zoning Board, in response to Zarin & Steinmetz consultant submissions, dated November 7, 2019, with revised submission list.

EXHIBIT 8

White Plains Unit
Frank M. Cicero
Charles F. Murphy, Jr.
James Psarianos
Rose Murphy
Michael D. Ungerer
Noelia Chung
Brian Baldwin
Michael F. Cicero
Karen Dietz
Evelyn Branford
Michael C. Malale
Linda Cammisa, R.N.
Patrick Clemente

Cicero Consulting Associates
VCC, Inc.

925 Westchester Ave. • Suite 201 • White Plains, NY 10604
Tel: (914) 682-8657 • Fax: (914) 682-8895
cicero@ciceroassociates.com

Albany Unit
William B. Carmello
Joseph F. Pofit
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Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

November 11, 2019

Hon. David Douglas, Chairman
and Members of the Town of Cortlandt Zoning Board of Appeals
1 Heady Street
Cortlandt Manor, NY 10567
Attn.: Chris Kehoe

Re: <u>Hudson Ridge Wellness Center, Inc.</u>

Dear Chairman Douglas and Members of the Zoning Board of Appeals:

I write to you on behalf of my client, Hudson Ridge Wellness Center, Inc. (Hudson Ridge), in response to the letter of Mr. Steven Rabinowitz dated November 8, 2019. Following are my specific comments regarding the points in his letter:

- Contrary to Mr. Rabinowitz's attempt to compare the OASAS licensed Residential Treatment Program to a visit to the school nurse, the full text of the Part 820 regulations regarding assessment and medical treatment does include physical health issues as part of the treatment program and the individual patient's treatment plan, regardless of whether a physical examination is not required for patients who have had one within 12 months of admission. It is as follows:

Part 820.7(c)

Assessment.

(1) Prior to admission, all programs must:

(i) conduct a communicable disease risk assessment (HIV/AIDS, tuberculosis, hepatitis, or other communicable diseases);
(ii) (ii) conduct a toxicology screen as clinically appropriate or required by federal law.

(2) If clinically indicated, as soon as possible after admission, all programs must:

(i) recommend HCV testing; testing may be done on site or by referral;
(ii) conduct an intradermal skin or blood-based Tuberculosis test; testing may be done on site or by referral with results as soon as possible after admission but no later than finalization of the treatment recovery plan;
(iii)recommend HIV testing; testing may not be conducted without patient written informed consent except in situations specifically authorized by law. HIV testing may be done on site or by referral;
(iv)explain any blood and skin test results to the patient within 3 weeks of the test.
(v) provide or recommend any other tests the examining physician or other medical staff member deems to be necessary, including, but not limited to, an EKG, a chest X-ray, or a pregnancy test.

(3) Any significant medical issues identified prior to or after admission must be addressed in the treatment/recovery plan and documented in the patient case record.

(d) Medical history. (1) If the patient has a medical history available and has had a physical examination performed within 12 months prior to admission, or if the resident is being admitted directly to the residential service from another Office certified SUD program, the existing medical history and physical examination documentation may be used to comply with the requirements of this subdivision, provided that such documentation has been reviewed and determined to be current and accurate; such determination shall be dated and recorded in the resident record.

- Mr. Rabinowitz's description of Medication Assisted Treatment as a treatment that solely consists of a patient taking their medication shows a lack of understanding of this Evidence-Based Treatment.

  As stated in Mr. Baldwin's presentation on October 16, 2019, Hudson Ridge Wellness Center will offer Medication Assisted Treatment (MAT) to help these patients address their withdrawal symptoms and the potential cravings associated with them. MAT includes:
  - Assessment of withdrawal symptoms, which will include ongoing standardized withdrawal evaluation including the use of Clinical Institute Withdrawal Assessment (CIWA) and/or Clinical Opiate Withdrawal Scale (COWS).
  - Patients will receive symptom relief and/or addiction medications such as Suboxone, Vivitrol, Buprenorphine and Naltrexone for opiate withdrawal and Librium, Ativan and Valium for alcohol withdrawal.
  - This type of withdrawal management will be a closely managed withdrawal management service which will assist patients through withdrawal using a substance specific taper or induction plan. The plan will include decision points for ending the taper or extending for mild or protracted withdrawal or maintenance therapy.
  - The medical staff in the facility will be assessing and treating residents for the medical effects of possible withdrawal symptoms on their recovery and will be assisting the residents in managing the emotional aspects of withdrawal through psychosocial interventions including family therapy, if clinically appropriate.
  - Regular vital signs monitoring will be provided by medical staff, including a physician.
  - Medical staff will follow the Hudson Ridge Wellness Center Stabilization and Withdrawal Protocol, which must be approved by the Medical Director of OASAS.

- Mr. Rabinowitz is perhaps not aware of the high percentage of patients in Substance Use Treatment Programs who are suffering from Co-Occurring Mental Illness, which requires Medication Therapy, as well as individual, group and family counseling, all medical services required in a Residential Substance Use Program.

- Mr. Rabinowitz's denigration of important medical services such as individual, group and family counseling does not recognize their importance in the recovery process. OASAS does and that is why they are required in an OASAS licensed Residential Treatment Program.

- Finally, it should be noted that, while the opposition has repeatedly cited, in a misleading fashion, the minimum requirements governing the proposed Hudson Ridge program, they continue to fail to recognize that Hudson Ridge has proposed an operation with a high quality and level of service, including 42 on-site licensed medical professionals, which will far exceed the minimum standards.

Thank you for your attention to this information.

Sincerely,

Brian Baldwin

cc: Mr. Steven Laker, Hudson Ridge Wellness Center
Robert F. Davis, Esq., Singleton, Davis & Singleton PLLC
Peter J. Millock, Esq., Nixon Peabody
Mr. Frank M. Cicero, Cicero Consulting Associates

EXHIBIT 9

TOWN OF CORTLANDT

DEPARTMENT OF TECHNICAL SERVICES
PLANNING DIVISION

Michael Preziosi, P.E.
Director – D.O.T.S

Chris Kehoe, AICP
Deputy Director – Planning

Planning Staff
Michelle Robbins, AICP
Rosemary Boyle-Lasher

Town Hall, 1 Heady Street
Cortlandt Manor, NY 10567
Main #: 914-734-1080
Fax #: 914-788-0294

Town Supervisor
Linda D. Puglisi

Town Board
Richard Becker
Debra A. Costello
Francis X. Farrell
Seth M. Freach

June 15, 2017

Commissioner Arlene González-Sánchez
NYS Office of Alcohol and Substance Abuse
Albany Office
1450 Western Avenue
Albany, NY 12203-3526

RE: PB 6-15 Application of Hudson Ridge Wellness Center, Inc. for Site Development Plan approval and a Special Permit to reuse the seven existing buildings located at the former Hudson Institute property to provide a 92 bed private residential treatment program for individuals who are recovering from chemical dependency on a 20.83 acre property located at 2016 Quaker Ridge Road as shown on a drawing entitled "Site Plan, Hudson Ridge Wellness Center" prepared by Ralph G. Mastromonaco, P.E. dated July 16, 2015. (see prior PB 49-86)

Dear Commissioner Gonzalez-Sanchez,

Please find enclosed herewith the application form, drawings and Part One of the Full Environmental Assessment Form dated July 2, 2015 for the above referenced application. Pursuant to the State Environmental Quality Review Act Regulations Part 617 the subject application is an Unlisted Action. This application is referred for coordinated review and Lead Agency determination as required by 6 NYCRR Part 617.6. The Town of Cortlandt Planning Board declared their intent to be Lead Agent at their meeting on June 6, 2017. Pursuant to SEQR please submit any written comments to the Cortlandt Planning Board within the next thirty (30) days.

If you have any questions regarding this matter please contact my office.

Sincerely,

Chris Kehoe, AICP
Deputy Planning Director

CRK/crk
enclosures
cc: Linda D. Puglisi, Town Supervisor
Richard H. Becker, Town Board Liaison
Town of Cortlandt Planning Board Members
John Klarl, Esq., Deputy Town Attorney