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..... 1 C.A.C.
..... A.R.C.
..... Applicant
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Sent 2/5/19

February 5, 2019

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

Re: Hudson Ridge Wellness Center, Inc.

Dear Chairperson Taylor and Members of the Board:

On behalf of the Applicant, this letter is in response to the letter of Zarin & Steinmetz, dated February 1, 2019, on behalf of the "Citizen Group". Once again, counsel have made their submission on the Friday afternoon preceding the following Tuesday's Planning Board meeting, thereby making it extremely difficult for Applicant's counsel and its consultants to respond prior to the meeting.

Frankly, what has become readily apparent, is that the more the Applicant demonstrates that its proposed use is a laudable and necessary one, and one which will not pose any significant adverse impacts, the closer the purported Citizen Group's counsel comes to the bottom of the barrel of obstructionist tactics. Ironically, the more counsel continues to falsely claim that the Applicant has misled the Board - which is beyond insulting to the integrity of the Applicant and its professionals - the clearer it becomes that they themselves are making every effort to do so, having lost all credibility in the process. In our view, their latest efforts are disingenuous and irrelevant at best, and shameful at worst.

I. The Specialty Hospital is a "Hospital" under the Town Zoning Code.

The primary basis on which the Citizen Group's counsel now claims the Applicant should be delayed is their absurd argument, some 3½ years since the application was submitted, that there is a question as to whether the proposed specialty hospital is a permitted special permit "hospital" use in the Town, even if the Applicant obtains the one necessary area variance from the State road frontage requirement from the Zoning Board. The Group's counsel seeks to confuse the Planning Board by claiming that the Applicant has "vacillated" as to whether the use is a hospital or not. This is simply a bold-faced misrepresentation. There has been no such vacillation. As stated from the onset:

> The proposed hospital use is permitted in the R-80 Single Family Residential District subject to the issuance of a Special Permit by the Planning Board. A "hospital" is not specifically defined in the Zoning Code, but §307-4 of the Code states that "words not defined . . . shall be further defined by the Standard Industrial Classification Manual, United States Office of Management and Budget". The Federal Manual specifies Standard Industry Group 806: "Hospitals", which contains the sub-group 8069 "Specialty Hospitals, Except Psychiatric" (Appendix D). Sub-group 8069 includes the following uses:
>
> - Alcohol rehabilitation hospitals;
> - Drug addiction rehabilitation hospitals;
> - Rehabilitation hospitals; drug addiction and alcoholism.
>
> (See July 20, 2015 Expanded Environmental Assessment.)

Therefore, it is clear that the proposed specialty hospital to serve individuals who are recovering from chemical dependency is defined by the Zoning Code as a hospital use which is permitted in the R-80 Single-Family District, subject to a special permit. The Applicant requires the one area variance from the special permit requirements for hospitals and nursing homes set forth in § 307-59 of the Zoning Code.

The Group's counsel then proceeds to mix the proverbial apples and oranges in their futile attempt to demonstrate their false contention that the Applicant has mislead the Town, by claiming that the Applicant took a contradictory positon with respect to State licensing, since the proposed facility is not regulated as a general hospital under Article 28 of the Public Health Law, but by New York State's Office of Alcoholism and Substance Abuse Services ("OASAS") pursuant to Article 32 of the Mental Hygiene Law. *The mechanism for State licensing of the proposed use has nothing to do with the Town's zoning classification.* Counsel tries to further muddy the waters in this regard by claiming that Board Member Kessler asked a question about licensing at the original Planning Board of August 4, 2015, but the Applicant never clarified its answer to his question. This is simply false as well. The Applicant clarified its answer to Mr. Kessler's question the very next day in my e-mail of August 5, 2015 to Messrs. Kehoe and Preziosi, which I asked be conveyed to the Board, a copy of which is enclosed.

Then counsel claims the Applicant argued its use is not a hospital when calculating the daily water demand – which figure, as the Board knows, was reviewed and approved by the Westchester County Health Department and by the Town's consulting hydrogeologist. The Applicant simply demonstrated that the water demand would not be that of a general hospital, because this is a *specialty* hospital, with lesser water needs. Again, *this has nothing to do with the zoning classification of the use.*

Finally, in making this ridiculously transparent argument, counsel seizes on the phrase in the prologue to the Zoning Code special permit sections for hospitals and nursing homes, § 307-59(A), that indicates that a purpose of the permit is to allow hospitals "to serve the needs for medical care of residents of the Town", contending vaguely that this means the *only* hospitals permitted are those which serve *only*

local residents. Even if such limitation were legal, this generic statement of *intended purpose*, not a requirement, is not intended to prohibit a proposed specialty hospital from serving any and *all* people, both residents and non-residents, alike, as this hospital will do. Further, the Applicant has stated to the Town from the outset that it will provide special consideration to Cortlandt residents, including by offering a reduced fee structure and "scholarships", and by its participation in local programs to combat the addiction crisis, which certainly affects Cortlandt residents, along with those of all of its neighboring municipalities.

Counsel's argument is a complete red herring and they surely know that. It is not incumbent upon the Applicant – or the Planning Board – to seek any such determination as to whether the hospital use proposed by the Applicant is permitted, particularly when it so clearly *is* permitted, subject only to the one area variance.

Notably, the Group failed in its attempt to have the Zoning Board determine that Applicant requires a use variance and in their attempt to have the Supreme Court, Westchester County overturn the Zoning Board. In the Sunshine Home case in New Castle, where overlapping opponents raised the same types of issues as the Citizens Group raises in this case, including the same use variance claim with respect to State road frontage, the Supreme Court, Westchester County likewise struck down their claims and determined that the State road frontage variance is an area variance. The Group's current claim that the hospital use must be restricted to Town residents is even more spurious and must be rejected by the Planning Board.

II. <u>At the very least, the Application Warrants a Conditioned Negative Declaration.</u>

Counsel for the Citizen Group's continued request for a Positive Declaration under SEQRA is fully addressed in our comprehensive, issue-by-issue response, of January 10, 2019 to their January 3, 2019 letter, and the Board is respectfully referred thereto. Tellingly, counsel does not – and cannot – rebut *any* of the factual analysis set forth in our January 10th letter, which included the traffic analysis we presented at the January meeting, and which completely supports the Board's rendering of a Negative Declaration, or at most, a Conditional Negative Declaration, as explained therein.

We note that in January, Zarin & Steinmetz circulated a "Bulletin" regarding the "New SEQRA Amendments" which notably pointed out that SEQRA has expanded its list of Type II actions, that is, those not subject to SEQRA, to include matters similar to this application, including designating as Type II actions the adaptive re-use of residential and/or commercial structures for uses permitted by zoning and lot line adjustments and variances.

In speaking to the new mandatory "scoping" when Environmental Impact Statements are required, counsel's Bulletin states that:

> It will be telling to see if this provision triggers any meaningful effort on the part of reviewing agencies to achieve DEC's stated objectives of avoiding EIS's that are "bloated" with irrelevant information, and reduce clutter in the EIS's to more focused and targeted documents." If this application is to have any meaning, reviewing agencies will need to make a genuine effort to avoid the encyclopedic EIS, which currently dominates the field. Indeed, the Court of Appeals has made clear that the SEQRA 'hard look' standard must be tempered by the 'rule of reason', which emphasizes that not every conceivable environmental impact and mitigation must be identified and addressed, depending upon the facts and circumstances of the particular matter. This precept needs to better inform the SEQRA mindset.

Counsel's Bulletin notes the objective of preventing reviewing agencies from "moving the regulatory goal post", which "often leads to unaccountability and interminable delays in the process" and the "current practice of protracted and indefinite . . . review. Counsel's Bulletin cautions applicants to take advantage of the amended regulations in order "to guard against the weaponization and stagnation that too often encumber the SEQRA process".

Obviously, counsel's Bulletin was written from the perspective of the developer clients they concurrently represent before the Board. We trust that they will endeavor to consistently apply the same "rule of reason" to this application with respect to SEQRA, particularly when the subject application, as stated by the Applicant from the outset, is afforded the protection of the American with Disabilities Act (A.D.A.), which requires that the Applicant be given all reasonable accommodations – not every conceivable impediment.

Notwithstanding the foregoing, as suggested by Board Members, we are preparing and will submit shortly, a comprehensive volume(s) containing our environmental and other submissions to the Board to date for the convenience of the Board and the public.

The Applicant's hydrogeologist will be addressing shortly under separate cover the letter of the Citizen Group's new hydrogeologist submitted by counsel, which essentially calls for further testing of the wells of the only two neighbors whose wells were affected at all – albeit quite insignificantly - by the Applicant's intensive well pump test, as explained in detail by the Applicant's hydrogeologist at the December Planning Board meeting. The comments of the Group's prior hydrogeologist were fully taken into account in the Applicant's well pump test protocol. Thus, it is curious that the Group has now retained a new hydrogeologist.

III. The Purchase of the Referenced Adjoining Residential Property by a Related Corporate Entity is Irrelevant to this Application

In another red herring, the Group's counsel attempts to create intrigue about the fact that over two years after the commencement of this application in 2015, a corporate entity purchased the adjoining residential parcel at 81 Quaker Hill Drive. The reason this purchase was not raised is because it was not made by the Applicant and more importantly, because it is irrelevant to the application. The sole principal of the new owner is the wife of one of the Applicant's investors, who purchased the property independently, as an investment in the community, having fallen in love with the Town and the neighborhood. She has no ownership interest in the Applicant. Neither the Applicant nor the owner have any plans that this property will be used for any business purposes, including any connected to the proposed specialty hospital, or for any purpose other than as a single-family residential home. The owner advises that it leases the house to residential tenants – a professional couple with a small child and dog, who wish to establish roots in the community. Thus, there are no underhanded, nefarious intentions for this property, as counsel falsely suggests.

With respect to the property of another affiliated entity, the ownership of the adjoining property in New Castle at 35 Quaker Ridge Road has been disclosed in the application materials from the onset, although it is not part of the application and will not be used for any hospital or other business purpose. The Applicant has not merely "claimed" that this property in New Castle "will not be developed as part of the proposed drug and alcohol rehabilitation facility", but has stipulated publicly from the outset that, as a condition of approval of its application, it will impose upon that property, in recordable form approved by the Town Attorney, a restrictive covenant that so long as the hospital property is used as such, the adjoining property in New Castle will remain undeveloped open space, except for the small, currently unused house thereon, which pre-dated its purchase. Again, there are no mysterious intentions regarding this property, as counsel seems to imply, but only the preservation of some 27 acres of open space for the benefit of the neighborhood and Town.

IV. OASAS Licensure

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. 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's dredging up of neighbor Shannon's previous "investigative report" as to the background of one of the Applicant's investors, which is completely irrelevant to the application and beyond the purview of this Board, constitutes nothing more than a shameful attempt to obtain by character assassination that which cannot be obtained by legitimate means based on the relevant issues, i.e., the

prevention of the application from achieving fruition. 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 principals 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.

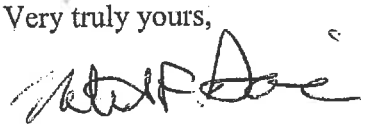
Respectfully, enough is enough with this line of personal attack! Putting aside its irrelevancy, we are blessed to reside in a country where those who have paid their debt to society are given the opportunity to turn their lives around. That is exactly the case of the one investor under attack by the Group and its counsel, who, like many in this field, draws on his own experience and is committed to devoting his life to helping others avoid similar mistakes. He should be lauded and encouraged for that, not publicly attacked.

Counsel and its Group then have the unmitigated audacity to raise unsubstantiated and baseless innuendo about "other individuals seemingly affiliated with the Applicant [which] will be provided during the Public Hearing", which "includes information about Mr. Steven Laker" who "has sat in the audience during several meetings". As again noted from the outset, Mr. Laker is a resident of the Town of Cortlandt, active with his family in Town programs, who serves as the Applicant's principal representative to the Town. Since 2015, he has attended virtually every public meeting and every staff meeting regarding this application. Counsel seems to indicate that there is some nefarious reason that Mr. Laker has not spoken at the public meetings. The simple reason is that he is represented by counsel and his professional consultants. He has not appeared incognito and he is not hiding anything. He has openly appeared and permitted his professionals to do that which they have been retained to do.

In view of counsel's threat to provide more scurrilous personal information at the public hearing on this application, we sincerely hope that in the interests of relevancy, not to mention decency, they will refrain from doing so. We ask that the Board inform them accordingly.

We look forward to moving forward with the review process before the Board. Thank you for your consideration.

Very truly yours,



Robert F. Davis

RFD:dds
Enclosure

c: Chris Kehoe, AICP (via e-mail)
Thomas F. Wood, Esq. (via e-mail)
Michael Preziosi, P.E. (via e-mail)
Zarin & Steinmetz (via e-mail)

Robert Davis

From: Robert Davis
Sent: Wednesday, August 05, 2015 2:53 PM
To: chrisk@townofcortlandt.com
Cc: Michael Preziosi (MichaelP@townofcortlandt.com)
Subject: Hudson Wellness

Chris-As you know and as I mentioned to the Board last night, not expecting the depth of discussion that ensued, I did not review again our entire submission before the meeting and therefore, I had to refresh my recollection as to our regulatory framework. Having now done so, please note that in speaking with Member Kessler, I inadvertently juxtaposed the State Public Health Law with the State Mental Hygiene Law. The specialty hospital is not regulated by Public Health Law, Article 28, but is in fact, strictly regulated by and requires State certification under the Mental Hygiene Law and the State Regulations promulgated thereunder and administered by the State Office of Alcoholism and Substance Abuse Services(OASAS). Please advise the Board accordingly. Thank you.

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