



Site Planning
Civil Engineering
Landscape Architecture
Land Surveying
Transportation Engineering

Environmental Studies
Entitlements
Construction Services
3D Visualization
Laser Scanning

February 19, 2021

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

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

Dear Chairperson Taylor and Members of the Board:

For the Board's review, attached please find a two-page "Summary of Impacts" of the proposed project. After numerous reviews, this document provides a summary of the identified absence of any significant adverse impacts of the proposed use. The proposed hospital is to serve patients and clients who experience alcohol and substance abuse disorders. The hospital will re-use the existing buildings on the 20.83-acre campus such that no new buildings are proposed.

Additional detail and data are found in the 4-volume "Consolidated Expanded Environmental Assessment Report", dated March 2019, previously submitted to the Board.

Thank you for your consideration.

Sincerely,

JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC

Robert B. Peake

Robert B. Peake, AICP
Project Manager

cc: Mr. Steve Laker
Robert Davis, Esq.

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- Site Planning
- Civil Engineering
- Landscape Architecture
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PROJECT: JMC Project 14088
 Proposed Specialty Hospital
 2016 Quaker Ridge Road
 Town of Cortlandt, NY

SCOPE: Summary of Impacts

DATE: February 17, 2021

Introduction: After numerous reviews, this document provides a summary of the identified absence of any significant adverse impacts of the proposed use. The proposed hospital is to serve patients and clients who experience alcohol and substance abuse disorders. The hospital will re-use the existing buildings on the 20.83-acre campus such that no new buildings are proposed.

Will there be there a substantial adverse change as a result of the project?

Traffic	In 2018/2019 our traffic consultants worked alongside the Town's traffic consultants to analyze potential impacts. After extensive studies, including a traffic management plan approved by the Town's consultants, it was agreed that the use would not have a significant impact. The use will have lower volumes than other permitted uses in the R-80 district.
Air Quality	No generation of emissions - No Impact
Groundwater	Proposed well system has been approved by WCDOH. Proposed Subsurface Wastewater Disposal System rebuilds and upgrades existing system to modern standards and is approved by the WCDOH. Extensive Town approved well pump testing for possible impact on off-site wells demonstrated use wouldn't have no significant impact. Town approved off-site Well Monitoring program to be implemented. -
Surface Water	Minimal site work - No Impact anticipated
Removal of Vegetation	Minimal removal of Vegetation - No Impact. Landscape buffer plan established. Additional trees to be planted.
Endangered Species	No Impact
Natural Resources	No Impact
Critical Environmental Areas	No Impact
Community's Current Plans or Goals	Project is consistent with the 2004 and 2016 Comprehensive Plans and 2004 Open Space Plan.

Impairment of Historical Resource	No historical resources will be affected with preservation of the site.
Impairment of Archeological Resource	No Archeological Affects noted with preservation of the site.
Impairment of Architectural Resources	Exterior of buildings will remain as originally designed - No impact anticipated
Impairment of Neighborhood Character	The Site has been in existence for 100 years as an institutional use - no impact anticipated
Major change in the Use of Energy	No new construction – Other improvements made will be more energy efficient and consistent with current standards.
Creation of a Hazard to Health	Existing Subsurface Wastewater Disposal System to be rebuilt and upgraded to modern standards - Approved by WCDOH – No impact anticipated.
Substantial Change in the Use of Agricultural Land	No Impact
Substantial Change in the Use of Open Space	No Impact
Substantial Change in the Use of Recreational Land	No Impact
Substantial change in Recreational Resources	No Impact
Attraction of a Large Number of People	Not compared with other permitted uses such as schools or prior permitted uses of property. Patients will remain on-site for approximately 28 days. Staff will have staggered shifts. Only 25% of patients will have visitors any one weekend.
Project is Consistent with the Town Development Plan	Use is consistent with 2004 Comprehensive Plan, including Policy 34 (no increase in development density), and with 2016 Comprehensive Plan and 2004 Open Space Plan.

NOTE: This document provides an overview summary of key SEQRA impact areas related to the proposed project. Additional detail and data are found in the 4-volume “Consolidated Expanded Environmental Assessment Report”, dated March 2019, by JMC.



SINGLETON, DAVIS & SINGLETON PLLC

ATTORNEYS AT LAW

THOMAS J. SINGLETON, 1930-2015
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February 22, 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
2021 Addendum to March 28, 2019
Consolidated Expanded Environmental Assessment Report*

Dear Chairperson Taylor and Members of the Board:

As requested by the Board at the February 2, 2021 meeting, enclosed for the Board's convenience, are the following items filed with the Board subsequent to the filing of the Applicants' 4-volume Consolidated Expanded Environmental Assessment Report ("CEEAR"), prepared by JMC and dated March 28, 2019, which are being submitted for the record:

1. April 11, 2019 report of the Town's hydrogeological consultant, in response to the February 2019 Report of the neighborhood group's hydrogeologist.
2. April 16, 2019 follow-up comments of the Town traffic consultant in response to JMC's March 21, 2019 responses to his prior comments.
3. April 25, 2019 response of JMC to the Town traffic consultant's April 16, 2019 comments.
4. Robert F. Davis June 4, 2019 Planning Board presentation outline.
5. Letter of Robert F. Davis to Planning Board, dated December 17, 2020, with copy of Court Decision.

Hon. Loretta Taylor, Chairperson and Members of the Board

February 22, 2021

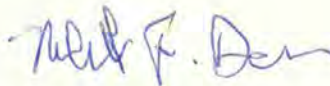
Page 2

6. Letter of Robert F. Davis to Planning Board, dated January 4, 2021.
7. Robert F. Davis January 5, 2021 Planning Board presentation outline.
8. Letter of Robert F. Davis to the Planning Board, dated January 21, 2021.

We have not enclosed the Applicants' expert reports submitted in the 2019-2020 Zoning Board proceedings relating to the internal medical and health care operations of the specialty hospital. However, we will provide them upon request and as consistently noted, the Zoning Board record shall be deemed part of the Planning Board record and vice versa.

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



Memorandum

Copies 1 Planning Board

To: Mr. Michael Preziosi, PE
Director - Dept. of Technical Services
Town of Cortlandt
1 Heady Street
Cortlandt Manor, New York 10567

..... Town Board

From: William A. Canavan, PG, LSRP
HydroEnvironmental Solutions, Inc.
One Deans Bridge Road
Somers, New York 10589

..... Zoning Board

..... 1 Legal Dept.

..... 1 DOTS Director

..... C.A.C.

..... A.R.C.

..... 1 Applicant

..... 1 Robert Davis, Esq.

..... 1 JMC

Date: April 11, 2019

Sent 4/16/19

Re: Hudson Ridge Wellness Center
Review of Hydro Quest and WSP Letters
2016 Quaker Ridge Road
Cortlandt, New York

1 Ralph Mustromano

1 WSP

HydroEnvironmental Solutions, Inc. (HES) was retained by the Town of Cortlandt to review the Hudson Ridge Wellness Center (HRWC) Application for a proposed 92 bed drug and alcohol rehabilitation facility as it relates to groundwater hydrogeology and water usage. As part of our evaluation process, HES reviewed the following documents provided by the Town and the Applicant:

1. A January 29, 2019 letter from HydroQuest (HQ) related to the 2018 Pumping Test conducted at the subject site.
2. A February 26, 2019 response letter from the Applicant's hydrogeologic consultant, LBG Hydrogeologic & Engineering Services, P.C., member of WSP (LBGHES) related to the HQ letter.
3. A March 4, 2019 letter from LBGHES describing the proposed post-approval well monitoring plan.

In the January 29, 2019 letter, HQ disputed the findings of WSP's October 2018 Pumping Test Report. The arguments made by, HQ can be summarized as follows:

- The 72-hour pumping test did not adequately stress the aquifer under full project water demand or seasonally dry or drought conditions.
- The water demand calculated for HRWC is not accurate, and a demand of 175 gallons per day (gpd) per hospital bed, as recommended by New York State Department of Environmental Conservation (NYSDEC), should be used instead of the 110 gpd used by the Applicant.
- The Greenstein and Shapiro wells located at 83 and 78 Quaker Ridge Road, respectively, were the only two monitoring wells impacted by the pumping test

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(on or off-site) and therefore are the only true monitoring wells measured during the pumping test.

- Water levels in the pumping wells were continuing to decline at the termination of the pumping test.
- Because the Greenstein and Shapiro wells were in use during the pumping test, the effects of on-site pumping cannot be accurately determined.
- There may be other impacted off-site wells which were not monitored during the test.

In response, the February 26, 2019 letter from LBGHES addressed points made by HQ and defended the findings of the Pumping Test Report. The points made by WSP are summarized as follows:

- The pumping test adequately stressed the aquifer by pumping the two wells at a combine rate of more than twice the average water demand for the project (17.6 gpm) continuously for 72 hours, a scenario that will not occur under proposed occupancy conditions
- Background precipitation and well monitoring data and annual precipitation totals from a local weather station indicate the pumping test was completed during seasonal and multi-year dry periods.
- HRWC is intended to be a drug rehabilitation center and not a general hospital or nursing home. The proposed water demand was based on NYSDEC standards and approved by Westchester County Department of Health (WCDOH).
- The off-site monitoring program provides excellent coverage of the 1,500-foot radius around the site taking into consideration wells with purported pressure or supply issues and local fracture trace patterns and provides clear information on off-site impacts. The monitoring program was approved by WCDOH and HES on behalf of the Town of Cortlandt prior to the start of the test.
- Sixty-seven property owners were solicited to participate in the off-site monitoring program. 16 wells were monitored out of the 18 owners who were interested in the program (two wells were deemed inaccessible). The results from the off-site program indicate that off-site impacts were limited to only two wells.
- The pumping test demonstrates there is a sufficient amount of water above the existing pump settings of each of the Greenstein and Shapiro wells. The utilization of the HRWC wells during proposed occupancy conditions should have no discernable impact to the off-site wells monitored.
- HQ's statement that the water level in the HRWC wells continued to decline following termination of the test is a misrepresentation of the results. The water level change in the final six hours of pumping met the NYSDEC criteria of less than 0.5 foot per 100 feet of available drawdown in each well.

- The fact that the Greenstein and Shapiro wells (and other off-site monitoring wells) were in use during the duration of the test doesn't compromise the data collected from the wells or undermine the conclusions of the pumping test report.

In the March 4, 2019 letter, the Applicant proposed a new post-approval well monitoring plan which was also described in the February 26 letter and previous reports and work plans. The monitoring plan would begin three to six months before the facility's certificate of occupancy is issued and continue for up to two years after 75 percent occupancy has been achieved. The program as proposed by the Applicant would monitor up to six wells using pressure transducer data loggers as was done during the pumping test. The Greenstein and Shapiro wells at 83 and 78 Quaker Ridge Road would be solicited as part of the program based on the drawdown effects documented at these wells during the pumping test. Off-site monitoring data would be compiled by LBGHES and submitted to the Town as semi-annual reports which would also include water level data and pumping volumes from on-site wells which will be metered. The Applicant has also proposed sending monthly operational reports, including pumping volumes, to the Town and WCDOH.

Based on our review of the above outlined letters we offer the following:

Pumping Test and On-site Well Monitoring

In their January 19, 2019 letter HQ questioned the stabilization of the two pumping wells and criticized the pumping test methodology used by LBGHES stating:

"using the methodology employed by professional hydrogeologists, stabilized aquifer equilibrium conditions were not achieved during the 2018 aquifer test.... The moderate downward-trending slopes on these graphs documents that aquifer equilibrium conditions have not been achieved."

The simultaneous two well 72-hour pumping test met the requirements of the WCDOH and followed NYSDEC Guidelines for pumping tests. The purpose of the pumping test was to demonstrate that an adequate water supply was available for the proposed HRWC facility based on the project demand, not to establish equilibrium conditions in the bedrock aquifer. As stated in the pumping test report, at the test's conclusion stabilization, as defined in the NYSDEC Pumping Test Guidelines as less than 0.5 foot per 100 feet of available drawdown in the final six hours of pumping, was achieved.

HQ's 180-day projections, indicating over 100 feet of drawdown will occur in the wells if they were pumped continuously at the pumping test rate of 9 gpm each for 180 days is not relevant. If this scenario were to occur, ample drawdown would still be available in each well (total well depths are 385 feet and 800 feet in Wells 1 and 2 respectively). However, this is unlikely as the wells will are not expected to pump double the daily demand continuously for a multiday period, let alone a 180-day period. In addition, the site will be serviced by a one day 12,000-gallon water tank which may be used to meet peak demands. The 12,000-gallon water tank is proposed and designed into the new water system. The existing fire suppression tank is proposed for use, and one of the original wells is proposed for use in filling the fire suppression tank only. If it is shown on the site plan that one of the existing wells is connected only to the fire suppression tank, in our opinion one of the wells can remain, as it will only be used to top off the fire suppression tank and will have minimal use.

HQ's claims that "Aquifer depth and continuity over the broad project area have not been adequately addressed". HES believes that the three pumping tests demonstrate that the two supply wells are capable of achieving HRWC's daily demand. The most recent test conducted in August 2018 effectively demonstrated the facility's water demands could be met without severe impacts on neighboring supply wells. The water bearing fractures and their depth are irrelevant to the testing and the water supply. Additionally, hydrographs from the pumping wells indicate that water level recovery to pre-pumping level following cessation of pumping was relatively rapid.

HQ's comment regarding the total drawdown measurements of 345 feet and 460 feet in Wells 1 and 2 respectively during a "previous aquifer test" are misinterpreted. These water levels, which are shown on the driller's logs for Wells 1 and 2 were not from an "aquifer test", but are measurements made by the driller following well installation using air lift through the drilling tools from the bottom of the borehole. Well drillers use air lift from the drill rig to provide an approximation of a well's capacity. They are not actual measured values from long-term pumping at the wells and the duration of the air lifting is unknown. Long term pump testing is the most accurate way to determine a well's capacity.

HES agrees with HQ's statement that the two on-site monitoring wells are not hydraulically connected to the pumping wells as was demonstrated during testing at Wells 1 and 2. However, the lack of induced drawdown in the wells does not mean disqualify their use as monitoring wells as stated by HQ. On the contrary, the lack of drawdown in the two on-site monitor wells confirms that these two well locations are not connected to the same water bearing fracture set(s) as the pumping wells.

Off-site Well Monitoring Program

HES agrees with LBGHES that the 16 off-site homeowner wells provided sufficient coverage, and a total of sixty-seven (67) off-site surrounding well owners were notified and solicited to participate in the well monitoring program. The two impacted wells contained ample available drawdown in the wells at the end of testing (475 feet and 175 feet), demonstrating ample water will be available in the wells during drought conditions. As noted in the site-wide water budget, even under severe drought conditions (30-year drought), recharge to the bedrock aquifer is substantially greater than the water demand for the project.

The 72-hour pumping test induced drawdown in the Shapiro (78 Quaker Hill Road) and Greenstein (83 Quaker Hill Road) wells while pumping double the daily demand. Which well induced the impacts is irrelevant. The impacts were discernible but not concerning because there was plenty of available drawdown in both impacted wells at the peak drawdown levels. Additionally, the Applicant has proposed long-term monitoring of impacted wells to ensure that no adverse impacts occur.

As noted above with regards to the on-site monitoring wells, no impact or induced drawdown in a well does not indicate the well is not a valid monitoring well, it simply means that the well(s) with no impact is not hydraulically connected to the pumping wells. As HQ points out, bedrock aquifers are anisotropic.

HQ's assertion that the value of monitoring data from off-site wells is negated by homeowner pumping is incorrect. Data loggers in the wells were set to collect water level readings at a frequency sufficient to determine the effects of homeowner use versus impacts related to on-site pumping. The homeowner well pumping cycles are clearly indicated on the hydrographs, as are the impacts related to on-site pumping on the Shapiro and Greenstein wells.

Consideration of Dry and Drought Condition Impacts on the Bedrock Aquifer

The LBGHES response regarding precipitation monitoring before during and after the pumping test supports the conclusion that rainfall was not a factor regarding the water supply on-site. The 2012-2018 rainfall data presented by LBGHES indicates rainfall over the past 6 years prior to the pumping test was significantly below average (page 2 of WSP February 226, 2019).

The Applicant's hydrogeologic consultant carefully monitored rainfall before, during and after the pumping test. The pumping test report specifically states the rainfall amounts for multiple years prior to testing, provides for rainfall documented from an on-site rain gage and from a National Weather Service rain gage within the same drainage basin (not the Cross River in an entirely different water shed on the eastern

side of the county, as listed in the HQ letter). As noted by the Applicants consultant, long-term rainfall trends were well below average. HES believes the rainfall and its minimal effects on groundwater recharge during the testing period were carefully detailed and accounted for and was not a factor in skewing the testing results.

Water Demand

HES is satisfied with the water demand of 110 gpd for the proposed Hudson Wellness Center. The WCDOH approved this demand, and the demand is site-specific in that the facility is not considered a hospital and has lesser demand.

- The Applicant demonstrated to the WCDOH and to HES that the proposed use was not a typical hospital, and that the per bed water use of 110 gpd was justified. If the agency responsible for estimating water use approves of the calculated demand, that is the demand that should be used to estimate the water budget. It should be noted that HES attempted to find an applicable Standard Industrial Code (SIC) for the proposed use at the site, and none was found, therefore, relying on the WCDOH approved water use per bedroom is acceptable. Additionally, the proposed use for the site does not include on-site laundry or irrigation. However, when it comes to estimating project demand HQ cites the NYSDEC water use numbers for a hospital at 175 gpd per bed, yet when it comes to pumping test protocol, HQ wishes to use their own interpretation of stabilization and protocols not the NYSDEC Water Supply Testing Guidelines. Regulations and Guidelines are promulgated by state and county agencies for a reason, they are not open for interpretation by professional hydrogeologists as a matter of convenience.

Post-Approval Monitoring Plan

As proposed by the Applicant, a long-term post-approval off-site monitoring plan should be put in place three to six months prior to granting of the certificate of occupancy for HRWC and should continue for two years following 75% occupancy. HES is in agreement that the Greenstein and Shapiro residences at 83 and 78 Quaker Ridge Road should be solicited to participate in the program. The Applicant has proposed mitigation measures for any off-site wells that may be adversely impacted from on-site pumping. Mitigation measures could include lowering a pump, deepening a well or in extreme cases replacing a well. Additionally, the on-site supply wells should be individually metered as proposed, and monthly update reports should be submitted to the Town for review to confirm water use and if any off-site impacts have occurred. The proposed monitoring plan was submitted with the August 2018 Water Supply Assessment Report and in a subsequent March 4, 2019 letter from WSP to the Town of Cortlandt citing the submitted Off-Site Monitoring Plan and stating that the on-site wells would be metered and water use reports would be submitted to the Town.

Mr. Michael Preziosi, PE
March 26, 2019
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Conclusions & Recommendations

HES agrees with LBGHES that the water demand for the project was accurately and properly justified and that the 72-hour simultaneous pumping test was conducted in accordance with the WCDOH and HES approved work plan. The pumping test demonstrated that Wells 1 and 2 can support the project and are compliant with WCDOH and NYSDEC requirements for community water supplies.

The off-site well monitoring program was thorough and comprehensive. The pumping test was conducted as per the approved work plan and in accordance with WCDOH and NYSDEC Guidelines. Both are valid and well thought out and confirm the presence of a viable water supply for the project with minimal off-site impacts given the project demand.

Based on the findings of the multiple pumping tests and the off-site well monitoring program, HES does not recommend any additional hydrogeologic testing at this time, other than implementing a long-term monitoring plan which should be put in place following project approval.

If you have any questions regarding this matter or should you require any additional information, please contact me at (914) 276-2560.

cc: File



EXHIBIT 2

Provident
design engineering
7 Skyline Drive, Hawthorne, NY 10532
Tel: (914) 592-4040 www.pderesults.com



April 16, 2019

Michael Preziosi, P.E.
Director – Dept. of Technical Services
Town of Cortlandt
1 Heady Street
Cortlandt Manor, NY 10567

RE: Traffic Engineering Re-Review
Hudson Wellness Facility – 79.11-1-18
Town of Cortlandt, New York

Dear Mr. Preziosi:

Provident Design Engineering, PLLC (PDE), a licensed Professional Engineering Firm in the State of New York, has conducted a Traffic Engineering Re-Review on the above-referenced Application. This review considered responses to PDE's February 22, 2019 Review Letter provided by the Applicant in their March 21, 2019 Response Letter. In addition to the March 21, 2019 Response Letter, the following additional information was reviewed:

1. January 19, 2018 JMC Response Letter to October 26, 2017 PDE Letter
2. January 19, 2018 JMC Response Letter to Town Staff Comments
3. January 19, 2018 JMC Response Letter to November 14, 2017 New Castle Letter
4. Site Plans dated January 8, 2018, prepared by Ralph G. Mastromonaco, P.E., P.C.
5. Transportation Management Plan dated February 22, 2018 prepared by JMC
6. Expanded Environmental Assessment Report dated July 20, 2015
7. Expanded Environmental Assessment Report dated October 10, 2016
8. October 20, 2016 letter from JMC to the Town of Cortlandt ZBA
9. April 10, 2017 Addendum to the Expanded Environmental Assessment Report dated October 10, 2016
10. July 10, 2017 2nd Addendum to the Expanded Environmental Assessment Report dated October 10, 2016
11. July 31, 2017 letter from JMC to Town of Cortlandt Planning Board
12. September 8, 2017 letter from JMC to Town of Cortlandt Planning Board
13. Site Plan for Hudson Ridge Wellness Center dated October 5, 2016
14. May 21, 2018 JMC Response Submittal Cover Letter
15. March 22, 2018 JMC Response Letter to Town Professional Staff and Consultant Meeting Comments
16. April 30, 2018 Letter from Scott Cullen to Robert Davis

Copies ¹ Planning Board
 Town Board
 Zoning Board
 ¹ Legal Dept.
 ¹ DOTS Director
 C.A.C.
 A.P.C.
 ¹ Applicant
 ¹ Robert Davis, Esq.
 ¹ JMC

Sent 4/17/19
 1 Ralph Mastromonaco P.E.

17. May 14, 2018 JMC Letter Addressing Public Facebook Comments
18. May 18, 2018 JMC Response Letter to Mr. Shannon Comments
19. May 18, 2018 JMC Response Letter to March 23, 2018 PDE Letter
20. May 16, 2018 Letter from Ralph G. Mastromonaco to Dan O'Connor
21. May 8, 2018 Email from Ralph G. Mastromonaco to Michael Preziosi
22. Site Plans dated Revised May 16, 2018 prepared by Ralph G. Mastromonaco, PE, PC
23. August 13, 2018 JMC Response Letter to June 11, 2018 PDE Letter
24. Site Plans dated Revised August 8, 2018 prepared by Ralph G. Mastromonaco, PE, PC
25. Survey Plan dated Revised October 18, 2018 prepared by TC Merritts Land Surveyors
26. Revision #1 to August 13, 2018 JMC Response Letter dated revised November 12, 2018
27. Transportation Management Plan dated revised November 12, 2018 prepared by JMC
28. Revision #2 to August 13, 2018 JMC Response Letter dated revised December 17, 2018
29. Site Plans dated Revised December 4, 2018 prepared by Ralph G. Mastromonaco, PE, PC
30. Site Plans dated Revised February 27, 2019 prepared by Ralph G. Mastromonaco, PE, PC

Based upon a review of the responses and additional information provided, there are items that still need to be further addressed by the Applicant. The following provides a summary of comments on the Applicant's responses in the order in which they appeared in the March 21, 2019 Response Letter:

1. The Applicant has provided a more detailed plan that clearly notes the gravel path will be an ADA accessible path. Additionally, the path has been relocated around the proposed land-banked parking area on the updated plans. PDE finds this response to be acceptable.
2. The Applicant indicates that New York State Department of Transportation (NYSDOT) has provided an oral advisement that 10 feet from the roadway pavement is 'typically' used for purposes of the 10% standard. PDE maintains that the Applicant should confirm that the design meets the following criteria set forth in the NYSDOT Design Manual:

"Minimum vertical curve to accommodate the design vehicle. Whenever the driveway grade changes, the profile should be rounded by connecting the two different grades with a smooth vertical curve. Abrupt changes in driveway grade near the highway may cause operational and safety problems. Driveway profiles should prevent vehicle undercarriage damage and facilitate entering and exiting maneuvers. Refer to the driveway profiles found in the Residential and Minor Commercial Driveways Standard Sheets 608-03."

The Applicant further indicates that lessening the grade on the driveway would require substantial excavation (8-10 feet) for a length of more than 200 feet. It is stated that this would result in significant regrading that would impact the subsurface sanitary sewer improvements, as well as wetland impacts, and the septic system improvements could not be relocated on site. The Applicant does not indicate whether the provision of retaining wall in combination with regrading would avoid impacts to the septic system.

The Applicant provided examples of two locations within the Town where maximum grades exceed 10%. The two examples are as follows:

1. Springvale Road approach to NYS Route 9A
 - a. Maximum grade - 16.6%
 - b. Grade within 50 feet of intersection – 8.5%
 - c. Grade at intersection – 2.9%

2. Jacobs Hill Road approach to US Route 6
 - a. Maximum grade – 15.4%
 - b. Grade within 50 feet of intersection – 6.7%
 - c. Grade at intersection – 1.2%

Although the maximum grades at these two locations are greater than the proposed maximum grade of 13% on the proposed site driveway, the grades in the more immediate vicinity of the intersection are substantially less than the proposed site driveway, which is proposed to have a grade of approximately 11% within 50 feet of the intersection and 5% at the intersection. As noted above, the Applicant should confirm that the criteria set forth by NYSDOT is met, especially with respect to whether the driveway profiles may cause any vehicle undercarriage damage. This can be confirmed with vehicle tracking software. PDE recommends this be investigated for the following design vehicles:

- Typical Passenger Vehicle
 - Delivery Vehicle (SU-30)
 - Delivery Vehicle (SU-40)
3. The Applicant indicates the proposed driveway improvements do not impact the historic nature of the road. PDE defers to the Town on this matter.
 4. No additional response necessary.
 5. As noted previously, the actual daily trips can be confirmed with the traffic monitoring study to be performed by the Applicant as part of the Transportation Management Plan. The finalized version of the Transportation Management Plan should be a condition of Site Plan Approval that will need to be deemed acceptable by the Director of Technical Services.
 6. No additional response necessary.
 7. No additional response necessary.
 8. The Applicant has provided an updated Driveway Improvement Plan that demonstrates that the 20-foot traveled way can be provided with minor additional widening along the west side of Quaker Ridge Road immediately south of the site driveway, as well as the removal of overburden as previously indicated. The Applicant will need to provide a Construction Plan to formally identify how the 20-foot width will be achieved in this area

and to what extent the pavement will need to be replaced and/or repaired. This Plan should be prepared as part of the Site Plan Approval Process to confirm whether there would be any impact or modification to the historic characteristics of the roadway.

9. The Applicant provided additional truck turning templates in the plan set dated revised February 27, 2019. The additional truck turning templates illustrate an SU-30 and SU-40 truck entering and exiting the site driveway to/from Quaker Ridge Road to the north. These turning templates indicate that the maneuver may be very difficult to accomplish, especially for the SU-40 and there would significant vehicle overhang on the south side of the site driveway. Additionally, these vehicles would need to fully encroach into the oncoming lane of traffic on Quaker Ridge Road in order to exit the site. This may create an unsafe condition and the Applicant may need to closely coordinate these delivery trips and provide temporary traffic control on Quaker Ridge Road to avoid potential vehicular conflicts.
10. No additional response necessary.
11. The Applicant indicates the visitor parking spaces will be made available to staff on weekdays and visitors on weekends, when staffing is reduced. A portion of the visitor spaces should be remain reserved on weekdays for operational-type visitors.

As noted previously, a Parking Monitoring Study will be part of the Transportation Management Plan. The finalized version of the Transportation Management Plan should be a condition of Site Plan Approval that will need to be deemed acceptable by the Director of Technical Services. At a minimum, the Parking Monitoring Study should be performed at the following thresholds:

- Initial occupancy of the facility
- 50% occupancy of the facility
- 75% occupancy of the facility
- 100% occupancy of the facility (and for two years thereafter)

If the parking demand at any of these thresholds indicates that the parking supply to be provided is (or will be) deficient then the Applicant will need to come back before the Planning Board to demonstrate how the land-banked parking necessary to meet the parking demand will be accommodated from an engineering and environmental standpoint (no engineering detail currently provided for the land-banked parking areas). The additional impacts associated with the land-banked area(s) will need to be considered cumulative to the original impacts to determine State Environmental Quality Review Act (SEQRA) implications.

12. No additional response necessary.
13. No additional response necessary.

Michael Preziosi, P.E.
April 16, 2019
Page 5 of 5

14. No additional response necessary.

Should you have any questions or comments concerning the review letter, please feel free to contact me at 914.367.0204 or via email at cholt@pderesults.com.

Very truly yours,

Provident Design Engineering, PLLC

Carlito Holt

Carlito Holt, P.E., PTOE
Partner/Senior Project Manager

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EXHIBIT 3



Site Planning	Environmental Studies
Civil Engineering	Entitlements
Landscape Architecture	Construction Services
Land Surveying	3D Visualization
Transportation Engineering	Laser Scanning

April 25, 2019

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

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

Dear Chairperson Taylor and Members of the Board:

We have prepared this letter and attachments to address the outstanding comments in the Provident Design Engineering letter, dated April 16, 2019. Comments which have been addressed to the satisfaction of the Town traffic consultant are not reiterated herein. The comment numbers are consistent with the numbering in the Provident Design Engineering letter.

Comment No. 2

The Applicant indicates that New York State Department of Transportation (NYSDOT) has provided an oral advisement that 10 feet from the roadway pavement is 'typically' used for purposes of the 10% standard. PDE maintains that the Applicant should confirm that the design meets the following criteria set forth in the NYSDOT Design Manual:

"Minimum vertical curve to accommodate the design vehicle. Whenever the driveway grade changes, the profile should be rounded by connecting the two different grades with a smooth vertical curve. Abrupt changes in driveway grade near the highway may cause operational and safety problems. Driveway profiles should prevent vehicle undercarriage damage and facilitate entering and exiting maneuvers. Refer to the driveway profiles found in the Residential and Minor Commercial Driveways Standard Sheets 608-03."

The Applicant further indicates that lessening the grade on the driveway would require substantial excavation (8-10 feet) for a length of more than 200 feet. It is stated that this would result in significant regrading that would impact the subsurface sanitary sewer improvements, as well as wetland impacts, and the septic system improvements could not be relocated on site. The Applicant does not indicate whether the provision of retaining wall in combination with regrading would avoid impacts to the septic system.

The Applicant provided examples of two locations within the Town where maximum grades exceed 10%. The two examples are as follows:

1. *Springvale Road approach to NYS Route 9A*
 - a. *Maximum grade - 16.6%*
 - b. *Grade within 50 feet of intersection - 8.5%*
 - c. *Grade at intersection-2.9%*

2. *Jacobs Hill Road approach to US Route 6*
 - a. *Maximum grade-15.4%*
 - b. *Grade within 50 feet of intersection - 6.7%*
 - c. *Grade at intersection - 1.2%*

Although the maximum grades at these two locations are greater than the proposed maximum grade of 13% on the proposed site driveway, the grades in the more immediate vicinity of the intersection are substantially less than the proposed site driveway, which is proposed to have a grade of approximately 11% within 50 feet of the intersection and 5% at the intersection. As noted above, the Applicant should confirm that the criteria set forth by NYSDOT is met, especially with respect to whether the driveway profiles may cause any vehicle undercarriage damage. This can be confirmed with vehicle tracking software. PDE recommends this be investigated for the following design vehicles:

- *Typical Passenger Vehicle*
- *Delivery Vehicle (SU-30)*
- *Delivery Vehicle (SU-40)*

Response No. 2

The attached information prepared by Ralph G. Mastromonaco, PE, PC confirms a firetruck can traverse the proposed grade transition without impacting the vehicle undercarriage. While the proposed centerline of the driveway is shown with a 5% initial slope, the vast majority of entering traffic, projected at 95% entering from the south, will be traversing along a lesser slope since the travel distance is greater in the transition area for an entering vehicle between the existing road and the proposed driveway, as compared to an exiting vehicle making a left turn. The attached Existing Road Grade Exhibit Springvale Road, dated 4/24/2019 prepared by Ralph G. Mastromonaco, PE, PC shows the Springvale Road grade at the intersection with Route 9A is approximately 7.14 percent. The previously submitted plan inadvertently labeled the Route 9A slope of 2.9 percent as if it were a portion of Springvale Road.

Retaining walls are already proposed on both sides of the proposed improved driveway in the vicinity of the septic system. If the driveway was lowered even more in association with a 10% maximum driveway slope, the retaining walls would need to be substantially higher and longer, and it would have the feel of an undesirable 'tunnel effect'.

The Applicant had extensive discussions with Town professional staff throughout 2018, at which Mr. Holt was present at least on some of the occasions, where the grade was extensively discussed, and it the Applicant's understanding that the Director of Technical Services/Town Engineer agreed that the driveway grade would be acceptable so long as the existing grade was not increased." As discussed in previous submissions, the Applicant proposes to substantially reduce the existing grade at the entrance as requested from 14% to 5%, and the grade does not violate any applicable

regulations. As also previously submitted, the existing driveway was used for institutional uses for at least 60 years.

Comment No. 3

The Applicant indicates the proposed driveway improvements do not impact the historic nature of the road. PDE defers to the Town on this matter.

Response No. 3

So noted. The Applicant trusts the Town will concur that a minor widening of approximately 2 inches along a roadway length of only 37 feet and the requested driveway entrance improvements will not be perceptible relative to the character of the roadway.

Comment No. 5

As noted previously, the actual daily trips can be confirmed with the traffic monitoring study to be performed by the Applicant as part of the Transportation Management Plan. The finalized version of the Transportation Management Plan should be a condition of Site Plan Approval that will need to be deemed acceptable by the Director of Technical Services.

Response No. 5

The Applicant previously submitted the proposed Transportation Management Plan, as an agreed condition of approval which includes traffic and parking monitoring, and will consider any requested modifications which may be requested by the Director of Technical Services.

Comment No. 8

The Applicant has provided an updated Driveway Improvement Plan that demonstrates that the 20-foot traveled way can be provided with minor additional widening along the west side of Quaker Ridge Road immediately south of the site driveway, as well as the removal of overburden as previously indicated. The Applicant will need to provide a Construction Plan to formally identify how the 20-foot width will be achieved in this area and to what extent the pavement will need to be replaced and/or repaired. This Plan should be prepared as part of the Site Plan Approval Process to confirm whether there would be any impact or modification to the historic characteristics of the roadway.

Response No. 8

The enclosed Quaker Ridge Road Improvement Plan has been prepared as requested by Ralph G. Mastro Monaco, PE, PC. The plan confirms that there would not be a perceptible impact to the historic characteristics of the roadway resulting from the minor improvements.

Comment No. 9

The Applicant provided additional truck turning templates in the plan set dated revised February 27, 2019. The additional truck turning templates illustrate an SU-30 and SU-40 truck entering and exiting the site driveway to/from Quaker Ridge Road to the north. These turning templates indicate that the maneuver may be very difficult to accomplish, especially for the SU-40 and there would significant vehicle overhang on the south side of the site driveway. Additionally, these vehicles would need to fully encroach into the oncoming lane of traffic on Quaker Ridge Road in order to exit the site. This may create an unsafe condition and the Applicant may need to closely coordinate these delivery trips and provide temporary traffic control on Quaker Ridge Road to avoid potential vehicular conflicts.

Response No. 9

Although the Applicant has already committed to the condition of including in its Transportation Management Plan its directing delivery vehicles to travel to and from the south, the Applicant will augment the Transportation Management Plan to also include a condition that, in the event that a delivery vehicle needs to exit the site and travel north along Quaker Ridge Road, the Applicant will utilize on-site security personnel to provide traffic control to advise drivers along Quaker Ridge Road of the movement of the delivery vehicle and to assist the vehicle in making the turn safely.

Comment No. 11

The Applicant indicates the visitor parking spaces will be made available to staff on weekdays and visitors on weekends, when staffing is reduced. A portion of the visitor spaces should be remain reserved on weekdays for operational-type visitors.

As noted previously, a Parking Monitoring Study will be part of the Transportation Management Plan. The finalized version of the Transportation Management Plan should be a condition of Site Plan Approval that will need to be deemed acceptable by the Director of Technical Services. At a minimum, the Parking Monitoring Study should be performed at the following thresholds:

- Initial occupancy of the facility*
- 50% occupancy of the facility*
- 75% occupancy of the facility*
- 100% occupancy of the facility (and for two years thereafter)*

If the parking demand at any of these thresholds indicates that the parking supply to be provided is (or will be) deficient then the Applicant will need to come back before the Planning Board to demonstrate how the land-banked parking necessary to meet the parking demand will be accommodated from an engineering and environmental standpoint (no engineering detail currently provided for the land-banked parking areas). The additional impacts associated with the land-banked area(s) will need to be considered cumulative to the original impacts to determine State Environmental Quality Review Act (SEQRA) implications.

Response No. 11

Three such proposed visitor spaces are shown on the previously submitted Driveway Improvement Plan. The spaces are conveniently located adjacent to the proposed ADA spaces in the vicinity of Building #1.

The Applicant will provide the Parking Monitoring Study at the suggested thresholds as part of the Transportation Management Plan, required as a condition of approval as agreed by the Applicant. As noted in prior letters, including our letter dated 3/21/2019, the Applicant is requesting a parking waiver, not "land-banked" spaces as referenced in the comment. Significantly, no such additional spaces are proposed or anticipated. However, the Applicant understands that Planning Board approval would be required in the unexpected event that, based on the agreed and required parking monitoring, additional parking is necessary, as referenced on the previously submitted Additional Parking Plan In Support Of The Parking Count Waiver, as requested by Town staff. Moreover, if any additional spaces are desired by the Applicant or Town based on actual future operations, the number of spaces would likely be 10 or fewer spaces based on the information previously submitted in support of the requested waiver. Thus, under these circumstances, it is the Applicant's position that any review and approval of future spaces would be a separate new Planning Board application for an amended site plan approval, and any relatively minor SEQRA impacts would be addressed at that time. Regardless, the 10 or fewer spaces would not be expected to have significant cumulative SEQRA implications, even if considered relative to the proposed action. The 10 spaces could be provided on the north side of the roadway, as depicted in the Additional Parking Plan, in an already cleared/developed area adjacent to Building #1 with relatively minor disturbance, including a short retaining wall to minimize disturbances, and likely a drywell for stormwater. No sensitive environmental features, such as trees, steep slopes, wetlands or wetland buffers would be affected.

We are willing to discuss our various responses if desired.

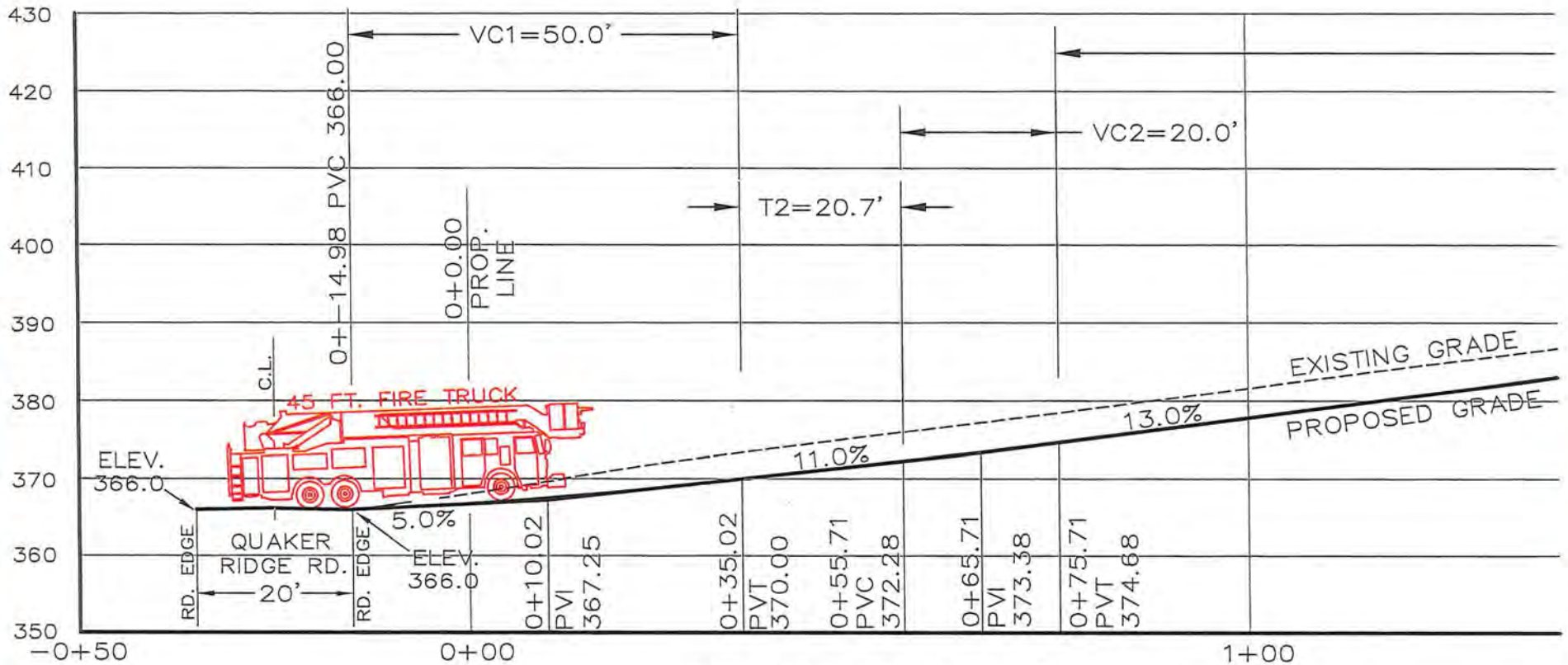
Sincerely,

JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC



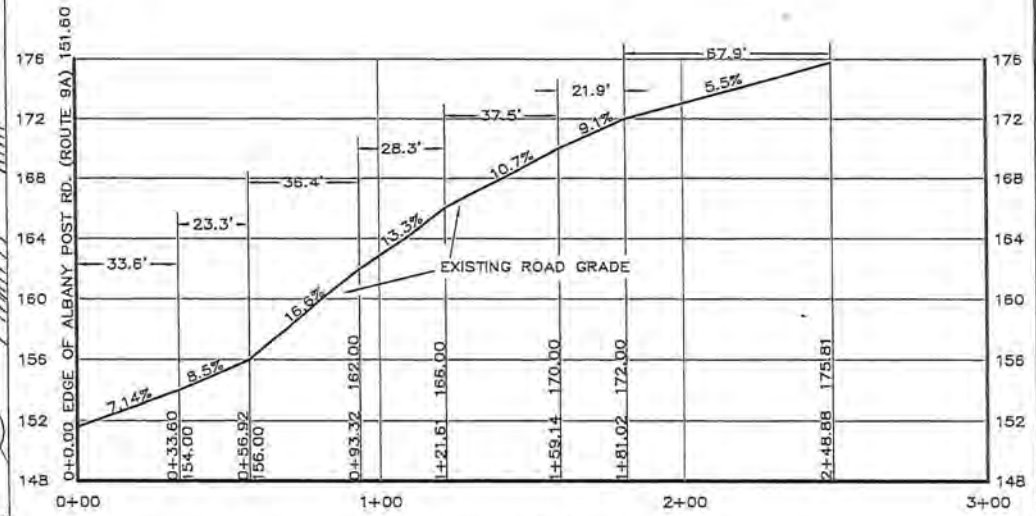
Richard J. Pearson, PE, PTOE
Senior Associate Principal

cc: David Douglas, Chairman and Members of the Town of Cortlandt Zoning Board of Appeals
Mr. Steve Laker
Robert Davis, Esq.
Mr. Ralph Mastromonaco, PE

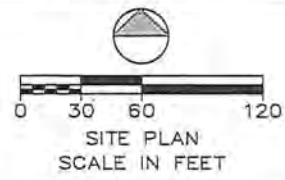


ENTRANCE DRIVEWAY PROFILE
 13% MAX. GRADE
 SCALE: HOR. 1" = 20'
 VER. 1" = 20'

45 FT. FIRE TRUCK APPROACH
 HUDSON RIDGE WELLNESS CENTER
 LOCATED AT
 2016 QUAKER RIDGE RD
 TOWN OF CORTLANDT
 WESTCHESTER CO. NY
 APRIL 25, 2019

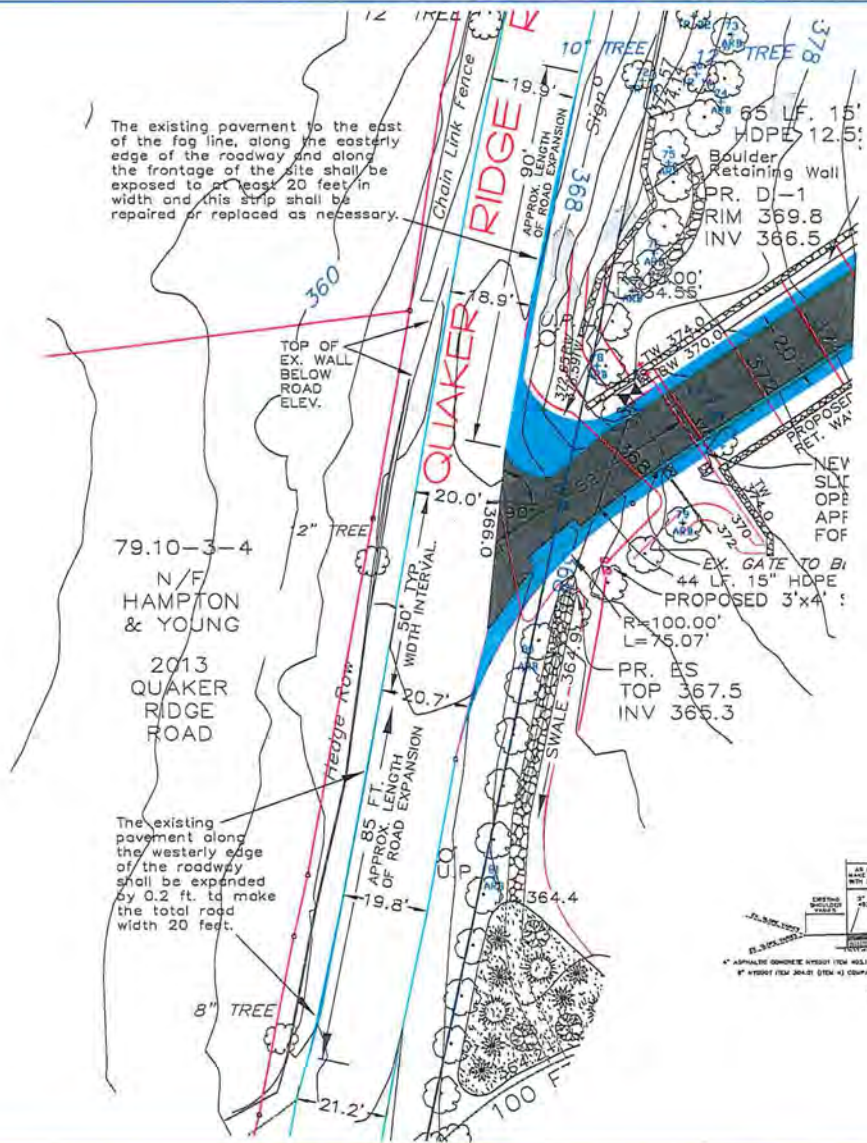


ROAD PROFILE
 SPRINGVALE ROAD
 SCALE: HOR. 1"=40'
 VER. 1"=8'



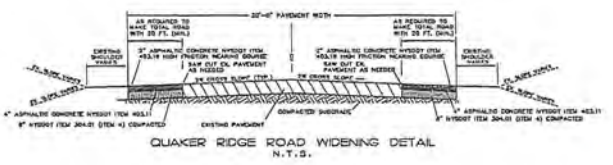
RALPH G. MASTROMONACO, P.E., P.C.
 Consulting Engineers
 13 Dove Court, Croton-on-Hudson, New York 10520
 (914) 271-4762 (914) 271-2820 Fax

EXISTING
 ROAD GRADE EXHIBIT
 SPRINGVALE ROAD
 TOWN OF CORTLANDT
 WESTCHESTER CO., NY
 APRIL 24, 2019



The existing pavement to the east of the fog line, along the easterly edge of the roadway and along the frontage of the site shall be exposed to at least 20 feet in width and this strip shall be repaired or replaced as necessary.

The existing pavement along the westerly edge of the roadway shall be expanded by 0.2 ft. to make the total road width 20 feet.



QUAKER RIDGE ROAD WIDENING DETAIL
N.T.S.



VICINITY MAP



LEGEND

EXISTING	PROPOSED	DESCRIPTION
—	—	CATCH BASIN
○	○	DRAIN MANHOLE
○	○	DRAIN INLET
○	○	HEADWALL
○	○	SEWER MANHOLE
○	○	IMPROVEMENT
○	○	D.I.S.A.
—	—	CONTOUR LINE
○	○	SPOT ELEVATION
○	○	DRIILLED WELL

RALPH G. MASTROMONACO, P.E., P.C.
Consulting Engineers
13 Dover Court, Catskill-Hudson, New York, 12022
(914) 271-4742 (914) 271-2820 Fax

QUAKER RIDGE ROAD IMPROVEMENT PLAN
PREPARED FOR
HUDSON RIDGE WELLNESS CENTER
LOCATED AT
2016 QUAKER RIDGE RD
TOWN OF CORTLANDT WESTCHESTER CO. NY
APRIL 25, 2019
SHEET 8 OF 8 SHEETS

EXHIBIT 4

PLANNING BOARD MEETING - JUNE 4, 2019

INTRODUCTION

1. Good evening. I am Bob Davis, attorney for the Applicant.
2. Since we have not appeared before you since the January meeting, I would like to review what has transpired over the last few months, which has been quite substantial and significant.
3. You will recall that at the December meeting, our hydrogeologist gave a powerpoint presentation regarding the extensive well pump testing we performed last August, which clearly demonstrated that the proposed use will have no significant adverse impact on off-site wells. The Town's hydrogeologist agreed.
4. At the January 8 meeting, our traffic engineer gave a powerpoint presentation with respect to traffic matters, including the substantial mitigation measures we have incorporated into the application, which demonstrated that the proposed use will have no significant adverse traffic impacts. While the Town's consultant raised some relatively minor technical matters at that meeting, a number of which had already been addressed and the others which have subsequently been addressed, he has not disagreed with the basic premise that there will be no significant adverse traffic impacts.
5. On January 10, in response to the January 3 submission of the neighbors' counsel, we submitted our detailed analysis under the SEQRA Regulations, which addressed the SEQRA criteria for a determination of significance. Employing those criteria, we demonstrated that the proposed action will have no significant adverse environmental impacts and that therefore, we're entitled to a Negative Declaration or a Conditioned Negative Declaration under SEQRA.
6. On January 25, we received the two approvals for the proposed hospital use required from the Westchester County Health Department:
 - (1) Approval of the water supply system, which was based upon and incorporated the Health Department's prior approval of the Applicant's water demand calculations, which accordingly were incorporated in our well pump testing and

(2) Approval of our state-of-the-art septic system, which will replace most of the old existing system and be much more protective of the environment.

7. On February 5, we responded to another letter of the neighbors' counsel, dated February 1, and we addressed what, in our opinion, represent only some spurious last ditch efforts to derail the application after seeing that we have clearly demonstrated a lack of significant adverse environmental impacts.
8. The focal point of opposing counsel's February submission however, was the report of the neighbors' new hydrogeologist critiquing our well pump test protocol, which had been approved by Town staff and its hydrogeological consultant.
9. On February 26, our consultants submitted their detailed report refuting each and every comment of the neighbors' new consultant. To buttress that response, on March 6, we submitted an additional report from our consultant confirming that as conditions of approval, we have agreed to conduct an extensive post-approval well monitoring program with respect to the off-site wells and in addition, we will monitor and submit monthly operation reports of water usage to the County Health Department and the Town.
10. On April 11, the Town's hydrogeological consultant submitted his report discussing his review of the neighbors' consultant's report and our two reports in response. The Town's consultant, once again, confirmed our reports, and found no merit to the comments of the neighbors' consultant.
11. On February 22, the Town's traffic consultant submitted a report updating his comments at the January meeting on our December submission, which were largely technical and non-environmental in nature. Significantly, he did find our daily trip estimates to be acceptable and that they would not have a significant impact on any of the studied area intersections.
12. On March 21, we fully responded to the Town traffic consultant's February comments. We received follow up comments from the Town's consultant on April 16, and we fully addressed those in our response letter of April 25. The Town's consultant advised ours that he is satisfied with our final responses.

13. Significantly on March 18, to buttress our SEQRA analysis we submitted in January demonstrating non-significance under the SEQRA criteria, we submitted a list of no less than **54 stipulated mitigative conditions** of approval which we have incorporated in our application and which, in fact, ensure that there will be no significant adverse environmental impacts caused by the proposed specialty hospital.
14. At the January meeting, the Board suggested that since this has been such a long process, with so many submissions, in order to accommodate more efficient review by the Board and the public, we should consolidate those submissions in a “user friendly” manner. We have done just that. On March 28, we submitted a voluminous four-volume set of our prior submissions, with a fully updated version of the environmental analysis we had originally submitted in July 2015. These volumes include our very strong SEQRA significance analysis I mentioned, as well as the 54 stipulated conditions, and all of the other items we have submitted, including detailed responses to every single public comment since the outset of this process in 2015.
15. In their February 1 submission, neighbors’ counsel raised, for the first time, the issue of whether the proposed use actually constitutes a permitted hospital use under the Town Zoning Code. This question was raised for the first time after **four years** of extensive public review before the Zoning and Planning Boards, which even included two litigations.
16. As a result, at its February meeting, the Planning Board asked for advice on this “threshold” issue, even though we are far beyond the threshold of this matter.
17. On March 21, the Code Enforcement Officer rendered a memo to the Board stating his patently erroneous opinion that the proposed specialty hospital was not, in fact, a permitted hospital, based on his demonstrably false premise that the use is primarily “custodial care” and not “medical care”.
18. We completely refuted that erroneous opinion in my comprehensive submission of April 23, which was accompanied by reports of our two expert hospital consultants, and the overwhelming applicable laws, regulations and facts.

19. There can be no legitimate question whatsoever that the primary purpose of the proposed specialty hospital is the medical and healthcare and treatment of those suffering from the disease of addiction.
20. Putting aside the inarguable facts and numerous legal grounds we have explained which demonstrate this is a permitted hospital, perhaps first and foremost, this is a matter of **common sense**. We have a main hospital building which was built, designed and used for some 30 years for the very purpose of the same type of addiction treatment hospital for which the Applicants will use it. It is currently configured with hospital rooms and office spaces, and after renovation, will continue to be. It will be occupied by doctors, nurses, psychologists and other medical and behavioral health care professionals. Indeed, there will be some 42 such health care professionals to serve the projected initial population of some 42 patients. The hospital-type rooms in the building will be occupied by those patients, who are suffering from a disease, for which they will be treated by health care professionals. The ancillary buildings will be utilized for the same purposes. The operation will be strictly regulated as a medical facility treating substance abuse issues under the State Mental Hygiene Law and require licensure thereunder by the State Office of Alcohol and Substance Abuse Services known as "OASAS". Patient medical insurance will be accepted. Obviously, this is a medical use, not merely "custodial care".
21. Thus, we requested in our April submission on this issue that in consultation with Town Attorney Wood, the Code Enforcement Officer, in light of many dispositive legal and factual matters of which he apparently was not previously aware or misunderstands, change his opinion accordingly.
22. However, on May 16th, the Code Enforcement Officer issued a second memo, declining to change his prior Opinion. In fact, he added a second incorrect determination that the State road frontage variance we require is a use variance, not an area variance. His second memo completely failed to address any of the numerous points we made in our April 23rd submission. **In 40 years of practicing zoning law, I have never seen a more egregiously wrong determination.** It is beyond comprehension that the Code Enforcement Officer has ignored the overwhelming facts and law to the contrary and maintained his erroneous position. We will be refuting his May 16 submission very shortly.

23. Further, his comment on the frontage variance is barred by law. The Zoning Board made a determination in March 2017, over 2 years ago, that the variance is an area variance. Notwithstanding the Code Enforcement Officer's assertion that the Board lacked jurisdiction, which he has no authority to make, the State Town Law provides that on an application for a special permit or a site plan, both of which we have here, the Applicant can go directly to the Zoning Board without the necessity of a determination by the Code Enforcement Officer or an appeal.
24. The Code Enforcement Officer's statement that the Zoning Board's determination on that issue is not final is also incorrect. The Court's dismissal of the neighbors' Article 78 proceeding was not based on the fact that that issue was not finally determined by the ZBA, which it was, but that it was only premature for the neighbors to appeal it until the Board rendered a determination on whether to issue the variance.
25. Since the Zoning Board ruled, the Supreme Court, Westchester County, as well as the Appellate Division, Second Department, in other cases, have both ruled that a variance from a State road frontage requirement is an area variance, not a use variance. The Code Enforcement Officer is also bound by those rulings.
26. We have submitted an appeal to the Zoning Board from the Code Enforcement Officer's Determinations and we will first be appearing before the Zoning Board at its June meeting. The facts and law are indisputable. His determination cannot and will not stand.
27. At this juncture, we have done everything asked of us and much more. Based on the substantial record and proceedings to date, which have demonstrated that the proposed use will not have *any* significant adverse environmental impact, we ask that the Board now proceed with the rendering of a Negative Declaration or at least, a Conditioned Negative Declaration, under SEQRA, either of which could incorporate our 54 conditions, in order that the process may move forward. Thank you.

EXHIBIT 5



SINGLETON, DAVIS & SINGLETON PLLC

ATTORNEYS AT LAW

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

ALEXANDER D. SALVATO

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December 17, 2020

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
January 5, 2021 Planning Board Meeting*

Dear Chairperson Taylor and Members of the Board:

As you know, our firm represents the Applicants, who are seeking a special permit and site plan approval from your Board to operate a specialty hospital to serve patients suffering from substance use disorder. As a reminder, the Applicants are proposing to reuse the existing buildings at the subject property, originally used for similar hospital and other institutional purposes, with no new construction, except the updating of the septic system. The Applicants also require an area variance from the Zoning Board from the State road frontage requirement for hospital special permits. The Planning Board is the Lead Agency under SEQRA with respect to this application.

At the January 5, 2021 meeting, I will update the Board in detail as to where we were in the review process as of our last appearance before the Board on the substance of the application on January 8, 2019.

In short, some four years after the commencement of this application and after two prior litigations, upon receipt of an inquiry in February 2019 from counsel for the neighborhood opposition group as to whether the proposed specialty hospital constitutes a permitted "hospital" use under the Zoning Code, this Board directed that belated question to its professional staff. On March 21, 2019, the Director of Code Enforcement rendered his opinion to the Board that the

Hon. Loretta Taylor, Chairperson and Members of the Board
December 17, 2020
Page 2

proposed use does not constitute a “hospital”. Notwithstanding the substantial written objection of Applicants’ counsel to the contrary, on May 16, 2019, he reiterated that opinion.

Thus, the Board’s review of this application ceased and the Applicants were compelled to appeal the Director’s determinations to the Zoning Board. The Zoning Board proceedings on the Applicants’ appeal lasted from June 2019 until January 2020, when the Zoning Board, by a 3-1 vote in favor of the Applicants, with two members recused and one new member abstaining, set aside the Director’s erroneous determinations. However, as State law requires 4 votes of the 7-member Zoning Board to effectuate any such approval, the Board’s 3-1 vote was deemed to constitute a “default denial” under the statute. Accordingly, although, the 3-1 majority of the Board voted in favor of the Applicants, the Applicants were compelled to bring an Article 78 proceeding against the Board to set aside its “default denial” and the Director’s determinations.

On September 24, 2020, the Supreme Court, Westchester County ruled emphatically and conclusively in favor of the Applicants, holding that the proposed use is clearly a permitted “hospital” under the Zoning Code and directing the Zoning Board to render a Decision and Order in accordance with the Court’s directive. A copy of the Court’s Decision Order & Judgment is enclosed herewith. Accordingly, the application may now proceed before the Planning Board.

At the point of interruption of this Board’s review, 1½ years ago, after exhaustive analysis, the Applicants had been determined by the Town’s hydrogeological and traffic consultants, respectively, to have satisfactorily addressed all relevant issues in demonstrating the lack of any significant adverse impacts either on off-site wells or traffic, the two primary issues raised by the public. Accordingly, the Applicants requested that the Board proceed to render its SEQRA determination, specifically a Negative Declaration or Conditioned Negative Declaration. In support of that request, on January 10, 2019, the Applicants submitted to the Board a detailed analysis of the proposed use *vis a vis* the SEQRA criteria for a determination of significance – demonstrating there would be no significant adverse environmental impacts. In addition, the Applicants submitted as part of their application, a list of 54 positive and mitigative aspects of its prospective hospital operations, including special accommodations for the Town and Town residents, which would not only further ensure there would be no significant adverse environmental impacts, but that there will be significant positive impacts, and which the Applicants proposed as conditions of approval.

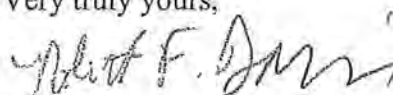
On March 28, 2019, as the Board had requested in order to facilitate its efficient and thorough review, the Applicants submitted a 4-volume set consolidating all prior submissions, with a fully updated version of its environmental analysis and its responses to all public comments.

Hon. Loretta Taylor, Chairperson and Members of the Board
December 17, 2020
Page 3

Thereafter, in April 2019, the Town's Traffic Consultant submitted his final comments, to which the Applicants fully responded. Given the passage of time since these submissions, we respectfully request that Board and staff review same, with the intent of moving expeditiously forward subsequent to the January 5, 2021 meeting with the previously requested SEQRA determination.

Thank you for your consideration.

Very truly yours,



Robert F. Davis

RFD:dds
Enclosure

c: Steven Laker (via e-mail)
Richard Pearson (via e-mail)
Robert Peake (via e-mail)
Thomas Cusack (via e-mail)
Karen Destefanis (via e-mail)
Ralph Mastromonaco (via e-mail)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
In the Matter of the Application of
HUDSON RIDGE WELLNESS CENTER, INC., and
HUDSON EDUCATION AND WELLNESS CENTER,

Petitioners,

DECISION
ORDER & JUDGMENT

Index No. 1167/20

- against -

ZONING BOARD OF APPEALS
OF THE TOWN OF CORTLANDT,

Respondent,

-----X
CACACE, J.

The following papers, numbered one (1) through ten (10) were read on this petition for relief brought pursuant to article 78 of the Civil Practice Law and Rules (CPLR):

	<u>Papers Numbered</u>
Notice of Verified Petition	1
Verified Petition - Exhibits	2
Memorandum of Law	3
Affirmation in Opposition	4
Affidavit in Opposition	5
Memorandum of Law in Opposition	6
Answer	7
Reply Affirmation	8
Sur-Reply Affirmation	9
Sur-Sur-Reply Affirmation	10

Upon the foregoing papers, it is decided, ordered and adjudged that the instant petition for relief brought pursuant to article 78 of the CPLR is resolved as follows:

Procedural History and Factual Findings

The record presented reflects that the events relevant to this proceeding began with the implementation of measures by the petitioners, Hudson Ridge Wellness Center, Inc., and Hudson Education and Wellness Center, to develop an approximately 20.8 acre lot located at 2016 Quaker Ridge Road, designated on the Town of Cortlandt Tax Map as Section 79.11, Block 1, Lot 18 (hereinafter, the project site), upon which improvements exist in the form of seven buildings previously associated with the original use of the property as a specialty hospital, denoted as a sanitarium in Town of Cortlandt property records, between approximately 1920 and 1948. Specifically, the petitioners are seeking to operate a new private specialty hospital upon the project site which would provide residential substance use disorder/chemical dependency treatment for a maximum of 92 patients (hereinafter, the proposed project). In pursuit of their rehabilitation and development of the project site, the petitioners sought site plan approval regarding same from the Planning Board of the Town of Cortlandt (hereinafter, Planning Board), which, incident thereto, undertook a review of the potential environmental impacts of the proposed project pursuant to SEQRA. In connection with its review, the Planning Board made a formal request of the Town of Cortlandt's Department of Technical Services (DOTS) on February 5, 2019, seeking a zoning opinion concerning whether the proposed project would constitute a "hospital" under the Code of the Town of Cortlandt (hereinafter, the Town Code), and if so, whether the operation of such a "hospital" would require frontage on a "main road".

Acting pursuant to the Planning Board's zoning opinion request, Martin G. Rogers, the Director of Code Enforcement of the DOTS (hereinafter, DCE Rogers), issued a written

determination, dated March 21, 2019, which concluded that the proposed project would not provide for the use of the project site as either a "hospital" or a "specialty hospital", but rather would constitute use as a "rehabilitation center" which is not a permitted use within the R-80 Zone encompassing the project site pursuant to §§ 307-14 and 307-15 of the Town of Cortlandt Table of Permitted Uses, and further declined to render a determination regarding any requirement of "main road" frontage for the proposed project. For reasons not clearly articulated upon the record, DCE Rogers issued a second written determination, dated May 16, 2019, in response to the Planning Board's zoning opinion request of February 5, 2019, through which he adhered to his earlier conclusion that the proposed project would not provide for the use of the project site for the operation of either a "hospital" or a "specialty hospital", but rather would provide for its use as a "rehabilitation center", and proceeded to render his further determination that Town Code § 307-59(B)(9) required that the proposed project have frontage upon a state road (hereinafter, DCE Rogers' determinations).

In response to DCE Rogers' determinations, the petitioners brought an application before the respondent Zoning Board of Appeals of the Town of Cortlandt (ZBA) for an interpretation of the Town Code in relation to those determinations based upon their contention that same were incorrect *en toto* (hereinafter, the underlying application), leading the respondent ZBA to conduct public hearings upon the underlying application on June 19, 2019, August 21, 2019, September 18, 2019 and October 16, 2019, when the public hearing was formally closed. As reflected in the certified minutes of its meeting on January 15, 2020, the respondent ZBA commenced its consideration of the underlying application by first announcing that two of its seven members, Frank Franco and Thomas Walsh, had recused themselves from participating in any vote upon

the underlying application. Immediately thereafter, Chairman David S. Douglas proceeded to marshal the evidence adduced in connection therewith upon the record, drawing from a draft Decision and Order (hereinafter, the draft D&O) which the respondent ZBA had prepared in advance of that meeting. As published therefrom, the respondent ZBA framed the question raised through the underlying application as an issue of whether the proposed use of the project site should be properly defined as the operation of a "hospital", which would be capable of being permitted upon the approval of applications for a special permit and an area variance, or whether that proposed use should be properly defined as a "rehabilitation center", which would be capable of being permitted upon the approval of an application for a use variance.

As further reflected in the certified minutes of the meeting of January 15, 2020, Chairman Douglas stated that the respondent ZBA first sought to define "hospital" through examination of the Town Code, but noted that the absence there of such a definition had ultimately lead to its reliance upon the Standard Industrial Classification Manual (SIC) for guidance regarding the question of whether the proposed project should properly be defined pursuant to § 8069 of the SIC which defines "Specialty Hospitals", or should more properly be defined pursuant to § 8361 of the SIC which defines "Residential Care". In connection therewith, Chairman Douglas again referenced the draft D&O and recited the definition of "Specialty Hospitals" provided by § 8069 of the SIC, and related that the given examples of same therein included both "alcoholism rehabilitation hospitals" and "drug rehabilitation hospitals". Again drawing from the draft D&O, Chairman Douglas next recited the definition of § 8361 of the SIC, and related that the given examples of same therein included both "alcoholism rehabilitation centers, residential: with health care incidental" and "drug rehabilitation centers, residential: with healthcare incidental".

After having recited these definitions, Chairman Douglas stated that the respondent ZBA had determined that the ultimate issue for its resolution turned upon whether the adduced evidence demonstrated that the health care services to be rendered through the proposed project should properly be characterized as being merely incidental to the primary care provided, or should otherwise properly be characterized as being more than incidental to such provided care.

Chairman Douglas then stated that the adduced evidence which related to the type/nature of the health services to be administered pursuant to the proposed project, had supported the conclusion that the proposed project is a "hospital" within the meaning of § 8069 of the SIC. In support of this conclusion, Chairman Douglas proceeded to summarize the adduced evidence set forth within the draft D&O relating to the type/nature of the health services to be provided to patients who were being treated at the proposed project facility.

Specifically, reading from the draft D&O, Chairman Douglas related that the services to be provided to patients admitted to the proposed project facility would be in the nature of those medical treatment and care services traditionally provided by a hospital subsequent to the detoxification and stabilization of a person suffering from an acute substance abuse issue. In this regard, Chairman Douglas further related that the proponents of the proposed project had demonstrated that persons admitted thereto would require 24-hour medical treatment and care, which would be provided by no less than 2 medical doctors and 15 nurses, among other psychologists, social workers, counselors and technicians, all of whom would be responsible for administering treatment for physical needs related to internal medicine and addictionology, as well as psychiatry and psychology. In terms of the nature of the medical treatment to be administered through the proposed project to admitted patients, Chairman Douglas related that

the adduced evidence had established that such medical treatment and care would be central to the services provided, rather than merely incidental thereto, as these medical treatment and diagnostic services would be the same as those provided by traditional hospitals. In terms of the nature of the persons admitted to the proposed project facility for treatment and care, Chairman Douglas reflected upon the adduced evidence and stated that these persons would exclusively be sufferers of substance abuse disorder who would continue to receive diagnostic assessments, routine drug testing, physical and mental health examinations, prescribed medication treatment regimens, and other associated medical and psychiatric during their anticipated 28-45 days of in-patient treatment at the proposed project facility. After marshaling much of the evidence adduced in connection with the underlying application, as considered in light of the applicable statutory and case law, Chairman Douglas submitted that the proponents of the proposed project had successfully demonstrated that it meets the definition of a "hospital", and that the underlying application should be granted to the extent that DCE Rogers' determinations should properly be reversed and set aside.

Having completed his summarization of the draft D&O, Chairman Douglas indicated that prior to calling upon the members of the respondent ZBA to enter their respective votes upon the underlying application, he would first solicit comments from them. Initially, Cristin Jacoby announced that she would be abstaining from a vote upon the underlying application due to her absence from all public hearings conducted in connection therewith. Having received no comments from any other members of the respondent ZBA, Chairman Douglas advised that he wished to be heard further and proceeded to address his fellow ZBA board members. Notably, Chairman Douglas stated that he agreed with the draft D&O's analysis regarding the applicability

of the SIC to the definition of "hospital", and that he concurred with much of the content and findings outlined in the draft D&O based thereupon, yet stated that he intended to vote against the underlying application. Indeed, after submitting his several statements of concurrence with the draft D&O, Chairman Douglas proceeded to offer an explanation for his stated intention to vote to deny the underlying application based upon his feeling that the proposed project "falls more readily under SIC Code 8361 which covers residential care". Specifically, Chairman Douglas stated that he felt that the medical treatment to be provided pursuant to the proposed project is "incidental" to the primary care provided, as he submitted his belief that the residential upkeep of recovering patients subsequent to their detoxification would primarily be provided by nurses and social workers. Continuing, Chairman Douglas submitted that the presence of doctors doesn't establish that the proposed project would involve the operation of a hospital, as he stated that doctors provide medical care in many settings other than hospitals, as do care providers such as nurses, psychologists, social workers, counselors and technicians, whom he believed to routinely administer medication and perform diagnostic assessments, drug testing, mental/physical examinations and counseling in non-hospital settings. Upon these beliefs, Chairman Douglas submitted his opinion that the proposed project facility seemed to him to be more akin to what he characterized as "non-hospital healthcare facilities", referencing both a hospice and a residence for people with dementia as examples, rather than hospitals. Finally, Chairman Douglas stated that the adduced evidence concerning the Medication Assisted Treatment (MAT) to be offered to persons admitted to the proposed project facility, supported his view that such treatment constituted a "step-down" from the actual medical intervention provided to patients since MAT does not need to be provided in a hospital, or by doctors.

Chairman Douglas' remarks were followed by a motion brought by Wai Man Chin, Vice Chairman of the respondent ZBA, supporting the adoption of the draft D&O, as submitted and published by Chairman Douglas. Vice Chairman Chin's motion to approve the draft D&O was followed by a poll of the members of the respondent ZBA, which reflected votes in support of the motion by members Adrian C. Hunte and Eileen Henry, an abstention from the vote by member Cristin Jacoby, and a vote against the motion by Chairman Douglas. Upon the recording of the votes registered by the four voting members of the respondent ZBA, the tabulation of same by Assistant Town Attorney Joshua Subin reflected a total of 3 votes registered in favor of Vice Chairman Chin's motion to adopt the draft D&O, and a total of 1 vote registered in opposition thereto, leading Mr. Subin to announce that since the registered vote totals reflected the absence of a voting quorum of the respondent ZBA, the underlying application was deemed to have been denied and DCE Roger's determinations would remain in effect (hereinafter, the challenged determination).

The instant litigation ensued, as the petitioners commenced this hybrid article 78 proceeding/declaratory judgment action in an effort to overturn the challenged determination made by the respondent ZBA through its default denial of Vice Chairman Chin's motion to approve the draft D&O which had represented the proposed approval of the petitioners' challenge to DCE Rogers' determinations. By a verified petition, the petitioners brought the instant hybrid proceeding for a judgment pursuant to article 78 of the CPLR and declaratory relief pursuant to CPLR 3001, in an effort to challenge and overturn the respondent ZBA's failure to approve its own draft D&O by a voting quorum which is required by Town Law § 267-8(13) for the adoption of same, which specifically seeks an order of this Court: (1) reversing,

annulling and setting aside the challenged determination upon allegations that same was arbitrary and capricious, an abuse of discretion, contrary to substantial evidence and contrary to law, and (2) declaring that the petitioners' proposed establishment of a specialty residential drug abuse treatment facility on the project site does constitute the operation of a "hospital" within the meaning of the Town Code, and further directing that the draft D&O be given full force and effect as if it had been validly approved.

Legal Analysis

At the outset, the Court notes that although the challenged determination of the respondent ZBA to deny the petitioners' application for an "interpretation" - seeking to overturn DCE Rogers' determinations - was supported by the registered vote of merely 1 of the 4 voting members of the respondent ZBA, the resulting failure of a majority of its 7 members to register votes in support of Vice Chairman Chin's motion to approve the draft D&O constituted a denial of the petitioners' application and, in effect, an approval of DCE Rogers' determinations (*see* Town Law § 267-a[13][b]; *see also* *London v Zoning Bd. of Appeals of Town of Huntington*, 49 AD3d 739, 740, *lv. denied* 10 NY3d 713). When the respondent ZBA undertook to consider the petitioners' application for an "interpretation" regarding DCE Rogers' determinations, it was acting with the authority to make such an "interpretation or determination as in its opinion ought to have been made in the matter" by the Code Enforcement Division of the Town of Cortlandt in the first instance (*see* Town Law § 267-b[1]; *see also* *Matter of BBJ Assoc., LLC v Zoning Bd. of Appeals of Town of Kent*, 65 AD3d 154, 159). Pursuant to that express authority, the respondent

ZBA rendered the challenged determination, which, in effect, served to approve DCE Rogers' determinations that the petitioners' proposed establishment of a specialty residential drug abuse treatment facility on the project site does not constitute the operation of a "hospital" within the meaning of § 307-59(B)(9) of the Town Code.

In this regard, it is generally understood that a determination made by a zoning board of appeals may not be set aside by a reviewing court considering a challenge raised pursuant to article 78 of the CPLR unless that board's decision is arbitrary and capricious, lacks a rational basis, or constitutes an abuse of discretion (*see Matter of Lucas v Bd. of Appeals of Vil. of Mamaroneck*, 109 AD3d 925; *see also Matter of Fuentes v Planning Bd. of Vil. of Woodbury*, 82 AD3d 883). More specifically, where the challenge relates to the legal interpretation of a term of a zoning ordinance as it is applied to a particular property, the zoning board's interpretation shall not be set aside unless found to be unreasonable or irrational (*see Pecoraro v Board of Appeals of Town of Hempstead*, 2 NY3d 608, 613; *see also Matter of Frishman v Schmidt*, 61 NY2d 823, 825; *Matter of Conti v Zoning Bd. of Appeals of Vil. of Ardsley*, 53 AD3d 545, 547; *Matter of Falco Realty, Inc. v Town of Poughkeepsie Zoning Bd. of Appeals*, 40 AD3d 635, 636; *Matter of Arceri v Town of Islip Zoning Bd. of Appeals*, 16 AD3d 411, 412). In this regard, although a zoning board's interpretation of its zoning ordinance is generally entitled to great deference (*see Matter of New York Botanical Garden v Board of Stds. & Appeals of City of N.Y.*, 91 NY2d 413, 419; *see also Matter of Louchheim v Zoning Bd. of Appeals of Town of Southampton*, 44 AD3d 771), its interpretation "is not entitled to unquestioning judicial deference, since the ultimate responsibility of interpreting the law is with the court" (*Matter of Baker v Town of Islip Zoning Bd. of Appeals*, 20 AD3d 522, 523; *see Matter of Ogden Land Dev., LLC v Zoning Bd. of*

Appeals of Vil. of Scarsdale, 121 AD3d 695, 696).

Furthermore, where, as here, the courts are called upon to review a zoning board's exercise of its appellate authority in relation to a zoning code interpretation made by a zoning enforcement official pursuant to the jurisdictional authority conferred by Town Law § 267-a(4), this Court remains mindful that zoning ordinances exist in derogation of the common law and, thus, must be strictly construed in favor of the owner whose land is being regulated (*see Matter of La Russo v Neuringer*, 105 AD3d 743; *see also Matter of Sanantonio v Lustenberger*, 73 AD3d at 934; *Matter of Mamaroneck Beach & Yacht Club, Inc. v Zoning Bd. of Appeals of Vil. of Mamaroneck*, 53 AD3d 494, 498), and any ambiguity in the zoning ordinance under review must be resolved in favor of the property owner (*see Albany Basketball & Sports Corp. v City of Albany*, 116 AD3d 1135, *lv. denied* 23 NY3d 907; *Matter of Subdivisions, Inc. v Town of Sullivan*, 92 AD3d 1184, 1185; *Incorporated Vil. of Saltaire v Feustel*, 40 AD3d 586).

Consequently, as the Court's review of the challenged determination rendered by the respondent ZBA reveals that the basis upon which DCE Rogers relied when he determined that the petitioners' proposed establishment of a specialty residential drug abuse treatment facility on the project site does not constitute the operation of a "hospital" within the meaning of § 307-59(B)(9) of the Town Code, as echoed by Chairman Douglas when he registered his vote in opposition to the adoption of the draft D&O, was the application of the definition of a "hospital" pursuant to the 1987 edition of the Occupational Safety and Health Administration's Standard Industrial Classification (SIC) Manual. In this regard, it is noted that such reliance was compelled by the absence of a definition of "hospital" within either Town Code § 307-4, entitled "Definitions", or Town Code § 307-59, entitled "Hospitals or nursing home". Specifically, this

application of the SIC is properly drawn from Town Code § 307-4, which provides that any terms not defined therein (or within the unavailing New York State Uniform Fire Prevention and Building Code) may properly be given the meaning provided within the SIC Manual, and by Town Code § 307-14, entitled, "Content of Table of Permitted Uses", which also directs that such definition be drawn from the SIC. As both DCE Rogers' determinations and the respondent ZBA's challenged determination permissibly drew their applied definition of "hospital" from the SIC, the Court first notes that § 8069 of the SIC, entitled "Specialty Hospitals", defines same as "[e]stablishments primarily engaged in providing diagnostic services, treatment, and other hospital services for specified categories of patients", and provides examples including "alcoholism rehabilitation hospitals" and "drug rehabilitation hospitals". In addition, the Court notes that § 8361 of the SIC, entitled "Residential Care", defines same as "[e]stablishments primarily engaged in the provision of residential, social and personal care for children, the aged, and special categories of persons with some limits on ability for self-care, but where medical care is not a major element", and provides examples including "alcoholism rehabilitation centers, residential: with health care incidental", and "drug rehabilitation centers, residential: with health care incidental".

Having applied these SIC-based definitions, the Court notes first that the evidence adduced before the respondent ZBA indicated that the proposed project facility will be designed and staffed to provide medical treatment and related health care services to individuals who suffer from the diseases of alcoholism and/or chemical dependence, primarily subsequent to their detoxification, using a residential substance abuse treatment program model under licensing by the New State Office of Alcoholism and Substance Abuse Services (OASAS) pursuant to Article

32 of the of the Mental Hygiene Law (MHL) and 14 NYCRR Part 820. In connection therewith, the adduced evidence indicated that persons admitted to the petitioners' proposed OASAS-licensed treatment facility (hereinafter, patients) would receive 24/7 medical care and treatment on-site from a staff of medical/health professionals which would include a minimum of 2 medical doctors and 15 nurses, as complimented by an additional team of 2 licensed psychologists and 23 social workers, counselors and technicians, all of whom would implement the individual treatment and recovery plan developed for each patient admitted to the proposed project facility. More specifically, all patients would receive periodic medical assessments and ongoing treatment for medical ailments and chronic diseases, whereas patients determined to be suffering from withdrawal symptoms would be stabilized through the use of "medication-assisted treatment", and patients determined to be suffering from co-occurring mental illness would be treated with "medication therapy" to alleviate the symptoms of same, through the administration of these treatments on a daily basis by a medical doctor, registered nurse or nurse practitioner. Pursuant to the OASAS licensing requirements, the individual treatment and recovery plan developed for each patient would include initial and ongoing drug/alcohol screening, individual counseling, group counseling, family counseling, chemical abuse and dependence awareness education, chemical dependence relapse prevention counseling and generalized healthcare services throughout their anticipated 28-45 days of in-patient treatment at the proposed project facility. Notably, the adduced evidence which supported this overview of the medical treatment and related health care services to be provided to patients at the proposed project facility was derived from the hearing testimony and written presentations offered by Frank Cicero and Brian Baldwin, LCSW of Cicero Consulting Associates, Inc., and Peter Millock, Esq., of Nixon

Peabody, LLP, and Dr. Ernst Jean, MD, during the public hearing sessions conducted on September 18, 2019 and October 16, 2019.

Of further significance, the Court notes that the evidence presented by these hearing witnesses further informed that the OASAS certification, which the proposed project facility will operate under, specifically mandates that such a residential substance abuse treatment facility be operated under the supervision of a Medical Director who is a NYS licensed physician possessing the required education, training and experience in substance use disorder services, and who shall personally bear overall responsibility for, *inter alia*, all medical services provided by the program, oversight of routine medical care, specialized services and medications, and the supervision of medical staff in the performance of all medical services. Notably, Dr. Jean's testimony on October 16, 2019, offered through the prism of his personal experience as the Medical Director of an OASAS-certified residential substance abuse treatment facility located in Broux County, revealed that patients do not qualify for such treatment unless they are seriously ill and require extensive 24-hour medical presence to address their addiction-related treatment needs and their commonly presented co-occurring disorders, which include coronary artery disease, hypertension and Chronic Obstructive Pulmonary Disease (COPD), opining that such a level of significant medical care cannot be properly characterized as mere custodial care.

Despite the considerable experience-based expertise reflected in the testimony and extensive written submissions presented by these witnesses in connection with the respondent ZBA's efforts to examine the nature of the medical care to be provided to the petitioners' patients, and their shared opinion that the petitioners' proposed project facility would provide diagnostic services and treatment which would be consistent with that provided at alcoholism

and drug rehabilitation hospitals as defined by § 8069 of the SIC, Chairman Douglas, alone amongst the members of the respondent ZBA, rejected that evidence and elected to register the only vote to deny the petitioners' interpretation application based upon his conclusion that the medical care to be provided to such patients would be incidental to the primary care they were to receive. Although Chairman Douglas declined to support this conclusion by identifying the specific nature of the primary care that he believed would predominate over the medical care that each patient would receive at the proposed project facility, he did indicate that his vote was based upon his determinations that patients would primarily be cared for by nurses and social workers, that the presence of doctors doesn't establish that the proposed project would constitute the operation of a hospital, and that the administration of medication and the performance of diagnostic assessments/examinations and counseling could be accomplished in non-hospital settings.

Against this backdrop, having considered the evidence adduced before the respondent ZBA, and having evaluated Chairman Douglas' articulated factual bases for his vote to deny the petitioners' interpretation application, the Court finds little difficulty concluding that there is neither a reasonable nor rational view of that adduced evidence which would support the challenged determination reached by the ZBA upon the sole vote of respondent Chairman Douglas. In this regard, the Court finds that all three of the bases proffered by Chairman Douglas in support of his disapproving vote bear little, if any, relevance to his ultimate determination that the medical care to be provided to the petitioners' patients would be incidental to the primary care they were to receive, as reflected by the conclusory statements he ostensibly offered to support his minimization of the significance of the adduced evidence detailing the routine

medical care that would be delivered to all patients of the proposed project facility. Indeed, the Court's scrutiny of each of the three findings offered by Chairman Douglas in support of his vote, reveals the ambiguous nature of such findings in relation to his ultimate conclusion that the medical care to be provided to the petitioners' patients would be incidental to the primary care they were to receive, as his findings that the petitioners' proposed project facility would be staffed by medical doctors on-site, that more patient care would be delivered by nurses than doctors, and that such patient care could be equally provided in either a hospital or a non-hospital setting, more persuasively undermines his ultimate conclusion rather than supports it. Consequently, noting the absence of support within the challenged determination for Chairman Douglas' ultimate conclusion that the medical care to be provided to the petitioners' patients would be incidental to the primary care they were to receive, the Court's consideration of the hearing testimony and submissions offered by the petitioners' expert witnesses, Frank Cicero, Brian Baldwin, Peter Millock, Esq., and Dr. Ernst Jean, MD, with specific regard to the extensive and consistent medical care that would be provided by the petitioners' to the patients of their OASAS-certified residential substance abuse treatment facility, strongly indicates that such care is not consistent with mere residential care defined by § 8361 of the SIC, yet is entirely consistent with the care provided by a specialty hospital as defined by § 8069 of the SIC.

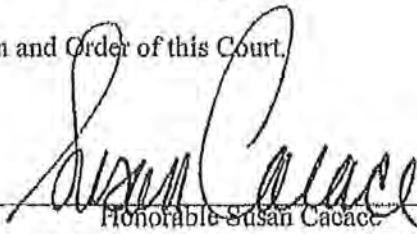
Accordingly, as this Court's role in reviewing the respondent ZBA's challenged determination is limited to a retrospective examination and analysis of the record before it to determine the level of evidentiary support therein for that determination, this Court finds that the record in this case compels it to conclude that the respondent ZBA's challenged determination to deny the petitioners' application for an interpretation that their proposed operation of an OASAS-

certified residential substance abuse treatment facility on the project site is consistent with that of "Specialty Hospital" as defined by § 8069 of the SIC, was improper, arbitrary and capricious, and constituted an abuse of discretion, as it was neither rational nor reasonable to reach that determination due to the patent absence of a sufficient evidentiary basis of support for same within the record (*see Matter of Sanantonio v Lustenberger*, 73 AD3d 934, 935; *see also Matter of Stone Indus., Inc., v Zoning Bd. of Appeals of Town of Ramapo*, 128 AD3d 973; *Matter of LaRusso v Neuringer*, 105 AD3d 743; *Halperin v City of New Rochelle*, 24 AD3d 768).

Based upon the foregoing, the respondent ZBA's challenged determination is hereby annulled and set aside (*see Matter of Sasso v Osgood*, 86 NY2d 374, 384 n. 2; *see also Matter of Ogden Land Dev., LLC v Zoning Bd. of Appeals of Vil. of Scarsdale*, 121 AD3d 695, 696-97; *Matter of Haberman v Zoning Bd. of Appeals of Town of E. Hampton*, 85 AD3d 1170, 1171; *Matter of Campbell v Town of Mt. Pleasant Zoning Bd. of Appeals*, 84 AD3d 1230, 1231; *Matter of Rusciano v Ross*, 78 AD3d 715, 716), and to the extent that the petitioners additionally seek declaratory relief, the Court hereby remits this matter to the respondent ZBA for the issuance of a determination that the petitioners' proposed establishment of an OASAS-certified residential substance abuse treatment facility on the project site does constitute the operation of a "hospital" within the meaning of the Town Code (*see Ogden Land Development, LLC v Zoning Bd. of Appeals of Village of Scarsdale*, 121 AD3d at 697).

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
September 24, 2020



Honorable Susan Cacace
Acting Justice of the Supreme Court

10/2/2020

-17-
Trusty

HON. SUSAN CACACE
WESTCHESTER COUNTY
JUDGE

TO:

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EXHIBIT 6



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January 4, 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
January 5, 2021 Planning Board Meeting*

Dear Chairperson Taylor and Members of the Board:

We are in receipt of the letter of counsel for the neighborhood opposition group, dated December 31, 2020. We offer the following brief responses to each of the points raised therein.

As set forth in my letter to the Board of December 17, 2020, the Supreme Court, Westchester County has set aside the 2019 Determinations of the Director of Code Enforcement and the January 2020 3-1 Determination of the Zoning Board in favor of the Applicants, constituting a statutory "default denial", in holding that the proposed use is a permitted "hospital" under the Town Zoning Code. On December 16, 2020, as directed by the Court, the Zoning Board held in pertinent part, as follows:

NOW THEREFORE BE IT RESOLVED, that pursuant to the Decision, Order and Judgment (Index #1167/20) by the Honorable Susan Cacace, Acting Justice of the Supreme Court, the applicant [sic] proposed establishment of an OASAS-certified residential substance abuse treatment facility on the project site constitutes the operation of a "hospital" within the meaning of the Town Code. This matter is hereby put back on the ZBA agenda and, if necessary is referred to the Planning Board for further review.

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These Determinations are binding on this Board. The fact that the opposition group, whose motions to intervene in the Supreme Court action were twice denied by the Court, disagrees and are “pursuing [their] appellate rights before the Appellate Division” is of no relevance to the proceedings before this Board. As it is the Applicants’ view that the opposition group, as a non-party, is clearly precluded by law from appealing the Supreme Court’s Determination, we have moved to dismiss the group’s three pending appeals. That motion is pending determination in the Appellate Division, Second Department. Notably, the group has been consistently unsuccessful in its legal efforts to contest the Applicants’ rights with respect to its specialty hospital. Perhaps that fact should bear on the Board’s assessment of the validity of the group’s claims going forward. The following “bullet points” correspond to those counsel’s December 31 letter:

- With respect to counsel’s claim that “an Environmental Impact Statement is required under SEQRA”, we respectfully submit that that claim is rendered demonstrably false by the numerous submissions made to this Board by the Applicants’ expert consultants and the Town’s own expert consultants. In particular, as set forth in my December 17 letter, in January of 2019, the Applicants submitted to the Board a detailed analysis of the proposed use *vis a vis* the SEQRA criteria for a determination of significance – demonstrating there would be no significant adverse environmental impact to warrant an Environmental Impact Statement. In addition, the Applicants submitted as part of their application, a list of 54 positive and mitigative aspects of its prospective hospital operations, including special accommodations for the Town and Town residents, which would not only further ensure there would be no significant adverse environmental impacts, but that there will be significant positive impacts, and which the Applicants propose as conditions of approval.

- In further regard to counsel’s purported rationale for requiring an Environmental Impact Statement, on March 28, 2019, as the Board had requested in order to facilitate efficient and thorough review by the Board and the public, and just as counsel suggests, the Applicants submitted a 4-volume “Consolidated Expanded Environmental Assessment Report” consolidating all prior submissions to date, with a fully updated version of their environmental analysis and their responses to all public comments on this matter since the initiation of the application in July 2015. This was augmented by several pieces of correspondence between the Applicants’ and the Town’s respective traffic consultants in April 2019. This submission, which contained said fully updated environmental analysis, more than satisfies the intentions of any Environmental Impact Statement. As requested by the Applicants two years ago, the Applicants’ submissions to date clearly demonstrate that the Applicants are entitled to a Negative Declaration, or at the very least, a Conditioned Negative Declaration, under SEQRA.

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- With respect to counsel's claim that the proposed specialty hospital "would violate the Town's requirement" of State road frontage for hospital special permits, that is a very misleading statement. As counsel well knows, the Applicants have applied to the Zoning Board for an area variance from the frontage requirement that was added to the hospital special permit requirements in 2003. In yet another Zoning Board and court proceeding in which the opposition group was unsuccessful, the Zoning Board rejected the group's spurious argument that that said variance is a use variance, not an area variance. Since then, the Supreme Court, Westchester County and the Appellate Division, Second Department, have put that issue to rest once and for all, finding that a State road frontage variance is, in fact, an area variance.

- With respect to counsel's claim that the specialty hospital "would run afoul of the Town's 2016 Master Plan", which designates the Quaker Ridge area as a "scenic resource", unlike a 20-lot residential subdivision, for example, the proposed hospital will use the existing buildings on the site, whose exteriors will not be altered, there will be no construction, other than to update the septic system to better protect the environment and the entrance way for traffic safety, with almost 50 wooded acres to be preserved as is. No sensitive environmental features will be disturbed at all. Thus, the quality of the Quaker Ridge area as a "scenic resource" will not be negatively affected in any way whatsoever. The Applicants' Expanded Environmental Assessment Report discusses at length the consistency of the proposed use with the Town's Master Plan and Open Space Plan.

- With respect to counsel's claim that the proposed specialty hospital would significantly affect the neighborhood character as a result of traffic, the issue of traffic has been exhaustively studied at this point, with significant mitigation measures provided, and with the Town's expert traffic consultant essentially finding that there will be no significant adverse traffic impacts, with the highest level of service, Level A, being maintained at all relevant intersections. The additional traffic will be significantly less than that which would be generated by uses permitted as of right.

- With respect to counsel's request that the Board should evaluate the January 2019 Report of the opposition group's latest hydrogeologist in consultation with the Town's hydrogeologist, the Board has already done so. At the Board's December 2018 meeting, our hydrogeologist gave a Powerpoint presentation regarding the extensive well pump testing the Applicants performed in August 2018, which clearly demonstrated that the use will have no significant adverse impact on off-site wells. The Town's hydrogeologist agreed that there will be no significant impact. Indeed, there will be little impact at all. Nonetheless, the Applicants have submitted an extensive post-approval well-monitoring program, also as approved by the Town's hydrogeological consultant. On February 26, 2019, the Applicants' hydrogeological consultant submitted their report

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refuting each and every comment in the referenced report of the neighbor's new consultant. To buttress that response, on March 6, 2019, the Applicants submitted an additional report confirming that, as a condition of approval, the Applicants will conduct an extensive post approval well-monitoring program of the off-site wells, and, in addition, will monitor and submit monthly reports of water usage to the Health Department and the Town. On April 11, 2019, the Town's hydrogeological consultant submitted his own response to the neighbor's consultant's report. He once again confirmed the Applicants' reports to be accurate and found no merit at all to the comments of the neighbor's consultant.

- Finally, with respect to counsel's request that the Board and staff should thoroughly review the representations made by the Applicants to the ZBA regarding the "program elements" of the proposed hospital to "confirm whether any newly proposed services would affect the Planning Board's SEQRA and land use reviews", there have been no such program changes, and certainly none that would be relevant to the Planning Board, SEQRA and land use reviews or within the legitimate purview of the Board's site planning and special permit authority.

With respect to counsel's reference to "detoxification", there has been no change in the Applicants' proposed use. This issue arose only because of the detailed review by the Zoning Board of the hospital's internal operations to determine whether it constituted a permitted "hospital", which internal operations are generally not relevant to this Board's review or even properly reviewable by the Board under applicable law. When the Applicants initially advised the Board that there would not be "detoxification" on site, but that detoxification would take place at a general hospital off-site prior to patient admission, the reference was to "detoxification" in its generic sense as understood by most laymen, not to the very technical classifications and terms of art utilized in the State OASAS Regulations, which will govern the specialty hospital. The Applicants' generic use of the term "detoxification" equates to what the OASAS Regulations refer to as the most acute level of detoxification or "medically managed withdrawal and stabilization services", which are designed for patients who are acutely ill from substance-related addiction or dependence, with severe withdrawal symptoms, at risk of acute physical or psychiatric co-morbid conditions. This level of detoxification takes place in general hospitals and will not take place – or be permitted by the regulations to take place - in the specialty hospital. Under the OASAS Regulations, patients who have been largely stabilized in a medically managed detoxification in a general hospital may "step down" to "medically supervised withdrawal and stabilization services", which is what the specialty hospital will be authorized by the Regulations to provide.

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Upon request of the Board, the Applicants will be pleased to provide the reports of its expert consultants provided to the Zoning Board with respect to its internal program operations, but once again, I respectfully submit that such matters do not fall within the Board's bailiwick. As we have stated from the outset, however, the public record of each of the two Boards reviewing this application shall be deemed part of the record of the other as well.

Thank you for your consideration.

Very truly yours,



Robert F. Davis

RFD:dds

c: Steven Laker (via e-mail)
Thomas F. Wood, Esq. (via e-mail)
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EXHIBIT 7

PLANNING BOARD MEETING – JANUARY 5, 2021

INTRODUCTION

1. Good evening. I am Bob Davis, attorney for the Applicant. It has been a while, but you will recall that we are seeking your site plan approval and a special permit for a specialty hospital to serve those suffering from substance use disorder. We will be using the existing buildings on the property, which have been used for the same type of hospital and for other institutional purposes since the 1920's. There will be no construction except for updating the septic system and some modification of the entrance way.
2. As we have not appeared before you on the substance of the application since January, 2019, I will summarize where we were at that time and what has transpired in the 2 years we have been delayed since then, through no fault of our own.
3. At the December 2018 meeting, our hydrogeologist gave a PowerPoint presentation regarding the extensive well pump testing we performed that past August, which clearly demonstrated that the use will have **no significant adverse impact on off-site wells**. The Town's hydrogeologist agreed that there will be no significant impact. Indeed, there will be **little impact at all**. Nonetheless, we have submitted an extensive post-approval well-monitoring program, also as approved by the Town's consultant.
4. At the January 2019 meeting, our traffic engineer gave a PowerPoint presentation with respect to traffic matters; including the substantial mitigation measures we have incorporated into the application, which demonstrated that the use will have **no significant adverse traffic impacts**. While the Town's consultant raised some minor technical matters at that meeting, which had already been addressed or which were addressed shortly thereafter to his satisfaction, he essentially agreed with the basic premise that there will also be **no significant adverse traffic impacts**.
5. Thus, significantly when we left off with you, we had demonstrated, by exhaustive expert analysis, to the satisfaction of your own independent experts, that with respect to the 2 principal environmental concerns raised by the neighbors – off-site wells and traffic – there will be **no significant adverse impacts**.

6. On January 10, 2019 we submitted our detailed analysis under the SEQRA Regulations, which addressed the enumerated regulatory criteria for your determination of significance under SEQRA. Employing those criteria, we demonstrated that the proposed action will have **no significant adverse environmental impacts** and that therefore, we are entitled to a **Negative Declaration** or, at least, a Conditioned Negative Declaration under SEQRA. (See “Executive Survey” and Appendix 31 to “Consolidated Expanded Environmental Assessment Report, 3/28/19). **Based on your own experts, there is no basis in your record, for a Positive Declaration.**
7. On January 25, 2019, we received the two approvals for the hospital required from the Westchester County Health Department, which have been renewed to date:
 - (1) Approval of the water supply system, which was based upon and incorporated the Health Department’s prior approval of our water demand calculations, which accordingly were incorporated in our well pump testing, and
 - (2) Approval of our state-of-the-art septic system, which will replace most of the existing system and be much more protective of the environment.
8. On February 5, 2019, we responded to the letter of the neighbors’ counsel, dated February 1, and we addressed what, in our opinion, was only a last ditch effort to derail the application after seeing that we had clearly demonstrated a lack of significant adverse environmental impacts. However, as I will discuss shortly, they *were* successful in causing this substantial delay.
9. The focal point of the neighbors’ February 2019 submission was the report of their new hydrogeologist – who replaced their prior one - critiquing our well pump test protocol, which had been approved by Town’s professional staff and its own consultant.
10. On February 26, 2019, our consultants submitted their report refuting each and every comment of the neighbors’ new consultant. To buttress that response, on March 6, 2019, we submitted an additional report confirming that, as a condition of approval, we will conduct an extensive post-approval well monitoring program of the off-site wells. In addition, we will monitor and submit monthly reports of our water usage to the Health Department and the Town.

11. On April 11, 2019, the Town's hydrogeological consultant submitted his own response to the neighbors' consultant's report. He, once again, confirmed our reports to be accurate, and **importantly, found no merit to the comments of the neighbors' consultant.**
12. On February 22, 2019, the Town's traffic consultant submitted a report updating his comments at the January 2019 meeting on our December 2018 submission, which were largely technical and non-environmental in nature. Significantly, he found our daily trip estimates acceptable and that they **would not have a significant impact on any of the studied area intersections.**
13. On March 21, 2019, we responded to the Town traffic consultant's February comments. We received follow up comments from him on April 16, and we fully addressed those in our response of April 25, 2019. **The Town's consultant then orally advised our traffic engineer that he is satisfied with our final responses.**
14. Significantly, on March 18, 2019, in order to buttress our SEQRA analysis we submitted in January demonstrating non-significance and our entitlement to a Negative Declaration under the SEQRA criteria, we submitted a list of **54 positive and mitigative aspects of the hospital operations, including special accommodations for the Town and Town residents,** which are incorporated in our application and which **further ensure not only that there will be no significant adverse environmental impacts caused by the proposed specialty hospital, but there will be significant positive impacts.** We have proposed them to be conditions of approval. (See Appendix 37 to CEEAR.)

15. At the January 2019 meeting, the Board suggested that since this has been such a long process – now two years longer still - with so many submissions - in order to accommodate efficient review by the Board and the public, we should consolidate all of our submissions in a “user friendly” manner. Thus, on March 28, 2019, we submitted a voluminous four-volume set of our prior submissions (“Consolidated Expanded Environmental Assessment Report”) with a fully updated version of the environmental analysis we had submitted with our original application in July 2015. These volumes include our strong SEQRA non-significance analysis I just mentioned in the “Executive Summary” and Appendix 31, as well as our 54 stipulated conditions in Appendix 37, and all of the other materials we have submitted, including **detailed responses to every single public comment since the outset of this process in 2015. There has already been very substantial public comment.**
16. Accordingly, we then requested that your Board proceed with its SEQRA determination at its May 2019 meeting. Unfortunately, that did not happen and we last appeared before you on June 4, 2019 to summarize everything I have just said and to tell you of some other events which I will now address and update.
17. Regarding the 2-year delay since we saw you last - in February 2019, neighbors’ counsel raised, *for the first time*, the issue of whether the proposed use actually constitutes a permitted hospital use under the Town Zoning Code. This question was first raised after **four years** of extensive public review before the Zoning and Planning Boards, which had even included two litigations.
18. As a result, at its February 2019 meeting, the Planning Board asked staff for advice on this “threshold” issue, even though we were far beyond any such “threshold” of this matter.
19. On March 21, 2019, the Director of Code Enforcement rendered a memo to the Board, stating his erroneous opinion that the proposed specialty hospital was not, in fact, a permitted “hospital”, based on his **demonstrably false premise** that the use would entail primarily “custodial care” and not “medical care”. This erroneous opinion effectively forestalled your Board’s review of the application for 2 years.
20. We totally refuted the Director in my comprehensive submission of April 23, 2019, which was accompanied by reports of two of our expert hospital consultants.

21. There can be no legitimate question that the primary purpose of the proposed specialty hospital is the medical treatment and health care of those suffering from the disease of addiction.
22. Putting aside the inarguable facts and numerous legal grounds we explained in our April 2019 submission, which overwhelmingly demonstrated that this is a permitted hospital, perhaps first and foremost, from the outset, this has been a matter of **common sense**. We have a main hospital building which was built, designed and used for some 30 years for the same type of addiction treatment hospital for which the Applicants will use it. It is currently configured with hospital rooms and office spaces, and after renovation, will continue to be. It will be occupied by doctors, nurses, psychologists and other medical and behavioral health care professionals. Indeed, there will be some 42 such health care professionals to serve the projected initial population of some 42 patients. The hospital-type rooms in the building will be occupied by those patients, who are suffering from a disease, for which they will be treated by health care professionals. The ancillary buildings will be utilized for the same purposes. The operation will be strictly regulated as a medical facility treating substance abuse issues under the State Mental Hygiene Law and require licensure thereunder by the State Office of Alcohol and Substance Abuse Services known as "OASAS". Patient medical insurance will be accepted. Obviously, this is a medical use, not merely "custodial care".
23. Thus, we requested in our April 2019 submission that the Director, in consultation with the Town Attorney, in light of many legal and factual matters of which he apparently was unaware or misunderstood, change his opinion accordingly.
24. However, on May 16, 2019, the Director issued a second memo, declining to change his prior Opinion. In fact, he added a second incorrect determination, that the State road frontage variance we require from the ZBA is a use variance, not an area variance.

25. His opinion on the frontage variance was barred by law. The Zoning Board had already made a determination in March 2017, in rejecting yet another claim of the opposition group - likewise, the claim that the frontage variance is a use variance - in finding that it is, in fact, an area variance. The Supreme Court, Westchester County dismissed the neighbors' Article 78 proceeding challenging the ZBA's determination as premature. Since then, the courts have ruled in two other cases that a variance from a State road frontage requirement is an area variance, not a use variance, which put that matter to rest, once and for all.
26. In May 2019, we submitted an appeal to the Zoning Board from the Director's erroneous Determinations. The Zoning Board conducted its first meeting on our appeal in June 2019 and then a lengthy public hearing over 3 sessions from August to November 2019. The Applicants submitted extensive expert testimony and reports from a number of witnesses with experience with such hospitals, including management consultants specializing in them, the Former General Counsel of the New York State Department of Health, a physician who serves as the Medical Director of a similar hospital, and an expert attorney on the Americans With Disabilities Act, which requires the Town to make reasonable accommodations for these Applicants.
27. In January 2020, the Zoning Board, by a 3-1 vote, with two recusals and one abstention, adopted a well-reasoned resolution granting the Applicants' appeal from the Director of Code Enforcement and finding that the use is, in fact, a permitted "hospital". However, due to the State statutory requirement that there must be 4 votes of a 7-member board for an approval, the 3-1 vote in the Applicants' favor constituted a "default denial" under the statute.
28. As a result, we were compelled in February 2020 to bring an Article 78 proceeding to set aside the Zoning Board's "default denial". Although the Board had voted 3-1 in our favor, the Board vigorously opposed our Article 78 proceeding and asked the Court to uphold the "default denial". The neighborhood opposition group also sought permission of the Court to intervene in the proceeding against us.

29. The Court twice denied the neighbors' request to intervene. Finally, on September 24, 2020, the Court, in a 10-page Decision Order & Judgment, ruled strongly in favor of the Applicants, finding that the proposed use *is* a permitted "hospital", and ordering the Zoning Board to render a decision in the Applicants' favor in accordance with that determination. I have provided a copy of the Court's Decision to the Board. Our motion to dismiss the neighbors' attempt to appeal the Decision is pending.
30. Ultimately, at its meeting of December 16, 2020, the Zoning Board complied with the Court's Order, in adopting a Resolution that the use is a permitted "hospital", as held by the Court.
31. Accordingly, we may and must now proceed before this Board for a SEQRA determination before any further proceedings with the Zoning Board for the frontage variance. We ask that the Board now refresh its recollection by reviewing the 4-volume record of this application we submitted in March 2019, including our analysis of the SEQRA criteria for a Negative Declaration and our 54 stipulated conditions, (CEEAR, Executive Summary and Appendices 31 and 37), as augmented by our April 2019 correspondence with your traffic consultant and the April 2019 report of your hydrogeologist. It easily meets the requirements an Impact Statement. Volume 1 is most relevant if you want to limit your review efforts.
32. At this juncture, we have done everything asked of us by the Town since our initial 2015 application, **5½ years** ago, and then some. Based on the substantial record and proceedings to date, including your own expert reports, which have amply demonstrated that the proposed use **will not have any significant adverse environmental impact**, we ask that the Board now proceed – finally - with its rendering of a Negative Declaration, or at the very least, a Conditioned Negative Declaration, under SEQRA, either of which should incorporate our 54 stipulated conditions, in order that the review process may move forward to conclusion before your Board and the Zoning Board. Thank you.

EXHIBIT 8



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January 21, 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*

Dear Chairperson Taylor and Members of the Board:

We are in receipt of the letter of the neighborhood opposition group's counsel, dated January 20, 2021. In my letters to the Board of December 17, 2020 and January 4, 2021, as well as my comprehensive presentation at the January 6, 2021 meeting, we have amply refuted counsel's repeated request that the Board adopt a Positive Declaration under SEQRA. In short, there is no basis in the comprehensive record before the Board to render any SEQRA determination other than a Negative Declaration or Conditioned Negative Declaration. Counsel acknowledges that the Board has all it needs in the Applicants' four-volume "Consolidated Expanded Environmental Assessment Report" to render its SEQRA Determination. A public hearing will be held on the application regardless of that determination. Counsel's request is simply another effort to forestall the application in the opposition group's seemingly never-ending war of attrition.

Further, we strongly object to the opposition group's attempt to postpone or in any way control the scheduling of the further review of this application. The group has had in its possession, due to its constant monitoring of the application, all of the items comprising the Consolidated Expanded Environmental Assessment Report, which were filed from 2015-2019, *well prior* to its submission in March 2019. Moreover, in the various proceedings before the Boards and the Court, we have repeatedly referenced the four-volume compendium, as counsel is well aware. As just one of many examples, see my outline of my June 4, 2019 presentation to the Planning Board, when I specifically discussed our submission of the four-volume set in

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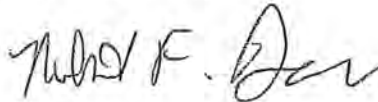
March 2019. The fact that counsel for the group has chosen to wait some two years before “carefully” going through it should be of no consequence whatsoever to the Applicants or the Board.

Counsel’s request is rendered all the more outrageous by the fact that the Town’s review of this application, which involves no new construction, is now approaching **six years** in length, resulting in millions of dollars in unnecessary costs to the Applicants. No less than three years of the extensive delays in the review process have been caused by two litigations arising out of spurious claims of the opposition group, which have been soundly rejected by the courts. Quite simply, enough is enough!

As we have previously noted, the opposition group has comported itself throughout as if it is an equal partner in the application. It is not. Its members have the right only to be heard at public hearings on the application. On the other hand, the Applicants have substantial rights of due process in the consideration of their application and significant property rights, which are protected not only by State Law, but in this case, by Federal Law. We respectfully ask the Board to keep in mind the significant difference between the rights of the Applicants and those of the opposition group going forward.

Thank you for your consideration.

Very truly yours,



Robert F. Davis

RFD:dds

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)