

**Meeting Minutes**

THE REGULAR MEETING of the PLANNING BOARD of the Town of Cortlandt was conducted via Zoom webinar on *Tuesday, January 5, 2021*. The meeting was called to order, and began with the Pledge of Allegiance.

Vice-Chairperson Thomas A. Bianchi, presided and other members of the Board were in attendance as follows:

Steven Kessler, Board Member  
Robert Foley, Board Member  
Jeff Rothfeder, Board Member  
George Kimmerling, Board Member  
Valerie Myers, Board Member

Absent: Loretta Taylor, Chairperson

Also Present: Michael Preziosi, P.E., Director, DOTS  
Chris Kehoe, AICP, Deputy Director, DOTS  
Michael Cunningham, Deputy Town Attorney

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**CHANGES TO THE AGENDA**

Mr. Bianchi stated there will be a couple of changes to our agenda tonight. Under Correspondence, we will be adding Case No 2021-03 Foodtown. We will be moving the Hudson Ridge Wellness application to end of our agenda for discussion this evening. These changes to the agenda were adopted by the Board by Motion by Mr. Rothfeder with a second by Ms. Meyers. All present voting Aye.

**ADOPTION OF THE MINUTES OF THE MEETINGS OF DECEMBER 1, 2020**

Minutes were adopted by Motion by Mr. Kessler which Mr. Kimmerling seconded and all present voted “aye”.

**CORRESPONDENCE**

**PB 2018-23 a. Letter dated December 22, 2020 from Ralph G. Mastromonaco, P.E. regarding possible modifications of certain conditions of approval from PB Resolution 23-20 for the Mahlab Subdivision located on Teatown Road.**

Mr. Jeff Rothfeder I move we approve by Motion. Mr. Kessler stated, second. With all in favor saying "aye".

**ADDITION TO THE AGENDA – CORRESPONDECE**

**PB 2021-03 b. Letter and packet of information dated 12/23/20 seeking Planning Board Approval of propane exchange cage at Foodtown.**

Mr. Kimmerling move we approve this request via Motion. Mr. Kessler stated, second. With all in favor saying "aye".

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**RESOLUTION**

**PB 2020-12 a. Application of New York SMSA Limited Partnership, d/b/a Verizon Wireless, for the property of the Lake Mohegan Fire District, for recertification of the Special Permit for an existing cell tower located at 260 Croton Avenue.**

Mr. Kehoe stated that we are recommending holding this over until next month’s meeting. Mr. Foley made a Motion, seconded by Mr. Kimmerling that this application be adjourned to our next meeting on February 2, 2021 as per the applicant. With all in favor voted “aye”.

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**PUBLIC HEARINGS**

**PB 2020-10 a. Public Hearing: Application of Cortlandt CSG, LLC, for the property of 202 Cortlandt, LLC for Site Development Plan approval and a Special Permit and for Tree Removal and Steep Slope permits for a proposed 2.3 MW community solar power system located on an approximately 33.86-acre parcel of property located on the north side of Route 202, west of Lexington Avenue. Drawings latest revised December 21, 2020.**

Mr. Bianchi asked if the applicant was present. Kieran Siao project development manager with Dimension Energy – Community Solar & Battery Storage Company introduced himself. With me tonight is Brad Schwartz, Esq., from Zarin and Steinmetz, Keith Staudohar from Cronin Engineer and Kevin Jameson from Maser Consulting.

Mr. Siao stated the proposal is a 2.3 MW DC and 2.1 MW AC community solar project. Under NYS climate acceleration and community protection act the State is tasked with having 80% renewable energy by 2023. Within that initiative, it calls for 6,000 MW of solar by 2025. This is a project that is being developed as part of that NYS legislation.

Essentially it is a solar array that is connected to Con Ed's distribution grid and allowing local residents to save money on their electric bills if they subscribe to be part of the project. So, this project benefits the Town, the State and National level. It is good for local and for the government with the execution of a pilot agreement without strain on the local Town services.

Our site is 35 acres in size and is located on Lexington Avenue between Crompond Rd and Dyckman Rd. We feel this is well suited for solar development based on its size and commercial zoning. We believe we can design a project that complies with and even exceeds the Town's setback requirements in your code by 2 to 4 times.

We are designing a project that preserves a great deal of existing forest, thereby buffering this project to neighbors while preserving habitat on site. It was in October, 2020 that we had our last meeting with the Planning Board and since then we have submitted many voluminous documents including the tree inventory.

The tree inventory report was prepared by both Maser Consulting (applicant's consultant) and Weston and Sampson (Town consultant) have wrapped up the field work and tree inventory. Maser located the actual trees in the area of disturbance of approximately 11.5 acres. Weston & Sampson (the Town's consultant) reviewed and conducted species characterizations and health of trees.

In reviewing the tree inventory analysis, there have been 2,005 trees were identified. While that can sound like a lot of trees, but as a reminder it is a 35 acres total site with 11.5 acres of disturbed area. We must also keep in mind that there is an existing 3.5-acre gas pipeline right of way which leaves approximately 20 acres on site forested with the existing trees remaining on site for those approximately 20 acres.

Delving deeper now into the 2,005 trees and their species and conditions - over 44% of the trees are identified as invasive or un-desirables. The large driver of the species within this tree stand are Black Locust and Norway maple. Over 30% of the remaining native species trees are considered to be in poor health or dead. So, when we look at the full number of trees identified within the proposed project disturbance area over 60% are either un-desirable species or of poor health quality. We understand there are still a number of trees that are desirable and will need to be cleared for the project. For those we are proposing to mitigate for those trees with a combination of on-site planting, contributions to the Town's environmental fund as well as, where feasibly, a consultation with Town staff to identify locations for off-site planting. We believe with these measures we will be mitigating those trees proposed to be removed while maintain a robust buffer on all sides of the project.

We also provided Wetland Delineation which was conducted by Maser Consulting. Their survey has been confirmed by site visits by NYCDEP, NYSDEC and the Town's consultant Weston & Sampson. All parties have agreed with Maser's delineated wetland boundary and through the design of our system we have created a project that will result in no impacts to any of the wetlands on site regardless of jurisdiction, Town, Army Corp of Engineers, or State which is only wetland B located in the southwest corner of the property. Keeping in mind that the Town maintains its own 100-foot regulated buffer. This project has been designed to mitigate any impact within the wetland buffer. So, all of the wetlands on the western side of the project – their buffers will not be impacted. The only proposed impact would be in a small wetland buffer located within the existing natural gas right-of-way. This man-made small wetland was created as part of the grading for the gas pipeline. While, we believe this is a low-quality wetland and we are not impacted the wetland itself. There is a slight impact to the buffer area as a result of our access road and we have designed this to minimize that impact and further are proposing to mitigate that disturbance through a series of wetland plantings on the site.

Cronin Engineering has provided a full level site plan that has been reviewed in previous meetings that includes existing conditions, site layout, zoning compliance, tree removal and planting and erosion and sediment control. Back in October one of the comments received by members of the public was concern about our access off Dyckman Road. That was something we took under consideration and in this revised site plan shows access off Lexington Avenue only which will be used for both construction and operation with no proposed access off Dyckman Road.

Mr. Siao continued, the other major discussion point is a fire access and fire safety. We have had several conversations with Martin Rogers, P.E., of the Town's Code Enforcement division and have tweaked our access road the fire code, for hose runs and have ensured that the current proposed access road complies with those fire standards. On November 16, 2020 the Planning Board received a letter from George and Madeline Fouhey of Baron DeHirsh Road. We appreciate their comments and we provided a response matrix addressing to each of their comments.

We also provided a Biodiversity memo which I understand there were some questions and comments by the PB members during the work session. This study in response to a comment within Weston and Sampson's tree inventory where they suggest perhaps a biodiversity study be performed. Kevin Jameson from Maser, ecological lead has put together an analysis. Kevin has proposed a series of conservation measure that we are asking the PB to accept in lieu of a full biodiversity study. This is something that Weston and Sampson have seen, reviewed and deemed to be reasonable. Turning the presentation over to Keith Staudohar from Cronin to give an overview of the civil site plan.

Keith Staudohar stated Happy New Year to all. The tree cut line proposed for this project meets or exceeds the local law requirements. The tree cut line is 100 feet to the north of the property line and about 108 feet to the nearest house. The cut line is approximately 316 feet to the west property line on Baron DeHirsh and approximately 526 feet to the nearest house. To the south the tree cut line is about 370 feet to the line and 580 feet to

the nearest house. To the east the tree cut line is 200 feet to Lexington Avenue. So, the solar panel area has been situation as central as we can make it and far away from the property lines as we can make it. As Kieran mentioned, the site is approximately 34 acres, it consists of wooded, open meadow and brush areas. It contains some trails, rights-of-ways and paper streets. It is zoned CD, Designed Commercial. There was some concern at the November, 2020 meeting about our access. We have now diverted our entire access to the site off Lexington Avenue. That access point will be used for both construction and post-construction maintenance. There will be no access or disturbance work up on Dyckman Rd. In fact we will be placing a barricade at that northern trail at the end of Dyckman to prevent anyone from coming down. So, there will be no access or services off Dyckman Road.

Mr. Staudohar continued bottom line on the trees we feel there about 866 trees that need to be mitigated. As part of that mitigation. We are looking at a combination of planting plans and contributions to the Town's environmental fund. As can see on the plan, we have trees proposed at Lexington Avenue at the gate at the southeast corner of the site. We also have trees located along the western flank of the solar array. Those two areas will be provided with new plantings that are indigenous and native to the area. We have a total of 132 trees proposed to offset the 866 trees to be mitigated.

Chairman Bianchi asked Mr. Staudohar to elaborate on the "mitigated" part of the tree 866 vs. 132. Mr. Staudohar responded that to mitigate the 866 trees we will be providing a combination of plantings as well as a contribution to the Town's environmental fund. So, we plant 132 trees subtracted from the 866. That delta would then be paid to the Town at what Mr. Staudohar believes to be \$150 per tree.

Mr. Foley asked if the 132 trees to be planted are saplings or more mature trees. Mr. Staudohar responded that they are supposed to be 2" to 3" caliper trees. We also proposed blueberry bushes and the like along the western flank. There are not going to be saplings. The evergreens that we have proposed for new plantings will be 6 to 8 feet high. Bushes will be sized at 2 to 3-gallon containers size. Mr. Foley asked are the bushes included in the 132 trees to be planted. Mr. Staudohar replied yes. There are 102 trees and 30 native bushes proposed.

Ms. Meyers asked if you can elaborate further on the 2,005 trees being proposed to be removed and 866 trees being mitigated and explain the delta there. Mr. Staudohar responded the 2,005 is the number of trees we have identified within the tree cutline on the 11.5 acres. Of those 2,005 trees there were a number of invasive species and undesirable trees and a further number that were in dead or diseased condition per the report. So, we subtract those from the 2,005 total to arrive at the 866 trees to be mitigated.

Mr. Bianchi pointed out doing the math a bit more, that means there are 1,215 trees within the cut line that have been determined to be undesirable, diseased, dead, or invasive. Keith confirms yes. There are 76 trees we are removing that are located on steep slopes that have to be counted twice as two trees. So, when you do all that math it is 866 trees.

Mr. Kimmerling stated the tree inventory from Daniel Biggs(Weston & Sampson) listed 3,123 trees. But then you are working off the number 2,005 vs. the 3,123? Keith says 3,123 is the total number of trees that were tagged. Weston and Sampson went out and tagged every tree that is 100 feet outside our cut line, along with all the trees with in our cut line. The 2,005 number is the trees that are within our cut line.

Mr. Staudohar continued, the loop road was designed to make the fire access requirements and this has been submitted to the Town Code Enforcement office and we have received a verbal approval for this layout for fire access.

As far as stormwater is concerned we have prepared a preliminary SWPPP as well as a preliminary erosion and sediment control plan. Our findings show that there will not be an alteration within the site's hydrology from pre-construction conditions. Based on that NYSDEC will only require an erosion and sediment control plan which has been prepared and submitted. We are in the process of putting together the book. But since we submitted the preliminary SWPPP we have received some detailed and technical responses from the Town Engineer, Mike Preziosi, and we are preparing our responses to those comments in the very near future. We do not believe is a stormwater is a hurdle on this project. I will now turn the presentation over to Kevin Jameson of Maser who will give an overview of the Biodiversity technical memorandum on behalf of the applicant.

Mr. Jameson stated thank you Keith, as way of background about myself I have over 20 years of experience in the field of environmental consulting and ecological studies, endangered species and wetlands. My 20-year experience has been with Maser Consulting a multi-disciplined firm environmental, land use and engineering. I am a professional wetlands scientist with a B.A. from Rutgers University and a Masters in biology and ecology from Montclair State University.

Maser was hired to provide a biodiversity technical memo dated 12/22/20. This memo was circulated to the Town and to the Town's environmental consultant. Before we get into the content itself, I want to establish the purpose of the memo which was not meant to be considered a full biodiversity study and we are not representing it as such.

Rather this memo is intended to proactively arrive at conclusions that most likely would be arrived at for this site if a full biodiversity study were conducted. This approach considers known characteristics at the site, the Town's intent to maintain biodiversity and factors in Maser's experience in common useful strategies conservation measures that can be implemented to provide for that maintenance of biodiversity and offer to mitigate possible impacts resulting from the proposed project. This approach was coordinated with the Town's environmental consultant – Daniel Biggs where he reviewed our draft technical memo. We then had conversations with Daniel Biggs to improve those strategies and conservation strategies to the site. The memo of 12/22/20 includes the conversation and recommendations of the Town's environmental consultant.

Mr. Jameson pointed out that the Town's biodiversity guidelines for assessments layout certain circumstances where a full biodiversity study is warranted and it generally is

applying to opens space or preserves or projects in near rivers or streams. The proposed project is not in those areas. Maser and the client does recognize that we are in an upland forest area and there is some wildlife habitat due to the nature of the existing conditions.

We respect the Town's desire to protect biodiversity and took that into account as we prepared this technical memorandum and identified a number of conservation measures that we think will be beneficial to the maintenance of biodiversity on the site. Highlighting now just a few things from the memorandum:

The site is in a fragmented landscape surrounded by roads, highways and residential developments. Internally it contains a gas pipeline and right of way and a disturbed wetland. It consists of upland forest cover type that is not rare or unique to this region.

To provide perspective, the conversion of this forest to a solar facility will result in less than 1% loss of the total tree cover in a 1-mile radius. The balance of the property outside of the proposed disturbed area includes upland forest wetland sand streams. Again, wetlands and stream will not be impacted by this project.

We researched the NYS database for threatened or endangered species. None were identified either on or adjacent to the site.

We are proposing certain conservation measures instead of a full biodiversity assessment. Our experience has been that we often arrive at the same recommendations for conservation measures with or without a full biodiversity assessment.

Mr. Rothfeder pointed out that on a project of this magnitude we would often require a full biodiversity assessment and not something just prepared from a desk-top. I am a little confused because Mr. Jameson referred to Daniel Biggs as the Town's environmental consultant but I thought he just did the tree survey. So, is he also involved in making decisions about biodiversity? Mr. Preziosi interjected that the Town's consultant does not make policy or guide decisions they simply make recommendations within their review memo's to staff for consideration by the Planning Board. So, any discussion or emails between the Town's environmental consultant and Maser does not constitute or represent a decision made by the Town's representative or the Planning Board. Mr. Rothfeder responded that he appreciates that clarification from Mr. Preziosi. Mr. Rothfeder stated I don't think we can arrive at recommendations on conservation measures without a full biodiversity assessment. The determination of mitigation measures should occur after our consultation with the Town's expert in biodiversity.

Mr. Jameson offered to provide more context in that this biodiversity technical memorandum was suggested by Weston & Sampson as part of their tree inventory. But also, for a biodiversity study if one was required. The purpose of our technical memorandum was to be proactive and understand the motivation of the Town's biodiversity guidelines. What we are proposing here is the best use case for the site – this is a site that is zoned commercial. This is a use that will result in the least environmental impact of any other use that could be proposed for this site under existing zoning. We

understand the motivation to preserve habitat. We are suggesting that the measures we are suggesting would be same most likely that we would arrive at ultimately after the full assessment.

If you compare this project to the Hanover Estates project which is where Dimension Energy solar project was approved. I believe Steve Coleman prepared a biodiversity assessment for that site and the same recommendations are contained within that report that are identical to what we have recommended here. Things like staying out of wetlands and buffers, placing conservation easements for the wetlands. Tree removal on site and meeting the spirit of what the Town's intentions are in a way that will allow us to maintain schedule here for our construction

Mr. Rothfeder stated I understand but we cannot short-cut our process and use only historical trends or typical trends because then we are operating half-blind in the process.

Mr. Jameson does not feel that is necessarily true because he feels there has been many visits to the site by W&S and both Dan and Kevin have ecological backgrounds. The way we designed this project is one that does not eliminate habitat. The phrases we kept in our minds when we designed were preserve and protect and improve and enhance. When you look at the various habitats on site, one could argue that the wetlands are the most critical from a habitat perspective. We are proposing to preserve and leave in place and not impact as part of our project. But we go even further and recommend putting the large majority of the wetlands into conservation easements to it is protected in perpetuity.

The majority of the trees on site will remain in place and un-disturbed. The portion we are impacting is predominately made up of undesirable and invasive species. One must also consider that we are not proposing a commercial development with parking lots that offers no habitat at all. Our use in tandem with the Croton Avenue project, what we are proposing here is that under the panels we will plant native low growth pollinating plants species which will mitigate. So, we are preserving habitat onsite where we can and then enhancing and improving habitat both on and off-site which I think meets the spirit of Town's biodiversity guidelines.

Vice-Chairman Bianchi pointed out that Jeff's point is well taken and we are all in agreement that a full biodiversity assessment will need to be done. There are several others waiting to speak this evening. Mr. Jameson highlighted the conservation measures that will be performed regardless of the full biodiversity assessment being required and just wanted to point out that this memorandum was not prepared primarily from a desk-top. We do have on the ground experience from the site. There were many site inventories performed including tree inventory, wetlands study, and State agency databases. The findings and recommendations in this memorandum are site-specific and come from valuable site data.

Mr. Foley acknowledged Mr. Jameson's comment that this was not just performed from a desk-top. But he would like to see more detail. Mr. Biggs is also on the call. Mr. Kimmerling asked Mr. Biggs if it seems that from his report dated 10/14/20 that full biodiversity report be undertaken? Mr. Biggs responded that while they were doing the



tree survey we did notice several amphibian and aviary species on site. As part of that we noted that in our study and recommend that the Town's biodiversity guidelines be followed. Mr. Jameson pointed out that the memorandum addressed each of the species mentioned.

Vice-Chairman Bianchi then opened the Public Hearing to comment and asked each person to please state their name and address for the record before speaking.

Cynthia & George Fouhey, 41 Baron DeHirsh Road. Our property is northwest of where you propose this solar energy farm. You opened your presentation that you feel this project will not interfere with nearby properties. That is not true. We can see from our house right now where you have markers on the trees. That means we will be able to see this actual solar farm. We are concerned with our property values as a result. We want to know if you can address that for us.

Michael Preziosi pointed out on the plan the location near where the Fouhey's were referencing.

Mr. Siao pointed out that the markers on the trees that the Fouhey's are referring to are not necessarily the limits of disturbance of trees that will be removed on site....

Mrs. Fouhey pointed out the words "not necessarily" cause her concern. She would prefer words like "absolutely". Mr. Siao mentioned the tree inventory was performed past the line of disturbance. Many of the trees that had markers will not all be cleared as part of this project. The setback from your property line off Baron DeHirsh to the cut line is around 380 feet. Further from the property line to the array itself is 520 feet. The Town's standard for setback is 100 feet. So we are setting our array back 5x the Town's standard. To address property values contained within the documentation we have submitted to the Town is industry standard studies and reports highlighting that solar array farms do not negatively impact surrounding property values.

Mr. Fouhey asked if any reports on property values that were not prepared by agencies that are not solar provider? What was submitted was by a solar industry provider. Since what has been provided was done by an industry proponent it seems to me their ideas are valueless.

Mr. Siao pointed out that the fact sheet included is from a large solar organization but the report itself was prepared by Cole Resnick which is a value advisory firm. Mrs. Fouhey asked who paid for that assessment. This is a joke. Mr. Siao responded that solar is not new to New York. This has been done in many places and the data shows that there has been no negative impact to surrounding residential uses.

Mr. Fouhey finds it hard to understand because one of the things people comment on is that we have this nature preserve behind us and that is one of the selling points for our house and if we are not going to have that it will definitely affect our property value. If you really feel that she is wrong about that would you be willing to put in writing that if

our property value is negatively impacted that you would be willing to compensate us for that.

Mr. Siao responded that all he can say is the data is the data and he encourages the Fouhey's to read and evaluate the report. He understands completely that the natural aspects of the site are valued here. The majority of the trees between the property line and fence line will remain in place and further if you look at the site plan we are proposing even more trees being planted. So several hundred feet of the tree cover will remain intact.

Mrs. Fouhey mentioned that the tree survey refers to some of the maples on the property as invasive. She is a poet so maybe she views it differently. Our neighborhoods actually honor the maples including the naming of some of our streets like Maple Row so these are not really considered invasive to us.

Mr. Siao commented that there from a botanical standpoint are many species of maple including some that are indigenous like sugar maple & red maple. However from the Town's own guidelines and tree ordinance a Norway maple is considered invasive.

Mr. Staudohar suggested a different view (sheet 4) of the plan and explained that it shows the tree cut line and 100 feet to the west of that all the trees were identified and then to the west of that it is all wooded to the property line to the west to the rear lots of Baron De Hirsh. All of that is still wooded. We are enhancing that area with additional plantings as well.

Mr. Bianchi mentioned that he does not believe a line of sight study was completed here and that could go a long way to answering some of the speaker's questions to see what the views would be from specific properties nearby. Keith said we would need permission to access people's properties to establish sight lines. Mr. and Mrs. Fouhey indicated they would be very willing to grant that access for that purpose and thanked the applicants for that offer.

Mr. Foley would also like to see some photometric. Mr. Preziosi explained that a visual assessment is required from the road as part of the application but if the homeowner is willing to grant access to the applicant for the purposes of establishing sightlines then that is acceptable as well.

Mr. Fouhey pointed out you are going to cut down 2,000 trees, saying that 800 are worthy and you are going to give us about 200 trees in exchange. This seems ridiculous to him. He doesn't understand how you can put in 134 trees but you are taking down 2,000. You haven't done a full environmental assessment.

Mr. Siao responded that the tree survey which was in intense was the environmental assessment on the site. If you look at the total number of trees within the area of disturbance a number of them are considered undesirable, invasive, diseased or dead by the Town's tree ordinance.

Mr. Preziosi pointed out the town's Tree ordinance specifies which trees are not permitted for re-planting of invasive species or undesirables. Does not mean there is a requirement to remove them from the site. Even diseased or dead trees might have an ecological benefit. Be careful in that general assessment. The Planning Board makes the final determination and assessment as to any specific tree planting requirements for applications before them. That is still outstanding and not been resolved.

Mr. Siao appreciates Mr. Preziosi's clarification. He also points out that there are maples indigenous to the U.S. and those that are not. Norway maple is considered a non-native invasive species.

Mr. Fouhey asked could you put up a hedge around the areas that face residential properties. If you are cutting down 2,000 trees maybe you could put up tall 10 foot hedges to protect nearby neighbors from visual impact. Mr. Jameson a hedge can certainly be considered for mitigation if the Planning Board agrees.

Mr. Bianchi thanked the Fouhey's and then asked Mr. Preziosi to promote the next speaker.

Ms. Anne Lockwood (no address given) mentioned she is a musician and she is interested in the 76db mentioned in the submissions as part of the solar string inverters. How many solar string inverters are planned to be installed on this site?

Mr. Siao responded there are 17 solar string inverters proposed at 76db each. Ms. Lockwood said so this is not a simple multiple 17 by 76 to arrive at noise impact. But certainly, the installation of 17 would have more impact than a single one would.

Mr. Siao replied yes, that is not really how acoustics work. Noise deteriorates with distance so you are correct it is not just a multiplier. Even with a combined decibel rating of these 17 inverters the project is set back far enough that it will not be heard above the existing Town noise standard which is 60 dp. Ms. Lockwood responded the distance argument over noise depends on the frequency band of the noise. It is her understanding that solar string inverters generate low frequency band of sound of 40 hz to 80 hz or is it a high frequency sound?

Mr. Siao could not speak directly to the frequency question but what he can say is that it is around 70 decibels of noise which is equivalent to 2 people have a conversation or a refrigerator. So, if you think about standing several hundred feet away from your fridge you would not hear that noise. Ms. Lockwood said the low frequency sound and how it travels is something she is concerned about.

Mr. Siao suggested that Planning Board members can speak to their experience with the Mill Creek school solar facility.

Mr. Preziosi promotes Mr. William Hart to speak. Mr. Bill Hart lives at 33 Baron DeHirsh Road. From the end of his property he can see the trees marked as his neighbors mentioned earlier. So, he is concerned about those and if they are removed it will change

the visual impacts to his property. He is appreciative of the offer for a visual assessment from his property and gives permission to the applicant to access his property. He noticed a black vinyl coded chain link fence on the PDF as part of the protection around the solar panels. Not a really visually attractive fence and he would like some bushes to be planted in front of that. Mr. Hart mentioned that there are many trees in the area that warrant saving including white oak, pin oak, maple and tulip and they are beautiful and he would hate to see that disrupted any more than absolutely necessary.

Mr. Bianchi thanked Mr. Hart and asked for the next speaker.

Cynthia Manchurian, 100 Glendale Road in New Castle. She is interested in this application because she was quite involved in the loss of 350 trees for the Sunshine home project. What she recommended to New Castle is to take a serious look at what constitutes biodiversity. The truth is we are not looking for an Olmstead Park type environment and when you look at the trees that are in this biodiversity corridor we need all sorts of trees in all states of condition. That goes from the saplings to the mature to the dead and dying and back down to the ground to support healthy soil and the rebuild of the saplings. They all depend on the other. It is the circle of life. We lost our battle with Sunshine Home. The notion of putting 2" caliper trees in that area with rocky steep slopes under other existing trees and no one is tasked to follow the health of these trees say 2 years out.

Ms. Manuchrian encourages you to look at your Croton to Highlands Biodiversity Plan written by Michael Clements. I am sure many of you are familiar with it. Look at it, figure an on page 25 is a map of this entire "greater Teatown area" that includes this area of Cortlandt where you are proposing this solar project. You should absolutely require a full environmental assessment for this project. We are not only worried about animal life and plant life that is endangered you also want to protect what you have with respect to existing native species of all time. We should protect all animal life we have. I encourage you to require a full environmental assessment. Taking down 2,000+ trees and saying you are going to plant 100 and then give a donation to an environmental fund doesn't cut it. I can understand and appreciate the invasive species. Losing 2/3 of the trees being eliminated from this site does not make sense without doing a full environmental assessment.

Mr. Bianchi asked for next speaker

Ms. Cindy Fouhey asked to speak again. Mr. Fouhey asked are there going to be lighting at night for this facility? Mr. Siao responded no there are no site lighting proposed. Mr. Fouhey responded well that is something positive. He has researched some about solar farms and have heard that they are often usually on flat land. This property is a steep slope and placing it on a steep slope seems crazy. Mr. Fouhey has walked the site, it is steep.

Mr. Siao responded with respect to the topography, they type of panels proposed have slope tolerances up to 25% and this site is substantially less than that. In fact, a southern

facing slope is ideal for this because it eliminates the shading that can happen from one row of panels to the other, so it actually increases production.

Mr. Fouhey mentioned the document he had submitted from the Union of Concerned Scientists that mention that the best place to put solar farms are on flat surfaces like a farm. For example, the farm on Croton Avenue is very suitable for this. But with the hillside that is damage for the area. He does not oppose solar power. He just thinks it is kind of overemphasized in New York. We have snow, we have very short days in the winter time and he really doesn't know how this can be called a reliable source of energy.

Mr. Bianchi asked if there was anyone else who wants to speak. Mr. Preziosi indicated there are no other with their hands raised at this time. Mr. Bianchi pointed out that the public hearing this evening will be adjourned so there will be other opportunities for people to speak to the Planning Board on this matter.

Mr. Bianchi asked for comments from Planning Board Members. Mr. Kessler mentioned he is thinking about the line of sight process here and how we get this done. Is this something where we will go to all the neighbors who have been notified as part of this public hearing and ask them if they wish to participate in a line of sight study? Is that the best way to approach this?

Mr. Preziosi recommended that anyone who has expressed a concern and offered the opportunity for a line of sight study to be done from their property that they reach out to Chris Kehoe, AICP, our Deputy Director of Planning tomorrow or later this week to provide your address and contact information and we will coordinate that with the applicant.

Mr. Kessler expressed concern that he doesn't really know that everyone who might be interested in having a line of sight study done from their property is on this call today. Mr. Preziosi said I am sure they are not but we have existing ordinances that require the applicant to line of sight studies from adjacent streets etc. Mr. Kessler asked do we re-approach those people who we notified as part of this public hearing so they are made aware that they can avail themselves of this line of sight study or is it just whomever spoke up.

Mr. Kehoe said we certainly notified numerous people of this public hearing. Ms. Meyers asked well does it matter if the property is commercial or residential have to have a line of sight done. I thought the applicant was required to do a line of sight study from the property line?

Mr. Preziosi said in order to respond to both Mr. Kessler and Ms. Meyer's question he will be reading directly from the Town Code:

“...conduct a visual assessment of the visual impacts of the solar energy system on public roadways and adjacent properties”

So that appears pretty inclusive so we can reach out again to any adjacent property owner to see if they would like a photo taken from their property as well. Mr. Kessler then asked is there a prescribed way of that being done? He is not familiar with the methodology for line of sight studies.

Mr. Preziosi responded it is a bit vague but generally leaves that up to the approving authority. Again, reading directly from the Code:

“At minimum a line of sight profile analysis can be provided depending on the scope and potential significance of the visual impacts, additional impact analysis including for example a digital view shed report”

Mr. Kessler explained he wants to be sure that there is a prescribed way of doing this so whatever we get back from the applicant for a line of sight study has utility to us so we don't have to go through this again.

Mr. Siao pointed out that this is something that Dimension Energy has done in the past including at the Croton Avenue property so he is happy to work with Town staff to advance this and establish the scope, identifying specific properties for the view shed of the area.

Mr. Foley said if he could please weigh in here – he supports the updated view shed study. He would also like to address the comments by the person who commented from New Castle speaking to all the variances in the Croton to Highlands Biodiversity Study by Michael Clements from several years ago. Mr. Foley agrees that this report is important to look at. There are many variables here on this property including steep slopes and differing types of soils that it does require and in-depth environmental study.

Mr. Foley, Mr. Bianchi and Mr. Kessler then asked Mr. Preziosi to indicate on the plans the areas for the line of sight study to be conducted. During that discussion, Mr. Brad Schwartz of Zarin and Steinmetz mentioned that they have been involved in conducting these line of sight studies in the past and we are happy to work with staff on coming up with the key vantage points and the exact methodology that we would use to analyze the view. Mr. Kessler thanked Mr. Schwartz.

Mr. Siao, with respect to the biodiversity, I want to remind everyone about the SEQRA requirements and rule of reason with respect to exactly what studies are performed depend on specific circumstances. We are accepting tonight the circumstances that the site provides for habitat and ecological benefit. That is not being disputed. As you have already heard this evening the recommendations about conservation easement, wetland enhancement, buffer protections, etc. He thinks under the circumstances, we are just not seeing the added benefit of conducting a full-blown study when we have already identified and proposed the very measures that are typically recommended as a result of that study. He would ask the Board to keep an open mind when determining whether they require a full study.

Mr. Rothfeder responded that frankly in today's situation with the environment, we expect applicants to offer at least that. That is just basic requirements. It just makes sense to care about the land on and around which you are building. I just don't feel like we have enough information to determine the exact right types of mitigation to have in this case. So, it is not a matter of the applicant not being cooperative. The applicant is being perfectly cooperative about this. But as far as myself I expect that from applicants now.

Mr. Siao acknowledged that he heard Mr. Rothfeder and appreciated his comments. Maybe we could be authorized to meet with the staff and talk about the timing. We know what needs to be done in spring. We are trying to stay on a schedule where we can begin construction in early summer. So, if there is a way we can complete SEQRA with the measures that have been recommended we can always fine tune those measures in the site plan process when we come back to the Planning Board after the special permit is issued by the Town Board. Please remember we still have to go to the Town Board for special permit. That is something that can help keep Dimension on schedule while also satisfying the Planning Board's desire for the study.

Mr. Bianchi thanked Mr. Siao. Mr. Rothfeder said he is not comfortable with that proposal. Mr. Bianchi stated neither is he and the Board made clear what their requirements are. Mr. Meyers expressed that one of her concerns with this project is what is this going to look like to the surrounding neighbors and the streets of Lexington Ave and Route 202. There is discussion of loss of 2,000 trees and planting of 130+ trees. She had difficulty seeing in the zoom presentation the exact locations of the proposed planting of trees. Mr. Preziosi and Keith highlighted areas on the plan where the new trees are proposed. Ms. Meyers said it appears that those new tree plantings will not be a good cover for the proposed chain link fence then. So, I am wondering if instead of a chain link fence can there be something more attractive.

Mr. Siao responded that can be considered. He did want to point out that everything around our fence line is forested. Over 200 feet of forested area will remain in place. Going towards Route 202 there is another 400 feet to our property line that will remain forested. There are thousands of trees remaining on site on the buffer of the property that will serve as that vegetative screening. Mr. Jameson believes the line of site study will help show that more clearly that the residents will not have to see this from their properties.

Ms. Meyers then asked about erosion and sediment control plans. She did not see specifics in the plans that were submitted of what specific plantings will be utilized for erosion and sediment control. Keith responded we will be planting a meadow pollinator mix similar to the fence line for erosion and sediment control. This will be similar to what we have on the Croton Ave site. Ms. Meyers thanked Keith and mentioned she did not see that called out on any of the drawings. Keith responded that he will add that to the drawings.

Ms. Meyers stated she next would like to focus on the access road. As indicated by the applicant this evening, they have re-located the post construction site access road to not be on Dyckman but instead to be off Lexington Ave, but her real concern is during

construction with the equipment going in and the 2,000 trees coming down. Where is the during construction access point. Keith responded Lexington Avenue as shown will be utilized for both construction and post-construction.

Ms. Meyers asked where the construction lay down area will be. There is a lot of equipment that has to go in here. Keith pointed out on the plans on the screen that there is a laydown area shown on the plans. Ms. Meyers asked if that area is flat. She remembers from the site visit that area did not seem very flat. Keith responded it is relatively flat and very workable.

Ms. Meyers asked during construction do all the arrays come in at once for just as needed each day. Keith responded that based on his experience with the site under construction on Croton Avenue, they bring the mounting screws, the racks, the supports, and then they bring in panels. Finally, they do the electrical. It is all done in stages. Mr. Jameson confirms Keith's statement. It is phased.

Ms. Meyers that traffic is a concern on Lexington Avenue. How will you be controlling heavy equipment going in and out with traffic? Mr. Jameson said this would be the same as any other construction project – it is not unique to a solar project. There will be traffic control and safety measures put in place.

Ms. Meyers asked about noise from the site during construction. Mr. Jameson encourages Ms. Meyers to visit the Croton Avenue facility which is currently under construction right now as the best example of construction noise example.

Ms. Meyers asked about the decommissioning plan and funding. She did not see anything about that in the documents submitted. Mr. Jameson responded we did provide a decommissioning plan and bonding that was submitted to the Town with our initial application. Again, this is similar to the Croton Avenue project.

Ms. Meyers said her other concern is the aesthetics after you walk away from this site and what it is going to look like for the surrounding residents. That is the end of her questions.

Mr. Foley asked about the staging area that was shown on the plans as part of Ms. Meyers comments – it seems they chose the area that was the best location on the site for that staging. As far as traffic control measures – he just wants to confirm that there will not be a road closure of Lexington Avenue as part of this construction. Keith responded there will be flagmen and allowing trucks in and out of the site but no planned closure of Lexington Ave as part of construction.

Mr. Foley suggested with respect to view shed it might be helpful to have samples from not only Baron DeHirsh but also Lexington and Route 202. It would be good to see elevation drawings from the perspective of those other streets. Thank you.

Ms. Anne Lockwood, 37 Baron DeHirsh wanted to state she would be happy to give access to her property for a line of site study.



Mr. Kessler made a motion to adjourn this public hearing. Mr. Foley seconded the motion. All voted Aye.

### **OLD BUSINESS**

#### **PB 2020-17 a. Application of Hemlock Hill Farm for Site Plan Approval for a seasonal beer garden, in conjunction with Captain Lawrence Brewery, to be located at the Hemlock Hill Farm, 500 Croton Avenue, as described in a packet received by the Planning Division on October 22, 2020.**

Laura from Hemlock Hill Farm was present and explained that several members of the Planning Board conducted a site visit and we showed them the beer garden site and parking area location on the farm property. The engineer also submitted some plans. Scott Vaccaro and James Coleman should also be on this zoom.

Mr. Bianchi stated we discussed this at our work session and the Board feels this would be appropriate to schedule a public hearing for this application and we will look have that be next month.

Mr. James Coleman (engineer for the applicant) then asked to share his screen with the Board. Very briefly he explained this is a bit of a unique application. This is an existing working farm with a store, an old farmhouse and an existing corn field surrounded by a fence. Mr. Coleman highlighted the beer garden seating area, parking lots, food trailer, restroom trailer locations.

Mr. Coleman attended the work session and appreciated the opportunity to attend that and acknowledged the Planning Board for doing that because most Town's don't do that. A few items that came up in the work session that he would like to clarify. The Department of Health is typically not the approving authority for this type of use. So that is something we will have to sort out. Regarding the zoning and parking calculations, because it is an outdoor space, there was some confusion about what square footages to use for occupancy. In the narrative we spoke about the garden having up to 200 people. So, we have this huge field which will be open parking with no lighting. The occupancy requirements for restrooms are related. The 240 is based on maximum allowed by the plumbing fixtures.

Mr. Coleman explained that Scott and Laura plan to have people directing traffic at peak times. Regarding the EAF we will make sure our answers are correct on that.

Mr. Bianchi entertained comments from the Board.

Mr. Foley asked about the 240 number he brought up at the work session so that was driven by the maximum allowed by the restrooms. Mr. Coleman confirmed that is the maximum we could have based on the maximum capacity allowed by plumbing fixtures. Mr. Foley also expressed concerns about access to and from the site on Croton Avenue

especially if it is dark and there are mass exodus at the end of the evening. Scott and Laura said it is a 4 way stop and we will defer whatever the Town requires in addition to that. We could have staff directly people in and out at peak times. Mr. Foley asked about ADA compliance for the beer garden. Will that be accommodated specifically wheelchair bound. Mr. Coleman said all the projects that he and Scott have done are all ADA compliant. We will of course have the required number of spots for ADA compliance. Mr. Coleman will do a bit of research around surfaces that would be most appropriate for ADA portion. Mr. Coleman suggested we might provide a paved area just by the entrance and we will study that a bit and come back with a proposal.

Mr. Keesler asked if it was the expectation that people will stay within the defined area or will they be milling around the property? Scott responded that the liquor authority requires the patrons stay in the designated area with the seating and the lighting. That is where the patrons must legally stay if they are enjoying a beverage. I am sure that Laura hopes that they will also visit the store on their way in or out. Laura explained they stay open a little later in the summer months anyway.

Mr. Kehoe, Town planner mentioned the size of what is proposed and the numbers of planned participants are a pretty high here in an area that is largely residential. Showing on your plans a maximum allowed occupancy of 240 people with 100+ car parking lot introduces a commercial use into a residential area and I think that is why the Board wants to have a public hearing on this. The applicants should be prepared to respond to that.

Laura responded she does not expect it will be 240 all at once at the beer garden. However, she does point out that she does get approximately 200 people coming and going all day long at the store on a Saturday in the peak season from 8 AM to 6 PM. Scott said he sees traffic all day at his other facility. Earlier in the day there might be families with strollers. We are by no means a late-night destination. We stop serving at 9. Closed by 10. There is a lot of turnover throughout the day. Currently due to COVID we have reservations only.

Mr. Kehoe stated I only raised that because the applicants should make those comments on the record during the public hearing. Laura and Scott will make that clear at the next meeting.

Mr. Foley asked in addition to the Elmsford location, didn't you also have a Pleasantville location. Scott responded yes we used to have a Pleasantville location but that is no longer active. We did just open a Mt. Kisco operation 369 Lexington Ave, a warehouse/beer hall with food truck and outdoor seating area as well. The Mt. Kisco site is approximately 3,000 square footage in size. Total seating occupancy max of 170 and we rarely see more than 70 people seated at one time.

Mr. Foley asked about the uses surrounding that in Mt. Kisco. Scott responded we are surrounded by residential uses in Mt. Kisco which you can see on Google Earth. Mr. Foley had a specific question on the EAF #19 – unanswered. Mr. Coleman said that was an oversight and he will correct that.

Mr. Bianchi asked for a Motion. Ms. Meyers made a Motion to schedule a public hearing for 2/2/21. Seconded by Mr. Kessler with all voting “Aye”.

**PB 2020-14 a. Application of Teatown Lake Reservation Inc. for renewal of a Special Permit for a Private Nature Preserve to conduct a summer camp program and a weekday public program and for amended site plan approval for tree removal and wall removal at Cliffdale Farm for the purposes of improving wildlife movement for property located on the north side of Teatown Road, approximately 3,000 feet east of Quaker Ridge Road. (see prior PB’s 10-10, 5-15).**

Mr. Bianchi asked if anyone was present on behalf of Teatown.

Ms. Danielle Begley Miller, Teatown’s Director of Stewardship mentioned the only change from our last meeting was the Town’s CAC committee has provided a written recommendation to the Planning Board with respect to his application. She is hoping that we can get a decision on this tonight because we are in the grant application period. If that is not possible this evening she would request a vote on the Special Permit tonight.

Mr. Bianchi requested comments from the Board.

Mr. Foley pointed out that in the work session we discussed three options and the CAC memo which was not very definitive. But Paul Buckhout of the CAC attended the Planning Board site visit. Mr. Buckhout indicated he would be in favor of whatever Teatown wanted. Yes, the staff is recommending option 3. Mr. Foley asked the representatives from Teatown about the financial implications of that.

Ms. Begley Miller responded that would depend on the size of the trees being required to be planted. If we are able to plant saplings from the DEC nursery we can meet the requirement for option 3. If we are required to plant larger caliper trees that would be cost-prohibitive for us. So, it depends on the size of the tree required. We had discussed giving us multiple years to accomplish the revegetation requirements which is in alliance with our meadow management plan. She thinks the CAC memo was basically saying that all the options are valid and it is up to the Planning Board to decide.

Mr. Bianchi expressed concern about a memo from the Town’s legal staff Mr. Michael Cunningham, Esq. explaining that at 3<sup>rd</sup> party cannot plant trees on another site. How do we address that?

Ms. Begley Miller said that was in response to the idea that we could have people donate trees to us without us bearing the huge financial cost. If the determination is that a 3<sup>rd</sup> party cannot plant trees on our behalf that perhaps that is not an option for us. If we can plant smaller trees we can do Option 3. Our preference as we mentioned on the site visit was to choose option 1 which as the meadow plan. The shrubs are part of meadow management plan. It would accelerate our planting plan because we were not thinking of

doing those for a few years. The tree replanting is beyond the scope of our meadow work but is feasible with smaller trees and a longer time line.

Mr. Kehoe mentioned he is also the staff member to the CAC which is an advisory committee to the Planning Board and Mr. Buchkhout of the CAC did mention to Mr. Kehoe that his inclination was not to require the planting of trees. But the whole CAC when we were working on the memo decided given the scope of the proposed tree removal that some plantings should happen. Perhaps a compromise would be to permit the planting of saplings vs. 2- or 3-inch caliper but Mr. Kehoe leaves that up to the Board.

Mr. Rothfeder said something mentioned in the work session by Mr. Preziosi could also help which is to extend the plantings over a 3-year period which would coincide with the re-issuance of the renewal of the Special Permit. Are you suggesting the 2- or 3-inch caliper trees over that 3-year period is also cost prohibitive?

Ms. Begley Miller responded it would be cost prohibitive for us because it is outside the scope of the area of the funding source. The funding source is grant money and project money and includes meadow plantings. Tree plantings would have to come from our operational budget and that fluctuates year to year. It would depend on the cost of the trees and the size of the trees and how difficult they would be to move. For example, if we need special equipment to move them that is not something we have on site. It depends on can they be planted by hand, how easy is it to water them etc. In 3 years, we can figure it out but trying to plant them within 12 months would be very difficult.

Mr. Rothfeder pointed out that you are proposing to take down a large number of trees and we are requesting you only replant a portion of that I believe over the 3-year period. Ms. Begley Miller responded yes but the shrub plantings were also part of that plan. If you look at option 3 included the shrubs and the trees. For us the shrubs are not a big deal. They are part of the meadow plan and included in the funding source. Our goal in this project is to replant those rows of hedgerows, eliminate the invasive species and allow these meadow plants to establish. The meadow plans being established does take a bit of investment including mowing, watering and re-seeding when necessary, planting plugs etc. She just does not want to take away from the revegetation of the hedgerows which is our first priority, the shrubs which is our second priority. The trees for us on a 3 span she could get to them but she just doesn't want those to take away from financial investment in the meadows and the revegetation of the hedgerows.

Mr. Rothfeder said the direction the Planning Board is moving in is to instruct the preparation of an approval Resolution for next month that would include option 3 over 3 years coinciding with the special permit. Is that OK with you?

Ms. Begley Miller responded that is OK with her if the tree plantings are over a course of e years but we need clarity on the size of the trees to be planted. Does the Board have a decision on number of trees and size of trees?

Mr. Foley expressed concerns about option 3 for Teatown regarding cost and impact. He would have preferred Option 1 but can she handle option 3 in some form?

Ms. Begley Miller it is doable over the 3 years but it needs to be detailed size, species of the trees. In looking at the proposed re-planting plan she would prefer saplings from the NYSDEC which we can closely monitor with tree tubes. Mr. Bianchi stated the replanting plan talks about 20 trees.

Mr. Foley asked Town staff members if sapling plantings would be acceptable? Mr. Preziosi responded that typically the Town discourages the planting of saplings because typically they do not survive because they are not monitored. However, with the expertise of a Teatown, we could allow for saplings.

Ms. Begley Miller stated she would be much more comfortable with saplings because it is not as expensive and she believes she can plant even more trees than. They would be closely monitored for survival. Any replanting project we do, we monitor. It is not a big deal for us to plant 50 saplings for example and they will self-thin eventually and close the canopy. We always order from NYSDEC Saratoga nursery in January anyway so getting additional saplings is not cost prohibitive for us.

Mr. Preziosi asked Ms. Begley Miller her opinion of how many saplings would equate to a 2" caliper tree. Ms. Begley Miller responded that she cannot speak to that specifically. She thinks whatever the Board wants from a saplings perspective she will do. She then asked her colleague Rebecca to weigh in with her opinion.

Rebecca pointed out to the Board that site does not have a ton of space. I think we could get 50 saplings in the site. But if the Board required more than 50 saplings then we would need to identify a different area for those additional saplings to be planted.

Mr. Foley confirmed that it poses a problem then to require more than 50 saplings? Ms. Begley Miller responded we could find some other locations but it would require going a bit into where the shrubs are planted and more into the woods in a more densely shaded area.

Mr. Bianchi said the total number of trees to be removed is 83? Ms. Begley Miller responded that is correct. We would be replanting over half with the proposal of 50 saplings as well as shrubs and meadow. However, with the saplings we must recognize that even with close monitoring not all of them are going to survive. We will plant them densely a diversity of species which will bring us shade quickly. The goal is to provide shade quickly so we can prevent invasive species.

Mr. Foley commented he was going to allude to this before, during the site visit in looking at some of the 83 trees proposed to be removed weren't some of them dead, diseased or invasives themselves?

Ms. Begley Miller responded that over 50% of the 83 trees did have some die back so they were not in great condition. A small portion of Ash were dead. The trees themselves are not in great condition because they are highly exposed.

Mr. Foley said that is his point when you see the 83 trees in person you see some of them are not in great shape. Mr. Foley then asked Mr. Preziosi if the proposal is for 50 saplings or 25 saplings?

Mr. Preziosi responded the Town standard on tree replanting is 2 to 3" caliper at DBH. However, the Planning Board can use its discretion and come up with a formula as to how many saplings can equate to a tree. Maybe 2 to 1 as a suggestion. But we need to remember that Teatown is an environmental agency and we could rely on them to closely monitor as they have indicated they are willing to do.

Mr. Kimmerling asked if we can make that monitoring part of the Resolution language for next month. Mr. Preziosi replied yes we can and asked if Teatown was comfortable with the language of suggesting that at the end of the 3 year period at least 75% of the saplings will have survived?

Rebecca replied as long as the Town is OK with us meeting that 75% survived with possible replacements to make that 75%. Mr. Preziosi said that would be acceptable. The Board concurred. Rebecca confirmed this is the option 3 with the shrubs on the edge as well. Mr. Bianchi confirmed that is correct. So are we looking at 50 saplings, and 50 shrubs?

Mr. Foley confirmed it would be 50 saplings instead of 25 larger trees. Mr. Preziosi confirmed Mr. Foley's understanding is correct.

Mr. Kimmerling confirmed we are requiring them to do the saplings and monitoring. Just a clarification about the 3-year period are we able to do the plantings in a single year? Rebecca replied if you are looking to monitor the trees over a longer time span than 3 years makes sense. Mr. Kimmerling asked if the saplings could be planted within a single calendar year and then monitoring for the total 3-year period. Ms. Begley Miller confirmed she believes that is doable. We could get them in the ground this spring and monitor over the 3-year period. Rebecca pointed out a slightly longer period might be helpful like 1.5 or 2 years for site preparation and planting and total 3 years of monitoring.

Mr. Foley asked with regard to the preparation of the Draft Resolution for PB consideration at next month's meeting will this also be shared with the CAC? Mr. Kehoe responded that yes, he can make sure the PB sees the resolution first and he will share it with other people. He expects to get it done shortly with 50 shrubs, 50 saplings, 3-year monitoring and being planted over the course of 2 years. Mr. Bianchi thanked Mr. Kehoe. Mr. Rothfeder made a motion that the Draft Resolution for approval be prepared for next month's meeting. Motion was seconded by Mr. Kessler with all voting "Aye".

**PB 2020-18                    Application of Rafael Triana of High Q Electric for Amended Site Development Plan approval and a Special Permit for a Specialty Trade Electrical Contractor for an approximately 34,000 sq. ft. parcel of property located at 1 Dogwood Rd. Drawings latest revised December 4, 2020. (see prior PB 8-99)**

Good evening, JB Hernandez, architect for the project and we appeared before your Board last month. Just to quickly recap, we are proposing is to relocate High Q Electric, an electrical contractor to this property, the old Veterinarian Hospital, 1 Dogwood Rd., near the bus garage. The property was approved in February of 2000 to be used as the veterinary hospital. What we are proposing now has no major changes, utilizing the same parking area and simply changing the use to an electrical contractor which is why we need the Special permit. There is no changes to the size of the building. Our use would be a reduction in traffic. We are proposing to enhance existing landscaping. We did enlarge the size of the parking spaces to 20 feet. At this time, we would like to request the Board approve this.

Mr. Bianchi thanked Mr. Hernandez and entertained comments and questions from the Board. Mr. Bianchi stated he feels this is a relatively minor change or request of the Board, that there is no real exterior changes to the outside of the building that we might be able to prepare a Resolution for the next meeting.

Mr. Foley concurred and made a Motion to direct staff to prepare an approving Resolution for the next meeting. Motion was seconded by Mr. Rothfeder with all voting “Aye”.

Mr. Hernandez thanked the Board and confirmed that what he heard in the Board’s work session – there will be no required public hearing. Mr. Kehoe confirmed no public hearing and there will be a Resolution of approval with some conditions prepared for next month. Mr. Preziosi suggested in the meantime Mr. Hernandez start the building permit process with the DOTS Code Enforcement Division.

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Mr. Bianchi confirmed as he indicated earlier in the meeting, we will be skipping over the Hudson Ridge Wellness application discussion until the end of the agenda.

**NEW BUSINESS**

**PB 2020-19                    Application of Lexington 202 Group, LLC for Site Development Plan Approval for a change of use to a self-storage facility to be located in the former Elmsford Sheet Metal Building located on an approximately 5-acre parcel of property at 23 Arlo Lane. Drawings dated December 21, 2020. (See prior PB 34-88)**

Mr. Ron Hoina of Design Development Architects appearing on behalf of the applicant Lexington 202 Group, LLC Mr. Paul Ferraro is also here. Ron explained they are proposing a change in use from the existing 19,000 square foot manufacturing facility to be a self-storage use of approximately 16,000 square feet or a reduction of 3,000 square feet of interior use. The plan is to eliminate an existing mezzanine office. There would be no change to the exterior of the building. The self-storage use is un-manned and un-staffed so we have no need for the office. Dropping the square footage about 16% eliminating the office component and the general nature of self-storage it naturally reduces parking demand and trips to the property. There is no staff so significant reductions in water load, sanitary load etc. He does want to point out that he made an error on his application where he indicated that the site is served by municipal sewer which he has learned it is not. This site is on a septic system. However, the significant reductions remain. No staff.

To modify the building, we are eliminating all interior office space, re-painting the exterior, eliminating a few of the exterior garage doors which we do not need. In addition, we are reducing the heights of some of the large garage doors. Loading docks remain where they area. There is no site fencing proposed. Everything from a security perspective will be controlled at the perimeter of the building with card readers so we know who is coming and going at any time. There is a slight change to the top area of the windows to create a false shadowbox. We are adding exterior lights at all door locations and along the perimeter of the building front and back, security cameras as well. We will be making sure to be completely dark sky compliant. We are 150 plus feet from any of our neighbors. We will re-stripe and keeping the parking as it is. However, we anticipate significant reduction in demand for parking vs. the former use.

Mr. Bianchi entertained comments/questions from the Board. Mr. Bianchi asked about signage. Ron replied yes, we will be putting up a sign to be in compliance with the Town's sign ordinance and other regulations. It will be on the front corner of the building where we talked about the shadowbox windows. Ron will add it to the elevation. Mr. Bianchi confirmed this is public storage correct. Ron replied correct.

With no other comments from the Board, Mr. Bianchi explained the Town's staff will do a detailed review of the application and we will bring it back on the agenda after that. Ms. Meyers made a motion to refer the application back to the Town's DOTS staff for a review memo and ask that we consider a site visit. Mr. Keesler seconded with all voting "Aye".

Mr. Kehoe suggested January 31<sup>st</sup> at 9 AM for the site visit. Ron thanked the Board and confirmed he will be there at the site visit.

Mr. Bianchi said returning now Old Business:



**PB 6-15      Application of Hudson Ridge Wellness Center, Inc. for Site Development Plan approval and a Special Permit to reuse the seven existing buildings located at the former Hudson Institute property to provide a 92-bed private residential treatment program for individuals who are recovering from chemical dependency on a 20.83-acre property located at 2016 Quaker Ridge Road. Drawings dated December 4, 2018**

Mr. Bianchi asked if Mr. Davis was on the Zoom call. Mr. Davis confirmed he was. Mr. Bianchi confirmed he will turn it over to Mr. Davis to hear him, however he is not sure if he attended the work session earlier in the evening? Mr. Davis confirmed he was.

Mr. Bianchi confirmed receipt of the several pages of submissions from both Mr. Davis on behalf of the applicant as well as several other pages of submissions from residents in the area. There is a great deal of materials submitted here. If Mr. Davis can please give us a summary of where we stand and where the court actions are at and where we stand right now.

Mr. Davis confirmed he is happy to do that and appreciates Mr. Bianchi's comments. Mr. Davis stated we have been at this for 6 year so 3.5-hour pales in comparison. He hopes the Board will afford him 10 or 15 minutes of their time because it has been quite a long time since we appeared before your Board.

The Board will recall we are seeking site plan approval and a special permit for a specialty hospital to serve those suffering from a 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 building construction here. Just an updating of the septic system. As we have not appeared before you since January of 2019, I will summarize where we were at that time and what has transpired in the 2 years that we have been delayed since then through no fault of our own.

Our hydrogeologist gave you a power point presentation regarding the extensive well pump testing we have performed that past August which clearly demonstrated that the use will have no significant adverse impact on any off-site well. The Town's hydrogeologist agreed that there would be no significant adverse impact. Nonetheless, we have submitted an extensive post-approval well monitoring program which has also been approved by your own consultant.

After the January 2019 meeting our traffic engineer gave his power point presentation with respect to traffic matters including the substantial mitigation measures we have included in the application which again demonstrated that the use will have no significant adverse traffic impacts.

While the Town's traffic consultant raised some minor technical matters at that meeting, which have already been addressed or were addressed shortly thereafter to his

satisfaction. He essentially agreed with the basic premise that there will be no significant adverse traffic impact from our use.

So when we last left off with you, we had demonstrated by exhaustive expert analysis to the satisfaction of your own independent experts that with respect to the two principal environmental concerns raised by the neighbors which were off-site wells and traffic, there will be no significant adverse impacts.

On January 10, 2019 we submitted our detailed analysis under SEQRA which addressed the enumerated criteria for you to make a determination of significance under SEQRA. Employing those criteria we demonstrated that the proposed action will have no significant adverse environmental impacts and that therefore, respectively we are entitled to a Negative Declaration or at least a Conditional Negative Declaration under SEQRA. That analysis is contained in the executive summary we submitted in Appendices #31 in our expanded environmental impact report. So there is no basis in the record based on your own experts for any Positive Declaration in this matter.

On January 25, 2019 we received two approvals for the hospital required from the Westchester County Health Department which had been renewed to-date. First we received approval of our water supply system which was based upon and incorporated the Health Department's prior approval of our water demand calculations, which accordingly were incorporated into our well pump testing. Secondly, we received 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.

On February 5, 2019 we responded to the letter of the neighbor's counsel dated February 1, 2019 and we addressed what in our opinion was a last-ditch effort to forestall the application after seeing we had demonstrated a lack of any significant adverse environmental impacts. However, as I will mention shortly, they were successful in causing the substantial delay. The focal point of the neighbors February 19, 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 the Town's professional staff and its consultants.

On February 26, 2019 our consultants submitted their report refuting each and every comment from the neighbor's new consultant. Then 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 submit monthly reports for our water usage to both the Health Department and The Town.

Importantly, on April 11, 2019 the Town's own hydrogeological consultant submitted his own response to the neighbor's consultant report. He once again confirmed our reports to be accurate and he found no merit at all to the comments of the neighbor's consultant submission.

On February 22, 2019 the Town's traffic consultant submitted a report updating his comments from the January, 2019 meeting which were largely technical and non-environmental in nature. Significantly, he found our daily trip estimates acceptable and they would not have a significant impact on any of the studied intersections which would remain at service level A.

On March 21, 2019 we responded to the Town traffic consultants February 22, 2019 comments and we received follow up comments from him on April 16, 2019 and we fully addressed those in our response of April 25, 2019. Then the Town's consultant advised our traffic engineer that he was satisfied with our final responses.

Significantly, on March 18, 2019 in order to buttress our SEQRA analysis from January, demonstrating non-significance and our entitlement to a Negative Declaration. We submitted a list of 54 positive and mitigative aspects of the hospital operations including special accommodations for Town residents which are incorporated in our application and which further ensure not only will there be no significant adverse impact caused by the proposed specialty hospital but that indeed there will be significant positive impacts. We propose those to be conditions of approval and they are listed in Appendix 37 in our Expanded Environmental Report.

At the January, 2019 meeting the Board suggested that since this has been such a long process (which is now 2 years longer still) and with so many submissions, in order to accommodate a sufficient review by your Board and the public we should consolidate all of our submissions in a user-friendly manner. Accordingly, on March 28, 2019 we submitted a voluminous 4 volume set of our prior submission and which is entitled our "Consolidated Expanded Environmental Assessment Report" which has a fully updated version of the environmental analysis we had submitted with our original application way back in July, 2015. These volumes include our strong SEQRA non-significance analysis in the Executive Summary and in Appendix 31 as well as our 54 stipulated conditions in Appendix 37. All of the other materials which we have submitted includes detailed responses to each and every public comment since the outset of the process in 2015. There has already been very substantial public comment. 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 and to tell you some of the other events which I will now address and update.

Regarding the 2-year delay since we last saw you. In February, 2019 in the letter I referenced neighbor's counsel raised for the very first time the issue of whether the proposed use actually constitutes a permitted hospital under the Town's Zoning Code. This question was first raised after 4 years of extensive public review before the Zoning Board of Appeals and the Planning Board which had even included two litigations at that point. So 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 reasonable threshold of this matter.

On March 21, 2019 the Director of Code Enforcement rendered a memo to your Board stating his erroneous opinion that the proposed specialty hospital was not in fact a

permitted hospital based on the demonstrably false premise that the hospital use would primarily constitute custodial care and not medical care. This erroneous opinion effectively forestalled your Board's review of the application for 2 years. We refuted the Director in my comprehensive submission of April 23, 2019 which was accompanied by two of our excellent hospital consultants. There can be no legitimate question that the primary purpose of the proposed specialty hospital is the medical treatment and healthcare of those suffering from the disease of addiction.

Putting aside the inarguable facts and legal challenges we raised in our April, 2019 submission, we overwhelmingly demonstrated that this is a permitted hospital. Perhaps first and foremost from the outset it has been a matter of common sense in that regard. 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 it will be used now. It is currently configured with hospital rooms and offices and after renovation it will continue to be occupied by doctors, nurses, psychologists, and other medical and behavioral health care professionals. Indeed, there will be 42 such health-care professionals to serve and initial population proposed of 42 patients. The hospital rooms will be occupied by 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 New York State Mental Hygiene Law and will require licensure thereunder by the State Office of Alcohol and Substance Abuse Services. Patient medical insurance will be accepted. Obviously, this is a medical use and not merely custodial care.

So, we requested in our April 2019 submission that the Director of Code Enforcement in consultation with the Town Attorney change his opinion accordingly in light of the many legal and factual matters that he was apparently unaware of or misunderstood. However, in May, 2019 he issued his second memo declining to change his prior opinion. In fact, he added a second incorrect determination that the State road frontage variance that we required from the ZBA is a use variance and not an area variance. That opinion on the frontage variance was barred by law. The Zoning Board had already made a determination in March of 2017 rejecting yet another claim of the opposition group likewise that the frontage variance is a use variance and finding that it was in-fact an area variance.

The Supreme Court of Westchester County dismissed the neighbors Article 78 Proceeding challenging the ZBA's determination as pre-mature. Since then however, the Courts have ruled in two other cases including one out of New Castle that a variance from a State road frontage requirement is an area variance and not a use variance which put that issue to rest once and for all.

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 a lengthy public hearing was conducted from August to November of 2019. The applicants submitted extensive expert testimony and reports from a number of

witnesses who had experience with such hospitals including management consultants specializing in them. The former general counsel of the NYS Department of Health, a position that he serves as s medical director of a similar hospital and an expert attorney on the Americans with Disabilities Act which requires the Town to make reasonable accommodations zoning-wise for these applicants.

In January 2020, the Zoning Board by a vote of 3 to 1 vote with 2 recusals and one abstention, adopting a well-reasoned resolution granting the applicants appeal from the Director of Code Enforcement and finding that the use in fact is a permitted hospital. However, due to the State's statutory requirement that there must be 4 votes of a 7-member Board for an approval, the 3 to 1 vote in the applicants favor actually constituted a default denial under the Statute?

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 voted 3 to 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 to intervene in the proceeding against us. The Court twice denied the neighbor's motion. **(Webinar recording ended) \***

*\*Mr. Davis' complete remarks are attached to these Minutes as they were submitted.*

## **ADJOURNMENT**

**Next Meeting: Tuesday February 2, 2021**

# APPENDIX

## PLANNING BOARD MEETING – JANUARY 5, 2021 STATEMENTS BY BOB DAVIS, ESQ REGARDING:

PB 6-15

Application of Hudson Ridge Wellness Center, Inc. for Site Development Plan approval and a Special Permit to reuse the seven existing buildings located at the former Hudson Institute property to provide a 92-bed private residential treatment program for individuals who are recovering from chemical dependency on a 20.83-acre property located at 2016 Quaker Ridge Road. Drawings dated December 4, 2018

### 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.