TOWN OF FALLSBURG ZONING BOARD OF APPEALS
SULLIVAN COUNTY: NEW YORK

In the Matter of the Appeal of

JOHN FOUFAS, and
the BASHA KILL AREA ASSOCIATION, Appellants

from a the issuance of Building Permit No. F-17326 by the Town of Fallsburg Building Department on November 28, 2017 for property owned by the THOMPSON EDUCATION CENTER on Renner Road in Fallsburg (Tax Parcel No. 65.-1-11.59).

Appeal

Dated: December 22, 2017

Submitted on behalf of:
John Foufas, &
the Basha Kill Area Association

Submitted by:

GRANT & LYONS LLP

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Grant & Lyons letter to Fallsburg ZBA
December 22, 2017

Mr. Steve Burke, Chairman, and Members of the Town of Fallsburg Zoning Board of Appeals
5250 Main Street
South Fallsburg, NY 12779

Re: Request for Interpretation from Building Permit F-17326
   Project: Thompson Education Center
   Property Location: Renner Road Tr 14
   Tax Parcel Number: 65.-1-11.59

Dear Chairman Burke and Members of the Board:

Part 1: Introduction

Grant & Lyons, LLP, is a law firm dedicated to the practice of environmental, land use and real estate law. Our firm represents John Foufas and the Basha Kill Area Association (BKAA), the parties bringing this appeal. They will be referred to herein collectively as the "Appellants."

The appeal asks this Board to review the issuance of a building permit issued by the Fallsburg Code Enforcement Officer (CEO) to the Thompson Education Center (hereinafter "TEC"), which would allow the construction of a structure, labeled as a "single family residence," on TEC's property on Renner Road. This appeal seeks to have this Board overturn this building permit, and find that the structure will not be used as a single-family residence, as presented in TEC's application. Instead, the building is a commercial use or multi-family dwelling masked with a single family home label.

Part 2: Summary

This building permit for a single family residential unit for this structure should not have been issued. With this appeal, the Appellants are asking the members of this Board to believe your own eyes, and not the "label" that has been placed on this structure by TEC. A review of our consulting engineer's testimony about the building plans, knowledge of TEC's history with this property, plus a small dose of common sense, will lead you to the inescapable conclusion that TEC plans to use this building for uses other than a single family home. In short, the evidence shows that this structure is an office space or multi-family dwelling masquerading as a single family residence. This appeal asks this Board to rescind the Building Permit and declare it to be null and void.

First, the plans show conclusively that this building will not be a single-family dwelling unit as such is defined in the Town of Fallsburg Zoning Law. The details of the plans for this structure reveal and establish that this structure will be used either as commercial space or as a multi-family dwelling, neither of which is allowed in the Low-Density Residential/Recreation (REC-1) Zoning District.

Second, the plans also demonstrate that this structure is a trojan horse. It is being presented in the Building Permit application to the Town of Fallsburg as a "residential home" and "single
family home". But the design details as shown in the plans for the structure submitted as part of
the application show conclusively that, as a practical matter, the true nature of this structure is
that of commercial office, or multi-family building, or a mixed-use building, or a dormitory. But
what is it not, is a single family home.

In addition to the building design and plans, there is also evidence that, for years, TEC has
intended to use this parcel as part of the gigantic "education center" which it is proposing for
adjacent property in the Town of Thompson. In the past, TEC has indicated its intent to use its
Fallsburg parcel as part of that project for an access road connecting the education center to
Renner Road, and for a caretaker-security facility for the project.

Taken together, the evidence before this Board establishes that the true and practical future
use of this structure will be as either an office building (likely for security purposes) or as a
multi-family dwelling. As commercial offices, multi-family dwellings and mixed-use structures
are prohibited uses in the REC-1 Zoning District, the Building Permit should not have been
issued for this structure as a "single family dwelling unit" as defined in the Fallsburg Zoning
Law.

Moreover, given the evidence of its true purpose, allowing this structure to be built now and
without prior environmental review as part of the education center project, will constitute illegal
segmentation, and as such, will violate the New York State Environmental Quality Review Act
(SEQRA). If the building permit remains in force, it will allow TEC to illegally segment its larger
education center project by having this component of the project built without being included in
the environmental review being conducted by the Thompson Planning Board pursuant to
SEQRA. If that happens, it will allow TEC to build this structure right away instead of waiting
until Thompson Planning Board environmental review and site plan review of the education
center project is completed.

The evidence and the detailed arguments in support of these positions are set forth below and
in the letter to you from Willingham Engineering, which is submitted as separate document with
maps attached.

Part 3: Facts

On November 28, 2017, the Town of Fallsburg Building Department issued Building Permit No.
F-17326 to TEC (the "Building Permit"). This Building Permit will allow TEC to construct a 9,328
square foot (SF) structure, described on the Permit as a "Two Story Residence," on property
owned by TEC on Renner Road in Fallsburg. A copy of the Building Permit is attached as
Exhibit A.

The Appellants, John Foufas and the BKAA contended on this appeal that the Building Permit
should not have been issued, and that the issuance of that Permit was an error. And
consequently, the Building Permit should be rescinded and declared by this Board to be null
and void.

The legal arguments which support the position of the Appellants on this appeal are set forth in
detail later in this letter. But first, it is appropriate to establish the facts.

3.1. TEC's Property.

TEC owns a 4.93 acre parcel of land located on Renner Road in the Town of Fallsburg (Tax Parcel No. 65.-1-11.59). TEC's Renner Road property is located in the REC-1 low-density residential zoning district pursuant to the Fallsburg Zoning Law. According to the current Comprehensive Plan, the REC-1 Zoning District should remain low density.¹

The REC-1 Zoning District permits mostly residential and agricultural uses, as-of-right. One-family residence, agricultural operations, forestry, wildlife and game preserves are the uses that are permitted in the REC-1 Zoning District. The Fallsburg Table of Use for the REC-1 Zoning District is attached as Exhibit B.

Adjacent to its Renner Road parcel, TEC owns a 568± acre parcel, where most of its project is located, in the Town of Thompson. A Town of Thompson Planning Board Resolution dated September 13, 2017, adopted a Positive Declaration for this project. A copy of this Resolution is attached as Exhibit C. The Resolution describes the project as follows:

The Project is proposed as a school of higher education with supporting housing for 2,508 students and 276 faculty located on an approximately 573 acre parcel primarily in the Town of Thompson but with acreage in the Town of Fallsburg, Sullivan County, New York [emphasis added]. The Project is envisioned to include faculty and student housing, academic, administration, recreation and service buildings housed in 156 structures to be constructed in six phases. This is the same site that was formerly proposed as China City of America.

The Fallsburg property is referenced and included as part of the overall design and utility of the larger education center project by TEC, and the Fallsburg parcel is included in the total acreage of the project. This is not new, as the Fallsburg property has continually been discussed as part of this project.

3.2. History of Renner Road Property as Part of Education Center Plan.

TEC has applied to the Thompson Planning Board seeking approval of the education center project. The Town of Thompson Planning Board will be conducting a site plan review, and has declared itself to be lead agency for the environmental review of the project pursuant to SEQRA.

Since the project's inception in 2014, TEC has planned to utilize its Renner Road property as a part of the larger education center to be built in Thompson. As part of this larger plan, the Renner Road property was to perform two functions: (1) to provide vehicular access to the education center from Renner Road; and (2) to be the site of a security-caretaker's facility for

¹ Town of Fallsburg Comprehensive Plan, 2006, Chapter 11.2.2.
the project.

3.2.1. Use of the Renner Road Parcel for an Access Road.

In a letter dated April 29, 2014, Thompson Education Center’s Sherry Li told the Thompson Planning Board that TEC’s Renner Road parcel would be used as an access road for the project. A copy of Ms. Li’s letter is attached as Exhibit D. And indeed, an access road connecting the project to Renner Road across TEC’s parcel has been shown on TEC’s project plans in the four years since through June 20, 2017. An excerpt of the TEC project site plan, as revised on June 20, 2017, which shows the access road, is shown below.

In anticipation of eventual construction of the access road, TEC has already placed a sign for the education center along Renner Road.

The use of the Renner Road parcel for an access road was an important part of TEC’s plan, because the plan for this huge project provides only one other means of access from the project onto a public road. The other access road connects to Wild Turnpike in Thompson.

In addition to access for the project, TEC has already used the Fallsburg parcel for an access
road to the Thompson parcel for the purposes of drilling test wells.

3.2.2. Use of Renner Road Parcel for Security Facility.

On March 5, 2015, Fallsburg CEO Mollie Messenger and Toby Boritz of the Rock Hill Neighborhood Association had a telephone conversation, the subject of which was an illegal road which TEC had constructed on its Renner Road property without having obtained from the Town of Fallsburg the necessary land disturbance permit. This road was the access road to the Thompson parcel for test well drilling mentioned above. According to Ms. Boritz, during the course of the conversation there was some discussion with Ms. Messenger about TEC's intentions to construct a building on that parcel. At that time, in response to a question from Ms. Boritz, Ms. Messenger said that she had been advised by TEC that the building it intended to build on its Renner Road parcel was part of the larger education project in Thompson.

That information was confirmed several years later at a Town of Thompson Planning Board meeting held on April 12, 2017, when John Privitera, TEC's attorney, addressed TEC's intentions for its Fallsburg parcel. According to the minutes of the Planning Board meeting, Mr. Privitera said:

We need a caretaker house. We need security at this site now. It has independent utility (sic). The reason it is in Fallsburg is in case the project doesn't go forward we can sell it as a house and that's why it has independent utilities.

A copy of the Minutes of the April 12, 2017 Thompson Planning Board meeting is attached as Exhibit E.

Mr. Privitera's statement to the Thompson Planning Board makes eminently clear that TEC's primary purpose for the building on its Renner Road property is to serve as a security facility. The idea of the building being a single family home is identified by him as just a backup plan in case the TEC education center project doesn't go forward. But the fact of the matter is that, right now, the project is going forward. Hence, the first and primary purpose of the building to be built on this property will be a security facility. And this intention has now been confirmed overwhelmingly by the design plans for the building.

Moreover, once you see what this building will look like, as it is depicted on TEC's plans, the absurdity of TEC's stated Plan B to sell the building as a residential home if the project doesn't go forward will be apparent. It will be clear to you that this building could not easily be sold as a house, unless the buyer aspires to live in an office building.

3.2.3. Access Road Allegedly Removed, But Fallsburg Parcel Building is Still Designed to be Part of the Education Center.

In a letter, dated November 21, 2017, to the Thompson Planning Board, Mr. Privitera stated that "the Applicant [TEC] has eliminated a previously proposed access road from Renner Road in the Town of Fallsburg." A copy of this letter is attached as Exhibit F.
However, even if this is true, there is still a reasonable likelihood that the Fallsburg parcel will be part of the larger education center project. As mentioned above, there were two uses discussed for the Fallsburg Property, only one of which dealt with the access road. The structure on the Fallsburg parcel is still designed to be the site of a security-caretaker’s facility for the project. Furthermore, even with the access road removed, the size and footprint of the building has not changed or altered. Thus, there is still room for TEC to add the access road back into its plan at a later date.

Thus, even if TEC is claiming the access road has been removed, that does not provide any reliable assurance that this building will not be part of the education center.

3.3. TEC’s Building Permit Application

TEC’s application for a Building Permit for the Fallsburg Property is dated September 27, 2017, and a stamp on the application indicates that it was received by the Town of Fallsburg Code Enforcement Department on October 16, 2017. The application identifies the property owner as the Thompson Education Center, 2 Centre View Drive, Oyster Bay, NY 11778. This application is attached as Exhibit G.

According to the Building Permit application, the total square footage of the structure to be built is 9,328 square feet (SF). The building will be two stories in height.

The Building Permit application and correspondence between TEC’s representatives and the Fallsburg Building Department describe the structure to be built on the property in various ways. On the Building Permit application, the structure to be built is described generically as a “residential home”. TEC’s architect, Dan Ionescu, described the nature of the structure to be built as a “single family home” in correspondence to the Building Department dated September 20, 2017 and again on November 28, 2017.

The application for the building permit was accompanied by 81 sheets of design plans which set forth the details about how the structure will be built. An old expression says that “the devil is in the details”, and in this instance, that is certainly the case.

Shortly after the building permit was issued, the BKAA obtained all of the plans associated with this application via Freedom of Information requests from the Building Department. Those plans were provided to the BKAA’s consulting engineer, Andrew Willingham, PE, of Willingham Engineering. Mr. Willingham reviewed the details of the design plans. Based on his review, Mr. Willingham concluded that, based on the design, layout, materials, and facilities:

the building plans are nearly identical to that of an institutional or office building....The intent of this building is almost certainly not a single family home.

A letter setting forth Mr. Willingham’s testimony in full is included in this appeal and submitted herewith as a separate document. Mr. Willingham also says:

The Building Plans are nearly identical to that of an institutional or office building.
Commercial building codes are referenced throughout [the plans]. The building style and construction materials which include steel superstructure, concrete floor panels, concrete exterior panels, flat roof construction, floor to ceiling glass panel exterior, gypsum board drop ceilings, and metal stud partitions are commonplace for a commercial building and extremely rare for a residence. The layout also reveals the commercial intent for the building - a central corridor with janitor closet, four separate habitable spaces, full handicap accessibility, commercially code compliant stair railings and a data center room with IT equipment. Again, highly unusual for a residence.

The intent of this building is almost certainly not a single family home. The Building Plans admit as much, by repeatedly siting (sic) commercial building codes that do not apply [to residential homes]. Despite the sparse references to a single family residence on the Building Plans, the intended use as a more intensive, commercial use could not be clearer.²

Mr. Willingham’s conclusions, based on the hard evidence gleaned from TEC’s own plans, also dovetails exactly with the TEC’s previous representations about its intention to use the Renner Road property as part of its larger education center plans.

3.4. The BKAA has Repeatedly Objected to the Issuance of a Building Permit for this Structure.

Upon learning from representatives of TEC, and their communications to the Thompson Planning Board, that TEC intended to apply to the Town of Fallsburg for a building permit to construction a caretaker-security facility on TEC’s Renner Road parcel, Grant & Lyons wrote to Town of Fallsburg Town Supervisor Steven Vegliante advising him that no building permit should be issued to allow the construction of such a facility because to do so would violate SEQRA as improper segmentation of the Thompson Education Center project. Attached as Exhibit H is a copy of Grant & Lyons’ letter to Supervisor Vegliante dated May 8, 2017.

Subsequently, in light of the potential SEQRA violations that were described in the Grant & Lyons letter, the BKAA learned that TEC was preparing to change its strategy and planned to submit an application for a building permit, only now the structure would be labeled as a single family home with the accompanying claim that it was not part of the education center project in Thompson.

By letter dated July 21, 2017, Grant & Lyons advised Town of Fallsburg Code Enforcement Officer (CEO) Mollie Messenger TEC’s Renner Road parcel was still being shown on plans before the Thompson Planning Board as being part of the education center project. The letter also described how the Renner Road project fit into the education center project plans. Grant & Lyons advised Ms. Messenger that, even if the structure proposed for TEC’s Renner Road parcel was labeled as a single family home, the evidence was strong that it was actually

intended to eventually be an important functional part of the education center. A copy of Grant & Lyons' letter to CEO Messenger is attached as Exhibit I.

Part 4.

ZBA Jurisdiction and Timeliness; Standing; SEQRA Compliance

This appeal is properly brought before the ZBA.

4.1. The ZBA has jurisdiction to hear this Appeal

The ZBA has the jurisdiction to review the CEO's decision, and interpret the zoning law. As part of its duties:

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Code Enforcement Officer in administering this chapter [zoning]. It shall also hear and decide all matters referred to it or upon which it is required to pass under the provisions of this chapter.3

The ZBA is authorized to review the CEO's issuance of the building permit, as the permit represents a decision by the CEO.

The New York State Department of State says:

In its simplest terms, an appeal seeking an interpretation is an appeal to the board of appeal claiming that the decision of the enforcement official was incorrect.4

The Department of State says further:

An appeal may also be taken to the zoning board of appeals from a decision of the enforcement official issuing a permit. Thus, where a permit has been issued, a neighbor may file an appeal with the board of appeals claiming the issuance was incorrect, and asking the board to interpret the zoning regulations and reverse the decision of the enforcement official.5

The ZBA is also authorized to interpret the zoning law. Specifically:

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3 Town of Fallsburg Zoning Law §210-10.2(B). See also New York State Town Law § 267-B

4 New York State Department of State, Division of Local Government Services, Zoning Board of Appeals, 2005, reprinted 2015, at p. 9.

5 Id.
The Zoning Board of Appeals shall, upon request from and upon appeal of a decision by the Code Enforcement Officer, decide any questions involving the interpretation of any provision of this chapter, including the exact location of any district boundary if there is uncertainty with respect thereto.\(^6\)

This appeal seeks to overturn the building permit issued by the CEO and seeks an interpretation as to the actual use intended for this Project.

4.2. **This appeal is timely.**

This appeal is timely. The CEO issued Building Permit Number F-17326 on November 28, 2017. Pursuant to Section 310-10.3 of the Town of Fallsburg Zoning Law, the ZBA may hear all appeals and application made to the Board within "30 days of the action of the administrative official appealed from".\(^7\) This appeal from the CEO’s determination is submitted within 30 days from the date it was filed. This appeal is therefore timely.

4.3 **The Appellants have Standing.**

4.3.1. **John Foufas.**

Mr. Foufas, a BKAA member, owns property located at 29 Renner Road (Tax Parcel Number 65.-1-11.4), which is directly across the street from the Project location. As a neighbor to the Project site, Mr. Foufas is an aggrieved person and has standing to bring this appeal and interpretation before this Board.\(^8\)

Particularly, in zoning and land-use cases:

The fact that a person received, or would be entitled to receive, mandatory notice of an administrative hearing because it owns property adjacent or very close to the property in issue gives rise to a presumption of standing in a zoning case. But even in the absence of such notice it is reasonable to assume that, when the use is changed, a person with property located in the immediate vicinity of the subject property will be adversely affected in a way different from the community at large; loss of value of individual property may be presumed from the depreciation of the character of the immediate neighborhood. Thus, an allegation of close proximity alone may give rise to an inference of damage or injury that enables a nearby owner to challenge a zoning board decision without proof of actual injury.\(^9\)

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\(^6\) Town of Fallsburg Zoning Law §210-10.2(C).

\(^7\) Town of Fallsburg Zoning Law §310.10.3(A).


\(^9\) *Id.* at 413-414.
Here, Mr. Foufas's property is located directly across Renner Road. The close proximity of Mr. Foufas's property to the TEC property means that he will be adversely affected by TEC's erection of a structure on its property in a way that is different from that of the public at large. His right to the quiet enjoyment of his property at 29 Renner Road will be adversely affected by TEC's construction of a gigantic building, which does not meet the Town of Fallsburg definitions of a single-family dwelling unit and which is actually intended for a much larger use, such as an office or multi-family unit. Thus, standing is established for this appeal.

4.3.2. The Bash Kill Area Association.

Since its founding in 1972, the mission of the BKAA has been to protect the Bash Kill wetlands and surrounding area from ecological degradation, promote education and respect for the environment in general, and preserve the beauty of the area. The BKAA consists of some 800 members working together to preserve the unspoiled quality of the beautiful and unique Bash Kill, and to serve as a local guardian for the wetland by being alert to threats such as pollution, vandalism and unwise development.

The BKAA is intensely interested in the TEC project, and has been since its inception, because the wetlands on TEC's Thompson property are part of the Harlen Swamp Wetland Complex, located within the western portion of the Bash Kill's Watershed. Because they are hydrologically connected, a threat to the ecological health of the Harlen Swamp Wetlands also threatens the ecological health of the Bash Kill Marsh. This connection is shown clearly on the map which is depicted in the affidavit of Paula Medley, the President of the BKAA, which is attached hereto. Therefore, the BKAA has a keen interest and desire to protect the wetlands on TEC's Thompson property.

Since the project was first introduced, the BKAA has been very concerned about TEC's education center plans, plans which are out-of-scale for a rural setting and which threaten serious environmental harm. The BKAA has participated vigorously in all of the governmental reviews and permitting procedures associated with this proposed project. The BKAA believes that TEC's attempts to hide the true nature and future use of this building is an attempt by TEC to sidestep the environmental review of the education center project in Thompson. In that way, the interests of the BKAA and its members are adversely affected in a way different than the public at large, by the issuance of the Building Permit to TEC.

4.4. SEQRA Compliance - This Appeal is Exempt from SEQRA as a Type II Action

As an application for an interpretation on appeal from an administrative decision from the Town CEO, this application is classified as a Type II action under the State Environmental Quality Review Act ("SEQRA"). Type II actions are those actions, or classes of actions, which have been found categorically to not have significant adverse environmental impacts on the

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10 See 6 NYCRR 617.5(c)(31) of the SEQRA regulations.
environment, or actions that have been statutorily exempt from SEQRA.\textsuperscript{11} Hence, as a Type II action, this appeal does not require an environmental review under SEQRA.

4.5. Standard of Review - ZBA Must Conduct a \textit{de novo} Review on this Appeal.

The ZBA is authorized to hear this appeal in accordance with Section 310-10.3 of the Town of Fallsburg Zoning Law and New York State Town Law Section 267-b.\textsuperscript{12}

In deciding this appeal, the law requires that the ZBA conduct a \textit{de novo} review. Black Law's Dictionary defines "\textit{de novo}" as "anew, afresh, a second time."\textsuperscript{13} State law says that the ZBA takes a fresh look at the question presented, and should make whatever decision it determines should have been made by the enforcement officer whose decision is being appealed from.\textsuperscript{14} Indeed, Section 310-10.5 of the Town of Fallsburg Zoning Law describes the ZBA's duties and powers for appeals thusly:

Any property owner, tenant, representative thereof or other persons aggrieved by an administrative act of the Code Enforcement Officer of the Town of Fallsburg with respect to this chapter (i.e., believes such decision to be in error) may appeal to the Zoning Board of Appeals. An administrative act shall only include any order, requirements, decision or determination made by the Code Enforcement Officer. The Zoning Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made on the premises and to that end shall have all the powers of the official(s) from whom the appeal is taken. [emphasis added].

In this instance, after taking a full and fresh look at this matter, the ZBA should overturn the CEO's building permit for a one-family dwelling, and find that the project, as proposed, is actually for a commercial or a multi-family dwelling, which are prohibited in the REC-1 Zoning District.

Part 5: Arguments

5.1. this Permit Should Not Have Been Issued Because the Project Does Not Meet the Definition of a Single-family Dwelling

According to the Building Permit issued, the alleged use for the Property is a single family

\textsuperscript{11} NYSDEC, \textit{The SEQR Handbook}, 3d Ed. 2010, Ch. 2 "Required Review Under SEQR", Page 28.

\textsuperscript{12} These sections provide, among other things, that the ZBA may reverse, affirm or modify any decision, interpretation or determination of the Zoning Enforcement Officer.


\textsuperscript{14} NY Town Law Section 267-B(1); Sand Land Corp. v. Zoning Bd. of Appeals of Town of Southampton, 137 AD3d 1289, 1293 (2d Dept. 2016); Mimassi v. Town of Whitestown Zoning Bd. of Appeals, 124 AD3d 1329, 1330 (4th Dept. 2015).
home. The Building Permit application to the Town of Fallsburg presented this structure as a "residential home" and "single family home", but there was some discrepancy in description of the project on paper and the design shown on the map. For example, Mr. Ionescu, TEC’s architect, states that the home would include a "kitchen". However, the building plans shows four (4) kitchens, as opposed to only one. As indicated above, the "devil is in the details” for this project. Reviewing the project as proposed, it is evident that this structure is intended for much more than a one-family unit.

In reviewing the allowed uses in the REC-1 Zoning District, it is understood that a One-Family dwelling is permitted as-of-right. However, the details of the plans for this building do not support the conclusion that this 9,328 square foot structure will be used for a one-family unit. Instead, it will be either a commercial use building or a multi-family unit – both of which are prohibited in the REC-1 Zoning District.

In Mr. Willingham’s letter to you, he will explain how, using the building’s plans as evidence, the size and design of the structure supports the conclusion that this project will be used as a commercial use. Indeed, the volume of the plans for this building comprise 81 sheets. A normal single family dwelling does not nearly require such extensive plans.

Even if this were to be a “residential” use, it certainly cannot be claimed to be a one-family residence.

A one-family dwelling is defined as:

A detached building designed and occupied exclusively by one family and erected on a permanent foundation, with/without basement, and equipped for year-round occupancy.\textsuperscript{15}

However, two-family dwelling is defined as:

A structure containing two dwelling units.\textsuperscript{16}

From this definition, it is clear that a one-family dwelling requires one dwelling unit, where it would be occupied by one family because once there are two dwelling units, then the use is no longer a one-family dwelling, but becomes a two-family dwelling.

Similar to two-family, a multi-family dwelling is defined as:

A group of dwellings in one building or on one plot containing separate living units for three or more families, but which may have joint services or facilities or

\textsuperscript{15} Town of Fallsburg Zoning Law §310-2.2

\textsuperscript{16} \textit{Id.}
both.\textsuperscript{17}

Thus, the number of dwelling units within a structure dictate how the use is properly classified. In the Town of Fallsburg, a dwelling unit requires specific facilities in order to be considered a "dwelling unit". To have a dwelling unit, there must be:

one or more rooms, designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.\textsuperscript{18}

When interpreting zoning laws, the plain meaning of the text must be given its full effect. The New York Court of Appeals has stated that all interpretations should review the plain language as it is written. In \textit{Matter of Raritan Development Corp. v Gaston Silva}, the court said:

This Court has long applied the well-respected plain meaning doctrine in fulfillment of its judicial role in deciding statutory construction appeals. We agree that "[i]t is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature," but we have correspondingly and consistently emphasized that "where the statutory language is clear and unambiguous, \textit{the court should construe it so as to give effect to the plain meaning of the words used.}"\textsuperscript{19}

Hence, when looking at statutory interpretation and construction, the ZBA must first and foremost look at the statutory text.

A dwelling unit requires that there be "separate living quarters, with cooking, sleeping, and sanitary facilities" within the dwelling unit. According to the site plan maps, this Project will have nine (9) bedrooms, four (4) bathrooms, and four (4) kitchens, which are four (4) habitable spaces, as described in the project’s plans. From the definition, this qualifies as a single structure containing four (4) dwelling units, each with cooking, sleeping and sanitary facilities.

It is not outside the CEO’s jurisdiction to review the plans submitted and question the use proposed.\textsuperscript{20} As stated by the Court of Appeals:

\begin{quote}
Where there is reason to doubt that a proposed structure can be used for a lawful purpose, municipal authorities are not required to let the property owner
\end{quote}

\begin{footnotes}
\footnote{17 Id.}
\footnote{18 Id.}
\footnote{20 Commentary, Terry Ricc. New York State Town Law §267-a.}
\end{footnotes}
build the building and see what happens.  

Upon reviewing the plans submitted by TEC, with four (4) kitchens and four (4) bathrooms, it seems impractical that this project is intended for a one-family dwelling. In fact, the duty of the CEO is to enforce the zoning regulations; if the project does not fit within the confines of permitted uses, then the building permit should be denied. For example, in Matter of 9th & 10th St. L.L.C. v. Board of Stds. & Appeals of the City of N.Y., the Court upheld the denial of a building permit where it was suspected that a building labeled as a “dormitory” by the building permit applicant, would actually be used as an ordinary apartment building, a use not allowed in the zoning district where the building was to be located. The Court noted that it would not be improper for the Building Department to “insist on a showing that the applicant can actually do what it says it will do.”  
The Court explained:

To seek such assurances [that the use would legally be used for what is stated in the application] seems no more than prudent. It would create needless problems if petitioner built a 19 story building, only to find that it could not use it in a legally-permitted way. The City would then face a choice between waiving the legal restrictions and requiring the building to remain vacant or be torn down. The City’s officials did not act arbitrarily or capriciously in trying to avoid that dilemma.

In this instance, TEC has labeled the proposed building as a “residential home”. And yet belying this label, the plans show that there will be at least four different living areas, each with facilities for cooking, sleeping, and sanitary facilities. By this very definition, this constitutes a four-family dwelling unit. As designed, the building could also function as a dormitory. Either way, it would be impracticable to assume that this design will be legally used as a one-family dwelling. As in the 9th and 10th St LLC case above, the evidence here leads to the reasonable conclusion that the label for this building has been chosen to get around the Fallsburg Zoning Law (and SEQRA).

When plans are not rationally associated with what is typically expected with the proposed use, the CEO can deny the building permit.

In Witkovich v. Zoning Bd. of Appeals of Town of Yorktown, an applicant received for a building permit to a garage, which was a permitted accessory use in the zoning district. The garage proposed in that case was designed to house eight (8) to nine (9) vehicles, and was nearly double the size of the home to which it would be attached. The ZBA in that case upheld the

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22 Id. at 269.

23 Id. at 270.

building permit, but the court reversed, finding that the ZBA’s decision was arbitrary and capricious.\(^{25}\) The court found that the garage did not meet the definition of an “accessory building” and that there was “insufficient evidence to support a finding that the use of structures of this size as garages is ‘customarily incidental’ to residential homes in the subject neighborhood”.\(^{26}\) The court concluded that:

Under these circumstances, the ZBA lacked a rational evidentiary basis to support its finding that the proposed garage constitutes a permissible accessory building, within the meaning of the subject zoning ordinance.\(^{27}\)

The \textit{Witkowich} court uses a key phrase: “rational evidentiary basis”. Just as in \textit{Witkowich}, the size of the 9,328 square foot house, with nine (9) bedrooms, four (4) bathrooms, and four (4) kitchens is not typical for a one-family dwelling unit, particularly in a low-density residential area, and there would be no rational basis to support the conclusion that this structure would be used in any other way but a commercial or multi-family residence.

\subsection*{5.2. This Project Cannot be Approved Simply Because It has Been Re-labeled to a Permitted Use}

Given the size of this project, and the earlier statements made by TEC, this cannot be reasonably classified as a one-family residential home.

Simply labeling a proposed structure to coincide with an allowed use, while at the same time the details of the structure are plainly consistent with another, prohibited use, is unacceptable.

This situation presented in this case is similar to the facts of a court case called \textit{Brooks v. Town Board of Town of Dresden}.\(^{28}\) In \textit{Brooks}, the property owner applied for a building permit for a detached storage and utility building. The permit was initially issued, but it was later discovered that property was subject to an ordinance which prohibited such a structure. The property owner attempted to relabel the structure as a “seasonal cottage” but the Town upheld its stop work order. The court agreed, and held:

Regardless of the fact the petitioner attempted to reclassify the structure as a “seasonal cottage” after respondent issued the stop work order, he has consistently represented that the structure will not be equipped with water or permanent sanitation facilities. Under the circumstances presented here, it cannot be said that it was irrational or unreasonable for respondent to determine

\begin{flushleft}
\textsuperscript{25} Witkowich, 84 A.D.3d at 1103. \\
\textsuperscript{26} Id. at 1103. \\
\textsuperscript{27} Id. \\
\textsuperscript{28} In the Matter of Brooks v. Town Board of Town of Dresden, 56 A.D.3d 874 (3d Dept. 2008).
\end{flushleft}
that a structure that lacks potable water or permanent sanitation facilities and is not capable of permanent occupancy is not a residential use within the meaning of the ordinance.\textsuperscript{29}

Here, the plans for TEC’s proposed building are conclusive. The Willingham Engineering letter submitted herewith details all the many reasons why the design of this building says office, or dormitory, or mixed-use structure, but not single family home. The design details of the building show that TEC is committed to building this structure to comply with construction codes which apply to commercial buildings. Complying with these codes involves significantly higher expense than compliance with less rigorous codes for one-family residential structures. It is simply not logical, practical or sensible to conclude that TEC is building a single-family home when it is spending money to build this structure to comply with commercial-use codes.

The Property in Fallsburg has been repeatedly represented by TEC to be included as part of the education center project in the Town of Thompson. It has been represented as a caretaker’s home/security house as part of TEC’s project. This is different from a one-family dwelling, especially where there are nine (9) bedrooms, four (4) bathrooms, and four (4) kitchens on site. The Building Permit even acknowledges that some “security structure” will be included at a later date. It seems convenient that the use, at one time described as a security house, will still have security included in its final design.

TEC cannot be permitted to falsely label this building in order to obtain a building permit.

5.3. If the Building Permit Remains in Force, Improper Segmentation Will Take Place in Violation of SEQRA.

From the beginning, BKAA has expressed its concern that the Fallsburg Property is associated with the larger TEC project in Thompson. Even though it has been represented that the access road from Renner Road to the Thompson property has been eliminated\textsuperscript{30}, this does not alleviate any concerns that have been expressed about illegal segmentation. As noted earlier, the removal of the access road from the education center plan does not present any reliable assurance that the Renner Road parcel will be excluded as part of the education center. While the road may be gone (if TEC is to be believed), the size and footprint of the building has not changed. This huge structure would remain on the Renner Road parcel, built to commercial codes, institutional or commercial in scale, and ready for quick inclusion into the education center, with the road added back onto this parcel at a later time.

The evidence in the plans for the proposed building is conclusive. This structure will not be a single family dwelling. And if the Building Permit remains in force, the Town of Fallsburg will be allowing TEC to sidestep the Thompson Planning Board’s environmental review of this project.

\textsuperscript{29} Id. at 875.

\textsuperscript{30} Letter, dated November 21, 2017, from Mr. Privitera to the Town of Thompson Planning Board Chairman
Attached as Exhibit H is a letter dated May 8, 2017, from Grant & Lyons to Fallsburg Supervisor Steve Vegliante. Attached as Exhibit I is a letter dated July 21, 2017, from Grant & Lyons to Fallsburg CEO Mollie Messenger. Both of these letters address in detail why the construction of a caretakers-security facility on TEC’s Renner Road parcel would be improper segmentation of the education center project and a violation of SEQRA. We will not repeat those arguments again here, but you are respectfully referred to both of those letters which fully explain the argument.

Part 6: Conclusion

At the beginning of this letter, we asked you, as ZBA members, to believe your own eyes. We are asking you to believe what you see in the details of the plans for TEC’s building. There is a form of abductive reasoning that is commonly referred to as the “duck test”. It is thought that the duck test originated with James Whitcomb Riley (1849–1916) when he wrote:

> When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck.

Abductive reasoning is a form of logical inference which starts with an observation then seeks to find the simplest and most likely explanation. In this case, the simple, common sense duck test will get you to the heart of this matter. Look at the plans. TEC’s building walks, swims and quacks like an office, or dorm, or multi-family building. And so it is.

Thank you for your time and consideration.

Very truly yours,

John F. Lyons, Esq.

Kimberly A. Garrison, Esq.

Mark Miller, Esq. Veneziano & Associates
Steven Vegliante, Supervisor, Town of Fallsburg
John Foufias
Paula Medley, President, Bash Kill Area Association
Lou Kiefer, Chairman, Town of Thompson Planning Board
Bill Herrmann, Supervisor, Town of Mamakating
Freda Eisenberg, Commissioner, Sullivan County Planning Department
Exhibit A
to
Request for Interpretation from Building Permit F-17326

Exhibit: Building Permit No. F-17326, dated November 28, 2017
Mollie Messenger  
Code Enforcement Officer

TOWN OF FALLSBURG
CODE ENFORCEMENT OFFICE
Member: New York State Building Officials Conference, Inc.

5250 MAIN STREET
SOUTH FALLSBURG
NEW YORK 12779
(845) 434-8811
FAX:(845) 434-5883

BUILDING PERMIT

TOWN OF FALLSBURG
BUILDING DEPARTMENT
5250 Main Street, S. Fallsburgh, NY 12779

Permit #: F-17326

November, 28, 2017
Parcel Location: Renner Rd Tr 14

Owner: Thompson Education
Address: 16192 Coastal Highway
Lewes, DE 19958

Tax Map Number
65.-1-11.59

Estimated Cost
$1250000.00

Fee
$4180.20

Work Covered
66' 10" x 105' 2" TWO STORY
RESIDENCE - 9 BEDROOMS/4 BATHROOMS - NO DECKS

Conditions:
Concrete work, site clearing, temporary construction office trailer placement, well drilling, septic system install and electric service from street may commence until full plan review is completed by CEO.
Third party inspections required as per table on page S-001.00.
All third party inspection document to be submitted prior to issuance of certificate of occupancy.
Engineer over site, inspections and final sign off on septic installation prior to issuance of certificate of occupancy.
Well drillers final report required prior to issuance of certificate.
Dwelling side and rear yard set backs to property lines to be verified by surveyor and detailed with an as built survey prior to issuance of certificate.
Current disturbed areas between Town of Fallsburg parcel and Town of Thompson parcel to be graded & stabilized with indigenous vegetation.
Security structure on page T-100.00 not to be built until reviewed and approved by CEO.

George J. Lanni
Deputy CEO
November 28, 2017

George J. Sarvis
Town of Fallsburg
Deputy Code Enforcement Officer
5250 Main Street
South Fallsburg, NY 12779

RE: Building Permit Application
    Single Family Home
    Renner Road TR14
    Town of Fallsburg, NY

Dear George,

As per our telephone conversation and based on the email received 11.28.2017 regarding the above mentioned project we are in agreement of the following:

1. Accept a conditional permit for the concrete work that will allow the contractor to bring the construction out of the ground to the level of the first floor.

2. The following conditions will be part of the conditional permit and will be met prior to completion of the project and issuance of the Certificate of Occupancy:
   a. Third party inspections to be provided as per table on page S-001.00.
   b. All third party inspection documentation to be submitted prior to issuance of certificate of occupancy.
   c. Septic Engineer to provide all inspections and final sign off on septic installation prior to issuance of certificate of occupancy.
   d. Well drillers to provide final report prior to issuance of certificate.
   e. Side and rear yard setbacks to property lines to be verified by surveyor and detailed with an as built survey prior to issuance of certificate. Survey to include actual location of septic field.
   f. Current disturbed areas between Town of Fallsburg parcel and Town of Thompson parcel to be properly graded and stabilized with indigenous vegetation.
   g. Security structure on page T-100.00 not to be built until plans are submitted for review and approved by CEO.

3. The Department may further review drawings before issuance of the final permit.

Based on such permit the contractor will be able to perform the following:
   - Clear the site as required
   - Set a Construction Office Trailer on the site
RE: Building Permit Application
Single Family Home
Renner Road TR14
Town of Fallsburg, NY

November 28, 2017
Page 2

- Excavate for footings and foundation
- Pour in place all footings and foundations as per structural drawings
- Drill water well
- Install septic system as shown on drawings C100 and C101
- Complete structure to the level of the first floor
- Bring electric service to the building

Hope this meets your approval and please let me know if you have any other questions.

Sincerely,

Dan Ionescu AIA,
Principal
Dan Ionescu Architects
Exhibit B
to
Request for Interpretation from Building Permit F-17326

Exhibit: Fallsburg Table of Use for the REC-1 Zoning District
### ZONING

#### 310 Attachment 2

**Town of Fallsburg, New York**

**Schedule I - Table of Use and Bulk Requirements**

[Amended 6-25-2012 by L.L. No. 4-2012; 12-23-2014 by L.L. No. 8-2014]

<table>
<thead>
<tr>
<th>Recreational Districts REC-C-1</th>
<th>Use Type</th>
<th>Minimum Lot Size (acres)</th>
<th>Minimum Front, Rear, Side, Both</th>
<th>Maximum Lot Coverage</th>
<th>Maximum Floor Area</th>
<th>Maximum Height (feet)</th>
<th>Notes</th>
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<td>To conserve open space by encouraging a very low density development pattern while permitting clustering at higher density, provided that central water and sewer service is provided and common open space is provided.</td>
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<td>Off-street parking</td>
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**Notes:**

- Only within NYSL-designated Agricultural Districts; minimum lot size 50 acres for raising hogs.
- Subject to NYSL RecC requirements.
- in accordance with NYSL Uniform Building Code.
- Minimum parcel size of 35 acres required for REC-C-1 clusters.
- Cluster, multiple dwelling, duplex and multifamily developments shall require a minimum separation distance of 35 feet of green space between buildings. The only homes permitted within the separation distance are walkways, and landings or decks of less than 45 feet in width. No porch or similar structure shall protrude or be installed into this required separation. If floor area calculations can be met, then the required separation distance between buildings can be reduced to a minimum of 25 feet.

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**310 Attachment 2:1**

04-03-2015
Exhibit C
to
Request for Interpretation from Building Permit F-17326

Exhibit: Town of Thompson Planning Board Resolution, adopting a Positive Declaration for the Thompson Education Center project, dated September 13, 2017
TOWN OF THOMPSON PLANNING BOARD

RESOLUTION

ADOPTING A POSITIVE DECLARATION OF ENVIRONMENTAL SIGNIFICANCE
UNDER THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT WITH
RESPECT TO THE PROPOSED PROJECT

Town of Thompson, New York
September 13, 2017

WHEREAS, on June 23, 2017 the Town of Thompson received from the Thompson Education Center, LLC ("Applicant") updated materials for the Thompson Education Center (formerly China City of America), including an updated Long Form EAF, Site Plans, and Project Narrative. The Project is proposed as a school of higher education supporting housing for 2,508 students and 276 faculty located on an approximately 573 acre parcel primarily in the Town of Thompson but with acreage in the Town of Fallsburg, Sullivan County, New York. The Project is envisioned to include faculty and student housing, academic, administration, recreation and service buildings housed in 156 structures to be constructed in six phases. This is the same site that was formerly proposed as China City of America, and

WHEREAS, on November 13, 2014, the Town of Thompson Planning Board ("Planning Board") adopted a resolution to act as Lead Agency after conducting coordinated review for the SEQRA process for the China City of America project. While a Positive Declaration was also adopted at the same meeting in 2014 and a draft Scoping Document was submitted by the Applicant, review of the project did not continue, and

WHEREAS, the proposed Thompson Education Center has been identified by the Planning Board as a Type I Action in accordance with 6 NYCRR Part 617.4 involving more than one agency. Due to the receipt of an updated Long Form EAF, Site Plans and Project Narrative, the list of involved and interested agencies has been updated to reflect the currently proposed project. Therefore, on April 12, 2017, the Planning Board adopted a resolution of intent to reestablish Lead Agency under 6 NYCRR Part 617.6(b)(6)(c), and

WHEREAS, on or about June 23, 2017 the Planning Board gave notice to all involved and interested agencies of its intent to reestablish itself as SEQRA Lead Agency for the Project pursuant to 6 NYCRR Part 617.6(a), and

WHEREAS, more than 30 days passed since such notice was given and the Planning Board has received no objection to its serving as SEQRA Lead Agency for the Project and no involved or interested agency has offered to serve as SEQRA Lead Agency or otherwise suggested that the Planning Board should not serve as SEQRA Lead Agency for the Project, and

WHEREAS, the Planning Board has identified relevant areas of environmental concern and determined that the Project includes the potential for adverse environmental impacts, and

\( \text{(6125974613)} \)
NOW, THEREFORE, BE IT RESOLVED THAT the Planning Board hereby declares and issues a Positive Declaration with respect to the Project and will require the Applicant to prepare a Generic Draft Environmental Impact Statement for the Project in accordance with a written scope to be established after a public scoping session that will be held on due public notice in the future, and

BE IT FURTHER RESOLVED THAT the notice of these determinations be filed, circulated and published as required by SEQRA.

Motion made by: Michael Croissant

Motion Seconded by: Arthur Knapp

Adopted by a vote of 5 in favor, 0 abstentions.

Dated: Monticello, New York
         September 13, 2017
Exhibit D
to
Request for Interpretation from Building Permit F-17326

Exhibit: Letter from Sherry Li to the Town of Thompson Planning Board, dated April 29, 2014.
Date: April 29th, 2014

Applicant:

Thompson Education Center, LLC
198 Bridgeville Road
Monticello, NY 12701

Town of Thompson Planning Board

This letter shall supplement and clarify prior letters sent.

I am purchasing and planning a project for:

- The Section 26, Block 1, Lots 6, Thompson Parcel has 570 acres; and
- The Section 65, Block 1 Lot 11.59, Fallsburg Parcel has 5 acres

The project will only be in the Town of Thompson with the exit road in the Fallsburg. I am not seeking to extend the project into the Town of Mamakating. Please see attached letters regarding the Mamakating properties I had been trying to purchase in the past.

Yours truly,

Sherry Li
Exhibit E
to
Request for Interpretation from Building Permit F-17326

Exhibit: Copy of the Minutes of the April 12, 2017 Thompson Planning Board meeting
AGENDA

Town of Thompson Planning Board

Wednesday, April 12, 2017

Work Session 6:30 p.m. – Meeting 7:00 p.m.

MEETING:

<table>
<thead>
<tr>
<th>APPLICANT</th>
<th>PURPOSE</th>
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<td>THOMPSON EDUCATION CENTER</td>
<td>Site Plan review</td>
</tr>
<tr>
<td>Wild Turnpike Road, Rock Hill, NY S/B/L: 26.-1-6</td>
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<tr>
<td>NEW YORK STATE ELECTRIC &amp; GAS</td>
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<td>21 Katrina Falls Road, Rock Hill, NY S/B/L: 51.-2-41.2</td>
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<td>TOBY BORITZ</td>
<td>3 Lot Combination</td>
</tr>
<tr>
<td>199 East Glen Wild Road, Rock Hill, NY – S/B/L 25.-1-42/43/44.12</td>
<td></td>
</tr>
</tbody>
</table>
IN ATTENDANCE: Chairman Lou Kiefer
Matthew Sush
Jim Barnicle
Michael Hoyt, Alternate
Debbie Mitchell, Secretary
Richard McGoe, Consulting Engineer

Michael Croissant
Melinda Meddaugh
Arthur Knapp, Alternate
Paula Elaine Kay, Attorney
Mary Beth Bianconi, Planner

Chairman Kiefer called the meeting to order at 7:00 p.m.

A motion to approve the March 23, 2017 minutes was made by Michael Croissant and seconded by Matthew Sush
5 in favor, 0 opposed

Paula Kay has correction and will give to secretary Debbie Mitchell.

THOMPSON EDUCATION CENTER
Wild Turnpike Road, Rock Hill, NY S/B/L: 26.1-6
Joe Pfau, engineer
Jim Bates, design team
John Privitera, lawyer for Thompson Education Center

Mr. Pfau – We have updated the application plans, the environmental assessment form and a development scope which is a narrative for the project. There was confusion about the terminology and unit types. We simplified housing to dormitory and facility housing as dwelling units. We heard about the discussion about density. There is nothing in the code about how to get the density calculation. We took a conservative approach and designated every dormitory unit as a unit. Between the dormitory units and facility housing and the trustees housing we came up with 1,030 units that includes all the dormitory facilities. We took the dormitory as a signal facility.

Paula Kay - The dorm units are comprised of what? Mr. Pfau - That is the building where they sleep with a kitchenette, microwave and individual bathrooms. Paula Kay – The dorm unit can have how many students? Mr. Pfau – We have 732 dormitories and that will house about 2,500 students. Matt Sush - Three to four students per unit? Mr. Privitera - The entire area is zoned for school for colleges, that’s why it was bought. That is why Thompson Education Center has put in so much money into it. You got my density memo! We started with an understand that there is nothing in the code for college and schools as to density. The reason because college and schools don’t have dwelling units. Dwelling unit is a house with a kitchen and housekeeping facility. Specifically, the code excludes boarding houses and dormitories for the definition of dwelling units. That’s why it’s blank. You can’t do density analysis on housed per acre. The 2015 International Building codes definition of the dormitory is consistent with what Thompson Education Center proposes to build. Since this town excludes boarding houses and
dormitories from the definition of dwelling units and because its blank we don’t think it’s really capable of density analysis under the code at all. Except for the handful of structures that are going to be houses. And that’s going to be the trustee village, the president house and eventually a handful of facility houses. Jim Barnicle — Fire safety; to make sure there is enough room for equipment to get in and turn around in case of a fire or any other kind of emergency. Mr. Privitera — Yes, this facility has to be designed in a way that will allow full access for emergency equipment and it will have sprinkler in all the buildings. We’ll except full input from the Fire Department and International Building code on the public health and safety. We won’t have big challenges like high-rises issue. We are staying within the 35-foot threshold. I wanted to explain that what Mr. Pfau did was he took an assumption that these units were dwelling units and did the math on density. If you were to apply a formula of four units per acre it comes out below the code for density. Mr. Pfau — We took the gross area; 560 acres in the Town of Thompson and remove the wetlands and the 100-foot buffer. So, the calculation is done on the net density not the total gross density of the project. That comes up with 2.95 units per acre. Mr. Privitera — We are looking to restart this project. We realized that we need to get a full Environmental Impact Statement. We have taking the advice of the Planning Board and is looking to do a generic impact statement. We are doing a phased project and cannot get a site plan approval until we go ahead with each phase. Were looking towards phase one, site plan approval, after we responded to all of the concerns in the Environmental Impact Statement. Then looking to take it to the public. We are here for any question. Mr. Pfau — Were hoping that the Planning Board will declare their intent to take Lead Agent. Chairman Kiefer — That was a different project. Mr. Pfau — Yes, that’s why we submitted a new project and new documents. Mr. Privitera — This project is smaller than when we started. Mr. Pfau — We drilled three wells and have two good ones. We are going to continue to drill and hoping to get more good well on line. Chairman Kiefer — You have three wells drilled now? Mr. Privitera — Yes. Richard McGoey — Are you good to get the approval for the additional well? Can you explain to the Planning Board the confusion in respect to the wetland and the permits you have or do not have? Mr. Bates — There are two sets of wetland maps done in 2006 & 2008 they both had a 10 year blocks on them from the DEC. The wetlands according to the state guidelines follows the validation of the wetland not the property owner. The one validation ran out in Dec 2016 and the other one is still good for two years. I’m in contact with the DEC and re-evaluating the wetland on all of our parcels. The roads were put in while the jurisdiction was valid. In fact, the one well we are seeking the drill permit on is on the same access road, so there will be no other changes. All the work that was done was under a valid delineation. Mr. Privitera — At one of the well sites the hydrologist wants to see how much water is there. And we understand we need to have recon information on the wetland edge. And Mr. Bates will make sure the maps are valid and we stay outside the buffer zone. Chairman Kiefer — What are the wells pumping? Mr. Privitera — Test well one tested at 30 to 70 gallons per minute, well two tested at 115 gallons per minuets and well three was 5 gallons per minutes. Looking to do more wells and will keep them away from the wetland. Those application are pending. One of the wells are by the road. Mr. Bates — There is no need for any alteration since it’s by the road, so the Town could give us the permit. We are not making any changes, all the work was done while the maps were valid. I spoke with the DEC numers times and they see no issues. We are not looking to go down into the buffer either. Mr. Privitera — We haven’t done the full protocol yet. These are just preliminary numbers. Chairman Kiefer — How deep did you go? Mr. Privitera — Not sure. They are bedrock wells.
Richard McGoey – In regards to going to Fallsburg for the caretakes house, when the site plan arrived it looked like it was a lot more than a caretaker’s house. It shows two structures, one is two stories and the other is three stories. Mr. Privitera – It is really one structure, it’s a big house and I think that is for Fallsburg to decide. Richard McGoey – I think it’s part of the environmental review. Melinda Meddaugh – We are the Lead Agency. Mr. Privitera – No, it has independent utilities, it’s not part of the SEQRA review and its built in another town and purposed to what they require. And we realize its not fully engineer yet so we can’t get a building permit. Richard McGoey – Can you explain why it’s a caretaker’s house? Mr. Privitera – It’s a security house. We are going to need a security house. If this project does not go forward we can sell it as a house. Melinda Meddaugh – Isn’t office space included there as well? Mr. Pfau – Did we give you the floor plan Richard McGoey? Richard McGoey – No. Paula Kay – It was presented to us as a caretaker’s house for Sherri Lj and she would most likely stay there. But if it’s something else then we need to know what is being proposed. Richard McGoey – Your septic system is designed for 3,500 gallons per day. Mr. Pfau – Yes, the septic tank is 3,500 gallons. Richard McGoey – That is 24 hours of storage. Mr. Pfau – The system is designed for 900 gallons per day, we put in a 3,500-gallon tank. But the system itself is designed for 900 gallons per day. Mr. Privitera – If you want more info we can get it. We need a caretaker house. We need security at this site now. It has independent utility. The reason it’s in Fallsburg is in case this project doesn’t go forward we can sell it as a house and that’s why it’s has independent utilities.

Melinda Meddaugh – In the past, there were scoping issue with the project and it came to our attention that the deed and property needs to be subdivide for the mortgage. But on the application, it doesn’t say here that it need to be subdivide. Mr. Privitera – We don’t have plans to subdivide. I’ll look at the mortgage and see what it says. Mr. Bates – Sherri Lj had that in the original mortgage in case there was a default or something and then they could subdivide and then she would be able to keep what was hers. Mr. Privitera- I have to look and see how much has been paid off. Melinda Meddaugh – What do we need to do? Paula Kay – We can look at the payments as well. Mr. Privitera- I will look at the mortgage and see how much needs to be paid off. I think it’s almost all paid off. Chairman Kiefer – Is it an issue until it’s all paid off? Mr. Privitera – Maybe.

Melinda Meddaugh – For the units you said it would be three to four bedrooms in each unit. But this paper says nine bedroom units. Mr. Privitera – There are nine bedrooms in the town house type boarding units accessible from the street. If you look at the boarding house type, In phase one they look like row housing. Everyone walks in ground level with each boarding house having nine bedrooms. It’s a three story walk up, nine bedroom dorm. Mary Beth Bianconi – Nine per level? Mr. Bates – No three bedrooms per floor. Mary Beth Bianconi – I’m confusion, does unit equal bedroom? Mr. Privitera – I don’t know what a unit is. Mary Beth Bianconi - You have to define the lowest common dominator for me to calculation. Because it’s really hard to tell when you read the description, it says; Building type A comprised of three stories with nine bedroom units with one student per bedroom. But when I look at the plan it doesn’t make sense. Not sure what the reference to a unit is. Mr. Privitera – I’ll talk to the architect and get back to you. Mary Beth Bianconi - If they are all single occupant’s bedroom and we have 732 units that are accommodating 2,508 students, it just doesn’t add up. This is not clear, what does the 732 units mean? Mr. Privitera – I understand. Mary Beth Bianconi – We just need to understand better.
Jim Barnicle – We need to know what the definition is for a unit; row house and dormitory is! Mr. Privitera – We will work better with that. Melinda Meddaugh- A combined living and dining area will be located adjacent to each storage area. So, then each unit that has these three to four units has its own living, dining and storage? Mr. Privitera – Yes, standard definition for a dormitory.

Jim Barnicle – Did you know that the YMCA is your neighbor? Mr. Privitera – I did not know that. Mr. Bates – Where is it? Paula Kay – The YMCA bought it from your predecessor. Mr. Bates – Is there something built on it? Jim Barnicle – Yes. Paula Kay – It’s also a daycare. You need to account for it. Melinda Meddaugh – We had a few comments on the Environmental Assessment Form. Mary Beth Bianconi – Something need to be modify with the Environmental Assessment Form. Like where it says; Are there any facilities serving children within 1,500 feet of the project? Should go from no to yes. Mr. Bates – Ok, can we get a good description of what the YMCA has in term of size and what it has and does? Richard McGoey – Yes, there are maps here. Mr. Privitera – Is it built? Richard McGoey – Yes. Jim Barnicle – It’s an indoor, outdoor operation.

Chairman Kiefer – Any other questions. Melinda Meddaugh – Mary Beth Bianconi will you get the addition comments to them. Mary Beth Bianconi –Yes. Would you like for me to e-mail them to you? Mr. Privitera – Yes. Mary Beth Bianconi – We think it’s good for the Board to do part two on the Environmental Impact Statement again even though it will not change anything. Mr. Privitera – Lets adjust part one to make sure it reflects all that you said and then move onto the next step.

A motion to send out the notice of intent to reestablish Lead Agency was made by Michael Croissant and seconded by Melinda Meddaugh
5 in favor; 0 opposed

Paula Kay – Normally you will prepare a list, circulate it, go through the list and assuming there is no changes or if there are changes we will adjust it then you will send out. Mr. Pfau – We will send out? Paula Kay – Yes.

NEW YORK STATE ELECTRIC & GAS
21 Katrina Falls Road, Rock Hill, NY S/B/L: 51.-2-41.2
Josh Silver, attorney for applicant

Michael Hoyt recused himself from participating in this application, because Michael’s employer’s property boarders the NYSEG property.

Chairman Kiefer – Does anyone in the Public have any comments or question?

Deborah Padwe, I live adjacent to the pole. – I received a letter saying that this was a public hearing.

Paula Kay - Letters were sent out in error that this was going to be a Public Hearing. Even though this is not a Public Hearing we still have to let the public speak.
Exhibit F

to

Request for Interpretation from Building Permit F-17326

Exhibit: Letter from John Privitera to Lou Kiefer, Chairman of the Town of Thompson Planning Board, dated November 21, 2017
VIA FIRST CLASS MAIL:

Mr. Lou Kiefer, Chair
Town of Thompson Planning Board
Thompson Town Hall
4052 Route 42
Monticello, New York 12701

Re: Thompson Education Center

Dear Mr. Kiefer:

As we prepare for the scoping process under SEQRA, please accept this letter as an amendment to the Site Master Plan. As set forth in full scale drawings that have been delivered to Town Hall, and as reflected on the attached smaller drawing of the plans, the Applicant has eliminated a previously proposed access road from Renner Road in the Town of Fallsburg.

Sincerely,

John J. Privitera

JJP/kih

cc: Via E-mail only:
Paula Elaine Kay, Esq. (peklaw@hve.rr.com)
Mary Beth Bianconi (mbbianconi@delawareengineering.com)
Mollie Messenger (mmessenger@fallsburgny.com)
Exhibit G
to
Request for Interpretation from Building Permit F-17326

Exhibit: TEC’s application for a Building Permit for the Fallsburg Property, dated September 27, 2017
TOWN OF FALLSBURG
CODE ENFORCEMENT OFFICE
5250 Main Street,
South Fallsburg, NY 12779
Phone: (845) 434-8811 • Fax: (845) 434-5883

APPLICATION FOR BUILDING PERMIT
Only Checks Or Money Orders Are Acceptable And Must Be Made Payable to the Town of Fallsburg

INSTRUCTIONS:

1. This application must be completely filled in by typewriter or in ink and submitted to the Building Inspector.

2. A plot plan showing location of lot and buildings on premises with appropriate dimensions, relationship to adjoining premises or public streets and giving a detailed description of layout of property must be drawn on the diagram which is part of this application.

3. This application must be accompanied by two complete sets of plans showing proposed construction and two complete sets of specifications. Plans and specifications shall describe the nature of the work to be performed, the materials and equipment to be used and installed, and details of structural, mechanical and plumbing installations.

4. The work covered by this application may not be commenced before the issuance of a Building Permit.

5. Upon approval of this application, the Building Inspector will issue a Building Permit to the applicant, together with approved set of plans and specifications. Such permit, approved plans and specifications shall be kept on the premises, available for inspection throughout the progress of the work.


7. NO BUILDING OR STRUCTURE SHALL BE OCCUPIED OR USED IN WHOLE OR IN PART FOR ANY PURPOSE WHATSOEVER, UNTIL A CERTIFICATE OF OCCUPANCY SHALL HAVE BEEN GRANTED BY THE BUILDING INSPECTOR. Note: The homeowner is ultimately responsible for acquiring the certificate of occupancy.

8. APPLICATION IS HEREBY MADE to the Building Inspector for the issuance of a Building Permit pursuant to the New York Building Construction and Code Ordinances of the Town of Fallsburg for the construction of buildings, additions or alterations, or for the removal or demolition or use of property, as herein described. The applicant agrees to comply with all applicable laws, ordinances and regulations.

Adam Green
Name of Applicant (Please Print)

Signature of Applicant

31 Lewis Street Binghamton, NY 13901
Mailing Address

607-772-2500 9/27/17
Telephone # Date

"THIS IS NOT A PERMIT"
Thompson Education Center
Name of Owner (Please Print)

2 Centre View Dr, Oyster Bay, NY 11771
Mailing Address

516-541-6781
Telephone #

9/27/17
Date

Applicant is (check box indicating which is applicable):

[ ] Owner   [ ] Lessee   [ ] Agent   [ ] Architect/Engineer   [ ] Contractor/Builder

If applicant is a corporation, signature of duly authorized officer:

Name & Address of Corporate Officer: Dave Vaughn 31 Lewis Street Binghamton NY 13901

1. Street address of site where work will be done: Renner Rd TR 1A

Tax Map No./SBL: 65.1-11.59 Unit No:

2. State existing use and occupancy of premises and intended use and occupancy of proposed construction:

   1. Existing use and occupancy: NA

   2. Intended use and occupancy: Residential Home

3. Nature of work (check box indicating which is applicable):

   1. [X] New Building   [ ] Addition   [ ] Alteration

   [ ] Repair   [ ] Replacement   [ ] Deck

   [ ] Mobile Home   [ ] Other

   2. Number of Stories: 2 Number of Bathrooms: 4

   Number of Toilets: 4 Number of Bedrooms: 9

   Number of Families: 1 Heating System: Split System

4. Estimated cost: $1,250,000.00 Fee: Called Town 9/27/17 (TBD)
(To be paid upon filing of application)

5. If dwelling, number of dwelling units: NA

Number of dwelling units on each floor: NA

If garage, number of cars: NA

6. If business, commercial or mixed occupancy, specify nature and extent of each type of use:

   NA

7. Dimensions of new construction and/or addition:

   Front 66'-10" Rear 66'-10" Depth 105'-2" Height: 29'-0" Stories: 2

Please calculate total square footage: 9,328 SF
8. Dimensions of existing structures: NA
   Front ______ Rear ______ Depth ______ Height: ______ Stories ______

   Front ______ Rear ______ Depth ______ Total Square Footage ______

10. Dimensions of Mobile Home: NA
    Front ______ Depth ______ Make ______ Model ______ Year ______

11. Size of Lot:
    Front 156.5' Rear 175' Depth 1,215.92' Front yard: 957'-11"
    Rear Yard 156'-5" Side Yards 40' Is this a corner lot? No

12. Zone in which premises are situated: Rec-1

13. Does proposed construction violate any zoning law, ordinance or regulation:
    No

14. Name of Contractor's Compensation Carrier: ACIG Insurance Company
    Number of Policy: (NY) WCA00007117 Date of Expiration: 06/01/2018

15. Name of Contractor(s): LeChase Construction Services
    Address: 31 Lewis Street Phone Number: 607-772-2500

16. Name of Architect/Engineer: Dan Ionescu Architects
    Address: 233 Fifth Ave, New York, New York 10016 Phone Number: 212-223-5677

17. Name of Electrician: Schuler Haas

18. Name of Electrical Inspection Agency: To be selected from the list attached

19. Name of Plumber: DiGesare Mechanical Incorporated

**IMPORTANT**

- Do not pour footings until the location of building on lot and soil has been inspected.
- Defeer backfilling until waterproofing of foundation is approved by the Building Department.
- Walls are not to be covered until inspected by the Building Department.

Costs for work described in the Application for Building Permits include the cost of all the construction and other work done in connection therewith, exclusive of the cost of the land. If final cost shall exceed estimated costs, an additional fee may be required before the issuance of the Certificate of Occupancy.

SHOW PLOT PLAN ON REAR OF PAGE
(use additional sheet if necessary)
Attention Building Permit Applicants.

This Checklist Must Be Submitted Along With Your Completed Application.

Write N/A where not applicable

1. I have read the instructions on the front of the permit application.  X
2. I have submitted a plot plan showing the lot and buildings on the premises.  X
3. I have submitted legible detailed plans as per the instructions on the permit.  X
4. I understand the work may not be started until a permit is issued.  X
5. I understand that all electrical work must be independently inspected.  X
6. I understand that not displaying the permit placard is a $50.00 fine.  X
7. I understand that a Workmans Comp. exemption # or policy must be submitted.  X
8. I understand that const. debris must not be left outside during const.  X
9. I understand that a minimum of 24 hours is required for inspections.  X
10. I understand that any change requires updating the permit.  X
11. I understand that it is illegal to occupy or use without a C/O.  X
12. I understand that a C/O must be issued prior to occupancy or use.  X
13. I understand that a 911 number must be installed at the property.  X
14. I have given a copy of this checklist to my contractor.  X

By signing below I am stating that I have read and agree to the statements above and the dwelling, structure, fuel burning device, etc. will not be used or occupied until the issuance of a Certificate of Occupancy by the building department.

Signature of applicant Adam Green
Date 8/27/17

While not a requirement for a building permit, it is strongly suggested that final payment to contractors be subject to the issuance of a C/O.
100-2 Suitable containers required

All commercial or residential construction sites, whether a building permit is required or not, shall have suitable containers on site at all times to accommodate any and all construction-related debris.

§ 100-3 Covering X containers.

Containers are to be covered each day and night when not in use.

§ 100-4 Storage inside buildings.

Storage of construction-related debris may be inside the building.

§ 100-5 Availability and submission X landfill receipts.

Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Construction debris must be properly disposed of at the landfill at the end of the construction project. All landfill receipts must be made available upon request of the Code Enforcement Officer and must be submitted to the Code Enforcement Office prior to issuance of a certificate of occupancy.

§ 100-6 Outside accumulation X debris prohibited.

No outside storage of construction or project-related debris shall be permitted to accumulate, and all outside areas of the work site must remain free of debris, trash and garbage and must be cleaned regularly to ensure compliance.

§ 100-7 Stop-work order for noncompliance.

Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

In the event of noncompliance with the provisions of this article, a stop-work order shall be posted on the property and all project-related activities shall cease until the Code Enforcement Officer has inspected the property and compliance is verified. A stop-work order shall encompass the whole of the job site that is deemed in violation.

I have read the above stated code section regarding construction debris and storage and fully understand that outside storage of excess debris is prohibited and a stop work order for the entire construction project may be imposed for violation of this code section. I do hereby agree to provide suitable construction debris storage as required by this code section and to keep the job site clean at all times.

Signed ___________________________ Date 9/27/17

Adam Green

Title Project Executive
THIS FORM MUST BE FILLED OUT IF YOU ARE GIVING
SOMEONE ELSE PERMISSION TO ACT ON YOUR BEHALF
DURING CONSTRUCTION

OWNERS PROXY

(Owner) Thompson Education Center deposes and states that he/she resides
at:

Renner Rd TR 14

And that he/she is the owner of the premises described in the attached application for a
building permit/zoning application/planning board application and further states that
he/she has authorized LeChase Construction Services to make said
application, secure any necessary permits and approvals, call for inspections, and request
a certificate of occupancy upon satisfactory completion of the work described in said
application.

Date: 9/27/17

 Owners Signature Mike Wang

Witness Signature Elaine Li
ELECTRICAL CONTRACTORS VERIFICATION FORM

Electrical Contractor's Name: Schüler-Hams Electric Corp
Inspector License #: 821
Property Owner: Thompson Education Center
Property Address - Street: Renner Rd TR 14
Hamlet:

Signature of Electrical Contractor: [Signature]
Date: 9/27/17

No walls are to be covered until this form is returned to the Building Department and they have verification that the electrical contractor mentioned above is performing said work.

JOB: __________________________________________

TAX MAP #: _______________________________________

Return this form signed by a Sullivan County Licensed Electrician.
September 20, 2017

Molly Messenger  
Town of Fallsburg  
Code Enforcement Office  
5250 Main Street  
South Fallsburg, NY 12779

RE: Single Family Home Building Permit Application

Dear Molly,

We are the Architect of Record for the single family home proposed on Lot 65 of Block 1 in the Town of Fallsburg. Below please find relevant zoning and building information for the proposed design.

Zoning Data
- Block: 1
- Lot: 65
  - Located in REC-1 allowing Single Family homes to be built as of right
  - Maximum allowed Lot Coverage is 10%.
    - Provided 3% < 10%
  - Maximum number of floors allowable is 2 and 1/2.
    - Provided 2 floors < 2 and 3/4
  - The building is built within all required setbacks.

The building is designed and intended to be built as a self-sufficient single family house organized on two floors with a total area of 9,000 SF and includes the following:
- 9 bedrooms
- 3 full bathrooms
- 1 powder room
- Kitchen
- Living Room
- Breakfast Nook
- Screening Room
- Dining Room
- Family Room
- Den
- Sitting Room
- Home Office
- Family Room

The building has all necessary utilities and amenities to function independently:
- Well water
- Sewer system connected to a pumping station discharging into a septic tank and dissipating the waste to a leaching field.
- Electrical services from the local power provider, NYSEG.
- Heating and cooling is provided by a split system with 3 condensing units located outside the building and various air handlers located throughout the house.

The building meets or exceeds all codes including Local and International Building Code for construction, safety, and energy requirements.

Thank you.

Dan Ionescu AIA,
Principal
Dan Ionescu Architects
Exhibit H

to

Request for Interpretation from Building Permit F-17326

Exhibit: Letter from Grant & Lyons to Supervisor Vegliante, dated May 8, 2017
08 May 2017

Via UPS Delivery and
Email to: svelgian@fallburgny.com

Steven Vegliante, Town Supervisor
Town of Fallsburg
19 Railroad Plaza
South Fallsburg, NY 12779

Re: Thompson Education Center (TEC): Proposed Security/Caretaker Facility

Subj: TEC Request to Construct Security/Caretaker Facility
Location: Renner Road, Tax Parcel No. 65-1-11.59

Dear Supervisor Vegliante:

Grant & Lyons, LLP is a law firm dedicated to the practice of environmental, land use and real estate law. We represent the Basha Kill Area Association (BKAA).

Since its founding in 1972, the mission of the BKAA has been to protect the Basha Kill wetlands and surrounding area from ecological degradation, to promote education and respect for the environment in general and to preserve the beauty of the area. The BKAA consists of some 800 members working together to preserve the unspoiled quality of the beautiful and unique Basha Kill, and to serve as a local guardian for the wetland by being alert to threats such as pollution, vandalism and unwise development.

The BKAA has had deep misgivings about the Thompson Education Center (TEC) project and has been involved in the review of the project since its inception four years ago. The Security/Caretaker Facility proposed on a 4.93 acre parcel on Renner Road in Fallsburg (Tax Parcel No. 65-1-11.59) is clearly part of this larger project. This huge proposed venture, sited at the westernmost border of the Basha Kill Watershed, will potentially discharge significant volumes of wastewater effluent to waters that eventually flow to the Basha Kill, besides generating other negative watershed impacts.

Summary

The purpose of this letter is to notify the Town of Fallsburg that it would be illegal for the Town to grant to TEC any permits or approvals for the Security/Caretaker Facility. Given its obvious connection with the larger TEC project, the rule against improper segmentation prohibits Fallsburg from approving or issuing permits for TEC's Security/Caretaker Facility until full compliance with the State Environmental Quality Review Act (SEQRA) has been achieved. That means that the lead agency for the SEQRA environmental review must have issued either a negative declaration, or a Statement of Findings based on a Final Environmental Impact Statement (EIS) on the whole TEC project before Fallsburg can issue any approvals or permits for this Facility.
Proposed Security Facility is Part of the Larger TEC Project

From its inception, TEC has envisioned using the Renner Road parcel as part of the larger Education Center project. This is evidenced by its Environmental Assessment Form (EAF), which says:

Thompson Education Center (TEC), as proposed would be a school of higher education located on an approximately 573 acre parcel off of Wild Turnpike in the Town of Thompson (s/b/i 28-1-6) and in the Town of Fallsburg (s/b/i 65-1-11.59), Sullivan County, New York [emphasis added].

Clearly, the proposed building in Fallsburg is part of the project in Thompson.

SEQRA Regulations Prohibit the Issuance of Permits Or Approvals until SEQRA Has Been Complied with

Section 617.3(a) of the SEQRA Regulations says:

no agency involved in an action may undertake, fund or approve the action until it has complied with SEQRA. A project sponsor may not commence any physical alteration related to an action until the provisions of SEQRA have been complied with.¹

This means that no permits or approvals for any part of an action may be issued until the SEQRA lead agency has issued a Negative Declaration or a Statement of Findings based on an EIS for the entire project.²

SEQRA Rule Against Improper Segmentation Prohibits the Issuance Of Any Approvals or Permits for the Security/Caretaker Facility at this Time

The NYSDEC's "SEQR Handbook" defines segmentation as follows:

...the division of the environmental review of an action so that various activities or stages are addressed as though they were independent, unrelated activities needing individual determinations of significance. Except in special circumstances, considering only a part, or segment, of an overall action is contrary to the intent of SEQRA.

There are two types of situations where segmentation typically occurs. One is where a project sponsor attempts to avoid a thorough environmental review by splitting a project into two or more smaller projects. The second is where activities that may be occurring at different times or places are excluded from the

¹ 6 NYCRR 617.3(a).
² NYSDEC, The SEQR Handbook, Ch. 1 "Agencies and Decisions Subject to SEQR", p. 15.
scope of the environmental review.\textsuperscript{3}

The "SEQR Handbook" says further:

Reviewing the "whole action" is an important principal in SEQR; interrelated or phased decisions should not be made without consideration of their consequences for the whole action, even if several agencies are involved in such decisions. Each agency should consider the environmental impacts of the entire action before approving, funding, or undertaking any specific element of the action [emphasis added].\textsuperscript{4}

Here, TEC is attempting to obtain approval to construct the Security/Caretaker Facility as though it were independent, and unrelated to the larger TEC project. This is prohibited.

The "SEQR Handbook" provides important guidance on segmentation by setting forth a basic eight-part segmentation test. It says:

When trying to determine if segmentation is occurring, agencies should consider the following factors. If the answer to one or more of these questions is yes, an agency should be concerned that segmentation is taking place [emphasis added].

The segmentation test is comprised of eight questions. In this case, six of the eight questions can be answered yes.

<table>
<thead>
<tr>
<th>Segmentation Test Question</th>
<th>Answer, as Relates to TEC Project</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose:</strong> is there a common purpose or goal for each segment?</td>
<td>Yes. clearly the Security/Caretaker facility is part of the larger TEC project. Without a related project for which Security and/or Caretaker services are required, there is simply no need for a Security/Caretaker facility.</td>
</tr>
<tr>
<td><strong>Location:</strong> is there a common geographic location?</td>
<td>Yes. The Fallsburg parcel abuts the TEC's Town of Thompson parcel. Moreover, TEC's plan identifies use of the Fallsburg parcel to allow the portions of the project on the Town of Thompson parcel to access Renner Road.</td>
</tr>
</tbody>
</table>

\textsuperscript{3} Id., at Ch.2 "Review Required under SEQR", Subch. D "Segmentation", at p. 52.

\textsuperscript{4} Id.
| Impacts: Do any of the activities being considered for segmentation share a common impact that may, if the activities are reviewed as one project, result in a potentially significant adverse impact, even if the impacts of single activities are not necessarily significant by themselves? | Yes. Clearly if the Security/Caretaker Facility is reviewed with TEC as one project, the project will result in potentially significant adverse impacts. This is evident simply from the project's scale, intensity, its contrast to existing conditions and its proximity to sensitive environmental resources. |
| Ownership: Are the different segments under the same or common ownership or control? | Yes. Both parcels are under common ownership. |
| Common Plan: Is a given segment a component of an identifiable overall plan? Will the initial phase direct the development of subsequent phases or will it preclude or limit the consideration of alternatives in subsequent phases? | Yes. As noted above, the TEC EAF indicates that the Fallsburg parcel will be used as part of the Education Center to be built on TEC's Thompson property. |
| Utility: Can any of the interrelated phases of various projects be considered functionally dependent upon each other? | Yes. As noted above, the TEC EAF indicates that the Fallsburg parcel will be used as part of the Education Center to be built on TEC's Thompson property. |

Here the NYSDEC's segmentation test yields a clear result. Answering "Yes" to six of the eight questions proves that considering the Security/Caretaker Facility as a stand-alone project would be improper segmentation. This is supported by the court decision in *Kerasz v. Wallace*. In that case, in reviewing an application involving a single building on a large parcel, the court held that a town ZBA was required to consider simultaneously the other buildings planned by the same developer for that parcel. The court found it would violate the anti-segmentation rule "[t]o allow a piecemeal development, single building by single building, single permit by single permit, without an early examination of the environmental impact" of the entire development.

In addition, the NYSDEC's segmentation test also shows that the key consideration is whether the Security/Caretaker Facility is a component of a larger project. The fact that the project spans two towns is irrelevant. Given the clear connection to the TEC project proposed for the Town of Thompson parcel, the Security/Caretaker Facility in Fallsburg must be reviewed as part  

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5 134 Misc. 2d 1052 (Sup. Ct. Saratoga Co. 1987).
6 Id., at 1055.
of the larger project.

It bears noting as well that, at its recent meeting held on April 12, 2017, the Town of Thompson Planning Board's consulting engineer raised concerns about segmentation as regards TEC's attempts to build the Security/Caretaker Facility under the guise of an independent project. As shown by the foregoing, his concerns are well-founded.

Conclusion

The rule against improper segmentation prohibits the Town of Fallsburg from approving or issuing permits for TEC's Security/Caretaker Facility until SEQRA has been fully complied with. That means that the lead agency for the SEQRA environmental review must have issued either a negative declaration, or a Statement of Findings based on a Final EIS on the whole TEC project before approvals or permits can be issued for the Security/Caretaker Facility. Until that time, our clients urge Town of Fallsburg not to issue any approvals or permits for the Security/Caretaker Facility.

Thank you for your time and consideration.

Very truly yours,

Grant & Lyons, LLP

John F. Lyons

enc:

c: Paula Elaine Kay, Esq., Attorney to the Town of Fallsburg and Town of Thompson Planning Boards
Mollie Messenger, Code Enforcement Officer, Town of Fallsburg
Will Illing, PE, Town Engineer, Town of Fallsburg
Lou Kiefer, Chairman, Town of Thompson Planning Board
Heather Zangla, Secretary to the Town of Thompson Planning Board
Richard Sush, Deputy Supervisor, Town of Thompson
James Carnell, Jr., Director - Building, Planning & Zoning, Town of Thompson
Mary Beth Bianconi, Town of Thompson Planning Consultant
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Bill Herrmann, Supervisor, Town of Mamakating
Daniel T. Whitehead, Regional Permit Administrator, NYSDEC Region 3
Joseph R. Murray, Environmental Analyst, NYSDEC Region 3
Alan Sorensen, Sullivan County Legislator, District 9
Freda Eisenberg, AICP, Commissioner, Sullivan County Div of Planning & Env Mgmt
Paula Medley, Basha Kill Area Association
Toby Boritz, Rock Hill Neighborhood Coalition
Laura Coruzzi, Yankee Lake Preservation Association
Andrew Willingham, PE, Willingham Engineering
Katherine Beinkafner, Mid-Hudson Geosciences
Norbert Quenzer, Bagdon Environmental

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Laura Coruzzi, at lacoruzzi@gmail.com
Andrew Willingham, at awillingham@willinghamengineering.com
Norbert Quenzer, at nquenzer@bagdonenvironmental.com
Exhibit I

to
Request for Interpretation from Building Permit F-17326

Exhibit: Letter from Grant & Lyons to CEO Messenger, dated July 21, 2017
21 July 2017

Ms. Mollie Messenger, Code Enforcement Officer
Town of Fallsburg
5250 Main Street
South Fallsburg, NY 12779

Re: Thompson Education Center (TEC)

Subj: TEC Development of Renner Road Parcel & Access Road onto Renner Road
Location: Renner Road, Tax Parcel No. 65.-1-11.59

Dear Ms. Messenger:

Grant & Lyons, LLP is a law firm dedicated to the practice of environmental, land use and real estate law. We represent the Basha Kill Area Association (BKAA).

Summary: Building Permit for Single-Family Residence Should be Denied

In the near future, the Thompson Education Center (TEC) may apply to you for a building permit to build a "single-family residence" on a parcel of land owned by TEC on Renner Road in Fallsburg (Tax Parcel No. 65.-1-11.59)(the "Renner Road parcel"). In that event, we urge you to deny that application. The reasons in support of this position are set forth below.

Explanation: Reasons in Support of Building Permit Denial

1. Development of TEC’s Renner Road parcel with a single-family home, when that same parcel is also proposed to contain the TEC educational complex access road, constitutes improper segmentation.

A building permit for a “single-family residence” on TEC’s Renner Road parcel must be denied because that parcel is undisputably a critical part of TEC’s proposed educational complex (the "project") proposed for its abutting land in the Town of Thompson (Tax Parcel No. 26.-1-6). Allowing any development on TEC’s Renner Road parcel before completion of the SEQR review of the proposed educational complex would be improper segmentation.

Since its inception, TEC has planned to utilize its Renner Road property as part of the project. In a letter dated April 29, 2014 to the Thompson Planning Board, Sherry Li said that the Renner Road property will be used as an “exit road” for the project. And this remains the case. According to the latest version of the site plan (Revised June 20, 2017), an access road will be built on the Renner Road parcel which will connect vehicular traffic from the complex to Renner Road. TEC’s plan to use the Renner Road parcel for an access road is also stated twice in TEC’s Environmental Assessment Form (EAF) dated June of 2017, where TEC says:
Thompson Education Center (TEC) is to be a school of higher education located on an approximately 573 acre parcel off of Wild Turnpike in the Town of Thompson (s/b/l 26.1-1-6) and in the Town of Fallsburg (s/b/l 65.1-11.83), Sullivan County, New York. [emphasis added].

Thus, TEC’s Renner Road parcel will play a critical role in the project by providing a traffic outlet from the project onto Renner Road. Because this parcel is an integral part of the project, a building permit cannot be issued for a single-family residence on this parcel.

SEQRA’s rule against improper segmentation ensures that the lead agency will examine the potential adverse environmental impacts of an entire project, viewing it as a whole. That whole view makes sure that projects don’t evade full environmental review by being built piecemeal. Just as important, it also ensures the existence of a full range of flexibility for project design changes that accomplish mitigation to the “maximum extent practicable” as required by SEQRA. Diminishing that flexibility will constrain the range of alternatives, and hence constrain mitigation.

To illustrate this, below is an excerpt from the June 20, 2017 site plan map showing TEC’s Renner Road parcel and the proposed access road which traverses it.

1 See TEC Environmental Assessment Form dated June of 2017 at both “Description of the Action” and at the beginning of the “Proposed Overview.”
Below appears an excerpt from Page 1 of the Bulk Regulation table from the Town of Fallsburg Zoning Law.

<table>
<thead>
<tr>
<th>Recreation Districts</th>
<th>Lot Type</th>
<th>Maximum Lot Coverage</th>
<th>Minimum Lot Size</th>
<th>Maximum Lot Coverage</th>
<th>Minimum Lot Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>REC-1</td>
<td>Single-Family Residence</td>
<td>10%</td>
<td>10,000 sq. ft.</td>
<td>10%</td>
<td>10,000 sq. ft.</td>
</tr>
<tr>
<td></td>
<td>Multi-Family Residence</td>
<td>20%</td>
<td>20,000 sq. ft.</td>
<td>20%</td>
<td>20,000 sq. ft.</td>
</tr>
</tbody>
</table>

TEC's Renner Road property is located in the Recreation REC-1 Zoning District. According to a note on the Town's bulk regulations table, the bulk regulations are designed to help achieve the purpose of the various zoning districts. The table states that the purpose of the REC-1 District is:

To conserve open space by encouraging a very low density development pattern while permitting clustering at higher densities, provided that central water and sewer service is provided and common open space provided.

In order to achieve that end, the bulk table states that the maximum lot coverage in this District for a lot developed with a single-family home is ten percent (10%).

We do not have the benefit of an original, scaled version of the site plan map. But it appears to the eye that the lot coverage presented by the proposed structure, driveway, and the access far exceeds ten percent (10%) of the lot area. We urge you to scrutinize and calculate the area of lot coverage proposed. If it exceeds ten percent (10%), an application for a building permit which is based on the building and driveway dimensions shown on the TEC site plan must be denied for failure to comply with the Zoning Law.

Conclusion

The rule against improper segmentation prohibits the Town of Fallsburg from approving or issuing building permits for any development on TEC's Renner Road parcel as it is clear it is included as part of TEC's proposed educational complex. Allowing partial development of the parcel will improperly constrain the environmental review and narrow the range of potential design alternatives to mitigate potential adverse impacts, or perhaps eliminate them completely.

What's more, it appears as if the single-family residence structure and driveway/access road on

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2 The driveway and access road must both be included in the calculation of lot coverage because, as proposed, the driveway for the ''single-family residence'' does not connect directly to Renner Road, but instead relies upon a connection to the proposed access road in order to reach Renner Road.
the Renner Road parcel may far exceed the maximum lot coverage allowed in Fallsburg’s REG-1 Zoning District for a parcel developed with a single-family home.

For these reasons, we urge denial of any application by TEC for a building permit to construct a single-family home on its Renner Road parcel.

Thank you for your time and consideration.

Very truly yours,

Grant & Lyons, LLP

John F. Lyons

enc:

Steven Vegliante, Town Supervisor, Town of Fallsburg
Paula Elaine Kay, Esq., Attorney to the Town of Fallsburg, and the Town of Thompson Planning Board
Arthur Rosenshein, Chairman, Town of Fallsburg Planning Board
Will Ilting, PE, Town Engineer, Town of Fallsburg
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Norbert Quenzer, Quenzer Environmental LLC

c via email: Steven Vegliante, at svegliante@fallsburgny.com
Paula Elaine Kay, Esq., at paklaw@hvc.rr.com
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Lou Kiefer, at LJKiefer@hvc.rr.com
Heather Zangla, at planning@townofthompson.com
Richard Sush at rsush@townofthompson.com
James Carnell, Jr. at jrcarnell@townofthompson.com
Mary Beth Bianconi, at mbbianconi@delawareengineering.com
Affidavit and Owner Proxy of John Foufas,
Submitted to Fallsburg ZBA Request for Interpretation
In the Matter of the Appeal of
JOHN FOUFAS, and the BASHA KILL AREA
ASSOCIATION, Appellants,

from a the issuance of Building Permit No. F-17326 by the
Town of Fallsburg Building Department on November 28,
2017 for property owned by the THOMPSON EDUCATION
CENTER on Renner Road in Fallsburg (Tax Parcel No.
65.-1-11.59)

JOHN FOUFAS, being duly sworn, deposes and says:

Preface

1. I reside at 2015 82nd Street, Brooklyn, New York 11214, and I make this affidavit in
support of my appeal to the Town of Fallsburg Zoning Board of Appeals (ZBA).

2. By this appeal, which I make jointly with the Basha Kill Area Association (BKAA), I seek
a determination by this ZBA to rescind and declare null and void the Building Permit No.
F-17326 issued by the Town of Fallsburg Building Department on November 28, 2017 to
the Thompson Education Center (TEC), which permit will allow construction of an
alleged single family residence of property owned by TEC on Renner Road in the Town
of Fallsburg, and which property bears the Tax Parcel No. 65.-1-11.59.

Standing

3. I am the owner of real property located directly across Renner Road from the TEC
property. My property is located at 29 Renner Road and bears the Tax Parcel No. 65.-1-
11.4. A map which shows the location of my property and its relation to the property
owned by TEC appears on the next page as Figure 1.
3. As a direct neighbor to the TEC property, I am aggrieved by the issuance of the Building Permit at issue in this appeal. The close proximity of my property to the TEC property means that I will be adversely affected by TEC's erection of a structure on its property in a way that is different from that of the public at large. My right to the quiet enjoyment of my property at 29 Renner Road will be adversely affected by TEC's construction of a gigantic building which does not meet the Town of Fallsburg definitions of a single-family dwelling unit and which is actually intended for a non-residential use in a residential
neighborhood.

Authorization for Grant & Lyons to Represent Me

4. By this affidavit I testify that I authorize the law firm of Grant & Lyons, LLP to represent me in all respects in connection with this appeal. Grant & Lyons, LLP is authorized to appeal before the ZBA on my behalf and make all manner of argument and submit documents and evidence in support of, and in furtherance of this appeal.

5. I also advise the ZBA that I am also a member of the BKAA, which makes this appeal jointly with me. I support the work the BKAA and I am proud to have them joining with me on this appeal.

Sworn to before me this 20th day of December, 2017

[Signature]

Notary Public

TREVOR O. D'WYER
Notary Public - State of New York
NO. 31068291877
Qualified In Kings County
My Commission Expires Oct 21, 2021
THIS FORM MUST BE FILLED OUT IF YOU ARE GIVING SOMEONE ELSE PERMISSION TO ACT ON YOUR BEHALF DURING CONSTRUCTION

OWNERS PROXY

(Owner) John Foufas deposes and states that he/she resides at: 2015 82nd Street, Brooklyn, NY, 11214 and is the owner of property located at 29 Renner Road, Fallsburg, NY (tax parcel number: 65.1-11.4)

And that he/she is the owner of the premises described in the attached application for a building permit/zoning application/planning board application and further states that he/she has authorized Grant & Lyons, LLP to make said application, secure any necessary permits and approvals, call for inspections, and request a certificate of occupancy upon satisfactory completion of the work described in said application.

Date: 2/29/2021

Owners Signature

Witness Signature

TREVARNO JAY Dwyer
Notary Public - State of New York
NO. 01DW6291877
Qualified in Kings County
My Commission Expires Oct 21, 2021
Affidavit of Paula Medley,
Submitted to Fallsburg ZBA Request for Interpretation
PAULA MEDLEY, being duly sworn, deposes and says:

Preface

1. I reside at 45 Rambling Road, Westbrookville, New York 12785.

2. I am the President of the Basha Kill Area Association (BKAA), P.O. Box 1121, Wurtsboro, New York 12790.

3. I make this affidavit in support of the appeal to the Town of Fallsburg Zoning Board of Appeals (ZBA) by the BKAA and John Foufas.

4. By this appeal, the BKAA seeks a determination by this ZBA to rescind and declare null and void the Building Permit No. F-17326 issued by the Town of Fallsburg Building Department on November 28, 2017 to the Thompson Education Center (TEC), which permit will allow construction of an alleged single family residence of property owned by TEC on Renner Road in the Town of Fallsburg, and which property bears the Tax Parcel No. 65.-1-11.59.

Standing

5. Since its founding in 1972, the mission of the BKAA has been to protect the Basha Kill
wetlands and surrounding area from ecological degradation, to promote education and respect for the environment in general and to preserve the beauty of the area. The BKAA consists of some 800 members working together to preserve the unspoiled quality of the beautiful and unique Basha Kill, and to serve as a local guardian for the wetland by being alert to threats such as pollution, vandalism and unwise development.

6. The BKAA has had deep misgivings about the Thompson Education Center (TEC) project and has been involved in the review of the project since its inception four years ago. The structure, likely a Security/Caretaker Facility, proposed on a 4.93 acre parcel on Renner Road in Fallsburg (Tax Parcel No. 65.-1-11.59) is clearly part of this larger project. This huge proposed venture, sited at the westernmost border of the Basha Kill Watershed, will potentially discharge significant volumes of wastewater effluent to waters that eventually flow to the Basha Kill, besides generating other negative watershed impacts.

7. Shown below on the next page is a map which depicts the relationship between the Harlan Swamp Complex and the protected Basha Kill Marsh, a/k/a the Bashakill Wildlife Management Area (WMA). The location of the Harlan Swamp and TEC’s Thompson property are indicated on the map by the red arrows. On the map, the 3,000 acre Bashakill protected WMA is shown in orange. Surrounding it, in white (with gray-shaded topography), is the Basha Kill’s 36,000 acre watershed, whose waters, including the Harlan Swamp, drain down to the WMA. Thus, a threat to the ecological health of the Harlan Swamp Wetlands also threatens the ecological health of the WMA. Therefore, the BKAA has a keen interest and desire to protect the wetlands on TEC’s Thompson property.
8. The BKAA has participated vigorously in all of the governmental reviews and permitting
procedures associated with this proposed project. The BKAA believes that TEC's attempts to hide the true nature and future use of this building is an attempt by TEC to sidestep the environmental review of the education center project in Thompson.

9. In that way, the interests of the BKAA and its members are adversely affected in a way different than the public at large, by the issuance of the Building Permit to TEC.

Authorization for Grant & Lyons to Represent Me

10. By this affidavit I testify that the law firm of Grant & Lyons, LLP is fully authorized to represent the BKAA in all respects in connection with this appeal. Grant & Lyons, LLP is authorized to appear before the ZBA on the BKAA's behalf and make all manner of argument and submit documents and evidence in support of, and in furtherance of this appeal.

[Signature]
PAULA MEDLEY, President
Basha Kill Area Association

Sworn to before me this 22nd day of December, 2017

[Signature]
Notary Public