

**Minutes for the Ticonderoga Planning and Zoning Board held on  
January 6, 2021 commencing at 6:00 p.m.**

**Present:** Chairman Dr.W.D. McTyier, Walt Lender, Don Meserve, Ben Leerkes, Erik Leerkes, Tonya M. Thompson

**Absent:** Mike Powers

**Others:** Alternate Stephanie Mitchell

Chairman McTyier opened the meeting with the Reciting of the Pledge of Allegiance.

It was noted and acknowledged that the applicant, just today, asked for an adjournment until the February meeting in light of the increased cases of COVID. The board also acknowledges that the Go-To-Meeting and Ticonderoga Website is not currently available and therefore no way to advertise a meeting via the web. The board agrees to table the matter until the February 3, 2022 meeting.

Chairman McTyier noted in light of the above request the Public Hearing for tonight regarding the Interpretation of the Zoning Officer's determination regarding 102 Race Track Road the matter can be tabled if it is the board's pleasure.

**Resolution #1-2022PZB** brought by Walt Lender, seconded by Don Meserve to table the Public Hearing regarding the Interpretation of the determination on 102 Race Track Road. **5 – Aye, 0 – Nays. Carried.**

Chairman McTyier also noted in light of the above request the Public Hearing for tonight for the Use Variance regarding 102 Race Track Road the matter can be tabled if it is the board's pleasure.

**Resolution #2-2022PZB** brought by Walt Lender, seconded by Don Meserve to table the Public Hearing for the Use Variance regarding 102 Race Track Road. **5 – Aye, 0- Nays. Carried.**

**Other Business**

**Resolution #3-2022PZB** brought by Doug McTyier, seconded by Don Meserve to approve the Minutes from the November 4, 2021 meeting. **5 – Aye, 0- Nays. Carried.**

**Resolution #4-2022PZB** brought by Dough McTyier seconded by Don Meserve to approve the Minutes from the December 2, 2021 meeting. **5 – Aye, 0- Nays. Carried.**

Mrs. Thompson explained to the board that they need to appoint a firm to review the Decommission Plans for the approved Solar projects. We do have a recommendation from the Town's Engineering firm for ETM SOLAR WORKS out of Endicott, NY. This board needs to resolve to enter into an agreement with them if that is the plan. The fees will be disbursed between the projects.

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**Resolution #5-2022PZB** brought by Don Meserve to accept the proposal received from ETM SOLAR WORKS out of Endicott, NY to review three decommission plans in an amount of \$750.00. **5 – Aye, 0- Nays. Carried.**

**Resolution #6-2022PZB** brought by Walt Lender, seconded by Ben Leerkes to adjourn at 6y:10 p.m. **5 – Aye, 0- Nays. Carried.**

Respectfully submitted, Tonya M. Thompson, Town Clerk

300 North St.  
Endicott NY 13760  
[www.etmsolar.com](http://www.etmsolar.com)



Phone: 607-785-6499  
FAX: 607-786-3388  
email: [info@etmsolar.com](mailto:info@etmsolar.com)

12-21-2021

AES Northeast  
Bradley Noviski  
Associate, Controller/Program Manager  
Business Administration Division  
10-12 City Hall Place  
Plattsburgh, NY 12901

Brad,

Re: Review of Town of Ticonderoga's decommissioning plan

**Scope**

I will look at each plan and write up a report with comments/suggestions.

Lead time is 2 weeks. The cost to do this is: \$750

Sign here to accept WD - mcr

Sincerely,

Dr. Gay E. Canough  
President, ETM Solar Works



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**Present:** Chairman Dr. W.D. McTyier, Don Meserve, Erik Leerkes, Mike Powers, and Tonya M. Thompson, (Via video) Stephanie Mitchell and Town Attorney Matt Fuller

**Absent:** Walt Lender, Ben Leerkes

**Others:** Bob Ross, Brandon Titus, Dave Woods, and Mark Wright (Via Video), Mark Sweeney, Richard Frankel, Jim Abdallah, Bridget Cuddihy, Sam Hall, Donnie Ecret and Susanne Hoilunz

Chairman McTyier called the meeting to order (after a bit of difficulty with the Go-To-Meeting link) with the Reciting of the Pledge of Allegiance.

**Public Hearing**

**Appeal of a Determination for property at 102 Race Track Road (#150.34-9-18.019, /2 & /3**

We are going to re-open the hearing regarding the Determination of the Interpretation.

Mr. Frankel (Representing the applicant, St. Joseph's) is assuming that the minutes from the last proceeding back in December will be incorporated into this meeting (those minutes are on file in the Town Clerk's office). He would just like to address a few points. This interpretation deals with the fact that St. Joseph's wants to take the position that it either falls under the definition of the Town's Zoning Code as a Nursing Home or as a Multi-dwelling. The main aspect here is that the Zoning Code does not specifically prohibit the intended use, there are permitted uses, but there is no specific statement in the Zoning Code stating that all of the uses are prohibited. So, we charge that in the first instance, what is not prohibited is permitted. Secondly, because the Town Codes are supposed to be strictly construed against the municipality so it is not to affect the rights of the land owner, we believe that if you look at the definition of a Nursing Home and look at what the Town has said is a Nursing Home, that this proposed use as a 820 Mental Hygiene law residential facility, it fits all the components of what is a Nursing Home. It is residential, it has its residents there, they have a full-time staff 24/7 and they are providing Nursing Care. It is not an outpatient treatment facility, it is intended to basically, very similar as you would find in context to a Nursing Home and within the definition of what the Town has indicated. So, that would be the first argument that we are making and he will call your attention to 14NYCRR, section 820 paragraph 6, it talks in terms of this facility will have stabilization and rehabilitation services and there must be registered Nurse, weekend Nursing staff, and in addition there needs to be an LPN or a Licenses Practical Nurse and it requires staffing of a Physician, Nurse Practitioner, a Physician Assistant to meet the medical assessment and treatment needs of these residents. Very similar to what you would find being required in a Nursing Home. Once again, it is not a Detox center, it is not an outpatient center, it is residential. He would refer you to the supplemental letter by Robert Ross, the Chief Executive Officer Resident of the applicant, of December 15, 2021, which will assure this even further and has been submitted as part of the record and describes the distinction between outpatient services as well as medical detox, which is not what this program is intended to be. In addition, we believe it could also fall under Multi-housing. It is interesting, your Town Code Section 20.20.41 defines a multiple dwelling as any structure designed to be used as a residence for two or more families. Interestingly enough, you don't define that it has to be a dwelling unit. Unit

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and dwelling are defined in your code but they relate to other things, such as for instance, town homes, trailers, it is not used in multiple dwellings. So, taking a strict interpretation of the Town's Code this would also fall into that definition although admittedly, they have said, that there will be the equivalent of keeping up of the applicant of meeting of the concept of unit or dwelling unit is not used in your codes section for definition of purposes. One thing that he just wants to go back quickly on the Nursing Home issue is that this is a regulated entity by the Department of Mental Health through OASIS and as pointed out at the last hearing, there is a definitional distinction here that this is not a hospital under the public health law section 2801, paragraph 1 – because this facility will be regulated not by the public health law or not by the Department of Health but by Mental Hygiene Law. That specifically excludes from the definition of hospital this type of entity. So, it would fall within the definition of Nursing Home. With that, he does not know if his client that is present tonight would like to add anything further to those definitional arguments in our request for an Interpretation.

Bob Ross is fine with what Mr. Frankel has said.

Mike Powers owns property with his wife directly across the road from this project site at 99 Race Track Road and he would like to note that the contention that if it is not specifically excluded by Zoning, then it has to be included, is incorrect. Zoning by its structure is designed that if the project of use is not specifically included, it is therefore excluded. That has been the way Zoning is in NYS since Zoning was allowed in NYS. It is like that in the rest of the country as well. That is really the only thing he has to say. He is standing by the comments that he made at the December meeting (on file in the Town Clerk's Office). But that is the only thing he would point out for additional.

Dave Woods had a question about a dwelling and a Nursing Home, is there an age limit? He is assuming that these are younger people. When you say Nursing Home, is there an age limit and when you say dwellings, each one has to have their own bathrooms like the nursing homes do. Just how far do you go with that?

Chairman McTyier asked if the board members had any further comments.

Mr. Leerkes believes we had plenty of discussion at the last meeting.

Mr. Meserve feels the information provided today was very helpful in pointing out what you are trying to get us to look at closer. He feels we have enough to make a decision tonight.

Chairman McTyier noted that the public has spoken, we have given our ideas; he believes it is time to close this public hearing.

**Resolution #7-2022PZB** brought by Erik Leerkes, seconded by Don Meserve to close the Public Hearing at 6:30 p.m. **All in Favor 4-Ayes, 0-Nays, Carried.**

**Resolution #8-2022PZB** brought by Doug McTyier, seconded by Erik Leerkes to deny the Appeal regarding the Interpretation of the Determination as follows: **All in Favor 4-Ayes, 0-Nays, Carried.**

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**Whereas**, the Town's code enforcement officer by determination dated May 18, 2021, determined that St. Joseph's Rehabilitation Center Inc.'s proposed use of the property at 103 Race Track Road, Ticonderoga, New York, was not an allowed use in the Medium Residential ("MR") zone; and

**Whereas**, by joint appeal and use variance application on July 15, 2021, updated by letter and materials of November 12, 2021, St. Joseph's Rehabilitation Center, Inc. argues first that if a use is not prohibited, it is allowed, and it then follows to argue that its proposed "24/7 residential facility with certain health related services" should be considered a nursing home or a multiple dwelling, or some hybrid of the two, and

**Whereas**, a public hearing was held on the appeal by St. Joseph's Rehabilitation Center, Inc.; and

**Whereas**, the Planning and Zoning Board is prepared to render a decision on the appeal by St. Joseph's Rehabilitation Center, Inc.

**Now therefore**, the Planning and Zoning Board hereby finds and determines as follows:

MR permitted uses are: Mobile Home; Places of Worship; Public or Semipublic Building; Public Parks and Playgrounds; Public Utility Use; Rooftop Solar System; School; Single Family Dwelling; Townhouse; Tier I Solar Energy Systems.

MR permits as Special Use: Bed-And-Breakfast; Major Public Utility Use; Mini Storage Facilities; Mobile Home Parks; Multiple Dwellings; Nursing Home; Private School; Tourist Accommodations

The applicant states that their proposed use should be considered a "hybrid" of a nursing home and multiple dwelling that are permitted as special uses.

It does not appear to the board that the proposed use fits under the special use of Nursing Home, due to the fact that the use will be a rehabilitation facility where the residents will be receiving care different from normal nursing care supplied in a nursing home.

It also does not appear to the board that the proposed plan fits under the special use of Multiple Dwellings due to the fact that it is a business facility for rehabilitation supplying care specifically targeted toward recovery from addiction.

In addition, the dwelling units as proposed do not contain their own bathroom or kitchen facilities. Each unit in the proposed plan could not be categorized as an individual dwelling.

Based on the foregoing, the May 18, 2021, determination of David Burrows, Code Enforcement Officer of the Town of Ticonderoga is affirmed and the appeal of St. Joseph's Rehabilitation Center, Inc. is denied.

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Use Variance for property at 102 Race Track Road (#150.34-9-18.019./2 & /3)

We are going to re-open the Public Hearing on the Use Variance application from St. Joseph's Rehabilitation Center, Inc.

Mr. Frankel would like to make a few additional comments if it pleases the board. He is assuming that his prior information has been incorporated into this hearing. (December's minutes are on file in the Town Clerk's Office) He has submitted some additional financial information, both from the original individual Howard Carr from The Howard Group – there were some questions as to additional numbers or calculations and we did that, the information that was provided in the supplement showed that not only can there not be any reasonable rate of return, but a negative rate of return based upon all the uses, looking at the only available data in the community that could be located for comparisons and that was the Dollar Tree store and the Rental rate that we derived from there. He also has analyzed the issue relating to the continued use of a medical office building as is now permitted through a variance and concluded that essentially there is no warrant for it. This is further adjusted by the owner of HHHN in their letter that they submitted in support of this project, and that the potential use of this facility as a medical office building or those purposes are non-existent or highly unlikely. In terms of residential home or reconverting it into a residential home of somewhere around 5,000 square feet, there just doesn't seem to be a market to support it not only by Mr. Carr but by also by another broker from Berkshire Hathaway (Ms. Jody Gunther). Applying the criteria of trying to establish a reasonable rate of return, the other uses would not justify anything that would appear to be able to have a reasonable rate of return. Using whatever comparables were available, which were limited in the Town of Ticonderoga, so, he thinks that you will find that one of the 4 criteria of having to submit financial data has been provided by our experts for no reasonable rate of return for the permitted uses, let alone to be used by variants of a medical office is ascertainable and further supported by Ms. Gunther's letter. In addition, there were some issues about the intensity of the property and its use if this were to occur and what he would say is that it is not anticipated that the traffic from this use will increase, it is stationary compared to the multiple patients that might have been coming in and out during the day at the physician's office. Staff will be present and on call and as explained by Sam Hall at the last meeting and also indicated by Mr. Ross's letter, these residents are supervised and there is an attempt of quiet time at night in order to further their recovery from their substance abuse and so, the indication that there would be more intensive use when you have less people in the facility, coming in and out because the residents are not permitted or are very unlikely to be permitted to have cars. The only ones to have cars will be employees that will be there, that indicates that there should not be any more intensive use. There was an indication as well that there might be children there, that would create a situation where they would have to leave to go to doctors appointments or to be picked up by school, that is no different than if this was a single family house with a family of 5 or 6 children who had to go to the doctor or had to get on or off a school bus, so we don't feel that this factor should be taken into account. We also believe that if you take a look at some of the other permitted uses, such as public facilities or other facilities they seem to be more of a high intensive use than what is permitted here where the residents are intended to be stationary and for the most part those coming and going will be the few employees. He will mention that



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the employee count will be around 12, that is creating 12 more jobs for individuals in the community, but certainly less in and out of a pre-shift period than you might have had of the prior use. The property is so unique, it was built under a use variance, or a variance of some kind, to tear it down or to renovate it into one of the permitted uses, it requires demolition, it requires extensive renovation, it requires zoning more than what other uses, permitted uses might exist in the community, it is a unique property, a unique location. The character of the neighborhood, we can disagree on the distance or the circumference of the neighborhood, is it along Race Track Road, does it extend beyond into the entire zoning district. Do we look beyond the zoning district? For the most part, the building is there and unless it is torn down it continues to be there and certainly having a building occupied with individuals trying to recover and employ people in the community, it is better than having a building that is sitting idle and it has been sitting idle for 14-16 months since HHHN moved its facilities down the road. So certainly, having something there that is active and maintained will help the character of the neighborhood and the building itself, as he said, is there and had been active in the community. We also indicated the last time that there was a concern about pedestrian traffic, he thinks that this was addressed by Sam Hall and it might have even been in Mr. Ross' letter that individuals in this house are not supposed to have company, they may go out and venture out into the community for jobs, but it is the intent not to have people in and out the way probably the HHHN facility was in and out. So, we believe that the use can fit there if not of a lesser degree of the use that it was historical of the medical practice that this board permitted. The board, to be consistent in its application and granting use variances and the facility is going to be less intensive than the one that was granted a use variance in the past. We meet the requirements of granting a Use Variance. His client has also mediated that they are willing to add some fencing and are also willing to discuss with neighbors ways to buffer any potential impact that the neighbor might feel. He would say that there is a natural buffer of the utility project off to the side, that seems to be quite a large buffer to many of the other adjoining properties. Certainly, one last time he will point out that this will be less intrusive than some of the other permitted uses that might be allowed, whether it be public synagogues, Bed and Breakfast, things of that nature that have more transient traffic than you might have here. Unless his client has something else to add, that would conclude his additional information.

Mr. Powers (again owns the property with his wife that is right across the road from this project) is going to say that he disagrees with pretty much everything that Mr. Frankel has said. He is not going to go point by point and tear it down because we would be here for the next week. He will stand by his comments that he made at the last meeting (December's minutes are on file in the Town Clerk's Office) and leave it at that.

Mr. Woods would like to know what credentials the staff have, do they have medical training, mental health training, any kind of degrees to take care of these people? Is this 24/7 and are they capable of taking care of these people medically?

Mr. Ross stated that all the nurses are license nurses in NYS they are RN's and LPN's, the counselors are licensed or credentialed by the Office of the Addiction and Support Services which are part of the Mental Hygiene Law which Mr. Frankel mentioned earlier. We have

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Social Workers that are licensed. So, all of the staff who work are either licensed or credentialed and the distinction is the Office of the Addiction and Support Services is not a licensing agency but a credential and those credentials are accepted as part of a treatment regiment that they have to be qualified for, they have standards that they have to meet. We are given a license based on the fact that we have a staffing pattern which is approved and the staff has the licenses that would be appropriate for medical and clinical purposes and it is 24/7.

Chairman McTyier believes we heard in another hearing or it was in the paperwork that this is NOT a 24/7 facility.

Mr. Ross stated it is absolutely a 24/7 facility.

Mr. Frankel would like to make one or two other comments, one area that he wants to mention is that this is not a self-created hardship. We have not purchased the property, it is contingent upon obtaining all of the appropriate licenses, etc. He wants to also make sure that in the record the letters of support from the county and other agencies for this facility.

Mr. Leerkes would like to know how you can claim there is not a reasonable return, if there is not a hardship that is self-created. You claim there is no hardship because you haven't bought it, yet you can't get a reasonable return. He doesn't understand how you can claim both. You have no hardship, but there is no return.

Mr. Frankel stated that there are 4 criteria for a Use Variance, the reasonable rate of return and the self-hardship are two distinct areas of the law. Self-created hardship normally occurs when somebody goes ahead and buy the property and then realizes that they need a variance in order to do what they wanted to do. Courts have indicated that this is one of the criteria that if you created your own self harm by going ahead and purchasing a property or committing yourself to purchasing a property without obtaining the appropriate variances or permits, that can be held against you. (The board realizes this) Mr. Frankel stated that in this case, we haven't purchased the property, we haven't committed to purchasing the property at this point, so therefore we are not coming before the board and saying that oh, we bought this without taking a hard look and now we realize we made a mistake. That is completely different from the application to say, if I were to buy this without getting a variance to do whatever I want to do, can I do anything else with it and obtain a reasonable return on investment. That is completely different than creating a situation that you purchased a property without getting the appropriate variance. We are just showing that we haven't purchased it, we haven't committed to purchasing it, therefore there is no self-created hardship and that cannot be used against us in the balancing and we have proven there is no reasonable rate of return for the permitted uses.

Chairman McTyier would like more time to look at the criteria. He wants to study this and look at the reasonable rate of return situation with the things that have been submitted. This was a very good presentation and the board appreciates it.

**Resolution #9-2022PZB** brought by Doug McTyier, seconded by Don Meserve to table the Public Hearing for the Use Variance on 102 Race Track Road (St. Joseph's Rehabilitation Center, Inc. ) until the March 3, 2022. **All in Favor 4- Aye, 0-Nays, Carried.**

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Site Plan Review

Ticon Solar, LLC – 139.4-1-10.100 & 139.4-1-36.100 (Catlin)

(Mike Powers is seated back on the board)

Bridgette Cuddihy – Lead Developer from Cypers Creek

- Founded in 2014
- Specialize in design, build and operation of solar projects
- Currently have over 35 projects in NY that are either operational or under construction

This Project itself

- Off from Charboneau Road
- Currently sits on two separate parcels – purchase agreement has been signed
- Working with the Town and APA on a subdivision
- Eventually, will be sitting on one singular parcel
- 5 Megawatt GC Community distributed generated project
- Proposal consists of single axes tracker for the racking
- Disturbance for the fenced in area is about 37 ½ acres
- Solar array is on about 21 ½ acres
- Interconnection agreement with National Grid (Last May – paid fee in full)
- Environmental – we have received agency feedback and it is included in section f of the SEQR form
- Wetland delineation has been created at the site throughout the parcel – total of 6
- APA has deemed 5 as jurisdictional
- Incorporated 50 foot of vegetated buffer around the areas
- Completed SHIPO and Phase I permits and there were no environmental concerns
- APA – submitted the application last July and have been working with them continuously and are at the point of making a few more confirmations with them and expect the application to be deemed complete within the next few weeks
- Located within the Ag district – completed the short form, we are under the 30 acres
- Have had conversations with Essex County IDA for the PILOT program
- Inter-connection and access to the project site will be off from Charboneau Road
- There will be 6 utility poles going into the site for the inter-connection
- Plan has been approved by National Grid
- Landscaping is a large piece of this proposal – recently revised plan has been sent (per conversation with APA)
- Includes 21 different species of trees & shrubs–looks very natural/strong visual buffer
- Planting pollinator species in and around the inside – APA has provided guidelines
- Wooden post game fence – wire deer fence (not metal) – blends better

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- Will provide color copies of the plan

Chairman McTyier – looking at the diagram with the wetlands, are they along the perimeter of where the panels are going to be? (Correct) Environmental for – one statement asked if this project will be done in phases and it said no, but there is a drawing in the packet that has phase 1 – 6.

Ms. Cuddihy explained that it is showing how those sections will go into construction, there will be one continuous construction period – no pause.

Mark Sweeney (Attorney) – Looking at the plan in the packet, all the planned phases are under 5 acres and that is so we are in compliance with the storm water regulations and not disturbing more than 5 acres at a time. They are proceeding consecutively.

Chairman McTyier asked about the roads, you will have a service road while you are working on the project and later you will have to have a road to access the area. That is going to be a pervious road, will that be an impervious road at some point later?

Ms. Cuddihy explained that it will stay pervious based on a request from the APA.

Chairman McTyier noted that the plan mentioned herbicides to be used for weed control, it says that you will strive to use a safe product, will we be able to know that down the road?

Ms. Cuddihy can see of the O&M team has a typical product that they used and that we will be able to provide the detail on it.

Chairman McTyier explained in all the other projects it was noted that there will be mowing and trimming, but never had we seen a herbicide. There was a Bethany Crest that did a stream review, there was a document in that packet, but in the environmental form it said this did not involve a stream.

Ms. Cuddihy agreed and explained that there was an expected stream to be on site, but during that visit there was not one that was identified with the DEC.

Chairman McTyier noted that you stated that you are going through a subdivision for the project, yet he remembers seeing something asking that specifically and the answer was no.

Ms. Cuddihy agrees, that was her mistake with that explanation. Under the APA process, we are moving the lot line, we are not creating any new parcel with the planned purchase. Because the lot line adjustment is relatively significant the APA has required that we go through the subdivision process with their application for the lot line. They are still treating their review as a subdivision.

Mr. Leerkes asked if this was because you were combining the lots?

Ms. Cuddihy explained that we are not combining the lots, there is one lot line that we are shifting to kind of encompass some additional property from the neighboring parcel.

Chairman McTyier asked if this would also come through us.

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Mr. Powers wants to understand, while you are not triggering Town subdivision regulations you are triggering APA subdivision regulations because of the size of the lot line?

Ms. Cuddihy agreed and stated that she can pull the correspondence from the APA because they did have this question as to why it would need to be reviewed under that process.

Matthew Fuller, Town Attorney – this would be a question for Dave Burrows, it would ultimately be up to his interpretation as to whether or not what they are doing triggers our Town subdivision regs because ours and the APA's do not mirror one another.

The Board has no questions at this time.

Chairman McTyier noted that this gets us started, and you are going to get to us color rendition of the project.

Ms. Cuddihy agreed and will be sending color copies to Dave Burrows and will also send the updated civil plan for landscaping.

Ms. Mitchell noted that this was a nice presentation.

We will be seeing you at the next meeting which will be held on March 3. The board was polled on whether there is a need for a public hearing.

**Resolution #10-2022PZB** brought by Don Meserve, seconded by Erik Leerkes deeming a Public Hearing is not necessary at this time for this project Ticon Solar, LLC – 139.4-1-10.100 & 139.4-1-36.100 (Catlin). **All in Favor 4- Ayes, Stephanie Mitchell-Nay, Carried.**

Mr. Sweeney interrupted to say it might also be appropriate to coordinate SEQR review by declaring your intent to be lead agency. That has to move forward either in conjunction with or before you can jump right to a public hearing. You would need to send out notices to the other agencies in particular the APA in order to get that rolling.

Mr. Fuller noted that the APA has its own environmental review process, there generally isn't a declaration for them. Their process is actually deemed to be sufficient for SEQR. He doesn't have the EAF in front of him, were there any other involved agencies?

Mr. Sweeney noted that there was a referral to the county,

Ms. Mitchell asked when they expected a decision from the APA.

Ms. Cuddihy is hoping that it will be at the March meeting. She will confirm this later in the week. Our expectation is the March or April meeting.

Mr. Sweeney has been reviewing the referrals, there will be a PILOT with the Essex County IDA, we have the referral for the 239M, DEC is involved for the SPEDES Permit with the Storm water and APA, the Army Corp of Engineers are involved through the wetlands.

Mr. Powers reiterated that on page 213 of the EAF it lists under Government approvals – the Town, Essex County Planning Board, NYS DEC, APA and Army Corp.

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Mr. Sweeney again added the PILOT program, which is the Essex County IDA. So even though the APA is separate, the IDA, the DEC would also be involved agencies, the notice letter would need to go to them to do that and then they would provide whatever comments they have on the application at that point and then it would come back to you and you would make a determine on the agency.

Mr. Fuller noted that the County Planning Board is not a SEQR involved agency, and neither is the IDA. Did someone say something about Ags. & Markets? Do you need approval from them?

Mr. Sweeney mentioned that NYSERTA is also listed as an agency. The referral to Ag & Markets goes through NYSERTA.

**Resolution #11-2022PZB** brought by Mike Powers, seconded by Doug McTyier to declare the Ticonderoga Planning and Zoning Board lead agency of the Ticon Solar, LLC project. **All in Favor 5- Ayes, 0-Nay, Carried.**

Chairman McTyier stated that this will be all for tonight, we will get together the information we all talked about and reconvene at the next meeting.

**Other Business**

**Resolution #12-2022PZB** brought by Erik Leerkes, seconded by Doug McTyier to approve the Minutes from the January 6, 2022, meeting. **All in Favor 4- Ayes, 0-Nay, Mike Powers Abstain. Carried.**

We still have the sign and camper law to review – the board will wait for Dave Burrows to be present for this discussion.

**Resolution #13-2022PZB** brought by Don Meserve, seconded by Erik Leerkes to adjourn the meeting at 7:30 p.m. **All in Favor 5- Ayes, 0-Nay. Carried.**



December 9, 2021

Richard Frankel  
Rivkin Radler  
66 South Pearl Street, 11<sup>th</sup> Floor  
Albany, NY 12207

Re: 102 Racetrack Road  
Ticonderoga, NY

Dear Richard:

In response to the questions that you have asked and the Board members questioned, I will address each one of them individually:

"The existing improvements on the property are currently developed and built out as a medical office facility. The property has been unable to attract any attention, as far as a substitute tenant/use based on the health services delivery utilization of the premises."

This statement is founded in the fact that the building was previously used as a facility for the delivery of medical and healthcare facility services. That is a factual statement. One which cannot be refuted based on the date of the inspection of the property by myself.

The fact that the Town of Ticonderoga is located within Essex County, New York is factual, along with the fact that it is entirely located within the Adirondack Park and that nearly one third of its land area is part of the State Forest Preserve. This information comes directly from the Town of Ticonderoga website. A further statement on that website that the community consists of approximately 5,200 residents year-round, along with the increasing population that occurs during the summer and fall months.

However, the population increase is unable to be ascertained through census information or certifiable documentation. Therefore, the fact that there are only 5,200 full time residents within the township leads to the fact that a medical service delivery operation for a community of that size is already being served by the facilities in existence in the immediate area. Therefore, the potential for another medical services delivery operation locating within the immediate market area is highly unlikely.

The basis for the cost of construction numbers that were utilized in the analysis come from the Marshall and Swift Cost Segregation Manual (2020 Edition) as utilized by both the real estate industry, and the insurance industry (for casualty loss adjustments and estimating costs to rebuild for insurance purposes).

When utilizing the elements of the current cost to construct the existing building, to replace it with materials of like kind and quality, a 5,000 square foot building, built out for delivery of medical services with all the necessary plumbing, electrical and examination rooms build out, would cost approximately \$200-\$225 per square foot, based on a similar level of finish. Since the level of finish of the Subject Property was not elaborate, but certainly functional for its purpose, the lower number influenced the method of arriving at the cost of construction to develop a building equal in size and quality.

If we were then to assume that the costs related to demolition of the interior premises will approximate \$18-\$20 per square foot, that generates a cost between \$80,000-\$100,000.

The redevelopment of the premises into a facility for use, as proposed, of housing for women undergoing re-entry into society for various issues, and those that do consist of family units, will require a build out cost of no less than \$100 per square foot, based on today's current cost of construction and availability of labor and materials.

This would generate an additional \$500,000 to be added to the cost for the shell. The total amount of construction, without soft costs (financing, permits, architectural/engineering, real estate taxes, insurance) would bring the overall project cost to \$600,000. (\$100,000 cost to demolish and create a make ready interior area, plus the cost to re-construct the interior into a group home format for adults and children of \$500,000 plus an additional \$100,000 for soft costs of architectural, engineering, carry costs during construction (i.e. interest expense, real estate taxes, insurance, utilities, staging, refuse, tipping fees, etc.).



## CONCLUSION

In order to ascertain whether a reasonable rate of return could be achieved, we must then determine a market rate for rent to ascertain if a reasonable rate of return can be achieved by the ownership of the real property, and then apply the expenses of operation and ownership to the property in order to obtain a Net Operating Income (NOI). We then would look at this as an investment to obtain a reasonable rate of return. Utilizing a building cost of \$500,000, along with the renovation costs, an additional \$600,000, for a total cost of \$1,100,000.

We would then apply a capitalization analysis as follows: Using a 25% equity position (typical to achieve conventional financing) we would then come down to a debt service on \$825,000. If we then apply today's current rates of 4.5% on a 20-year basis, then .0759 is the mortgage constant and the equity side at 25%, \$275,000 at 15% and the constant is as shown:

|   |              |
|---|--------------|
| 25% Equity (15% return on equity (.25 x .15= .0375) | .0375        |
| 75% Mortgage Financing @4.5% -20 year term)         | <u>.0338</u> |
| Developed Capitalization rate                       | .0713= 7.13% |

The only recent lease transaction found in the immediate area was the Dollar Tree Store within a mile of the subject. The rent for the store was confirmed at \$3.50 psf NNN (net of real estate taxes, casualty and liability insurance and Common Area Maintenance costs). By then applying reasonable costs related to the operation of the property that are not included withing the NNN charges, the effective net rent would be reduced by 15% to \$2.98 psf.

By taking that rent and applying it to the capitalization rate of .0713, the 5,000 sq. ft. building would generate a net operating income of \$14,900. If we then apply the market generated cap rate of 7.13% we arrive at a value of \$209,269 against hard costs of \$1,100,000 plus the related soft costs, thereby effectuating a loss of (-\$865,244)

Another approach in order to ascertain if its current format could generate a reasonable rate of return could be as a result of utilizing the subject premises as a single family home, since this is permitted within the zoning ordinance. This effort would be more in concert with the present use of those properties that are in the immediate proximity to the subject. However, just a short distance to the north is a large parcel being used for industrial purposes, which is not untypical for other neighborhoods in the immediate vicinity of the Subject Property. A review of information available on public access web sites of properties available for sale, or use, in the Ticonderoga area, and throughout Essex County, reveals similar conditions of residential development in very close proximity to industrial uses.

By addressing the impact on the value of the Subject Property utilizing a residential approach, it would be necessary to consider the likelihood that a buyer would be attracted to a home of more than 5,000 square feet in the Ticonderoga marketplace. A search of recent sales within all of Essex County did not reveal a single residential property that sold in the past 4 years in Essex County, similar in size and nature of what would be equal in size and location.

In order to arrive at a determination of the property's ability to generate a reasonable return on investment, the Subject Property would also require a similar investment in the rebuilding and repurposing of the improvements that currently exist on the subject property from the current medical delivery service format into a single family residential format.

While that effort could be executed, the level of investment of at least \$100.00 psf into the 5,000 sq. ft structure would result in an investment of \$500,000 and result in an over improvement for the property, and therefore generate a negative rate of return. There is no factual evidence available within the records of Essex County over the past 10 years that would indicate that a property of this size and magnitude, if converted to a single family residence with average finishes and detailing, in a location similar in appeal as the Subject, would sell at a price that would generate a value over the \$600,000 cost of interior demolition and rebuilding/repurposing.

The overall underlying cost to breakeven would be \$600,000 with no return on the investment of \$250,000, for the acquisition of the asset before renovation and repurposing..

I would further add to page 19 "Current zoning allows numerous uses in addition to the current use as a medical office facility, as a result of a variance previously granted." While these uses are allowed under the current zoning law, it is doubtful, and completely unsubstantiated, that any other use that is allowed under the current zoning law, with or without variance, would yield a rental rate that would yield a positive return on the investment.

The real estate market is one which generates rates of return relative to the anticipated cash flows resulting from rental payments for utilization of the real property. In establishing a capitalization rate, two different factors are applied. One is for the rate of return on the capital invested and the other is based on a constant relative to the payment for the mortgage financing. Based on the information provided, the 5,000 square foot building at \$100 per square foot, would yield a value of \$500,000. The additional \$600,000, in order to modify the existing premises into its intended use, would establish an additional cost of \$600,000. A total of \$1,100,000.

Since the market is limited in terms of buildings being used for delivery of medical services or other commercial uses that are rented to others and have changed hands for

investment purposes, or for group homes, as rented to others for investment purposes, it became necessary for the Deponent to expand the impact of market forces on the ability of the subject property to determine its ability to deliver a rate of return predicated on the use of the property for a group home or any that were recently transferred in an arm's length transaction. Therefore, it became necessary to compare the subject property, and its proposed use, to those uses that are allowed under the current zoning ,and even the use allowed as a result of the variance granted to the previous user.

However, even the uses allowed under the current zoning were unable to achieve rental rates that would exceed those utilized in the Dollar General transaction, as previously noted. Therefore, the effort to evaluate any other allowed uses is moot, since there are no market rents from similar properties that are achieving rents greater than those found for the Dollar General transaction within the immediate Ticonderoga marketplace with similar locational attributes and amenities as the Subject Property.

The final conclusion is that a total investment of more than \$1,100,000 to achieve a value of \$209,269 results in a loss of (\$890,731).

Respectfully submitted,



Howard Carr





December 13, 2021

Re: Property desirability opinion

In reference to the property in Ticonderoga at 102 Racetrack Rd., I have been asked to offer an opinion of the marketability and demand for this type of property in the area and community of Ticonderoga.

The community of Ticonderoga, based on data, have had a strong residential market especially for properties that are located on or near the northern shores of Lake George. In looking for data on commercial, multi-family and industrial, this area does not seem to have many needs, wants or interest in such properties.

I do not see that there is much of a demand for such properties, and therefore the commercial market in Ticonderoga has been flat or stagnant for some time.

In particular the property at 102 Racetrack rd., Ticonderoga NY is very specifically suited to the use of medical or commercial offices. Bases on a pandemic and an uptick at work from home opportunities, there is almost no market in a rural area for office spaces.

I think if this property were to come to market, it would need to be very aggressively priced, have a great time of patience for a sale, and possibly a cooperative effort to recruit a company from outside the area who would be looking to start their venture in this market. Overall, I think it is a tough sale, based on location and specificity of the building design.

If there is an institution or group interested in this property, I would encourage the community as a whole to explore all options to fill the space.

Please let me know if you need any additional information from me.

Sincerely,

**Jodi Gunther**

Jodi Gunther

Licensed Real Estate Salesperson



December 15, 2021

Town of Ticonderoga  
Zoning Board of Appeal  
P.O. Box 471  
132 Montcalm Street  
Ticonderoga, New York 12883  
Attention: David Burrows,  
Zoning Administrator

Tonya M. Thompson,  
Town Clerk



Re: 102 Race Track Road, Ticonderoga, New York  
Tax Map Parcel # 150.34-9-18.019, /2 & /3  
Zoning Board of Appeals Applications  
RR File No.: 892275.29

Dear Mr. Burrows and Ms. Thompson:

Please accept this letter as supplemental information in support of St. Joseph's Rehabilitation Center, Inc.'s applications to the Zoning Board of Appeals for the property located at 102 Race Track Road, Ticonderoga, New York (the "Property").

We understand that at the December 2, 2021 Zoning Board of Appeals hearing on this matter certain questions were raised, and certain comments were made about the Part 820 residential program being contemplated at the Property. For clarification purposes, the Board should note that as a 14 NYCRR Part 820 residential program, the program at the Property is intended to provide for women residents the three elements of care prescribed in this Part. There will be a Stabilization Element of care that provides a safe environment for the individual to stabilize physically, mentally and spiritually in preparation for treatment. The Rehabilitation Element of care provides a structured environment for the residential treatment process. Lastly, the Reintegration Element of care is designed to facilitate an individual's safe re-entry into society.

The Part 820 residential program is a long-term residential program and distinct from other program such as a medical detox program which is for intensive medical care, and distinct from outpatient services that has individuals coming and going daily. Neither of those types of facilities or programs are a residential facility. Part 820 residential program contemplated at the Property is also distinct from a methadone outpatient services clinic or facility which are not residential and have individuals coming and going on a daily basis. In all, a Part 820 residential program is not a detox and methadone outpatient program.

It should also be noted that in the admission and screening and assessment process it must be determined that a proposed resident does not need acute hospital care, acute psychiatric care, or other intensive services



Multiple Year Designee

159 Glenwood Drive P.O. Box 470  
Saranac Lake, New York 12983  
(518) 891-3950 ■ [www.stjoestreatment.org](http://www.stjoestreatment.org)

which cannot be provided in conjunction with residential services or would prevent him/her from appropriate participation in a residential service. See 14 NYCRR Section 820.7(a)(1)(iii).

This Part 820 residential setting will be structured and supervised on a continuous basis. Individuals receiving treatment will stay on the Property grounds unless supervised by a staff member. If an individual requires services (i.e., a doctor's appointment) or essential supplies, the individual will be driven to said event by a staff member. This is to reduce traffic (both motor vehicle and foot) within the neighborhood.

There will be between 15 and 20 staff employed at this facility. These employees will be broken up between three shifts. The majority of the staff will be present during the typical workday shift.

This program will have the ability for three women to bring their children (5 years of age or younger), but with a maximum of two children for each female resident. The family unit is intended to be housed within a suite located on the bottom floor of the building on the Property. There will be qualified staff on site to provide childcare during the time that the mother is in a group or individual session. There will be no children from outside of the program allowed to participate in this care.

We welcome the opportunity to discuss this further with the Zoning Board of Appeals.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'R. A. Ross', with a stylized, flowing script.

Robert A. Ross

CEO

St. Joseph's Addiction Treatment & Recovery Centers



# MENTAL HEALTH ASSOCIATION IN ESSEX COUNTY, INC.

6096 NYS RTE 9N

WESTPORT, NY 12993

518-962-2077 1-800-440-8074 FAX: 518-962-8233

E-MAIL: [mha@mhainessex.org](mailto:mha@mhainessex.org)

Web Site: [www.mhainessex.org](http://www.mhainessex.org)

## OFFICERS

KATHY GRANGER

PRESIDENT

KRISTEN TRUE

VICE-PRESIDENT

ELIZABETH RUTKOWSKI

SECRETARY

DANA ALLEN

TREASURER

## BOARD OF DIRECTORS

2018

DANA ALLEN

WESTPORT

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SEVERENCE

2019

KRISTEN TRUE

TICONDEROGA

2020

JP MERO

WESTPORT

FRAN RAMIREZ

SCHROON LAKE

ELIZABETH RUTKOWSKI

EMERITUS

SCOTT SAYWARD

TERRI MORSE

## EXECUTIVE DIRECTOR

VALERIE AINSWORTH



UNITED WAY OF THE  
ADIRONDACK REGION, INC.



NORTH COUNTRY  
BEHAVIORAL HEALTHCARE  
NETWORK

January 10, 2022

Dear Zoning Board Members:

This letter represents the Mental Health Association in Essex County's support of St. Joseph's Rehabilitation Center's application to the Essex County Zoning Board to develop a residential treatment program to treat women and mothers with children who struggle with substance use and mental health concerns.

Motherhood has proven to be an immense barrier to women seeking help for substance use. This burden has only grown larger since the on-set of COVID-19. Despite an obvious need for residential care, many mothers have chosen to meet some of their needs in an outpatient manner because it allowed for them to care for their children. Since the onset of COVID-19, that option has also been reduced due to closing daycare and school systems. This has left many women desperately in need of support and stability while juggling the rigors of parenthood with the need for treatment services.

Women seeking residential treatment for substance use, as well as other behavioral health needs, often find themselves in a precarious situation. This situation requires the relinquishing of custody of the child(ren) to receive the services, they deserve, or to have their children (perhaps permanently) removed from their custody if they do not receive treatment. The result is that many women are forced to leave their children with unsuitable childcare for extended periods of time. Often, this childcare fails, and the woman is forced to leave treatment prematurely in order to care for the child.

The proposed initiative works with women and mothers with mental health and substance use needs, targeting the individuals living in North Country region. This will improve the system of care for vulnerable families by connecting them with residential treatment opportunities. Increasing access to high-quality treatment programs for underserved populations in their community is a critical need within the region.



MHA in Essex County can attest to the need for this approach to care and that it is critical as a community, we engage families with behavioral health needs, at risk of separation and expand opportunities for them to access the care, services and support that they require, as well as increase the quality of care provided.

Contingent on approval, our agency will formally partner with St. Joseph's to identify and refer families and individuals who may benefit from connection to the initiative and working together on a collaborative manner with these cases. If approved, this project will promote positive outcomes by providing treatment options care and helping families stay healthy and together.

Thank you for your time and appreciation on this matter.

Sincerely,

A handwritten signature in black ink that reads "Valerie Ainsworth". The signature is written in a cursive, flowing style.

Valerie Ainsworth, LCSW-R  
Executive Director MHA

# Essex



# County

**Community Services Board**

Laurie Kelley, Chairperson  
Terri Morse, LMHC, CASAC-Master  
Director

P.O. Box 8 – 7513 Court Street  
Elizabethtown, NY 12932  
(518) 873-3670  
Fax (518) 873-3777

**Mental Health Services**

Terri Morse, LMHC, CASAC-Master  
Director  
Dava Clement, LMHC  
Director of Mental Health Clinical Services

February 2, 2022

Dear Zoning Board Members of the Town of Ticonderoga:

As the Essex County Director of Community Services, I am writing in support of the St. Joseph's Addiction Treatment & Recovery Centers application to the Town of Ticonderoga Planning and Zoning Board to develop a residential treatment program focused on providing recovery services to pregnant women and mothers with children who struggle with substance use disorder.

The Essex County community has a strong need for this service for women and women with children, as no such service exists anywhere in the North Country.

Women seeking residential treatment for substance use disorder often find themselves in a precarious situation, that of being forced to relinquish custody of the children, while they are seeking to improve their ability to effectively parent their children.

Motherhood has proven to be an immense barrier to women seeking help for substance use disorder, also. This burden has only grown larger since the on-set of COVID-19. Despite an obvious need for residential care, many mothers have chosen to meet some of their needs in an outpatient manner because it allowed for them to care for their children. Since the onset of COVID-19, that option has also been reduced due to closing daycare and school systems. This has left many women desperately in need of support and stability while juggling the rigors of parenthood with the need for treatment services.

This project will promote positive outcomes for pregnant women and women with young children requiring substance use disorder services, help families stay together, and provide 12 excellent new healthcare jobs in the Ticonderoga area.

Sincerely,

A handwritten signature in cursive script that reads "Terri Morse".

Terri Morse, LMHC, CASAC-Master  
Director



GEORGE PURDUE  
ADMINISTRATIVE BUILDING

9 CAREY ROAD  
QUEENSBURY, NY 12804

518-761-0300  
WWW.HHHN.ORG

January 3, 2022

Town of Ticonderoga  
Zoning Board of Appeal  
PO Box 471  
132 Montcalm Street  
Ticonderoga, New York 12883

**RE: 102 Race Track Road, Ticonderoga, New York**  
**Tax Map Parcel # 150.34-9-18.019, /2 & /3**  
**Zoning Board of Appeals Applications of St. Joseph's Rehabilitation Center, Inc.**

To the Zoning Board of Appeals:

As you are aware, Hudson Headwaters Health Network owns the above-referenced real property. We support St. Joseph's Rehabilitation Center's application before the Zoning Board of Appeals to develop at this property a residential treatment program to treat pregnant women and mothers with children who struggle with substance use and mental health concerns.

Currently, the service to be provided by St. Joseph's at this facility is not available in the North Country. However, with a more than 50% increase in addition rates resulting from COVID-19 and an increase in overdose deaths in Essex County, this type of service and facility is very much needed.

Hudson Headwaters, a not-for-profit 501c3 organization, has served the Adirondack and North Country regions of New York as a Federally Qualified Community Health Center since 1981. We provide primary and select specialty care, behavioral health services, preventative and restorative dental care, and treatment for substance use disorders to everyone in the community regardless of income, insurance status, or ability to pay. Our vast and primarily rural service area, geographically larger than the State of Connecticut, is also a federally designated Health Professional Shortage Area, with few doctors and health centers outside the larger communities.

Hudson Headwaters operated a primary care physician practice (Ticonderoga Health Center) at the 102 Race Track Road facility. In September 2020, the Ticonderoga Health Center relocated to its new location at 101 Adirondack Drive, a newly renovated building that is part of the UVM Elizabethtown Community Hospital – Ticonderoga Campus.

Before and since the relocation, there has been no concrete third-party interest to purchase or rent the 102 Race Track Road property, other than the interest of St. Joseph's. This local community provides limited opportunity to medical providers to enter the field already occupied by existing primary care providers and specialists. As a result, it seems unlikely that medical office use for the 102 Race Track Road property and facility is viable. Given this, other uses need to be entertained for this property and facility.



GEORGE PURDUE  
ADMINISTRATIVE BUILDING

9 CAREY ROAD  
QUEENSBURY, NY 12804

518-761-0300  
[WWW.HHN.ORG](http://WWW.HHN.ORG)

On average, Hudson Headwaters operations at the Ticonderoga Health Center at 102 Race Track Road employed 32 full- and part-time providers, nurses, and staff, in addition to three per-diem employees. Our providers saw as many as 245 patients on any given day. From St. Joseph's application to the Board, we understand that there will be significantly less occupancy by their staff and residents. As a result, the proposed change in use should be less intensive to the neighborhood.

We consider St. Joseph's to be a key partner and an invaluable resource to our shared patients in the Adirondacks and North Country and hope the Board decides in favor of St. Joseph's and its application.

Sincerely,

A handwritten signature in dark ink, reading 'D. Tucker Slingerland, MD'.

D. Tucker Slingerland, MD  
Chief Executive Officer  
Hudson Headwaters Health Network