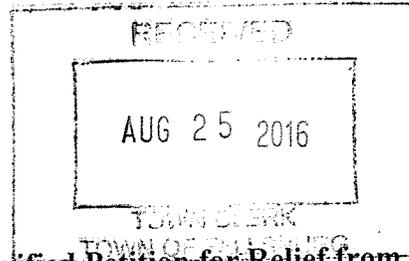


State of New York - County of Sullivan
Town of Fallsburg - Town Board

In the matter of the Application of /
SULCO DEVELOPMENT CORP. /
(a/k/a Royal Estates) /
for a Hardship Variance from the Town's/
Residential Moratorium Local Law /



Verified Petition for Relief from
Moratorium

Paid \$ 339.94 ✓ # 1245
Sulco Development Corp Fee
outstanding Bob Geneslaw Bill

The Petitioner, SULCO DEVELOPMENT CORP., by its attorneys, KALTER, KAPLAN, ZEIGER & FORMAN, hereby submits this Petition for a hardship variance from the application of the Town's Residential Moratorium Local Law (the "Moratorium Law"), and in furtherance thereof, respectfully alleges as follows:

1. The Petitioner is the owner of two parcels of real property located off of Edgewood Road, in the Town of Fallsburg, known as Town of Fallsburg SBL17-1-46.2 and 46.3 (the "Property"). The Property has been the subject of development plans since 1987.

2. The development project discussed herein (the "Project") has been submitted to the Town of Fallsburg Planning Board on several occasions since 1987, and has received approvals on several occasions.

3. In 1988, the Project was approved by the Town of Fallsburg Planning Board for the construction of 200 homes. In connection with that approval, a predecessor to the Petitioner paid to the Town of Fallsburg impact fees in the amount of \$264,800.00. Those fees were paid to the Town and continues to be held by the Town as of today's date. A copy of a letter from the then Town of Fallsburg Town Manager, Rich Kerbel, confirming the payment of the fee, dated January 27, 1988, is annexed hereto as Exhibit "A". Receipt of said fees was also confirmed by Town Engineer, William Illing, according to a memo dated March 30, 2001, whereby Mr. Illing spelled out the manner in which the impact fee of \$264,800.00 would be allocated by the Town. A copy of Mr. Illing's Memorandum of March 30, 2001, is annexed hereto as Exhibit "B".

4. Subsequent to the year 2001, the property was sold to a different developer who pursued a further development of the Project and a revision to that which was previously approved. That project has been known by Royal Estates, and site plan for that Project was granted by the Town of Fallsburg Planning Board on August 9, 2007. A copy of the Planning Board site plan approval resolution is annexed hereto as Exhibit "C".

THE PROJECT

5. The Project that was approved by the Town of Fallsburg Planning Board on August 9, 2007, was a development consisting of 163 seasonal dwelling units as a garden apartment development. Approval was granted under the Town's Cluster Development Law.

6. In connection with the approval granted on August 9, 2007, the Town of Fallsburg Planning Board declared itself lead agency, classified the project as unlisted, notified all involved agencies and after a series of public meetings determined that the Project would not have a significant impact on the environment and thereby adopted a SEQRA Negative Declaration. Adoption of the Negative Declaration is confirmed by the paragraph of the Town Planning Board site plan approval resolution, adopted August 9, 2007 (Exhibit "C" annexed hereto).

7. The 163 seasonal dwelling units project that was approved by the Town of Fallsburg Planning Board on August 9, 2007 represented Phase I of a project with two phases (the 163 units development approved by the Town of Fallsburg Planning Board on August 9, 2007, is referred to herein as the "Phase I Project"). Also contemplated by the then developer was developing the land on the west side of Edgewood Road to include a 46 unit residential community which is referred to herein as the "Phase II Project". As of the date of this Petition, the Phase II Project has been submitted to the Town of Fallsburg Planning Board, but has not been pursued for several years.

PROJECT HISTORY

8. As stated in Paragraph "3" above, the original approval for this Project was granted in 1988, and consisted of a development project of 200 homes. At the time of that approval, impact fees were paid to the Town of Fallsburg in the amount of \$264,800.00 (see Exhibit "A" and Exhibit "B" annexed hereto).

9. The approval granted in 1988 was modified by a second developer, and the modified development consisting of 163 seasonal dwelling units (the Phase I Project) was approved by the Town of Fallsburg Planning Board on August 9, 2007. A copy of the approval resolution is annexed hereto as Exhibit "C". Also annexed hereto as Exhibit "D" is a copy of the Negative Declaration that was granted by the Town of Fallsburg Planning Board also on August 9, 2007, and annexed hereto as Exhibit "E" is a copy of the Environmental Assessment Form Part III, that was approved by the Town of Fallsburg Planning Board also on August 9, 2007 when the Town of Fallsburg adopted a Negative Declaration for this Project.

10. From August 9, 2007 when the site plan for the Phase I Project was approved by the Town of Fallsburg Planning Board, to August 28, 2008, the developer pursued satisfying the conditions of the August 9, 2007 approval, including obtaining all necessary third party approvals. As of August 28, 2008, most of the conditions of the site plan approval of August 9, 2007 were satisfied, as evidenced by the minutes of the Town of Fallsburg Planning Board of August 28, 2008 (annexed hereto as Exhibit "F") and the revised site plan amended resolution dated August 28, 2008 (annexed hereto as Exhibit "G").

11. Subsequent to August 28, 2008, the then developer continued to pursue the conditions of the amended site plan approval resolution of August 28, 2008. Among the items pursued was public hearings and resolutions for the abandonment of Edgewood Road by the Town Board of the Town of Fallsburg (annexed hereto as Exhibit "H"), obtaining environmental permits from the New York State Department of Conservation (annexed hereto as Exhibit "I") and finalizing an Emergency Access Road Agreement with the Town Board of the Town of Fallsburg on April 7, 2009 (annexed hereto as Exhibit "J"). The then developer also submitted a site plan application for the Phase II Project.

12. Unfortunately, shortly after the Emergency Access Road Agreement of April 7, 2009 the real estate market, in general, including the real estate market in the Town of Fallsburg suffered a substantial down turn. As such, the then developer discontinued pursuing the Phase I Project and the Phase II Project.

13. In addition to continuing to seek to obtain all third party approvals and entering into an Emergency Access Road Agreement with the Town Board of the Town of Fallsburg, with permission of the Town of Fallsburg Code Enforcement Officer, the developer began limited construction at the project site, including the installation of two model homes, one single-family dwelling and one duplex building containing two residential dwelling units. Those two models remain as constructed on the site as of today's date.

14. As a further consequence of the down turn in the real estate market, and as a consequence of the substantial costs and expenses that the second developer had expended towards obtaining approval from the Town of Fallsburg Planning Board and all additional approvals and environmental reports necessary in connection with the Project, the second developer was unable to meet its obligations pursuant to the first mortgage that encumbered the Property, and defaulted pursuant to the mortgage. As a consequence of said default, the holder of the first mortgage (which was the first developer; when it sold the Property to the second developer, the first developer accepted a Purchase Note Money Mortgage as partial payment for the Property; the first developer was also owned by affiliates of the Petitioner), began a mortgage foreclosure proceeding against the second developer.

15. The mortgage foreclosure proceeding by the first developer against the second developer was highly contested litigation. Although this law firm did not handle the mortgage foreclosure proceeding, we had been consulted from time to time by attorney for the first developer and the attorney for the second developer and was aware of the highly contested litigation involved in connection with the mortgage foreclosure proceeding, including one or more bankruptcy petitions filed by the second developer.

16. In any event, after years of litigation, the mortgage foreclosure proceeding was completed and an affiliate of the first developer, that being the Petitioner herein, acquired title to the Property.

17. Shortly after the Petitioner acquired title to the Property, the then principal of the Petitioner, that being Mr. Leo Zisman ("Zisman") contacted this law firm and the engineer for the Project, Randy Wasson, to determine what was needed to be done to finalize the site plan conditions and to begin construction. This law firm began making an investigation and Randy Wasson began updating the reports necessary to complete to satisfy the site plan conditions. Unfortunately, shortly after those meetings occurred, Mr. Zisman, died prematurely, and, as a consequence, ongoing work in connection with the Project was discontinued.

18. From time to time, the successors to Mr. Zisman, including his nephew, Elliott Zisman, has consulted this law firm and Randy Wasson as to what was necessary to finalize the Project. However, Elliott Zisman had numerous burdens that he inherited and needed to resolve as a result of Mr. Zisman's premature death. Notwithstanding, as of today's date, the majority of the conditions of the site plan approval dating back to 2009 have been resolved, and the Phase I Project is at or near the stages of final satisfaction of the remaining conditions.

PROJECT IS VESTED

19. When the Town Board adopted the Moratorium Law, the Town Board prepared a schedule of those Projects that the Town Board determined would be subject to the Moratorium Law. The Royal Estates Project was included on the schedule of projects that would be subject to the Moratorium Law.

20. It is respectfully submitted that the Town Board's determination that the Phase I Project is subject to the Moratorium Law is not correct.

21. It is well settled law in New York that once a project has been approved by a Town Planning Board, if significant work is performed by the developer in furtherance of that approval, that the developer acquires "vested rights", such that the developer could continue to develop a project, notwithstanding, subsequent events such as a change in zoning law which would make the approved project inconsistent with the new zoning law. In other words, if a substantial investment is made towards the project development after approval, a change in zoning law would not impact the project, as approved, and the developer would be able to continue to pursue the project. See, e.g., matter of Putnam Armonk v. Town of Southeast, 52 A.D.2d (Second Dept. 1992).

22. In the instant circumstances, and in reliance upon the original approval of this Project in 2007, the developer spent almost a year satisfying all of the conditions of the 2007 approval. On August 9, 2008, the Town of Fallsburg Planning Board acknowledged that most of the conditions of the 2007 approval had been satisfied, and on August 9, 2008 adopted an amended resolution confirming this.

23. The Town of Fallsburg has imposed impact fees in connection with this Project and those impact fees were paid to the Town in the year 1998, and has remained with the Town ever since.

24. In addition, in furtherance of the approval, and with permission of the Town Code Enforcement Officer, the Petitioner has constructed two model houses, one being a single family residential home and the second being a duplex building with two residential dwelling units.

25. Based upon all of the above, it is respectfully submitted that this project should not be subject to the Moratorium Law, and that the Phase I Project should be allowed to continue notwithstanding the Moratorium Law.

26. The conditional amended site plan approval which has been granted to Petitioner is a property right which has vested as a result of the very substantial expenditures made by Petitioner in reliance thereon. *Town of Orangetown v. Magee ("Orangetown")*, 88 N.Y.2d 41 (1996). The provisions of the Moratorium Law have been crafted to prohibit the Town Planning Board Chairman from signing the final site plan map for the Project, even upon satisfaction of all conditions in the amended site plan approval, resolution, and notwithstanding that Petitioner has expended significant funds and performed significant work, including the construction of two model home buildings. Precluding the ministerial execution of the final site plan map by the Town Planning Board Chairman would be an abrogation of Petitioner's vested rights, in violation of the Fifth and Fourteenth Amendments to the United States Constitution, as well as a violation of 42 U.S.C. § 1983, *Orangetown, supra*.

HARDSHIP

27. If, notwithstanding the claim of the Petitioner that the Phase I Project is not subject to the Moratorium Law, the Town Board determines otherwise, then it is respectfully submitted that the Petitioner should be granted relief from the Moratorium Law, based upon a substantial financial hardship.

28. As discussed above, regarding the history of this Project, it is obvious that the Petitioner's investment in this Project has been substantial. An affiliate of the Petitioner purchased the Property and spent significant funds obtaining approval of a 200 unit development project in the year 1998, including the payment of impact fees to the Town of \$264,800.00. The foregoing was in addition to all engineering fees, attorneys fees and other costs and expenses of obtaining project approval. Thus, as of the year 1998 a predecessor to the Petitioner had a significant investment in the Project by way of the purchase price of the property and development fees, including the impact fee paid to the Town of Fallsburg.

29. Subsequent thereto, the second developer expended significant money towards obtaining approval of the revised project which was approved by the Town of Fallsburg Planning Board on August 9, 2007, and spent significant additional money in satisfying the conditions of said approval between the approval date of August 9, 2007 and the adoption by the Town of Fallsburg Planning Board of the amended site plan approval resolution on August 28, 2008. In addition, expenses continued to be pursued, including additional engineering costs to complete obtaining third party approvals for the Project and for pursuing other conditions of approval, including the abandonment of Edgewood Road. Upon information and belief, the second developer spent in excess of \$250,000.00 towards obtaining approval of the Phase I Project.

30. In Paragraphs "14" through "16" above, the Petitioner has explained that the Petitioner needed to reacquire the Property from the second developer as a result of a mortgage foreclosure proceeding. In connection with said mortgage foreclosure proceeding the Petitioner spent in excess of \$100,000.00 towards fees and expenses, including attorneys fees, in pursuing the mortgage foreclosure proceeding and the bankruptcy petitions that had been filed by the second developer.

31. The Petitioner is now in the process of discussing a sale of the Property to a new developer, who intends to finalize the conditions of the approval from 2008 and begin construction of the Phase I Project. We understand that the potential purchaser has had several conversations with representatives of the Town of Fallsburg, including the Town of Fallsburg Code Enforcement Officer.

32. The potential purchaser of the property has offered \$3,900,000.00 to purchase the property. The purchase price of \$3,900,000.00, as aforesaid, is conditioned upon the potential purchaser becoming satisfied that the approvals of the Phase I Project shall remain in effect, and that the purchaser could continue to pursue the Phase I Project, either in the manner that had been approved by the Town of Fallsburg Planning Board in 2008, or as an amendment to that which was approved. The potential purchaser was in the midst of performing its due diligence in connection with the foregoing when the Town adopted the Moratorium Law.

33. Accordingly, in the event that the Petitioner is unable to pursue the sale of the Property to the potential purchaser as a result of the Moratorium Law, the Petitioner might suffer a financial loss to the extent that \$3,900,000.00 representing the purchase price that has been offered to the Petitioner by the potential new developer. Clearly, if the new developer cannot pursue a development project with respect to the Property in accordance with that which had been approved by the Town of Fallsburg Planning Board in 2008, either in the form that the Project was approved in 2008 or in an amended form, then the Property would be worth significantly less than that which has been offered to the Petitioner and the Petitioner would risk the loss of a sale of the Property at a selling price of \$3,900,000.00. Certainly \$3,900,000.00 represents a significant financial loss and financial hardship, and if the Zoning Law of the Town applicable to the Property were to change, the loss to the Petitioner would be irreparable.

RELIEF REQUESTED

34. For the reasons heretofore set forth, the Petitioner is requesting relief from the Moratorium Law and requesting authority to continue to pursue obtaining final approval of the Phase I Project and, thereafter, to be allowed to begin development of the Project.

35. For the reasons set forth in Paragraphs "19" through "26" above, the Petitioner is alleging that this Project should not be subject to the Moratorium Law because the project is a "vested" Project, and that the Petitioner should be allowed to proceed with completing the development of the Phase I Project notwithstanding the Moratorium Law.

36. The Petitioner has also demonstrated a substantial financial hardship mandating that the Project be able to proceed, notwithstanding the Moratorium Law. As stated in Paragraphs "31" through "33" above, in the event that the Phase I Project is not allowed to proceed based on the Moratorium Law, the Petitioner is likely to lose a sale of the Property, with a selling price based upon the Property having approval rights to construct 163 residential dwelling units. Thus, should the Petitioner not be allowed to proceed with the sale, the Petitioner will lose a significant selling price of \$3,900,000.00.

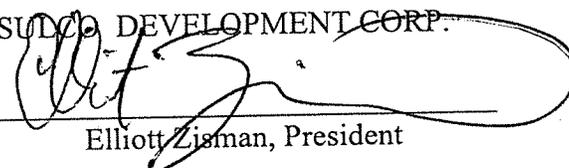
37. For all of the reasons set forth herein, it is respectfully submitted that the Petitioner has demonstrated that a significant financial hardship would be incurred, financial and otherwise, in the event that the Petitioner would not be allowed to proceed towards completion of this Project, and that in such event, Petitioner would suffer irreparable injury of no less than \$3,900,000.00.

END OF PAGE

WHEREFORE, it is respectfully requested that the Town of Fallsburg grant the Petitioner relief from the stay of development provided for by the Town of Fallsburg Residential Zoning Moratorium Law and that this Project be allowed to proceed through the approval process of the Town of Fallsburg Planning Board and any other Town Boards which may require approval for this Project, including the Architectural Review Board and the Building Department.

Dated: Woodbourne, New York
August 16, 2016

SUDCO DEVELOPMENT CORP.

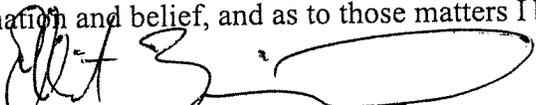
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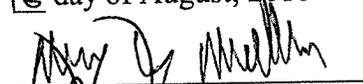
Elliott Zisman, President

VERIFICATION

STATE OF NEW YORK)
 Rockland Co)ss:
COUNTY OF ~~SULLIVAN~~

I, Elliott Zisman, being duly sworn depose and say that: I am the president of SULCO DEVELOPMENT CORP., the Petitioner named above; I have read the foregoing Petition, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.


Elliott Zisman

Sworn to before me on this
16 day of August, 2016

Notary Public

NICHOLAS J MALLON
Notary Public - State of New York
NO. 01MA8271504
Qualified in Rockland County
My Commission Expires Nov 5, 2016

EXHIBIT "A"

DARRYL KAPLAN
Supervisor
RICHARD KERBEL
Town Manager



SOUTH FALLSBURG
NEW YORK 12779
914/434-8810

January 27, 1988

Mr. David Krinsky
585 Montgomery St.
Brooklyn NY 11225

Mr. Leo Zisman
472 Coney Island Ave.
Brooklyn NY 11218

Re: Brett Lane Land Development Corp.
Extension to Browns-New Hope Sewer District

Gentlemen:

This will serve as your understanding and agreement with the Town of Fallsburg concerning establishing an extension district to the Browns-New Hope Sewer District to encompass property which you are purchasing from Brett Lane Development Corp.

Upon your delivering to the Town of Fallsburg the sum of \$264,800 by one or more good checks (subject to collection) representing an impact fee computed on the basis of \$1,320 times two hundred (200) units, the Town Board will commence the necessary proceedings to incorporate said property as an extension to the Browns-New Hope Sewer District.

It is understood and agreed that although the Town Board will take all of the necessary proceedings for the establishment of said extension district, no final order will be adopted by the Board creating the sewer extension district until such time as you have received all of the approvals required for the development of the premises as approved by the Town of Fallsburg Planning Board. Such approval shall include but not be limited to approvals from the Department of Environmental Conservation, New York State Health Department and the Town of Fallsburg Planning Board.

Once you have obtained all of said approvals, it is understood that the aforementioned funds being delivered to the Town will belong to the Town, and at that time, the Town will adopt an order establishing said extension. If for any reason whatsoever you are unable to obtain any of said

approvals by January 18, 1989, and as a result thereof cannot proceed with the development of the property, it is agreed that the Town Board will refund to you the aforesaid sum of \$264,800. All interest on these funds will belong to the Town. Notwithstanding the foregoing, it is understood and agreed that you will make all necessary applications to all of the appropriate agencies or departments necessary for the development of the property. The monies which you have delivered to the Town shall not be returned to you if for any reason you unilaterally decide not to proceed with the development of the project, notwithstanding that you have obtained all of the necessary approvals to proceed therewith.

Very truly yours,
Town Board, Town of Fallsburg

By: 
Rich Kerbel, Town Manager

Agreed to:

David Krinsky

Leo Zisman

EXHIBIT "B"



5410 State Rte. 42
P.O. Box 830
So. Fallsburg, NY 12779

Department of Public Works

Tel: 845-434-6320
Fax: 845-434-7971

MEMORANDUM

TO : Steve Levine, Town Supervisor
Robert Krutman, Town Attorney
Garry Silver, Attorney

FROM: William Illing, P.E., Town Engineer *WIEP*

RE : Sulco Development
Timber Falls, Loch Sheldrake

DATE: March 30, 2001

With regard to the disbursement of Impact Fee Funds allocated for the above-referenced project, the following terms are agreed:

1. \$60,000 is allocated for sewer system construction
2. \$18,000 is allocated for water system construction
3. The Town will not release funds until such time that water and sewer systems are constructed and tested in compliance with Town DPW requirements and certificates of completion, submitted by the developer's engineer, are deemed acceptable by the Town Engineer.

Thank you.

FILE:WTR-SWR/Timber Falls-Sulco

EXHIBIT "C"

PLANNING BOARD
TOWN OF FALLSBURG
ROYAL ESTATES
SITE PLAN APPROVAL
ADOPTED AUGUST 9, 2007

WHEREAS, the Town of Fallsburg Planning Board has a proposal for a one hundred sixty three (163) primarily seasonal dwelling unit condominium garden apartment development (hereinafter referred to as the Project) situated in the Town of Fallsburg, Tax Map SBL: 17-1-46.1, 46.3 and

WHEREAS, the Planning Board has followed and complied with the applicable standards of the New York State Environmental Quality Review Act, SEQRA 6 NYCRR 617.6 and was designated lead agency for coordinated environmental review, coordinated review, classified the action as unlisted, and notified interested and involved agencies (none of which objected). Applicant completed Part I EAF and Board completed Part II EAF, held a public hearing, approved Part III EAF, and after a series of public meetings determined that the Project will not have a significant impact on the environment and adopted a Negative Declaration; and

WHEREAS, the Planning Board reviewed all of the information and documentation developed for the Project, including plans for Royal Estates, prepared by Wasson Engineering, Plan set of 22 sheets most recent revisions date of June 25, 2007 on some sheets, as well as comments and correspondence received from staff, consultants, interested and involved agencies and the public, and made certain modifications to the Project. A last review of plans and supporting material will be made by staff to confirm that all requested changes have been made and conditions have been met, including:

1. Changes requested by Planning Board members

2. Comments from Code Enforcement Officer
3. Comments from Superintendent of Public Works
4. Comments from Planning Board attorney
5. Changes to the plans necessitated by permit agency requirements
6. Payment of all fees in accordance with Town fee schedule
7. Offer of dedication to Town of land or easements for roads, utilities, etc., that may be shown on the plan or determined to be necessary by the Superintendent of Public Works.
8. Escrow for soil erosion control during construction and repair/reconstruction of the dam, in amounts to be determined by the Building Inspector and Superintendent of Public Works.
9. Implementation of all mitigation elements referred to in the Environmental Assessment Form, Part III, and the Negative Declaration as accepted by the Planning Board August 9, 2007.

10. Resolution of any open items in the review letter from Keystone Associates dated July 24, 2007; and any open items from the review memo of Robert Geneslaw Co., dated August 6, 2007.

11. Amendment of plans either graphically or by note to include:
 - a. Location at which fencing will be permitted; detail of fencing; note indicating that only fencing shown on the plan or in notes may be constructed.

 - b. Adding a clearing limit line to the grading plans indicating the limits of disturbance during construction.

 - c. Location of speed humps, if any proposed, based on advice from the Town Engineer and Fire Chief. Speed humps at other locations will not be permitted.

 - d. Road pavement widths of twenty feet where possible, subject to advice from the Fire Department and the Town Engineer.

 - e. Separation distance between buildings of no less than twenty five feet, with no porches between buildings.

 - f. Adding a map note that there will be no increase in the number of bedrooms shown on the approved site plans.

12. Establishment of an escrow account, letter of credit or similar financial security to cover future maintenance/repair costs of infrastructure, including water supply, on site sewers, stormwater management, roads.
13. Review by Planning Board, staff/consultants of all portions of condominium association documents prior to their effective date that reference Planning Board approvals and conditions.
14. Subject to review and approval of building elevation/renderings, and individual building grading for dwellings on lots with significant slope conditions.
15. Subject to Town Board abandonment of portions of Edgewood Road as depicted on the plans.
16. Subject to completion of all off site improvements, whether public or private, prior to issuance of the first building permit, or as determined by the Town Engineer.
17. Provision for an escrow account for site inspection by the Town Engineer, his designee, or a consulting engineer of his choice.
18. Repair/reconstruction of the bridge and dam in accordance with plans to be approved by the Town Engineer, in accordance with a schedule to be approved by the Town Engineer, with particular attention to any need for emergency access during

construction, and the timing of issuance of building permits and certificates of occupancy.

19. Applicant to provide information regarding construction sequencing to be approved by the Town Engineer.
20. Provide letter from NYSEG approving grading and improvements within easement.
21. Resolution of impact fee payments made by prior owner of property.
22. Applicant to revise/update traffic analysis using counts from summer 2007, and providing any necessary mitigation as may be determined by the Planning Board to be needed.

NOW, THEREFORE, BE IT RESOLVED, the Town of Fallsburg Planning Board, based on the record before it, including the general, specific and detailed knowledge of the Board of the Project and of the community, hereby determines that the Project should received Site Plan Approval with certain conditions as enumerated above; and

BE IT FURTHER RESOLVED, that the Planning Board grants site plan approval so that the project sponsor may submit applications to permitting agencies with the understanding that no building permits will be issued until all conditions are met, unless specific conditions in this resolution have other requirements for implementation; and

BE IT FURTHER RESOLVED, that the Planning Board has reviewed the letter from the Sullivan County Division of Planning and Community Development dated March 21, 2007, and determines that the two recommended modifications of the proposal are addressed in the Stormwater Pollution Plan prepared by Tim Miller Associates, Inc., dated April 2006.

Dated: August 9, 2007

Ira Steingart
Vice Chairman of the Planning Board

Vote as follows: _____ All _____ For
_____ Against
_____ Absent

The Planning Board Clerk of the Town of Fallsburg, Sullivan County, New York, does hereby certify that I have compared this copy with the original Site Plan Approval record on file in this office and find that it is a true transcript and copy of whole of said original thereof.

Filed and Dated this: _____ date of _____, 2007

Paige E. Maxwell – Planning Board Clerk

The Town Board Clerk of the Town of Fallsburg, Sullivan County, New York, does hereby certify that I have compared this copy with the original Final Site Plan Approval record on file in this office and find that it is a true transcript and copy of whole of said original thereof.

Filed and Dated this: _____ date of _____, 2007

Patricia Haaf – Town Clerk

EXHIBIT "D"

State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance

Adopted - August 9, 2007

Project Number: N/A:

Tax ID Number: Section 17. Block 1 Lot 46.1, 46.3

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act – SEQRA) of the Environmental Conservation Law.

The Town of Fallsburg Planning Board as the lead agency has determined that the proposed action described below will not have a significant environmental impact, and a Draft Environmental Impact Statement will not be prepared.

Name of Action: Royal Estates Site Plan Approval

SEQRA Status: Unlisted

Description of Action: This "Proposed Action" is for Site Plan approval for a seasonal residential development of 77 single family detached and 43 two family semi-attached residential buildings (83 units) for a total of 163 dwelling units. The subject parcel consists of 123 ± acres and is zoned R-1. The project sponsor proposes to develop the property in one phase over a period of 24 – 36 months. On site infrastructure and community amenities will be owned and maintained by a condominium association. Water and sewer lines will connect to existing district facilities. Off-site infrastructure improvements will be provided by the project sponsor.

Location: Edgewood Road off New York State Route 52, between Hilldale Pond and Luzon Lake.

Reasons Supporting this Determination:

1. The Planning Board has determined that this proposed action is an Unlisted action, and lead agency notifications were mailed to all interested and involved agencies. No other agencies have expressed an interest in being lead agency.
2. The Planning Board has reviewed a Full Environmental Assessment Form (EAF), Parts 1, 2, and 3 and a Plan Set of 22 sheets entitled Royal Estates prepared by Wasson Engineering most recent revision date of June 25, 2007 on some sheets.
3. A Soil Erosion Control Plan and Storm Water Pollution Prevention Plan has been submitted and has been reviewed and found acceptable in concept by the Town Engineer and the Town's Consulting Engineer, Keystone Associates. The plan proposes the use of swales and catch basins for stormwater, which would then be conveyed by underground pipes to ten basins, which would provide for water quality treatment and volume regulation.
4. It has been determined that there are wetlands under the jurisdiction of the New York State Department of Environmental Conservation (NYSDEC) and United States Army Corps of Engineers (USACOE), which are not proposed to be disturbed, or to be disturbed minimally, depending on a revised delineation now underway, subject to the issuance of permits by the appropriate regulatory agencies.

5. Notice of a Site Plan Public Hearing was sent to all surrounding landowners and the Planning Board held a Public Hearing and carefully considered public comments.
6. Water supply and sewage disposal and treatment will be provided by existing Town district facilities. On site infrastructure and amenities will be owned and maintained by a condominium association. Off-site infrastructure improvements will be provided by the project sponsor.
7. The Town of Fallsburg Planning Board has reviewed all supporting documentation, including but not limited to the following: (1) Site Plan/Drawing Set, (2) Stormwater Pollution Prevention Plan (SWPPP), including Soil and Erosion Control Plan (3) Traffic Assessment Report The Planning Board has carefully reviewed Parts II and III of the Full EAF, and has determined that those Project Impacts that properly fall under consideration for the proposed action are noted with regard to the level of impacts anticipated.
8. The Planning Board has carefully reviewed potential environmental impacts, and has determined the following:
 - a. The subject parcel was reviewed to determine if wetlands exist upon the property. It has been determined that there are wetlands subject to the jurisdiction of the NYSDEC and USACOE, which are not proposed to be disturbed, or to be disturbed minimally, subject to a redelination of the boundaries, subject to issuance of any necessary permits by appropriate regulatory agencies.

- b. The proposed development is consistent with the permitted uses in the zoning code in effect at the time of initial application.
- c. The proposed project will utilize existing Town water and sewer systems, and internal infrastructure will not be dedicated to the Town. Off site infrastructure connections will be made by the project sponsor prior to issuance of the first building permit as determined by the Town Engineer. Additional studies may be required of the project sponsor.
- d. The proposed action will not have any impact on threatened or endangered fish or shellfish species. The NYSDEC was contacted to determine whether any known occurrence of federally-listed or state-listed rare, threatened, endangered species or species of statewide concern are or could be located within the project vicinity. Responses from these agencies indicate that there is no record of state-listed animals or plants, significant natural communities, or other significant habitats on or in the immediate vicinity of the project site. Further evaluation may be made as part of any permitting process necessary for repair/reconstruction of the dam.
- e. The project is not anticipated to have a significant adverse impact on the local road conditions. A Traffic Assessment Study was provided, but was based on counts taken in February 2007 and adjusted based on monthly counts taken by NYSDOT. Also, the projected traffic was based on recreational developments that are not similar. Based on that analysis, there is little change in the overall level of service under Build conditions when compared to No Build Conditions. In

order to correct for these factors, traffic counts are to be taken during the summer season, for the locations already analyzed and at least one existing similar development. The results of the study shall be reported and any necessary mitigation established prior to the issuance of the first building permit.

f. The dam near Edgewood Road is undergoing an engineering evaluation. Necessary repairs/reconstruction and mitigation factors will be determined as the study advances. It is anticipated that the repair/reconstruction will be completed prior to occupancy of any residential units.

9. In consideration of the foregoing, the Town of Fallsburg Planning Board has determined that the project will not create any significant adverse impacts and that mitigation is not necessary beyond the measures proposed, subject to the further analysis described above.

For Further Information:

Contact Person: Arthur Rosenshein – Chairman Town of Fallsburg Planning Board

Address: Fallsburg Town Hall, 5250 Main Street, South Fallsburg, NY 12779

Telephone number: (845) 434-8811

A Copy of This Notice is Sent to:

Chief Executive Officer, Town Supervisor, Town of Fallsburg

Other involved Agencies: New York State Department of Health, New York State Department of Environmental Conservation, New York State Department of Transportation, Sullivan County Department of Public Works, Sullivan County Department of Planning and Community Development, USACOE.

Applicant: Rosma Development

199 Lee Avenue

Brooklyn, NY 11211

EXHIBIT "E"

ENVIRONMENTAL ASSESSMENT FORM – PART 3

ROYAL ESTATES

A Proposed Seasonal residential development of 77 single family detached and 43 two family semi-attached residential buildings (86 units) for a total of 163 dwelling units. All infrastructure and amenities will be owned and managed by a condominium association. The project area is within Town water and sewer districts and these utilities will connect to the Town system. Access will be via Edgewood Road to New York State Route 52.

Town of Fallsburg
Sullivan County

Prepared for Arthur Rosenshein, Chairman
Members of the Fallsburg Planning Board
C/O Fallsburg Code Enforcement Officer
5250 Main Street
Fallsburg, New York 12779

Prepared by:

*Robert Geneslaw Co.
Robert Geneslaw, AICP
Two Executive Blvd. - Suite 401
Suffern, New York 10901*

Planning Consultant to the Town of Fallsburg

Submitted:

Draft

August 2, 2007

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All above Appendices are on file in Planning Board Office.

A. Introduction and SEQRA Process

The project sponsor proposes a seasonal residential development of 77 single family detached and 43 two family semi-attached residential buildings (83 units) for a total of 163 dwelling units located on 123± acres located within the Town of Fallsburg, Sullivan County, New York off Edgewood Road and New York State Route 52, generally between Hilldale Pond and Luzon Lake.. The property is zoned R-1. Among other permits and approvals, the applicant is seeking a special use permit and site plan approval from the Town of Fallsburg Planning Board. The application is also subject to the regulations implementing the New York State Environmental Quality Review Act (SEQRA).

SEQRA requires that no agency involved in any action undertake, fund, or approve the action until it has complied with the provisions of SEQRA. The Planning Board, as Lead Agency for this action, has determined that the action is an Unlisted action. All involved and interested agencies were notified, and the applicant has submitted to the Board a Full Environmental Assessment Form, Part I. A Part II was prepared by the Town's Planning Consultant and reviewed by the Planning Board. This Part III is being provided in response to the Part II to assist the Board in making its determination of significance and to evaluate project impacts and identify appropriate mitigation measures. Several special studies were performed to evaluate and provide mitigation, including a Stormwater Pollution Prevention Program which included a Soil Erosion and Control Plan, and a Traffic Assessment.

B. Project Description

The proposed development is located on Edgewood Road off New York State Route 52 in the Town of Fallsburg. The tax map reference is SBL 17-1-46.2, 46.3. The project sponsor is Rosma Development, Inc., 199 Lee Avenue, Brooklyn, NY 12111.

The site is approximately 123± acres and is zoned R-1 which permits detached and semi-attached residential units. Approximately 0.5 acres of the property is now devoted to roads, buildings, and other paved surfaces. An additional 13 acres would be devoted to the same purposes, and would no longer be in forest, meadow or brushland. There are 34.8 acres of wetlands on the property, of which 0.1 acre is potentially subject to disturbance.

The development would be served by Town water and sewer facilities as the project area is within existing water and sewer districts. The project sponsor proposes to construct the project in one phase, estimated to last 24 - 36 months.

All on site infrastructure (sewer, water, roads, stormwater facilities) and amenities (such as recreational facilities and community building) will be owned and maintained by the condominium association. Solid waste will be picked up by a private carter. The plan proposes the abandonment by the Town of a portion of Edgewood Road on the site and its conversion to a private road within Royal Estates. The project sponsor would upgrade the public portion.

The site has an unregulated stream tributary to the East Mongaup River, three ponds on or adjacent to the site with about 60 acres of surface area and New York State Department of

Environmental Conservation (NYSDEC) and Army Corps of Engineers (ACOE) regulated wetlands totaling about 35 acres.

The proposed stormwater management system consists of a series of ten stormwater management ponds scattered throughout the site, which discharge off site to Hilldale Road, its outfall watercourse, and Luzon Lake. The ponds have been designed to provide for water quality treatment and flood control.

C. Environmental Assessment Forms Parts 1, 2 and 3

Parts 1 and 2 were submitted previously and reviewed by the Planning Board. The following narrative addresses the potential large impacts identified in the Part 2 approved by the Planning Board. As explained in the first page of the Part 2, "If the impact threshold equals or exceeds any example provided," Column 2, "Potential Large Impact," is checked. Identifying that an impact will be potentially large does not mean that it is necessarily significant, but that it be further evaluated in Part 3.

1. Impact on Water

- Proposed Action will require a discharge permit.

The amount of proposed disturbance as part of this project will require a discharge permit. To receive a permit, the applicant must prepare a Stormwater Pollution Prevention Plan (SWPPP). This technical document was prepared by Tim Miller Associates, Inc., of Cold Spring, New York, and is the source of information herein

regarding stormwater and soil and erosion control facilities for the project. For detailed information that report should be consulted.

The existing site has three stormwater sub areas. Sub-area 1 drains to the NYSDEC regulated wetland and ultimately to Luzon Lake. Sub-areas 2 and 3 drain to the watercourse below Hilldale Pond which discharges to Luzon Lake by way of an unnamed pond and water course up gradient of Luzon Lake.

The total land disturbance for the project is approximately 41 acres or approximately 33% of the site. When fully developed the site would have approximately 13.5 acres of impervious area, 27.5 of the 123 acres would either remain or be restored to a vegetated state (lawns, planting beds, woodland).

The grading and drainage plan has been designed to ensure that stormwater runoff from all new impervious surfaces and other disturbed areas is captured and treated by the proposed stormwater basins. Stormwater would be collected in dry swales and catch basins and conveyed by underground pipes to the stormwater management facilities. The re-routing of stormwater runoff within the site and providing ponds for treatment helps to detain water coming off new impervious surfaces. The peak discharges offsite have been controlled to ensure that the post-development rate of runoff from the site would be "relatively equal" to, or less than, the existing discharge rates for 1, 10 and 100 year 24 hour storm events.

- Proposed action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions.

A soil erosion and sediment control plan has been prepared in accordance with the Erosion and Sediment Control Guidelines associated with the NYSDEC SPDES General Permit for Stormwater Discharge for Construction Activities and the 2003 NYSDEC Stormwater Management Design Manual. The measures to be incorporated into the design of the project are detailed in the erosion control features of the Stormwater Pollution Prevention Plan and report prepared by Tim Miller Associates, Inc., dated April 2007, and are summarized below:

The purpose of the Erosion and Sediment Control Plan is to minimize the erosion of disturbed soil and to prevent the migration of sediment into surface waters and off-site properties during construction and until the site has received final stabilization. The Erosion and Sediment Control Plan accomplishes that purpose through reducing runoff velocities, limiting the area of disturbed soils at any one time, and rapidly stabilizing disturbed soils. The erosion and sediment control plan contains construction notes, erosion and sediment control notes, specifications for erosion controls, a sequence of construction, construction phasing, and associated construction details designed to mitigate potential impacts associated with erosion and sedimentation.

Soil erosion and sedimentation measures, such as silt fencing, would be installed following a pre-construction conference with appropriate agency staff, and prior to any construction activities. In addition, the project sponsor would engage a Certified Professional in Stormwater Quality/Erosion and Sediment Control, or equally qualified

professional, to oversee implementation of the SWPPP, including the site specific Erosion and Sediment Control Plan component.

Implemented, monitored, and enforceable erosion and sediment controls would be utilized during the construction phase as the primary means of controlling erosion and sedimentation. The goal of the Erosion and Sediment Control Plan is to minimize the potential for soil erosion from areas exposed during construction and prevent sediment from reaching the down gradient receiving waters, including the regulated wetlands and Luzon Lake.

During construction, areas of active disturbance would be limited to five acres and runoff from areas outside of disturbances would be diverted away from erodable soils.

Both temporary and permanent erosion control facilities and activities would be applied over the duration of project related activities on the site. Implementation of the soil erosion control plan would be based on the latest New York State Standards and Specifications for Erosion and Sediment Control, latest edition.

Each phase would stand alone with regards to erosion controls, use of best management practices and site stabilization. This plan, as prepared, is intended to meet the requirements of the NYS General Permit for Stormwater Discharges from Construction Activity.

The temporary soil erosion and sediment control measures include protective earth moving procedures and grading practices, vegetated cover, silt fencing, stabilized

construction entrance, temporary stormwater diversions, construction road stabilization, silt traps, inlet protections and sediment basins. The methodology of the plan is to control erosion and sedimentation, and to re-establish vegetation as soon as practicable. These temporary controls would be installed prior to commencement of earth moving activities. All proposed soil erosion and sediment control practices are designed in accordance with current requirements.

Temporary sediment basins would be converted to permanent stormwater detention basins once the tributary drainage area has received final stabilization and established vigorous vegetative growth. In addition, rock outlet protections would be installed at the inflow of the ten stormwater detention facilities. All other temporary devices such as silt fencing, and diversions would be removed once final stabilization of the site has been attained.

The construction materials and vehicles expected to be present during construction include but are not limited to drainage pipe, pre-cast concrete drainage structures, earth moving equipment, concrete trucks, asphalt trucks, and worker vehicles. All construction related debris would be collected and removed from the area on a regular basis. Concrete wash out areas would be provided where necessary. Sediment spoils would be disposed of at an approved off-site location along with utilizing temporary erosion control devices for that site operation.

➤ Sequence of Construction

It is expected that the project would take approximately 24 – 36 months to construct from the time of groundbreaking to final completion, with work commencing shortly after the receipt of all necessary approvals. Throughout the construction process strict adherence to the Erosion Control Plan and specifications would be maintained to ensure that sediment is contained within the improvement areas. Stormwater management is also provided for water quality treatment such that the project areas would not represent a negative impact or degradation in water quality to any reservoir, stream, wetland or watercourse. The primary goal of the soil erosion and sediment control measures is to reduce soil erosion from areas stripped of vegetation during and after construction, and to prevent discharge of sediment off-site. Erosion control barriers shall be placed around exposed areas during construction. The barriers shall consist of silt fence. Temporary diversions would be constructed to reduce runoff velocities to non-erosive levels. Runoff from undisturbed areas would be directed off-site and runoff from exposed soils and disturbed areas would be directed to sediment basins. The sediment basins or traps would be used at stormwater collection points to allow sediment to settle prior to stormwater discharging off-site.

Any areas stripped of vegetation during construction would be left exposed for the shortest time possible with a maximum inactive exposure of 14 days. Topsoil removed during construction would be stockpiled for future use in final grading and landscaping. A stockpile location has been provided on the Erosion Control Plan and shall be contained within a silt fence barrier.

Temporary vegetation would be established to protect disturbed soil areas during construction. Should growing conditions be unsuitable for the temporary vegetation, mulch would be used and applied in accordance with the Erosion and Sediment Control Plans and the NYS Standards and Specifications for Erosion and Sediment Controls. Materials that may be used for mulching include; straw, hay, wood fiber, synthetic soil stabilizers, mulch netting and sod. A permanent vegetative cover would be established upon completion of construction of those areas that have been brought to finish grade and to remain undisturbed.

A temporary stabilized construction entrance would be constructed at the entrances to the site and or individual phases. The purpose of a stabilized entrance is to remove soil from the construction vehicle tires prior to exiting the site and traveling on the existing roadways.

During construction, silt fence inlet protection would be installed at each storm sewer inlet to minimize the conveyance of silt and sediment through the storm sewer system.

The following is an overall Construction Sequence:

1. Install stabilized construction entrance at the site access point;
2. Install silt fence, as shown on the plans;
3. Excavate temporary sediment basins and install inlet protection;

4. Minimize clearing within the limits of disturbance as required for construction;
5. Create stockpiles and install soil stockpiling protection;
6. Install temporary stormwater diversions, and sediment basins at the locations of micro-pool detention ponds to intercept and detain any sediment during construction. At the end of construction, and upon final stabilization of the site, convert ponds into permanent stormwater detention ponds;
7. Excavate for buildings, roads and utilities and stockpile topsoil;¹
8. Perform temporary stabilization over all disturbed soil areas;
9. Upon final stabilization¹ of the site, remove temporary soil erosion and sediment control measures.

➤ Other impacts: Repair/reconstruction of dam

In the north central portion of the site, not far from the intersection of Edgewood Road and County Route #51 a dam of uncertain age is at the outlet of Hilldale Pond. Without attention, there is a potential for failure and downstream erosion. An engineering evaluation is underway and remediation will be proposed. An initial inspection and evaluation has been made, with suggested repairs. A more detailed analysis of the

¹ Final stabilization means that all soil disturbing activities have been completed and that a uniform perennial vegetative cover with a density of 80% has been established or equivalent stabilization measures have been adequately employed.

structure and upstream drainage area is underway, which will be followed by a remediation plan. The preliminary timetable for permitting and starting remediation is the summer of 2009.

➤ Proposed Action may cause substantial erosion.

The extent of total disturbance has the potential to cause substantial erosion. To reduce this potential, only portions of the site will be disturbed at a time, and erosion control devices will be installed before other disturbances. The provisions for soil erosion and sedimentation control are described earlier, and are described in detail in the SWPPP.

2. Impact on Transportation

➤ Proposed Action may result in major traffic problems.

Because of the size of the proposal the Planning Board requested an evaluation of traffic impacts. The information summarized below is from a Traffic Assessment prepared by Creighton Manning Engineering as presented in a letter report dated March 5, 2007.

The Traffic Assessment outlined existing traffic conditions in the vicinity of the site, and particularly physical conditions, current traffic volume, estimated the amount of traffic generation to be expected from the proposal as well as a nearly completed 68

residential unit development on the westerly side of Edgewood Road and discussed applicable road standards and traffic levels with the project built and occupied.

Intersection turning movement counts were conducted at the study area intersection of Route 52 and Edgewood Road on Friday, February 24, 2007, from 4:00 to 6:00 P.M. and on Sunday, February 25, 2007, from 2:00 to 4:00 P.M. These time periods represent the typical peak periods associated with the proposed site. The February two-way traffic volume on Route 52 during the Friday peak hour from 4:00 to 5:00 P.M. was approximately 530 vehicles. During the Sunday peak hour from 2:15 to 3:15 P.M. approximately 335 vehicles traveled past Edgewood Road on Route 52. Only one vehicle was observed exiting Edgewood Road during the Friday PM peak hour. During the Sunday peak hour one vehicle was observed entering and exiting Edgewood Road.

The NYSDOT conducted a traffic count on Route 52 between County Route 51 (Hilldale Road) and County Route 104 (Loch Sheldrake Road) in July 2005, which encompasses the Edgewood Road intersection. The summer two-way Friday PM peak hour traffic volume for this section of roadway was approximately 840 vehicles, and 605 vehicles during the Sunday afternoon peak hour.

Due to the seasonal nature of the region and the proposed development, the turning movement count data collected in February was increased according to the NYSDOT seasonal adjustment factors to adjust for seasonal fluctuations and to provide a conservative analysis. An increase of approximately 130% was applied to the February traffic volumes to estimate the peak monthly summer traffic which occurs during the month of July.

The 68-unit project under construction is located on the western side of Edgewood prior to the site driveway entrance to the proposed Royal Estates. Since the development under construction was expected to be completed by the summer of 2007, trips associated with this project were added to the 2007 seasonally adjusted traffic volumes.

The seasonally adjusted two-way traffic volumes were 1,215 and 765 during the Friday PM and Sunday peak hours, respectively. Compared to the NYSDOT July 2005 traffic count, the seasonally adjusted 2007 traffic volumes are approximately 45% higher during the Friday PM peak hour and approximately 27% higher during the Sunday peak hour, thus providing a conservative estimate.

The 2007 seasonally adjusted traffic volumes were further increased by a growth factor of 1.5% per year, based on historical traffic growth, to estimate the future traffic volumes in 2008 without the proposed Royal Estates project complete.

The trip generation of the proposed project was then estimated. Trip generation determines the quantity of traffic expected to travel to and from a given site. Based on the trip generation assessment, the proposed development will generate approximately 57 vehicles trips (25 entering and 32 exiting) during the Sunday peak hour. This equates to approximately one vehicle every 1 minute during the peak periods.

The project trip generation was distributed onto Route 52 and added to the No-Build traffic volumes resulting in the 2008 Build traffic volumes. These volumes represent future summer traffic volumes with the completion of the project.

In general, traffic generated by a recreation development is seasonal and tends to have minimal impact when compared to other types of facilities where commuter traffic plays a key role in the traffic patterns. The trip generation data presented represents a worst case estimate of the peak hour trip expected on a Friday evening and Sunday afternoon when these recreation trips would tend to peak the most as residents travel to and from their primary residences. During the weekday, when activity from adjacent land uses will be most active, the development will generate less traffic.

Intersection level of Service (LOS) and capacity analysis relate traffic volumes to the physical characteristics of an intersection. The relative impact of the proposed project can be determined by comparing the level of service during the 2008 design year for the No-Build and Build traffic volume conditions.

The results of the level of service analysis at the intersection of Route 52 and Edgewood Road indicates that the westbound Route 52 left-turn will operate at LOS A for all conditions during both peak hours. The northbound Edgewood Road approach is operating at LOS C/D for both peak hours through the 2008 No-Build condition. With the increase in traffic, the northbound Edgewood Road approach is expected to operate at a LOS C/D during the Build conditions with an increase in delay of 6 seconds per vehicle or less. Given the relatively low traffic volumes exiting Edgewood Road, and the good traffic operations, no improvements are required.

Based on the traffic analysis, the site is expected to generate between 57 and 59 new vehicle trips during peak operational times which will occur during the Friday PM peak hour and Sunday peak hour. Edgewood Road is a local low-volume roadway with

approximately 5 vehicle trips during the Friday PM peak hour and 10 vehicle trips during the Sunday peak hour of the seasonally adjusted peak summer conditions. The development of the site will not result in any significant impacts to the operation of any adjacent intersections. Traffic generated by the site will be adequately serviced with the existing roadway network.

D. Summary

The Environmental Assessment form (EAF) Part 2 listed several impacts as being potentially large. This Part 3 discusses each of these in some detail, based on separate studies undertaken in support of the proposal, and identifies mitigating factors. For all of the impact areas, the Part 3 and supporting studies are intended to thoroughly evaluate the impacts and potential mitigation for purposes of the environmental review. Additional studies and permits will be needed as part of the overall approval process.

EXHIBIT "F"

TOWN OF FALLSBURG PLANNING BOARD MEETING

August 28 2008

Chairman, Art Rosenshein, Kalman Freidus, Irv Newmark, Steve Vegliante, Gary Tavormina, Maria Zeno, Allen Frishman, Code Enforcement Officer, Robert Geneslaw, Town Planner, and Ron Hiatt, Planning Board Attorney.

- 1 The meeting was called to order at 7:16 pm.
- 2 Board member Newmark entertained motion to accept the minutes of the July 10, 2008 meeting. Board member Tavormina seconded with the following revisions: Jacobs Landing – Will Illing was not the representative of the applicant. Page 3 – can start and stand alone. Page 12 – it should be Bogan's house, not Logan's house. Board member Vegliante abstained. All in favor.

NEW BUSINESS:

1. RAL HAL (RALEIGH HOTEL) – SBL #: 60-1-56/50/62.1/62.4/63/64/65/66/67/96 –
Requests subdivision and site plan approval for the development of 245 seasonal units. Zone: REC-1. Acreage: 188.81 acres. Location: Heiden Road, S. Fallsburg.
- 1 Robert Geneslaw stated that after discussion at the last meeting the Board had asked us to look at two elements and report back what we thought the standard lot count should be from the conventional plan. And to advise the Board as to whether we thought a part 3 or a draft environmental impact statement would be most appropriate. We've been working on both. We are not quite prepared to report to the Board. There has been some confusion between Allen, myself, Steve Lopez and John Russo about how the conventional plan was prepared. He thinks they have figured it out and now he has to do the technical review. The memo he gave you dated August 27, 2008 raises several issues that it would be helpful if the Board could indicate a preference or a consensus or no concern so that he can take whichever it is into account in evaluating the map for purposes of the standard lot count. Those were #3, 4 & 5 in the memo dated August 27, 2008. If you would like he will read them or if you are all familiar with it we can discuss them and see if there is a consensus on the part of the Board with any of them.
- 2 Chairman Rosenshein read that #3 was the tennis courts.

Zeno seconded.

5. ROYAL ESTATES – SBL #: 17-1-46.2/46.3 - Modification of the resolution and lot line change.

77 Jay Zeiger stated that this project is Royal Estates. It was approved by this Board a little over a year ago with several conditions and many of those conditions required us to go to third parties like the DEC and the Health Dept. and get their approvals and sign offs. All of that has been done now. What we were left with was a resolution similar to the one that was just passed with about 25 items on the resolution that said these are all of the conditions and we've had a couple of staff meetings in between a year ago and now to go over how we satisfied those conditions. We believe that we have satisfied them and we were here two weeks ago. We had presented the original resolution and went over the list as to how we satisfied each of them and then after ½ hour or so of going over that, the acting chairman had suggested that we put this off until tonight. That the resolution we would be seeking to accomplish be worked out between my office and staff and then come back with the resolution that we would hopefully, jointly be asking the Board to approve. We have accomplished that and that is the resolution that is in front of you tonight. The project is not materially different. We took off the items that staff and this office agreed was taken care of.

78 Chairman Rosenshein stated that he is looking at a document that says Planning Board Town of Fallsburg Royal Estates Site Plan Approval Adopted August 9, 2007 – Proposed amendments for review.

79 Jay Zeiger stated that that is the resolution that we are asking you to vote on. This is the modified version.

80 Robert Geneslaw stated that after the Chairman at the last meeting sent the applicant away, Jay and he agreed that Jay would take the first shot at a revised resolution. Then he would review it and modify it which he did. He circulated it to staff and to Jay and Randy and Moses and Jim and Will and Allen and Ron and asked for any comments anybody had. Moses had the most comments which he didn't hear directly. Allen had two comments: to change porches to decks and to exclude him from the group of two that was supposed to examine the bridge and make sure it was okay. The bridge was left to Will. Porches were changed to decks. What you should have in front of you should be that version. 4a and 6.

81 Jay Zeiger stated that one of the things they tried to do is that there are different stages of the development if you will. Looking at the site plan, and the Planning Board says okay, the site plan we are okay with but now as you are going ahead and developed, we need to ensure that your fees are paid, your bonding is in place. What we tried to do is summarize that – when do we have to do these things. That resolution was intended to tighten it up and say you have to pay your fees. When do we have to pay it. That example was before you sign the map that these fees have to be paid. That is one of the areas that he put in before Mr. Geneslaw moved it up the ladder. When do we have to do the bridge

for example. This is clarifying that. All of the ones before you start are done, but going forward, these are the things you need to do and this is when we are telling you you need to do it. That was really the thrust of the changes. Everyone is either in agreement or we've accepted the position of staff.

82 Robert Geneslaw stated that incidentally, he knows that you've only had this since the day before yesterday or the day before, if you think this is a good approach to break down the conditions to the points at which they should be approved, we can do that with all of the resolutions in the future.

83 Chairman Rosenshein stated that it certainly seems like a good idea.

84 Robert Geneslaw stated that he thinks it may be easier for staff too. Some of these items are in here kind of as check list items. Me, Allen and Will review the plans. Ron reviews the legal documents when there are any. The more detailed this is, the more it can be used as a checklist to make sure everything was done.

85 Board member Tavormina stated that the other thing is that Will doesn't have to go looking for the money. They know when it has to be approached. Allen doesn't have to go looking for the money. They know when it has to be paid. And it makes their job a lot easier.

86 Board member Vegliante stated that he certainly doesn't see any down side to this.

87 Robert Geneslaw stated that he wanted to mention one other thing that other communities are starting to do. That is, when the resolution is adopted and the applicant comes back with revised maps or the deeds or the fees or whatever it is, they bring in a letter that says they took care of item #1 this way, item #2 this way, item #3 this way, etc. You avoid the situation where someone walks in with a map and says okay it is ready to be stamped and staff has to go through the conditions and the plan and the history to make sure everything is there. This way, the applicant is stating that they are responsible for demonstrating to staff that each of the items is taken care of. If you want to, you can incorporate that procedure as well.

88 Chairman Rosenshein stated that he thinks that is fine. Was this before or after we got into bedroom counts, by the way. This project?

89 Allen Frishman stated that this project was before.

90 Robert Geneslaw stated that you can still ask them. I don't think their intention is any different than it was before.

91 Jay Zeiger stated that Bob wanted the number of bedrooms on the map. The number of bedrooms limited and put on the map. That has been done.

92 Robert Geneslaw stated that on the second to last page it is there because when he was doing this, he realized that Jay in his draft resolution referred to maps that Randy Wasson had done with the revision date of August 14. That was the night of the Planning Board meeting. Randy had them here. When he was doing the resolution he couldn't find it. So, he added them in the event that they are not yet on the map, they should be put on.

93 Jay Zeiger stated that under this note, we believe that all a - e is on the map that we are looking at.

94 Chairman Rosenshein questioned the lot line change.

95 Allen Frishman stated that this was discussed at the last meeting.

96 Chairman Rosenshein stated that we have a motion to accept the proposed amendments of the site plan approval that was first adopted on August 9, 2007 and as of tonight we will be accepting the changes as submitted on August 28, 2008.

97 Jay Zeiger stated that his wording would be that the Board amends the resolution of August 9, 2007 as per submittal.

98 Board member Vegliante entertained motion to modify the resolution and lot line change. Board member Zeno seconded. All in favor.

Meeting adjourned at 9:30 pm.

EXHIBIT "G"

Final -
As Approved

**PLANNING BOARD
TOWN OF FALLSBURG
ROYAL ESTATES
SITE PLAN APPROVAL
ADOPTED AUGUST 9, 2007
PROPOSED AMENDMENTS FOR REVIEW
BY THE FALLSBURG PLANNING BOARD
AUGUST 28, 2008**

WHEREAS, the Town of Fallsburg Planning Board has a proposal for a one hundred sixty-three (163) dwelling unit primarily seasonal condominium single family attached and detached development (hereinafter referred to as the Project) situated in the Town of Fallsburg, Tax Map SBL: 17-1-46.2, 46.3; and

WHEREAS, the Planning Board has followed and complied with the applicable standards of the New York State Environmental Quality Review Act, SEQRA 6 NYCRR 617.6 and was designated lead agency for coordinated environmental review, coordinated review, classified the action as unlisted, and notified interested and involved agencies (none of which objected). Applicant completed Part I EAF and Board completed Part II EAF, held a public hearing, approved Part III EAF, and after a series of public meetings determined that the Project will not have a significant impact on the environment and adopted a Negative Declaration; and

WHEREAS, the Planning Board reviewed all of the information and documentation developed for the Project, including plans for Royal Estates, prepared by Wasson Engineering, Plan set of 22 sheets most recent revision date of August 14, 2008 on some sheets, as well as comments and correspondence received from staff, consultants, interested and involved agencies and the public, and made certain modifications to the Project; and

WHEREAS, the Project was granted conditional site plan approval by the Town of Fallsburg Planning Board on August 9, 2007; and

WHEREAS, subsequent to August 9, 2007 the applicant has submitted the Project to all involved agencies for their review, and has applied to said agencies for all required permits to complete the Project; and

WHEREAS, all involved agencies have now approved the Project;

NOW, THEREFORE, BE IT RESOLVED, by the Town of Fallsburg Planning Board, based upon the record before it, including the general, specific, and detailed knowledge of the Planning Board of the Project and of the community, hereby determines that the Project is granted site plan approval; and

BE IT FURTHER RESOLVED, that in furtherance of the site plan approval, the lot improvement plan submitted by the applicant pursuant to which the lot lines with respect to Town of Fallsburg Tax Map Section 17, Block 1, Lots 46.2 and 46.3 is revised such that except for the area where the dam is located, the new lot line shall be the northern side of Edgewood Road, with one of the lots being

ll of the land on the northern side of the northerly boundary of Edgewood Road ("Lot 2") and the second lot being all of the land on the southern side of the northern boundary line of Edgewood Road ("Lot "1"); and

BE IT FURTHER RESOLVED, that the Project, as approved by this site plan, shall be applicable to Lot 1 only, and Lot 2 may be retained by the property owner, its successors and assigns, for possible future development, subject to the applicable laws of the Town of Fallsburg, including density; and

BE IT FURTHER RESOLVED, that the Chairman of the Planning Board is hereby authorized to sign the final site plan map so that it may be filed with the Town Clerk and the County of Sullivan, upon satisfaction of the conditions which are set forth below:

1. The cul-d-sac extension of Edgewood Road, as shown on the site plan, has been dedicated to the Town.
2. The Town Board and the Town Highway Superintendent approve the abandonment of the portion of Edgewood Road, as shown on the site plan.
3. Payment of all fees in accordance with the Town fee schedule; and

BE IT FURTHER RESOLVED, development of this Project shall comply with all applicable municipal laws, including the laws of the State of New York and the Town of Fallsburg, and the following additional requirements:

1. The following conditions will be satisfied before the Town of Fallsburg Code Enforcement Officer may issue permits applicable to this Project, including, but not limited to, a land disturbance permit:
 - a. Resolution of any open items in the review letters from Keystone Associates dated August 12, 2008 to Wasson Engineering
 - b. Escrow for soil erosion control during construction in amounts to be determined by the Code Enforcement Officer and the Superintendent of Public Works.
 - c. Establishment of an escrow account for site inspection by the Town Engineer, his designee, or a consulting engineer of his choice.
 - d. Letter from NYSEG approving any grading and improvements within easement.
2. The following condition will be satisfied before the Town of Fallsburg Code Enforcement Officer may issue building permits applicable to this Project:
 - a. Completion of all off site improvements, whether public or private. Alternatively, and subject to the approval of the Town Engineer this condition can be satisfied by filing with the Town adequate surety (to be approved by the Planning Board Attorney) of an amount to be approved by the Town Engineer.
3. The following conditions must be satisfied before the Town of Fallsburg Code Enforcement Office may issue certificates of occupancy applicable to this Project:

- a. Establishment of an escrow account, letter of credit or similar financial security to be maintained for a period of five years to cover future maintenance/repair costs of infrastructure, including water supply, on site sewers, storm water management, and roads. The amount of escrow shall be determined by the Town Engineer.
- b. Submission for review by Planning Board staff/consultants of all portions of condominium association documents prior to approval by the New York State Attorney General that reference Planning Board approvals and conditions.
4. The following conditions will be satisfied before the Town of Fallsburg Code Enforcement Officer may issue (i) building permits applicable to this Project in excess of seventy (70) building permits and (ii) certificates of occupancy applicable to this Project in excess of thirty-five (35) certificates of occupancy:
 - a. The bridge over Hilldale Dam is installed and approved by the Town Engineer, with a schedule to be approved by the Town Engineer, including provision for emergency access during construction.
 - b. The developer improves/repairs the spillway in accordance with the remediation proposal provided by the developer.
5. The developer shall implement all mitigation elements referred to in the environmental assessment form, Part III, and in the Negative Declaration, as adopted by the Town Planning Board on August 9, 2007.
6. Buildings will be separated by no less than twenty-five (25) feet, with the exception of decks which are not enclosed with a permanent roof, and fifteen (15) feet separation deck to building.
7. Construction of the Project to be performed in accordance with construction sequencing to be approved by the Town Engineer or the Town Code Enforcement Officer; and

BE IT FURTHER RESOLVED, that the Town of Fallsburg Code Enforcement Officer is authorized to issue applicable permits to commence development of this Project, including land disturbance permits, building permits, and Certificates of Occupancy, in accordance with the resolutions which have been heretofore approved by the Town of Fallsburg Planning Board.

Dated: South Fallsburg, New York
August 28, 2008

Arthur Rosenshein
Chairman of the Planning Board

Note: The following must be added if not already on the August 14, 2008 plans either graphically or by note:

- a. Location at which fencing will be permitted; detail of fencing; note indicating that only fencing shown on the plan or in notes may be constructed.

Filed and Dated this: _____ date of _____, 2008

Donna Akerley - Town Board Clerk

EXHIBIT "H"

Tuesday, December 9, 2008
The Town of Fallsburg Town Board conducted a
Continuation of a Public Hearing at Town Hall Town Court,
19 Railroad Plaza, South Fallsburg, New York
Relative to the Abandonment of Edgewood Road

Present:

Supervisor Steven Levine
Councilman Arnold Seletsky
Councilman Mike Weiner
Councilman Nathan Steingart
Councilman Joe Levner

Town Clerk Donna Akerley
Town Attorney Michael Altman
Town Engineer Will Illing
Jay Zeiger, Esq.
Randy Wasson - Engineer

Supervisor Levine called the Public Hearing to order at 7:45 p.m. "This is a continuation of the Public Hearing relative to the Abandonment of Edgewood Road. Jay Zeiger, Esq. is here representing the developers and Randy Wasson is here as the engineer."

Jay Zeiger, Esq.: Referring to maps shown to the Board - "This is the road that we are talking about and the cul-de-sac over here for the trucks to turn around. Last time we got hung up on two issues, one was this piece of property over here and what we would do about that. The other issue was what would we do about emergency access. Regarding this piece, the piece as best as we can tell is worth nothing before or after the abandonment. This is the pond and the dam is partly on the property. There is water that flows into it and the county drainage is from up here. I don't know what this property is and what we would propose is we would give them whatever easement you would want us to give them. We can give them an easement this way but I do not think you want them to go onto the County Road and we could give them an easement across this road, it is the same property owner that owns it in both cases. That would be our proposal if that works. Do you have a preference?"

Engineer Will Illing: "No as long as he maintains access to his property. I did not know that this was even the case. Now we can see that it is the case and we should examine it and decide what to do with it but it is not something that cannot be resolved."

Councilman Levner: "What is the issue of the dam? Where are we at with that?"

Jay Zeiger, Esq.: "Part of the approval is that there is work that the developer has to do at a certain phase of development, not on the dam but on this spillway."

Supervisor Levine: "In other words the Lake would stay there. I think that is important."

Randy Wasson: "Yes, he is committed to spending about \$50,000."

Supervisor Levine: "The DEC is alright with that?"

Randy Wasson: "There are no tickets or anything of this project, no violations."

Councilman Seletsky: "Is there a potential problem?"

Engineer Will Illing: "The dam is deteriorating, it is an old old dam and it needs to be put back together so that the water will stay in the pond."

Supervisor Levine: "I think that it is important that the pond stay there. The easiest thing is what the DEC says these days is to just breach it. I think we have just a prettier spot having the lake there."

Jay Zeiger, Esq.: "Part of the Planning Board approval, there was a submission made from a contractor as to what working was recommending being done at the spillway and that was part of the conditions for approval.

Supervisor Levine: "If we abandon the road we are abandoning the dam. "

Engineer Will Illing: "It is not ours now, not that I can see. The bridge and the dam are two different things."

Jay Zeiger, Esq.: "Would the Board like to weigh in on the easement? It seems to me that the easement should be this way as opposed to this way since this is the bone of contention we are already having."

Engineer Will Illing: "What happens to the piece about the abandonment?"

Randy Wasson: "Emergency Access. We put the gate in."

Jay Zeiger, Esq.: "I spoke to Jim Bates, he is the environmental consultant. He suggested to put the emergency access across the bridge and that would make it less accessible."

Engineer Will Illing: "I just have thoughts that people will dump down there. People dump down there now and without a gate up by the road they are going to keep dumping down there. There is also an issue that you need a turn around if you are going to bring a plow down. I would keep it up by the road. It has to be plowed in the winter. It is one of the conditions; it always has to be plowed in the winter, emergency access for the fire company."

Councilman Seletsky: Expressed his wishes for a gate at the site to be maintained by the developer and for a penalty to be imposed if the gate is not intact. (Fine of \$2,500.00)

Jay Zeiger, Esq.: Expressed concerns for the vandalism of the gate. He does not believe the developer should be held financially responsible for the fine if the gate is vandalized. He noted that this emergency access road was not in the original plan but done as a courtesy when the developer was asked by the fire department. The developer will do anything the Town wants to ensure that that the emergency access is not used unless in a case of emergency.

Councilman Steingart: "The Town Board is not looking to generate revenue by making this fine. The reason we made the fine \$2,500 is because we wanted it to be stiff enough where we had some assurance that this wouldn't be used."

Councilman Levner: Stated that the gate and fines are meant to predominately prevent homeowners from using the emergency access as a regular road.

Jay Zeiger, Esq.: "So the implementation of the fine is put into place when the first unit is sold?"

We have two issues now. We need a determination that the road is abandoned and we need this agreement. Can we get a Resolution after the Public Hearing to abandon the road conditioned upon an acceptable agreement. Michael Altman and I will work on something. ”

Supervisor Levine: “We do not see a problem with that. We do not want to you come back, it is costing this guy money.”

Councilman Weiner: “I just want to state again that we want the security, possibly a camera in there for the public record. I think we all agree on that. We just want to be certain that procedures are followed.”

Jay Zeiger, Esq.: “The condition of the abandonment is that whatever road is built must be approved by the Town Engineer and before the abandonment becomes effective we have to have an agreement acceptable by the Town on the use of the Fine Policy.”

Councilman Levner and Councilman Weiner agreed that they would be fine with a gate upon construction and fine thereafter.

On Motion by Councilman Seletsky, Seconded by Councilman Weiner to close.

Time: 8:35 p.m.

Vote 5 Ayes

Donna Akerley, Town of Fallsburg Town Clerk
DA:vlk

Tuesday, December 9, 2008
The Town of Fallsburg Town Board conducted their
Regular Legislative Meeting at the Town Hall Town Court,
19 Railroad Plaza, South Fallsburg, New York
8:00 PM

Present:

Supervisor Steve Levine
Councilman Arnold Seletsky
Councilman Mike Weiner
Councilman Nathan Steingart
Councilman Joe Levner

Town Clerk Donna Akerley
Town Attorney Michael Altman
Town Engineer Will Illing

8:00 p.m. Agenda

Call to Order

- By Supervisor Levine

Salute to the Flag

- By Jay Zeiger, Esq.

Supervisor's Report

- By Supervisor Levine: With the

beginning of December we have notices a large amount of snow dustings. In these situations, the Town is forced to send the Highway Department to sand the roads. Sometimes these types of conditions are actually worse than a heavy snowstorm. In a lot of cases, drivers are unprepared for slippery roads. We also seem to get complaints of too much sand. It is even the Town's responsibility to ensure that the roads are safe even under conditions of a snow dusting. Another consequence of this is that financially it costs the Town for the sand and salt as well as the labor. What I am trying to say here is these small storms are very costly to our community. On our agenda there are two items involving the construction of a pavilion at Morningside Park. We have had past discussions of the need for a new pavilion at a location near the county road. The pavilion we have no is located at the back of the park and causes traffic problems which bother the campers. Since many organizations use the pavilion for their functions as well we felt it was important to build a new and larger building near the front of the park. The building will be a standard pole building which will be unfinished on the outside. It will be 40' x 120' with bathrooms and a kitchen. There is already a parking lot which exists near this location. We are anticipating more interest from the public and will be holding more events. The reason we are rejecting a pavilion bid is because it is involved a finished building and the cost was unaffordable. The money to build the new pavilion will come out of funds collected from development and not the tax payers. On behalf of myself and the Town Board, I would like to commend the various renaissance groups for the beautification efforts in decorating for the

holiday around the community. In these tough times this helps to boost the morale of out residents during the holiday season. The Toy Drive is this Saturday, the Police Department will be handing out toys on December 13th from 10:00 a.m. – 1:30 p.m. at the Courthouse.

Legislator's Report
Liaison's Reports

- None
- Councilman Weiner: He and Town Clerk Donna Akerley attended the Christmas tree lighting ceremony. Wanted to thank Woodbourne for all the hard work.

Correspondence
Citizen's Comments

- None
- None

Operations:

RES. # 356

1. Motion to re-bid Mountaindale Rails-To-Trails Gateway Project for construction.

On motion by Councilman Seletsky, seconded by Councilman Weiner

Supervisor Levine: Publically thanked Will Illing for all of his hard work.

Vote 5 Ayes

RES. # 357

2. Motion to reject bids relative to the Morningside Pavilion.

On motion by Councilman Weiner, seconded by Councilman Seletsky

Vote 5 Ayes

RES. # 358

3. Motion to approve Minutes of November 25, 2008 Public Hearing relative to Abandonment of Edgewood Road.

On motion by Councilman Levner, seconded by Councilman Steingart

Vote 5 Ayes

RES. # 359

4. Motion to approve Minutes of November 25, 2008 - Pleasant Valley Water/Sewer District extension.

On motion by Councilman Levner, seconded by Councilman Weiner

Vote 5 Ayes

RES. # 360

5. Motion to approve Minutes of November 25, 2008 Regular Legislative Meeting.

On motion by Councilman Weiner, seconded by Councilman Seletsky

Vote 5 Ayes

RES. # 361

6. Motion to approve the abandonment of Edgewood Road from the County Road 51 to the end of the property line subject to entering into an agreement with the Town. The Property Owner shall enter into an agreement with the Town Board of the Town of Fallsburg which provides that after occupancy of the development by the homeowners, in the event that the emergency access onto County Highway 51 is used by persons other than emergency vehicles or other than in the event of an emergency, fines may be imposed against the then owner of the property and the violating person by the Town Board of the Town of Fallsburg in the amount of \$2,500.00 for each unauthorized use. The agreement shall be in the form and substance satisfactory to the Town Board and its attorneys.

On motion by Councilman Seletsky, seconded by Councilman Weiner

Vote 5 Ayes

Personnel:

RES. # 362

1. Motion to approve three (3) month Medical Leave of Absence with pay to Melissa Porter to be effective December 15, 2008-March 15, 2009.

On motion by Councilman Seletsky, seconded by Councilman Levner

Vote 5 Ayes

RES. # 363

2. Motion to authorize the Town Supervisor to enter into a contract with Roemer, Wallens & Mineaux, Esqs., as the Town's Labor Negotiations attorneys.

On motion by Councilman Seletsky, seconded by Councilman Levner

Vote 5 Ayes

RES. # 364

3. Motion to appoint Bernard Deutsch to the Fire Advisory Board for 2009.

On motion by Councilman Seletsky, seconded by Councilman Levner

Vote 5 Ayes

Finance:

RES. # 365

1. Motion to approve the attached 2008 budget transfers for the Parks Department.

On motion by Councilman Levner, seconded by Councilman Seletsky

Vote 5 Ayes

RES. # 366

2. Motion to award Morningside Pole Building Bid to AJ Construction for the amount of \$78,900.

On motion by Councilman Weiner, seconded by Councilman Seletsky

Vote 4 Ayes, 1 Abstain (Supervisor Levine)

RES. # 367

3. Motion to award Ice Control Materials to 209 Sand and Gravel for Pick-up @ \$7.00 a ton.

On motion by Councilman Levner, seconded by Councilman Steingart

Vote 5 Ayes

RES. # 368

4. Motion to award Ice Control Materials to Woodbourne Lawn and Garden for Delivered @ \$9.75 a ton.

On motion by Councilman Weiner, seconded by Councilman Levner

Vote 5 Ayes

RES. # 369

5. Motion to approve the following Warrants:

Warrant #12A08 dated 12/3/08 in the amount of 123,964.19
Warrant # 1208 dated 12/3/08 in the amount of \$203,143.65
Warrant # 12B08 dated 12/3/08 in the amount of \$227,994.57
Payroll Warrant #11208 dated 11/12/08 in the amount of \$222,187.25
Payroll Warrant # 112608 dated 11/26/08 in the amount of \$239,843.74.

On motion by Councilman Seletsky, seconded by Councilman Weiner

Vote 5 Ayes

On Motion by Councilman Seletsky, seconded by Councilman Weiner to adjourn.
Time: 8:47 p.m.

Vote 5 Ayes

Donna Akerley, Town of Fallsburg Town Clerk
DA:vlk

EXHIBIT "I"



5 McDonald Road, Suite 2
Wurtsboro, N.Y. 12790

Phone: (845) 888-2288
Fax: (845) 888-2289

Fax

To:	Kalter, Kaplan, Zeiger & Forman	From:	Randy Wasson
Attn:	Jay Zeiger	Pages:	6 plus cover
Fax:	845-436-8156	Date:	September 9, 2009
Re:	Royal Estates Project 97-77	CC:	
Project #			

Attached is the Rosma Development permit, as discussed.
Please review pages 2 and 3.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Facility DEC ID 3-4828-00335



RECEIVED

PERMIT

Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:
ROSMA DEVELOPMENT LLC
199 LEE AVE PMB 287

BROOKLYN, NY 11211
(718) 403-0900

Facility:
ROYAL ESTATES
EDGEWOOD RD (CO RTE 92) 500' E OF
HILLDALE RD (CO RTE 51)
LOCK SHELDRAKE, NY

Facility Location: in FALLSBURGH in SULLIVAN COUNTY
Facility Principal Reference Point: NYTM-E: 526.7 NYTM-N: 4624.2
Latitude: 42°46'09.1" Longitude: 75°40'43.6"

Project Location: Edgewood Road over tributary to Mongaup River (WIN# D-10-29; Class B)
Authorized Activity: Reconstruct the Edgewood Road bridge over a tributary to the Mongaup River (Class B), including demolition and removal of the existing structure, construction of new concrete footings and wingwalls, and installation of a 25 foot wide arch culvert with rip-rap embankment protection, in accordance with the plans and reports referenced in Special Condition No. 1 and as conditioned in this permit.

Permit Authorizations

Stream Disturbance - Under Article 15, Title 5
Permit ID 3-4828-00335/00001
New Permit Effective Date: 10/20/2008 Expiration Date: 12/31/2011

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: ALEXANDER F CIESLUK, JR, Deputy Regional Permit Administrator
Address: NYSDEC REGION 3 HEADQUARTERS
21 SOUTH PUTT CORNERS RD
NEW PALTZ, NY 12561 -1620

Authorized Signature: Alexander F. Ciesluk, Jr.

Date 10/20/2008

RSB



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Facility DEC ID 3-4828-00335

Distribution List

J. Bates - Tim Miller Assoc.
R. Wasson, PE
Town of Fallsburgh Planning Board
ACOE, NY District
D. Gaugler *via e-mail*
J. Swentusky *via e-mail*

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Permit Attachments

Permit Sign
Notice of Intent to Commence Work

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: STREAM DISTURBANCE

1. **Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by Wasson Engineering, dated September 9, 2006 with revisions through August 28, 2008 unless otherwise noted:

- A. Drawing Nos. 1, 9, 18A & 18B (4 sheets).
- B. SWPPP dated April 2007, prepared by Tim Miller Assoc., Inc. (11 page report w/ attachments)

2. **Notify DEC 48 Hrs Prior to Work** The permittee or a representative must contact by telephone Mr. Jack Isaacs, Bureau of Habitat Protection Manager, at (845) 256-3087 at least 48 hours prior to the commencement of the project authorized herein.

3. **Freshwater Wetlands Deed Notice Amendment** This property contains portions of New York State regulated Freshwater Wetland LE-36 (Class II) and its regulated 100 foot adjacent area. Accordingly, the deed for this property shall be revised to contain the following notice:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Facility DEC ID 3-4828-00335

"This property contains New York State regulated freshwater wetlands and/or regulated 100 foot adjacent area. For as long as any portion of the property described in this deed is subject to regulation under Article 24 (the Freshwater Wetlands Act) of the Environmental Conservation Law (ECL) of the State of New York, there shall be no construction, grading, filling, excavating, clearing or other regulated activity as defined by Article 24 of the ECL on this property within the wetland area or its 100 foot adjacent areas at any time without having first secured the necessary permission and permit required pursuant to the above noted Article 24 from the NYS Department of Environmental Conservation (DEC). This restriction shall bind the Grantees, their successors and assigns and shall be expressly set forth in all subsequent deeds to this property."

By July 31, 2009 the permittee shall file with the real property records of the County Clerk's Office this deed notice revision. The permittee shall within two weeks following the filing of the deed notice revision submit proof of filing from the County Office showing the Liber and page number at which the deed notice revision was filed and the date of filing to the DEC'S Regional Permit Administrator in the Region 3 New Paltz Office to document compliance with this condition.

4. Water Diversion: Prior to the start of construction, a sandbag coffer dam and pump-around shall be installed to divert stream flow around the area of work. Diverted water shall be pumped to a haybale enclosure: there shall be no direct discharge of pumped water back to the stream. The coffer dam, pump and haybales shall be entirely removed upon completion of work. All accumulated silt and sediment shall be disposed of at an appropriate upland location.

5. Straw Bales or Other Downslope of Work Area Bales of straw or other effective means to control erosion are to be used on the downslope edge of any disturbed areas. This barrier to sediments is to be put in place before any disturbance of the ground occurs and is to be maintained in good condition until all disturbed land is heavily vegetated.

6. Dewatering of Excavation: Any water encountered in the course of excavation for construction of concrete culvert footings and wingwalls shall be pumped to a staked haybale enclosure. All other necessary measures shall be implemented to prevent any visible increase in turbidity downstream.

7. No Turbidity from Dewatering No turbid water resulting from dewatering operations shall be discharged directly to or allowed to enter the tributary to the Mongaup River. Such water shall be pumped to settling basins or to an upland vegetated area prior to any discharge to surface waters. All other necessary measures shall be implemented to prevent any visible increase in turbidity or sedimentation downstream of the work site.

8. Precautions Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

9. Concrete Leachate During construction, no wet or fresh concrete or leachate shall be allowed to escape into any wetlands or waters of New York State, nor shall washings from ready-mixed concrete trucks, mixers, or other devices be allowed to enter any wetland or waters. Only watertight or waterproof forms shall be used. Wet concrete shall not be poured to displace water within the forms.



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Facility DEC ID 3-4828-00335

10. **Excess Materials:** Any excess excavated material, as well as debris from the demolition of the existing bridge, shall be removed from the bed and banks of the stream and shall be disposed of properly at an upland site. Excavated material temporarily stockpiled on site for future use shall be contained by a silt fence or haybale enclosure to prevent erosion.

11. **No Work Other Than Authorized Herein** No other modifications to the bed or banks of the stream are authorized by this permit.

12. **Seed, Mulch Disturbed Soils** All areas of soil disturbance resulting from this project (above the mean high water line) shall be seeded with an appropriate perennial grass seed and mulched with straw within one week of final grading.

13. **State Not Liable for Damage** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

14. **State May Order Removal or Alteration of Work** If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

15. **State May Require Site Restoration** If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. **Facility Inspection by The Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Facility DEC ID 3-4828-00335

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
NYSDEC REGION 3 HEADQUARTERS
21 SOUTH PUTT CORNERS RD
NEW PALTZ, NY12561 -1620

4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Stream Disturbance.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Facility DEC ID 3-4828-00335



NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

Item E: SEQR Unlisted Action, No Significant Impact Under the State Environmental Quality Review Act (SEQR), the project associated with this permit is classified as an Unlisted Action with Fallsburg Town Planning Board designated as the lead agency. It has been determined that the project will not have a significant effect on the environment.

EXHIBIT "J"

EMERGENCY ACCESS AGREEMENT

This Emergency Access Agreement is entered into as of the 7th day of April, 2009, between **Upstate Heights, LLC**, a New York limited liability company having its principal place of business located at PO Box 225, Monroe, New York 10949 (the "Developer") and the **Town of Fallsburg**, a municipal corporation having its office and principal place of business at 19 Railroad Plaza, PO Box 2019, South Fallsburg, New York 12779 (the "Town").

WITNESSETH:

WHEREAS, the Developer is the owner of a parcel of land located in the Town of Fallsburg known as Section 17, Block 1, Lots 46.2 and 46.3 (the "Property"); and

WHEREAS, the Town highway known as Edgewood Road currently travels through the Property; and

WHEREAS, the Developer has petitioned the Town to consent to the qualified abandonment of a portion of Edgewood Road, the portion to be abandoned commencing at the northerly side of County Highway 51 and continuing through the Property; and

WHEREAS, a metes and bounds description of the proposed portion of Edgewood Road to be qualified abandoned, as set forth above, is annexed hereto as Exhibit "A" (the "Abandoned Highway"); and

WHEREAS, the Developer has obtained site plan approval from the Town of Fallsburg Planning Board (the "Planning Board") for the development of the Property on the east side of the Abandoned Road as a 163 unit residential development known as "Royal Estates" (the "Project"); and

WHEREAS, one the conditions of the site plan for the Project is that ingress and egress with respect to the Project would be from the Abandoned Highway into the remaining portion of the Town Highway known as Edgewood Road, and that access from the Project to County Route 51 be for emergency access only (the "Emergency Access"); and

WHEREAS, the Developer is now in the process of developing the land on the west side of the Abandoned Road as a 46 unit residential community (the "Phase II Project"); and

WHEREAS, the Phase II Project will also use the Abandoned Road for ingress and egress in the same manner as the Abandoned Road is to be used for the Project; and

WHEREAS, the Developer has agreed, as part of the approved site plan for the Project, to install a gate at the Emergency Access, and that the gate will be locked, and not used for any purpose other than Emergency Access; and

WHEREAS, the Town desires a means of further enforcement of the Emergency Access, as provided for in this Agreement;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree, as follows:

1. As part of the development of the Project, the Developer will, at the commencement of construction, arrange to install a locked gate (the "Emergency Gate") at the Emergency Access, and that the Emergency Access shall be used for emergency purposes only. It is understood and agreed that the Hurleyville Fire Department and Town Police will have keys to the Emergency Gate and will have the right to access the Project in the event of an emergency. The location of the Emergency Gate, the design and quality, and the manner of installation shall be subject to approval of the Town Engineer.

2. The Developer agrees that the use of the Emergency Access will be limited to emergency access only and that this condition shall be incorporated in all development documents, including the approved site plan, all approved maps applicable to the Project, and the condominium declaration.

3. Prior to the time that the first home in the Community is occupied, the Developer shall install, at or near the Emergency Gate, at a location approved by the Town Engineer, a sign (to be approved by the Town Engineer), which clearly indicates that the Emergency Gate is for emergency use only and subject to a \$2,500.00 violation if used otherwise (the "Sign").

4. The Developer acknowledges that the condition that the Emergency Access be limited to emergency access only may be enforceable by all applicable Town enforcement officials, including, but not limited to, the Town Code Enforcement Officer and the Town Police.

5. The Developer acknowledges that the aforementioned Town enforcement officials shall be authorized to issue violation notices, which notices shall be in the form of a civil summons returnable in the Town of Fallsburg Justice Court:

a. To the Developer in the event that the Developer (i) fails to install the Emergency Gate within twenty (20) days after commencement of construction or (ii) fails to install the Sign at the Emergency Access prior to the time that the first home in the Community is occupied.

b. To the owner of the Property in the event that after the first home within the Development is occupied, one or more persons uses the Emergency Access for ingress and egress at times when an emergency does not exist. For purposes of this Agreement, each use shall be a separate and distinct violation.

c. After the first home within the Development is occupied, to those persons who use the Emergency Access for ingress and egress at times when an emergency does not exist.

6. For purposes of this Agreement, the determination of whether an emergency exists shall be made by the applicable municipal authorities, such as the Fire or Police officials.

7. Any person or entity that violates the provisions of this Agreement shall pay a fine or penalty to the Town in the sum of \$2,500.00. The determination of a dispute as to whether a violation has occurred shall be made by a Town Justice of the Town of Fallsburg, unless there is a conflict of interest involved and the proceeding is transferred to another Town Justice Court.

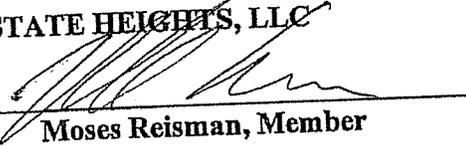
8. In the event that the Town determines that the Emergency Access condition which is provided for in this Agreement is violated by the Developer or by other persons involved in the Project, including the Developer's contractors or subcontractors or persons who reside within the community where the Project is located, then, in such event, in addition to the \$2,500.00 fine or penalty which is set forth herein, the Town may exercise all remedies available to it by law. In addition, the Developer agrees that the Town may proceed by injunctive relief to prevent any ongoing violation of the provisions which are set forth in this Agreement.

9. This Agreement shall be binding upon the Developer, its successors and assigns, as well as the successors and assigns of the owner or owners of the Property if such owner or owners is other than the Developer.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of

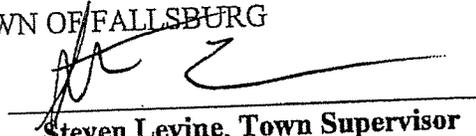
April 7, 2009.

UPSTATE HEIGHTS, LLC

BY: 

Moses Reisman, Member

TOWN OF FALLSBURG

BY: 

Steven Levine, Town Supervisor

Exhibit "A"

Daniel P. Yanosh
LICENSED LAND SURVEYOR
2194 Route 302, P.O. Box 320
Circleville, N.Y. 10919

Tel: 845-361-4700
Fax: 845-361-4722

Daniel P. Yanosh, L.L.S.
Kevin J. Wild, L.L.S.

DESCRIPTION
EDGEWOOD ROAD A/K/A TOWN ROAD #92
TO BE CONVEYED TO
ROYAL ESTATES DEVELOPMENT, LLC
BY THE TOWN OF FALLSBURG

ALL THAT CERTAIN PIECE OR PARCEL OF LAND SITUATE IN THE TOWN OF FALLSBURG,
COUNTY OF SULLIVAN, STATE OF NEW YORK, BEING ACCURATELY BOUNDED AND DESCRIBED
AS FOLLOWS:

BEGINNING at the intersection of the easterly side of County Highway 51 and the northerly side of
Edgewood Road n/k/a Town Road #92, said point being the westerly line of land now or formerly Royal Estate
Development, LLC, Liber 3207 Page 255; and runs thence along the northerly line of Edgewood Road for the
following 12 courses and distances:

- 1. North 34°35'12" East 126.26 feet;
- 2. North 49°41'40" East 89.68 feet;
- 3. North 37°51'45" East 26.68 feet;
- 4. North 13°09'36" East 118.53 feet;
- 5. North 22°05'48" East 220.86 feet;
- 6. On a curve to the right, said curve having a Radius of 125.00 feet and an Arc Length of 173.10 feet;
- 7. South 78°33'30" East 324.32 feet;
- 8. South 66°15'40" East 123.70 feet;
- 9. South 64°34'38" East 111.48 feet;
- 10. On a curve to the left, said curve having a Radius of 130.00 feet and an Arc Length of 136.81 feet;
- 11. North 55°07'23" East 85.46 feet;
- 12. North 51°38'41" East 665.68 feet;

thence through Edgewood Road for the following 2 courses and distances:

- 1. South 49°04'48" East 9.46 feet;
- 2. On 2 curve to the left, said curve having a Radius of 50.00 feet and an Arc Length of 69.18 feet;

thence along the southerly side of Edgewood Road for the following 12 courses and distances:

- 1. South 51°38'41" West 718.08 feet;
- 2. South 55°07'23" West 86.98 feet;
- 3. On a curve to the right, said curve having a Radius of 180.00 feet and an Arc Length of 189.44 feet;

