

**KALTER, KAPLAN, ZEIGER & FORMAN**

ATTORNEYS AT LAW

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ELLENVILLE OFFICE

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ELLENVILLE, NEW YORK 12428

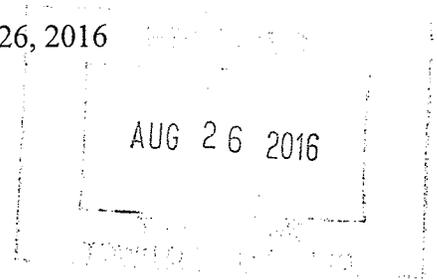
TEL. (845) 647-4110

FAX (845) 647-6232

Email: [jkaplan.kkzf@gmail.com](mailto:jkaplan.kkzf@gmail.com)

August 26, 2016

Ms. Donna Akerley, Town Clerk  
Town of Fallsburg Town Clerk's Office  
PO Box 2019  
19 Railroad Plaza  
South Fallsburg, New York 12779



**RE: Whittaker Road Associates, LLC.**

Dear Donna:

Enclosed is the Petition for Relief from the Town of Fallsburg Moratorium law.

Please let me know when the public hearing will be scheduled.

Very Truly Yours,

A handwritten signature in black ink, appearing to be "JAY L. ZEIGER". The signature is stylized and written over a diagonal line that extends from the bottom right towards the center.

JAY L. ZEIGER

JLZ/dm

Enc.

cc: Mr. Joseph Hecht (via email with enclosures)  
Paula Kay, Esq. (via email with enclosures)  
Ms. Mollie Messinger (via email with enclosures)

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

=====  
In the Matter of the Application of /  
**WHITTAKER ROAD ASSOCIATES,** /  
**LLC** /  
for a Hardship Variance from the Town's /  
Residential Moratorium Local Law /  
=====

**Verified Petition for Relief  
from Moratorium**

The Petitioner, WHITTAKER ROAD ASSOCIATES, LLC, 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 three parcels of real property located off of Whittaker Road, in the Town of Fallsburg, known as Town of Fallsburg SBL 47.-1-5.2; 47.-1-6 and 47.A-1-26 (the "Property"). The Property has been the subject of development plans since 2002.

2 The development project discussed herein (the "Project") has been submitted to the Town of Fallsburg Planning Board on several occasions since 2002, and has received approvals on several occasions.

3. In 2002, the Project was approved by the Town of Fallsburg Planning Board for the construction of 450 homes. In connection with said approval, the Town indicated that the Town had adequate water and sewage capacity for the 450 new residential homes which were the subject of the then pending site plan application. See letter of William H. Illing dated June 12, 2002, Exhibit "A" annexed hereto.

4. Subsequent to the year 2002, the property was sold to a different developer who pursued a different development of the Project and a revision to that which was previously approved. That project had been known as KDJ, Aden Woods, Rio Vista, and site plan approval for that Project was granted by the Town of Fallsburg Planning Board during the year 2007.

### **THE PROJECT**

5. The Project that was approved by the Town of Fallsburg Planning Board during the year 2007 was a development consisting of 196 dwelling units. Approval was granted as a conventional subdivision which, when built, would include 196 homes on 196 individual lots.

6. In connection with the approval granted in 2008, 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 and site plan approval.

7. Shortly after the approval of the Project in 2008, the Property was sold to Petitioner. Almost immediately thereafter, the Petitioner submitted an application to the Town of Fallsburg Planning Board to amend the Project that had been approved by the Planning Board, and to change the Project from a conventional subdivision to a site plan Project to be developed as a condominium association. Except for this change, the amendment to the site plan that had been approved in 2008 would not change. The Project would remain as a project of 196 homes, and the location of the homes and all other aspects of the site plan, including the location of the roads, community facilities, such as the community building and the swimming pools, would all remain at the same location. In essence, what was proposed was to take the same site plan and subdivision that had been approved by the Planning Board in the year 2008, and simply remove the subdivision lines. Everything else would remain the same.

8. The revisions to the site plan discussed above were extensively discussed at several Planning Board meetings, and at meetings of the Town Board. In furtherance of the foregoing, the Town confirmed its agreement to extend the water and sewer districts to include the entire Project. As stated in Paragraph "3" above, by letter dated June 12, 2002, the then Town Engineer William H. Illing sent a letter to the attorney for the then developer confirming that there was adequate water supply and waste water treatment capacity to service 450 new residential homes. That letter confirmed that the owner of the property would be allowed to connect to the Town of Fallsburg water and sewer systems, subject to obtaining Planning Board approval for the project. The foregoing commitment set forth by the then Town Engineer, was confirmed by the Town Board, by agreement dated April 14, 2009, whereby the Town Board, among other items, reaffirmed its commitment to extend the Town water and sewer water districts to include the entire Property and to allow for the completion of the development of 196 homes. A copy of said agreement of April 14, 2009 is annexed hereto as Exhibit "B".

9. In view of the fact that the revisions of the 2008 approval were requested less than a year after the 2008 approval had been granted, and since the revised site plan was substantially identical to the site plan that had been approved in 2008, the revised site plan did not require any material changes to any of the third party reports and third party approvals that had been approved by the Town Planning Board and other third parties, including the water distribution plan, the storm water plan, the DEC approvals and the approvals by the Health Department, and the Traffic Study. As such, the Petitioner continued to pursue the third party approvals and continued to submit the engineering reports that would be needed in order to obtain final approval of the project that had been approved in 2008 with the one modification of changing the site plan from a conventional subdivision to a condominium development, as described in Paragraph "7" of this Petition.

10. Annexed hereto as Exhibit "C" is a more detailed explanation, prepared by the project engineer, Pietrzak & Pfau, which sets forth all of the history of this project and all of the approvals that had been obtained in connection with the Project, as well as the third party reports that had been submitted and the engineering reports that had been submitted to the Town Planning Board and others.

11. Copies of all of the submissions mentioned herein should be in the files of the Town of Fallsburg Planing Board, and are available, upon request, from the applicant.

12. Unfortunately, during the year 2011 until 2015 the Project stalled for a variety of reasons, including a change in the real estate market which was not favorable towards pursuing this Project, and a dispute among the owners of the Project, including the Project representative, Joseph Hecht.

13. In the year 2015, the Petitioner once again appeared before the Town Planning Board to obtain final approval of the Project so that the Petitioner could begin construction. The Project that the Petitioner was pursuing in 2015 was substantially the same as the project that had been approved in 2008 and was at or near approval in 2011, with what was intended minor modifications. However, subsequent to 2011, the Town Zoning Code had changed in many respects, including adopting the Duplex Development Law. The town attorney and consultant took the position that the Project, as currently submitted, would need to comply with the Duplex Development Law in its current version, notwithstanding that the Project was substantially the same as that which was approved in 2008 and was at or near approval in 2011.

14. Modifying the project to comply with the Duplex Development Law required certain revisions to the Project, including relocating the retention ponds to an area outside of the 175 foot required setback, as required by the Duplex Development Law.

15. In connection with the latest pursuit of this Project, starting in 2015, the Petitioner has devoted substantial efforts towards bringing this project to fruition. The Petitioner submitted a revision to the site plan to comply with the Duplex Development Law. In addition, public hearings were held, and at the public hearings several members of the public expressed concern, particularly the manner in which the Project would impact the adjacent development, Timber Hill. In response, the site plan was amended to relocate some of the homes to a location more distant from Timber Hill, and to comply with the updated Town Duplex Development Law. In connection with the prior approval of this Project, all third party reports have been submitted and many permits had been obtained. The Project engineer was of the opinion that some of these would need to be updated, but many would not. The project engineer has been working with the town engineer towards updating those reports that needed to be updated.

## PROJECT IS VESTED

16. 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 Project was included on the schedule of projects that would be subject to the Moratorium Law.

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

18. 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).

19. In the instant circumstances, and in reliance upon the original approval of this Project in 2008, the developer spent several years satisfying all of the conditions of the 2008 approval. In addition, by agreement dated April 14, 2009, the Town recognized the approval of this Project by reaffirming its commitment to extend the water and sewer districts to include this Project, consisting of 196 homes, and entered into a written agreement with the Petitioner confirming this (Exhibit "B" annexed hereto).

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

21. 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 Petitioner has performed substantial work in response to that approval. The Moratorium Law would preclude the Town Planning Board Chairman from signing the final site plan map for the Project, even upon satisfaction of all conditions in the 2008 site plan approval resolution, notwithstanding that Petitioner has expended significant funds and performed significant work in furtherance of the approval. Precluding the 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*.

## FINANCIAL HARDSHIP

22. If, notwithstanding the claim of the Petitioner that the 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.

23. As discussed above, regarding the history of this Project, it is obvious that the Petitioner's investment in this Project has been substantial. The Petitioner purchased the Property as an approved project of 196 residential homes for \$5,000,000.00, including closing expenses. Clearly, said purchase price represented a premium, substantially in excess of what the purchase price would have been had the prior approval not have been obtained.

24. After purchase, the Petitioner spent significant funds obtaining third party approvals of the Project and amending the Project. The foregoing includes engineering fees, attorneys' fees and other costs and expenses of obtaining project approval to the extent of \$200,000.00. Thus, the Petitioner has a significant investment in the Project by way of the purchase price of the Property of \$5,000,000.00 and development fees of \$200,000.00, for a total of \$5,200,000.00. Should the Project continue to be subject to the Moratorium Law, and of greater concern, should the zoning applicable to this Project change in any material respect, the foregoing investment of the Petitioner may be lost. At a minimum, the value of the Property would be significantly less than the Purchaser's investment of \$5,200,000.00. In such event, the Petitioner's substantial loss would be irreparable.

25. In connection with its purchase, the Petitioner obtained financing secured by other assets owned by the Petitioner and personally guaranteed by the principals of the Petitioner. The costs of servicing these loans and carrying charges for the Property since the Property was acquired by the Petitioner is now in excess of \$1,500,000.00, and is continuing. Should this Project continue to be subject to the Moratorium Law, and should the zoning for the Property change to reduce the allowable number of homes, such zoning change would significantly devalue the Petitioner's investment resulting in substantial losses to the Petitioner. Clearly, these losses would be irreparable.

26. The Petitioner's Property acquisition financing of \$5,000,000.00 has matured and has been periodically extended by the Petitioner. For the last extension, the Petitioner needed to convince its lender that the U.S. economy has experienced an upturn and that there was a housing demand in Sullivan County, New York, and that development financing was available after approval of a project had been obtained. Thus, the lender has allowed the Petitioner to pursue the Project to completion and repay the past due loans.

27. The Petitioner's loans are again in need of a further extension. At the last loan update conference with the lender, the lender informed the Petitioner that if the Project did not move forward because of the Moratorium Law or otherwise, then the lender would not agree to an extension and would liquidate the assets of the Petitioner that had been pledged to secure the loan. Should that occur, then the Petitioner would suffer a loss of several million dollars of assets, which loss would be irreparable. Moreover, according to the Petitioner, the assets to be liquidated would not be sufficient to repay the \$5,000,000.00 loan in full. Thus, the lender would pursue the shortfall against the other assets of the principals of the Petitioner. Such action of the lender would, of course, cause substantial injury, which injury would result in the loss of assets and credit rating, thus making the injury irreparable.

28. In summary, should relief from the Moratorium Law not be obtained and should a zoning change adversely impact the number of houses that the Petitioner would be allowed to construct at the Property, the injury to the Petitioner by way of loss of value of the Property would be substantial and irreparable. This loss, when coupled with the default with respect to the Petitioner's acquisition loan of \$5,000,000.00, the liquidation of assets to partially repay said loan, and the claim against the principals based upon their personal guarantees results in even further irreparable injury.

### **RELIEF REQUESTED**

29. 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 Project and, thereafter, to be allowed to begin development of the Project.

30. For the reasons set forth in Paragraphs "16" through "21" 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 Project notwithstanding the Moratorium Law.

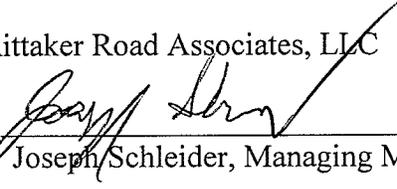
31. The Petitioner has also demonstrated substantial irreparable injury mandating that the Project be able to proceed, notwithstanding the Moratorium Law. As stated in Paragraphs "22" through "28" above, the Petitioner has invested in excess of \$5,200,000.00 in connection with this Project, plus financing and carrying charges of in excess of \$1,500,000.00, a substantial portion of which is likely to be lost as a result of the diminution in the value of the Property. Moreover, unless relief from the Moratorium Law is obtained, the Petitioner's acquisition financing of \$5,000,000.00 will be in default, resulting in loss of pledged assets of several million dollars and personal liability claims based upon personal guarantees applicable to said loans; such injury is both substantial and irreparable.

32. For all of the reasons set forth herein, it is respectfully submitted that the Petitioner has demonstrated that a significant hardship would be incurred, financial and otherwise, in the event that the Petitioner would not be allowed to proceed towards completion of this Project.

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 29, 2016

Whittaker Road Associates, LLC

By:   
Joseph Schleider, Managing Member

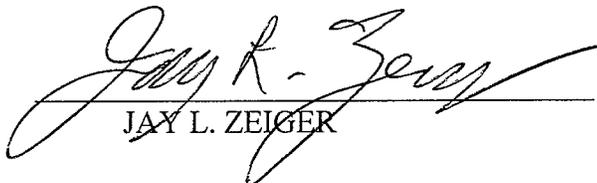
VERIFICATION

STATE OF NEW YORK )  
 )ss:  
COUNTY OF SULLIVAN )

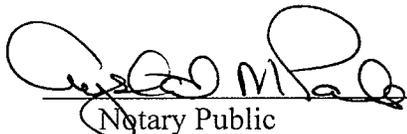
I, the undersigned, an attorney admitted to practice in the Courts of the State of New York, say that: I am a member of the firm of KALTER, KAPLAN, ZEIGER & FORMAN, the attorneys of record for the Petitioner, WHITTAKER ROAD ASSOCIATES, LLC. I have read the annexed Verified Petition for Relief from Moratorium, 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.

My belief, as to those matters therein not stated upon knowledge, is based upon further information provided to me by the Petitioner, conversations with the members of the Petitioner, and a review of the documents submitted to me by the Petitioner.

The reason I make this Verification instead of the Petitioner is that the Petitioner's managing member with authority to sign on behalf of Petitioner is currently out of the country, and time is of the essence.

  
JAY L. ZEIGER

Sworn to before me this  
22nd day of August, 2016

  
Notary Public

**CRYSTAL M. PATERSON**  
Notary Public, State of New York  
NYS Reg. No. 01PA6047246  
Qualified in Sullivan County  
Commission Expires August 28, 2018

**EXHIBIT "A"**

7/2002 17:43  
2-13-2002 10:06AM

914-638-4606

BERGSTOL

M RONALD S KOSSAR ESQ 914 342

PAGE 02

06/12/2002 15:39

914-434-7972

TOWN OF FALLS, NYTP

PAGE 02



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

Department of Public Works

Tel: 845-434-6320  
Fax: 845-434-7972

June 12, 2002

*Promo*

Mr. Jack S. Ingber, Esq.  
230 Broadway  
P.O. Box 977  
Monticello, NY 12701

RE: (T) Fallsburg  
Whittaker Road, SF  
Proposed Residential Units  
SBL #: 47-1-5.2 & 47-1-6

Dear Mr. Ingber:

Please be advised the Town of Fallsburg presently has adequate water supply and wastewater treatment capacity to service 450 new residential units proposed for construction on the Whittaker Road, South Fallsburg property. The owner of the aforesaid property can hook into the Town of Fallsburg water and sewer system, subject to Planning Board approval.

Please contact my office if you have any questions regarding connection fees.

Thank you.

Sincerely yours,

William H. Illing, P.E.  
Town Engineer

WHIlling

PC: A. Frishman, CEO

FILE:WIR-SWR/INGBER  
SBL 47-1-5 2 47-1-6

*2/4/02*

*ENRUC JUNG*  
*5/14/02*

**EXHIBIT "B"**

## **WATER AND SEWER AND ROAD PAVING AGREEMENT**

Agreement entered into as of the 14th day of April, 2009, among **Whittaker Road Associates, LLC**, a New York limited liability company having its principal place of business care of Joseph Hecht, 948 45<sup>th</sup> Street, Brooklyn, NY 11219 (the "Developer") and **Town of Fallsburg**, a New York municipal corporation having its 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 three contiguous parcels in the Town of Fallsburg, and, having tax map numbers 47-1-5.2, 47-1-6 and 47A-1-26 (the "Property") and;

WHEREAS, the Developer is in the process of obtaining approval of a 196 unit residential development project (the "Project") from the Town of Fallsburg Planning Board (the "Planning Board"); and

WHEREAS, a portion of the Property has historically been and remains within the Town Water and Sewer District; and

WHEREAS, Town records reveal that the Town Board, approximately 20 years ago, agreed to extend the Town Water and Sewer Districts to include the entire Property within the Town Water and Sewer Districts; and

WHEREAS, the extension of the Town Water and Sewer Districts to include the balance of the Property has not been filed with the Sullivan County Clerk and, therefore, is not currently reflected in the Town tax maps; and

WHEREAS, the parties hereto desire to complete the extension of the Town Water and Sewer Districts and to confirm the rights and obligations of the parties concerning the Town Water and Sewer with respect to the Project; and

WHEREAS, access to the Property is through Whittaker Road; and

WHEREAS, Whittaker Road is in need of repair and repaving; and

WHEREAS, the Developer has agreed to repair and repave Whittaker Road in the manner provided for herein;

NOW, THEREFORE, the parties hereto agree as follows:

1. The Town reaffirms that it has agreed to extend the Town Water and Sewer Districts to include the balance of the Property not previously included within the Town Water and Sewer Districts.

2. The Developer agrees to take whatever steps may be necessary in order to complete the documentation and legal requirements required in order to confirm the extension of the Town Water and Sewer Districts to include the entire Property and in order to reflect the extension of the Town Water and Sewer Districts on the Town tax maps and the records at Sullivan County. In furtherance of the foregoing, the Developer agrees to do the following:

a. Provide the Town Engineer with an updated water and sewer district extension report. The report shall be that report which would otherwise be attached to a petition to extend a water and sewer district, as provided for in the Town Law.

b. Provide the Town Engineer with any additional reports that the Town Engineer reasonably requires in connection with the water and sewer district extensions, including maps, plans, and such other information as the Town Engineer may be entitled to in accordance with Town Law.

c. Arrange for whatever documentation may be required to be filed with Sullivan County in order to confirm the extension of the water and sewer districts, as provided for in this Agreement, such that the extension of the water and sewer districts are reflected on the tax maps of the Town.

3. The Town agrees to cooperate with the Developer to accomplish the above and to enact appropriate Resolutions and Orders to complete this process.

4. The Town currently charges hookup fees in connection with the hookup of a residential dwelling to Town water and sewer connections. The Developer agrees that water and sewer connection fees will be paid by the Developer in accordance with applicable laws of the Town.

5. The Developer agrees to repair and repave Whittaker Road for the entire frontage of the Property and from the property line to La Vista Drive (estimated at 2,800 lineal feet). The repair and repaving will consist of the following:

- (a) Grind the road base down to the subbase.
- (b) Level the subbase to the extent needed.
- (c) Install an asphalt finish coat.
- (d) All work to be done shall be in accordance with Town highway specifications.
- (e) The width of the road shall be 22 feet.

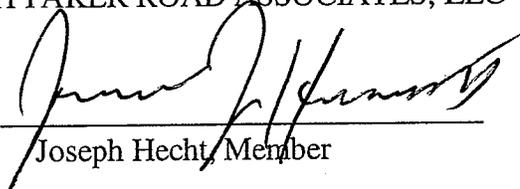
6. The repair and repaving of Whittaker Road as set forth herein shall be completed within a period of three years after construction of the Project commences, or upon the completion of the development of the Project, whichever shall first occur.

7. The Developer agrees that prior to the issuance of any building permits for the Project, the road repair and replacement, as provided for in Paragraph "5" herein, shall be completed and/or bonded.

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

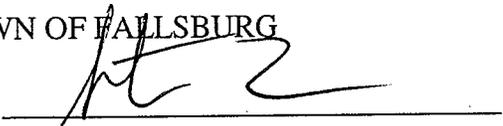
April 14, 2009.

WHITTAKER ROAD ASSOCIATES, LLC

BY: 

Joseph Hecht, Member

TOWN OF FALLSBURG

BY: 

Steven Levine, Town Supervisor

**EXHIBIT "C"**

**jayzeiger-kkz@hvc.rr.com**

---

**From:** "Pietrzak & Pfau" <pietrzakpfau@pietrzakpfau.com>  
**Date:** Thursday, August 11, 2016 12:08 PM  
**To:** "Joseph Schleider" <joe@throwerstone.co.uk>; <jayzeiger-kkz@hvc.rr.com>; <elibrezel@earthlink.net>  
**Cc:** <pfauj@pietrzakpfau.com>; "Vincent Pietrzak" <pietrzakv@pietrzakpfau.com>  
**Attach:** 20160811120342848.pdf; 20160811120348124.pdf; 20160811120354684.pdf; 20160811120407085.pdf  
**Subject:** Whittaker Road

Gentlemen:

Attached please find the Continuity and Tracking Document for the above project. This includes a time line for the entire project with the Planning Board, at its inception of February 13, 2003. We have also included two (2) letters, one (1) dated March 16, 2011 to the Planning Board Chairman, and another dated June 28, 2011 to Joseph Hecht. Both letters further describe work that was previously completed and was required to be completed to obtain a new approval. We have also provided a listed of agency approvals, including the issuance and expiration dates.

With regard to billing, our bookkeeper is on vacation and we will review those documents early next week and provide the necessary information.

Should you have any questions or require anything further, please do not hesitate to contact our office.

Very truly yours,

Joseph J. Pfau, P.E.  
*Pietrzak & Pfau*  
Engineering & Surveying, PLLC  
262 Greenwich Ave., Suite A  
Goshen, New York 10924  
(845) 294-0606 Fax (845) 294-0610  
www.pietrzakpfau.com

CONTINUITY & TRACKING DOCUMENT

Page One

Lands of KDJ Realty, Inc. (Aden Woods)  
Name Of Project

47-1-5.2 & 6; 47A-1-26  
SBL Number (Tax Map #)

Whittaker Road  
Physical Address of Site

HR-1  
Zoning District

KDJ Realty, Inc.  
Name of Applicant

845-638-4545  
Phone Number

475 South Main Street, New City, NY 10956  
Address of Applicant

N/A  
E Mail Address

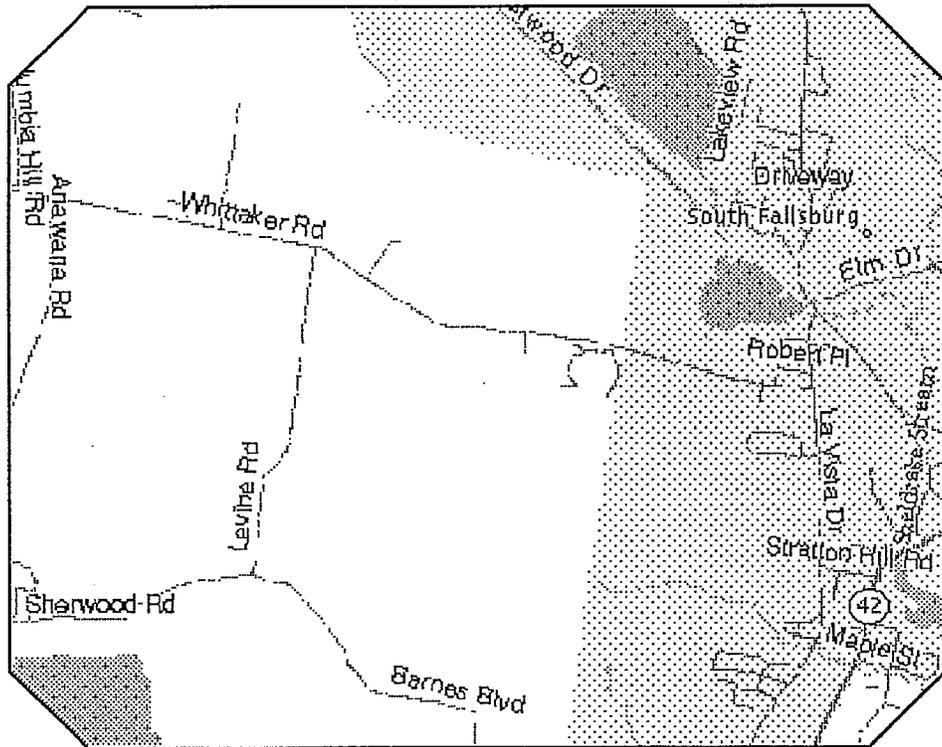
Kenneth Bergstol  
Contact Person – Address & Phone Number

Project Description:

196 unit subdivision of 153.90± acres in the HR-1 zoning district, to be served by interior Roadways, central sewer and water facilities.

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LOCATION MAP BELOW



LOCATION MAP  
SCALE: 1" = 2500'

CONTINUITY & TRACKING DOCUMENT

Page Two

<u>Lands of KDJ Realty, Inc. (Aden Woods)</u> Name Of Project	<u>47-1-5.2 &amp; 6; 47A-1-26</u> SBL Number (Tax Map #)
<u>Principle and Interested Parties</u>	<u>Fee Simple</u> Type of Ownership in Final Form [X] Subdivision [ ] Condo [ ] Co-Op [ ] Other
<u>KDJ Realty, Inc.</u> Owner of site while under construction	<u>Developer of site (if different)</u>
<u>N/A</u> Legal Representation (Name, Address & Phone #)	<u>N/A</u> General Contractor (if chosen)
<u>N/A</u> Site Developer (if chosen)	<u>Pietrzak &amp; Pfau, PLLC</u> <u>262 Greenwich Ave., Goshen, NY</u> <u>10924; 845-294-0606</u> Engineer of Record (Name, Address & Phone Number)
<u>N/A</u> Architect of Record (Name, Address & Phone Number)	<u>N/A</u> Landscape Architect of Record (Name, Address & Phone Number)
<u>Project Site is partially included in the districts</u> Water & Sewer District Status X Extension being sought from Town Board	
<u>Escrow Account Status, for Town services or contracted Planning &amp; Engineering firms</u> [ ] Current (fees up to date) [ ] Arrears (fees and payments owed to town)	
<u>Permits &amp; Fees (current or in arrears)</u> [ ] Current (fees up to date) [ ] Arrears (fees and payments owed to town)	
<u>Storm Water Pollution Prevention Plan</u> <u>Approved by the NYS DEC and Planning Board Consultants</u> <input type="checkbox"/> Under development <input checked="" type="checkbox"/> Designed & Current <input type="checkbox"/> Changes required to current design	

**CONTINUITY & TRACKING DOCUMENT**  
**Page Three**

Lands of KDJ Realty, Inc. (Aden Woods)  
 Name Of Project

47-1-5.2 & 6; 47A-1-26  
 SBL Number (Tax Map #)

PROCEDURAL HISTORY

Date	Purpose of Appearance:	Action Taken	Action Required
<u>2-13-2003</u>	<u>Sketch Plan Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>3-13-2003</u>	<u>Sketch Plan Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>5-8-2003</u>	<u>Sketch Plan, SEQR &amp; Wetland Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>6-12-2003</u>	<u>Project Layout Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>7-24-2003</u>	<u>Public Hearing</u>	<u>Hearing Closed</u>	
<u>11-13-2003</u>	<u>Preliminary Design Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>1-8-2004</u>	<u>Phasing &amp; Preliminary Design Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>3-29-2004</u>	<u>Public Hearing Scoping Session &amp; SEORA</u>	<u>Hearing Closed</u>	
<u>5-13-2004</u>	<u>Project Design Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>10-14-2004</u>	<u>Project Layout Revisions Due to Wetland Location</u>	<u>N/A</u>	<u>N/A</u>

**CONTINUITY & TRACKING DOCUMENT**

**Page Four**

Lands of KDJ Realty, Inc. (Aden Woods)  
Name Of Project

47-1-5.2 & 6; 47A-1-26  
SBL Number (Tax Map #)

**PROCEDURAL HISTORY**

Date	Purpose of Appearance:	Action Taken	Action Required
<u>12-8-2004</u>	<u>Final Project Design &amp; SEQRA Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>2-10-2005</u>	<u>Final Project &amp; Drainage Design Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>3-10-2005</u>	<u>Final Project Design &amp; SEQRA Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>4-14-2005</u>	<u>Part III EAF Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>5-12-2005</u>	<u>Preliminary Approval Discussion</u>	<u>Negative Declaration Preliminary Approval</u>	
<u>11-10-2005</u>	<u>Preliminary Approval Extension</u>	<u>6 Month Preliminary Extension</u>	
<u>5-11-2006</u>	<u>Preliminary Approval Extension</u>	<u>6 Month Preliminary Extension</u>	
<u>11-9-2006</u>	<u>Preliminary Approval Extension</u>	<u>6 Month Preliminary Extension</u>	
<u>5-10-2007</u>	<u>Preliminary Approval Extension</u>	<u>6 Month Preliminary Extension</u>	
<u>8-9-2007</u>	<u>Final Approval Discussion</u>	<u>Conditional Final Approval</u>	

**CONTINUITY & TRACKING DOCUMENT**  
Page Five

Lands of KDJ Realty, Inc. (Aden Woods)  
Name Of Project

47-1-5.2 & 6; 47A-1-26  
SBL Number (Tax Map #)

PROCEDURAL HISTORY

Date	Purpose of Appearance:	Action Taken	Action Required
<u>2-2008</u>	<u>Final Approval Extension</u>		<u>6 Month Final Approval Extension</u>
<u>7-10-2008</u>	<u>Sectioning of Subdivision &amp; Final Approval Signature</u>	_____	_____

**Continued on following Continuity & Tracking Document as Whittaker Road, LLC**

Add more description if necessary on separate page.

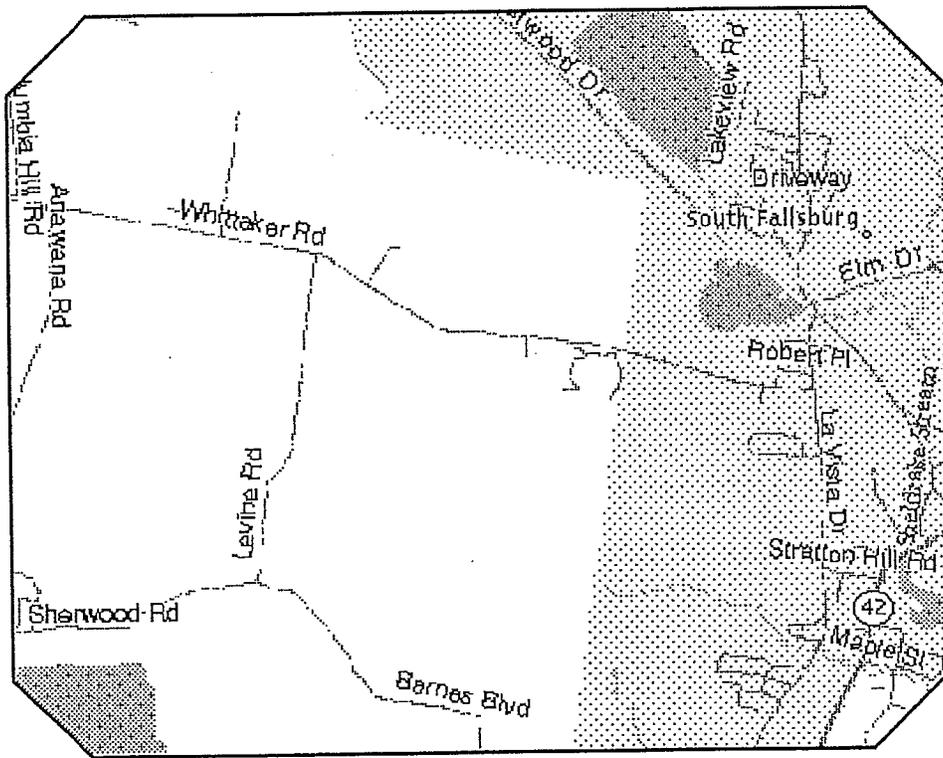
Punitive actions taken against developer (if any)

\_\_\_\_\_  
Current Date

NOTES: 1. Following items will need to be addressed prior to project/s being placed on agenda and heard before planning board. Property must be in code compliance. Escrow Account and payments to Town must be up to date. Permits and fees must be in place and paid.



LOCATION MAP BELOW



LOCATION MAP  
SCALE: 1" = 2500'



**CONTINUITY & TRACKING DOCUMENT**

Page Three

Whittaker Road, LLC (Aden Woods, KDJ)  
Name of Project

47-1-5.2 & 6; 47A-1-26  
SBL Number (Tax Map #)

PROCEDURAL HISTORY

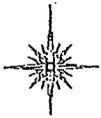
Date	Purpose of Appearance:	Action Taken	Action Required
<u>9-11-2008</u>	<u>Public Hearing re: Site Plan In lieu of Subdivision</u>	<u>Hearing Closed</u>	<u>N/A</u>
<u>10-16-2008</u>	<u>Roadway Width, Wetland Mitigation &amp; Public Comment Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>1-8-2009</u>	<u>Finalized Roadway Width Discussion and Project Phasing Discussion</u>	<u>N/A</u>	<u>N/A</u>
<u>4-21-2011</u>	<u>Request Negative Dec &amp; Conditional Site Plan Approval</u>	<u>PB Authorized Bob Geneslaw to prepare Documents for review</u>	<u>N/A</u>
<u>5-12-2011</u>	<u>Discussed Requirement of ARB Approval, &amp; Part III EAF Update to Traffic, Fiscal, &amp; Text Revisions</u>	<u>N/A</u>	<u>N/A</u>

Add more description if necessary on separate page.

Punitive actions taken against developer (if any)

Current Date

NOTES: 1. Following items will need to be addressed prior to project/s being placed on agenda and heard before planning board. Property must be in code compliance. Escrow Account and payments to Town must be up to date. Permits and fees must be in place and paid.



# PIETRZAK & PFAU

ENGINEERING & SURVEYING, PLLC

March 16, 2011

Arthur Rosenshein, Chairman  
Town of Fallsburg Planning Board  
P.O. Box 2019  
South Fallsburg, NY 12779

Re: Whittaker Road, LLC  
P&P No. 22157.01

Dear Mr. Rosenshein:

In reference to the above project, enclosed please find ten (10) copies of the revised site plan, along with the Continuity and Tracking Document continued from the Lands of KDJ Realty, Inc. (Aden Woods) project. The last appearances for this project in front of the Town of Fallsburg Planning Board occurred on September 11, 2008, October 16, 2008, and January 8, 2009. During the September 11, 2008 Planning Board meeting, a public hearing was held for the proposal to revise this project from a 196 lot subdivision, which gained final approval from the Town of Fallsburg Planning Board on August 9, 2007, to a site plan. The issues raised at this public hearing were responded to and discussed during the October 16, 2009 Planning Board meeting, with the remaining layout issues (i.e., 24 and 22 foot roads in lieu of 30 foot and 24 foot roads) being finalized with the Planning Board at the January 8, 2009 Planning Board meeting. Since the last appearance of this project before the Board, the plan set has been completely designed including the 22 and 24 foot road widths, drainage infrastructure revisions, grading revisions, etc.

Please note, this project maintains valid approvals from the outside agencies required to gain a final approval from the Town of Fallsburg Planning Board. These approvals are as follows (see copies attached):

1. Army Corps of Engineers Wetland Mitigation approval.
2. New York State Department of Environmental Conservation Notice of No Jurisdiction.
3. New York State Department of Environmental Conservation Sewer Main Extension.
4. New York State Department of Health Water Main Extension.
5. New York State Department of Health Realty Subdivision (which is no longer required due to the conversion to a site plan).

Additionally, the New York State Department of Environmental Conservation has revised the State Stormwater Regulations, which now require a runoff reduction volume calculation. In a telephone conversation with Pat Ferracane of the New York State Department of Environmental Conservation Stormwater Division, our office was informed that the New York State DEC is aware that projects have been in development

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(845) 796-4646 • FAX (845) 796-4092

March 16, 2011  
Whittaker Road, LLC  
Page 2

for many years, and a project which has a Storm Water Pollution Prevention Plan accepted by a municipality may file a Notice of Intent prior to a March 1, 2011 deadline to gain coverage under the SPDES General Permit for Storm Water Discharges from Construction Activity, General Permit No. GP-0-10-001. Filing this Notice of Intent with the New York State DEC allows the project to maintain the accepted storm water design in lieu of making costly project revisions to meet the new runoff reduction volume. This has been done to avoid imposing any unnecessary costs to developers, which are far along in the process of approval.

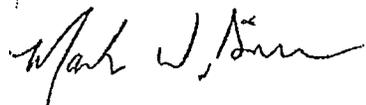
As this project was previously approved as a subdivision in 2007, the Notice of Intent has been filed for this project, and the Acknowledgment of Notice of Intent for Coverage Under SPDES Permit for General for Storm Water Discharges from Construction Activity, can be found attached.

As previously stated, this project has a valid Army Corps of Engineers Wetland Mitigation approval. This approval will expire in July of this year. Therefore, our client is interested in completing the site plan approval for this project and moving forward with construction activities.

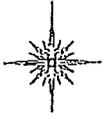
The project design has been completed and meets the current Town of Fallsburg Zoning Code requirements, as presented at the three (3) previous Planning Board meetings mentioned. We request that this project be placed on the next available Planning Board agenda for consideration of site plan approval.

I appreciate your attention to this matter. Should you have any questions or require anything further, please do not hesitate to contact this office.

Very truly yours,  
PIETRZAK & PFAU, PLLC

  
Mark W. Siemers, P.E.

MWS/tmp  
encs.



**PIETRZAK & PFAU**

ENGINEERING & SURVEYING, PLLC

June 28, 2011

Mr. Joseph Hecht  
Whittaker Road, LLC  
948 45th Street  
Brooklyn, NY 11219

Re: Whittaker Road, LLC  
Town of Fallsburg  
P&P No. 22157.01

Dear Mr. Hecht:

In accordance with our telephone conversation following the Town of Fallsburg May 12, 2011 Planning Board meeting, the following issues need to be addressed for the Whittaker Road project to receive Site Plan Approval.

1. Architectural drawings of the proposed dwelling units need to be completed and submitted to the Town of Fallsburg Architectural Review Board (ARB) for their review and approval prior to the Planning Board issuing a Site Plan Approval. Please keep in mind that there are variations of each unit as currently proposed (i.e. walk out basement, garage under, slab on grade, etc.). Additionally, the Town will only allow a maximum of 4 feet of exposed concrete wall face. The proposed architecturals should reflect this.
2. Robert Geneslaw (Town of Fallsburg Town Planner) has requested that the Part 3 Environmental Assessment Form originally adopted by the Planning board be revised and updated to reflect the change in the project from a subdivision to a site Plan. This update will require the following:
  - a. Update to the Traffic Study. Mr. Geneslaw is not requiring any new traffic counts be done, however the traffic distribution needs to be revised to reflect a summer community as opposed to a year round subdivision. Additionally, the traffic generated by the planned casinos can be removed as the casino proposals seem to have stalled.
  - b. Update to Fiscal and Community Services. The Part 3 needs to be revised to remove the impact on schools, as this project would no longer contribute school children to the district.
  - c. Text revisions to remove references to individual lots and the proposed subdivision.

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As you may be aware, Bonnie Franson of Tim Miller Associates, Inc. prepared the original Part 3 Environmental Assessment Form adopted by the Planning Board. I have contacted Ms. Franson and requested a proposal from her for completing the necessary Part 3 revisions to obtain an approval from the Planning Board. She informed me that the proposal is being prepared and will be forwarded to you directly.

Additionally, the wetland mitigation permit, received from the Army Corp of Engineers on July 13, 2009, is set to expire on July 13, 2011. The permit states:

"If the nationwide permits are suspended, revoked, or modified in such a way that the activity would no longer comply with the terms and conditions of a nationwide permit, and the proposed activity has commenced, or is under contract to commence, the permittee shall have 12 months from the date of such action to complete the activity."

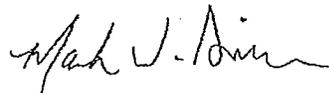
In accordance with this section of the permit, if you were to enter into a contract with a consultant to complete the wetland mitigation, the permit would not expire until one year after the date of that contract. I have contacted James Bates of Ecological Analysis and requested a proposal contract to complete the wetland mitigation for the project. Please find this proposal attached and note that the Notice of Intent (NOI) referenced in this proposal has already been completed and filed with the New York State DEC. This is currently the most critical issue for the project as Mr. Bates has stressed that the Army Corp will not issue another extension of the wetland mitigation permit.

Last, I have been informed by Robert Geneslaw and Allen Frishman (Building Inspector) that the neighbors in the Timber Hill Estates subdivision (near the wetland mitigation area) have hired an engineer from upstate New York to review plan and environmental studies prepared for the project. The public hearing was held and closed in 2009. Mr. Geneslaw and Mr. Frishman do not know if the Planning Board will allow the neighbors engineer to speak, but they wanted us to be aware that this has taken place.

Please review this information at your earliest convenience. Should you have any questions or require anything further, please do not hesitate to contact our office.

Very truly yours,

PIETRZAK & PFAU, PLLC



Mark W. Siemers, P.E.

MWS/tmp

enc.

Cc: Jay L. Zeiger

**Whittaker Road Project**

Town of Fallsburg

Sullivan County, New York

Pietrzak & Pfau Project No. 22157.01

<i>Agency</i>	<i>Approval</i>	<i>Issuance</i>	<i>Expiration</i>
Army Corps of Engineers	Jurisdictional Letter & Mitigation Permit	July 13, 2009	July 19, 2011
New York State Department of Environmental Conservation	Wetland Delineation Sign-off	October 17, 2003	October 17, 2013
New York State Department of Environmental Conservation	Notice of No Jurisdiction	January 22, 2007	No Expiration for this project layout
New York State Department of Environmental Conservation	Sewer Main Extension Approval	July 11, 2007	July 11, 2012
New York State Department of Health	Realty Subdivision Approval	May 7, 2008	May 5, 2013
New York State Department of Health	Water Main Extension Approval	September 25, 2006	September 25, 2011
New York State Department of Environmental Conservation	General Permit 0-10-001 Coverage (Stormwater)	March 5, 2011	No Expiration for this project layout & as long as fees are paid
Town of Fallsburg	Final Subdivision Approval	August 9, 2007	August 9, 2008