Yates County Planning Board Referral Form

Referral # County Use Only 2016-22

Date Received 04/22/2016

Revised 1/2014

Municipality and Referring Agency TOWN OF MILO, NEW YORK

Project Address 10 Keuka View Estates Road Project Tax Map # 61.65-1-20

Zoning District Agricultural Residental

Applicant (**Name & MAILING**) John Busch & Lawrence Horning/ 4591 State Route 226 Rock Stream, NY 14878 (Telephone: 315-694-8238) Email clynne87@gmail.com

Property Owner (**Name & MAILING**) same as applicant

Email

Reason for Referral (Prox. to Cty Rd., State Rd., Muni Boundary, etc.) Area Variance for Front Yard from Keuka View Estates Road (private road) that is a corner lot with Bath Road, which is a County Highway.

Application Type

- Area Variance ☒
- Use Variance ☐
- Special Use Permit ☐
- Site Plan ☐
- Subdivision ☐
- Text Amendment ☐
- Map Amendment ☐
- Other ☐ _____

Project Description

Reduction in front yard from Keuka View Estates Road. Lot is a corner lot that is located at the intersection of Bath Road and Keuka View Estates Road. Lot is located in a Homeowners Association with deed restrictions that prohibit detached accessory structures.

Supporting Documents Required (IF N/A, include explanation)

- Municipal Application ☒
- Tax Map or Plat ☒ Survey
- SEQR ☐
- Site Plan * ☒ Survey
- Variance Criteria ** ☒
- Subdivision Plat ☐ For Subdivision Referrals Only
- Other ☒ Pictometry

See attached letter from Code Enforcement Officer

Type II action per SEQRA - no environmental review required

*If Site Plan Review, Site Plan **MUST** be detailed and meet the municipal requirements.

All Variance referrals (Area/Use) **MUST include detailed justifications associated with reason/s for appeal.

Certification: *With the following signature I certify that this application provides a complete description of the proposed local action and is a complete application pursuant to NYS General Municipal Law Article 12b, Section 239-m, part c.*

Anthony Valdez, Referring Official

Provision of required information is the responsibility of the referring agency. Failure to provide such information may result in a significant delay in processing.

Submit To: **Yates County Planning Department, Sbonshak@yatescounty.org or 417 Liberty St. Suite 1093, Penn Yan, NY 14527**

TOWN OF MILO, NEW YORK

Department of Code Enforcement and Administration
137 Main Street – Town Hall
Penn Yan, New York 14527
Telephone No.: (315) 531-8042
Fax No.: (315) 536-9760
TDD No.: (202) 720-6382
Email: codeofficer@townofmilo.com

Friday, April 22, 2016

Town of Milo, New York
Attention: Members of the Zoning Board of Appeals
137 Main Street – Town Hall
Penn Yan, New York 14527

Reference: **10 Keuka View Estates Road (Tax Map Identification Numbers 61.65-1-20)**
Application No.: ZBA-06-28-2016A

Dear Board Members:

Thank you for taking the time to read this letter. Our department has received an application for one (1) Area Variance as it pertains to the following actions:

- The applicant proposed to construct a new single unit dwelling with an attached garage at 10 Keuka View Estates Road, which is more specifically known as tax map identification numbers 61.65-1-20. This lot of record is a corner lot located at the southeast intersection of Bath Road and Keuka View Estates Road. In addition, this lot of record is located within a homeowners' association that has a deed restriction that prohibits detached accessory structures. Therefore, due to this lot being a corner lot and a deed restriction prohibiting detached accessory structures, the attached garage has a front yard of only 34.3 feet that is less than the 50 feet requirement as prescribed in Section 140-14(E)(2)(a) of the Zoning Law of the Town of Milo. For that reason, an area variance is required to be approved by this board in order to construct the attached garage.

The Code Enforcement Officer wishes this Board to understand the following:

1. The proposed single unit dwelling is a NYS approved modular single unit dwelling and the owner has employed a registered design professional to certify the construction of the attached garage. Furthermore, the foundation walls are Superior Walls precast concrete foundations that have been certified by a registered design professional and obtained ICC ES Reports approving its construction.

2. The owner did obtain a Building Permit but informed the Code Enforcement Officer that the front yard from Keuka View Estates Road was 50 feet. Upon investigation, it was determined that such yard was less than 50 feet. The owner was informed by his attorney that front yards at private roads was measured from the centerline of such road. However, the Zoning Law of the Town of Milo defines a front yard and its measurement is from the edge of the right of way of roads, whether private or public. Therefore, a misunderstanding occurred and the owner stopped the construction of the attached garage until an area variance is obtained.

Definition from Zoning Law of the Town of Milo:

YARD, FRONT – A space extending the full width of the lot of record between any structure and the front lot line and measured between the front lot line and the building line nearest the front lot line, excluding any roads and its associated right-of-ways.

(Note. The Code Enforcement Officer wishes to convey that the Town of Milo did not envision the scenario of a dead restriction prohibiting detached accessory structures at corner lots when it drafted the applicable provisions of the Zoning Law of the Town of Milo, adopted 1/23/2016. A corner lot has two front yards and two side yards, no rear yard. Therefore, a deed restriction prohibiting detached accessory structures does place a constraint against the owner that was not self-created and the benefit received by the owner does outweigh any burden to health, safety and welfare that may be suffered by the community.)

3. The Code Enforcement Officer reviewed the proposed location of this single unit dwelling and it appears that no alternative solution exists but to request an area variance. A deed restriction exists at this lot of record that prohibits detached accessory structures. In addition, rotating the dwelling and attached garage by 90 degrees would cause its views to be the old truss plant located across Keuka View Estates Road and the abutting neighbor's backyard at Bath Road. Furthermore, most dwellings and buildings located at Bath Road in this vicinity have its longest dimension running parallel with Bath Road. Moreover, the privacy of the occupants of this proposed dwelling as well as the abutting neighbors would be negatively impacted if the dwelling was rotated 90 degrees so its largest dimension was parallel with Keuka View Estates Road. Lastly, it would be more aesthetically pleasing to the community if the proposed dwelling and attached garage were placed with its longest dimension parallel with Bath Road.

4. The owner has demonstrated that the benefit he stands to receive from the variance will outweigh any burden to health, safety and welfare that may be suffered by the community by his response to the five NYS review criteria for an area variance. Please understand that the Zoning Board of Appeals need not find in favor of the owner on every one of the NYS review criteria. Rather, the Zoning Board of Appeals must merely take each one of the factors into account.

5. The owner has obtained approval from the Yates County Highway Superintendent for the new driveway at Bath Road.

6. All utilities will be located underground as mandated by Section 140-47 of the Zoning Law of the Town of Milo.

7. The location of a new dwelling and attached garage will not negatively impact the visibility triangle at the intersection of Keuka View Estates Road and Bath Road.

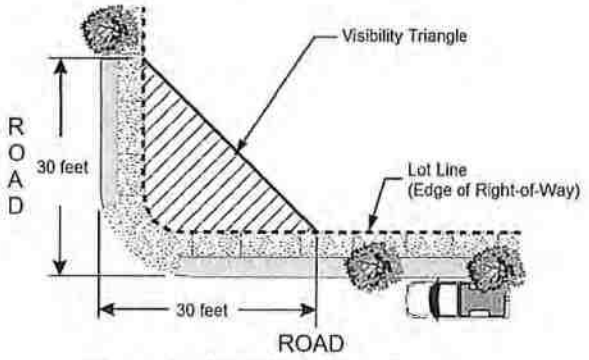


Figure 1 – Visibility Triangle

8. Two off-road parking spaces are being created with the construction of an attached garage at this lot of record as mandated by Table 1 of the Zoning Law of the Town of Milo.

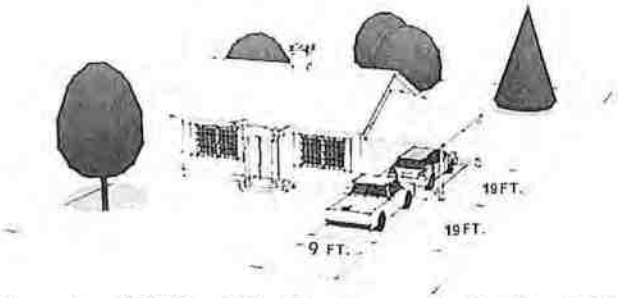


Figure 2 – Example of Off-Road Parking Spaces at a Residential Use

9. The new dwelling will be connected to public sewer and water.

10. The new lot of record is located in a Flood Zone C so no flood damage prevention requirements are mandated by law.

11. The applicant has spoken to their neighbors and no concerns have been raised.

12. The application is a Type II action pursuant to the State Environmental Quality Review Act (SEQRA), specifically §617.5(c)(9) and (13) of 6 NYCRR Part 617.5 . Type II actions are those actions, or classes of actions, which have been found categorically to not have significant adverse impacts on the environment, or actions that have been statutorily exempted from SEQR review. Such type of action does not require preparation of an EAF, a negative or positive declaration, or an EIS. Any action or class of actions listed as Type II action requires no further processing under SEQRA.

With these facts in mind, the applicant is applying for the following area variances:

1. *Area Variance #1:* The Applicant is proposing the construction of an attached garage that will have a front yard from Keuka View Estates Road of 34.3 feet. Section 140-14(E)(2)(a) of the Zoning Law of the Town of Milo requires a minimum front yard of 50 feet. However, this lot of record is a corner lot and a deed restriction prohibits detached accessory structures. Therefore, the applicant is proposing an area variance of 15.7 feet.

It is the opinion of the Code Enforcement Officer that this Application be "Approved with Conditions" since the area variance sought is the minimum necessary for the proposed owner's use and the new lot of record has constraints that was not self-created by the owner such as but not limited to being a corner lot and a deed restriction prohibiting detached accessory structures. In addition, there appears to be no alternative solution since rotating the dwelling and attached garage would cause a negative impact to the aesthetics of the community, main views from the proposed dwelling (Note. Rotating it would cause views to be towards the old truss plant and directly into the neighbor's rear yard.) but also the privacy of the occupants and abutting neighbors. The owner has employed a registered design professional to ensure that the project will provide a positive impact to the community and compliant with the applicable provisions of the NYS Uniform Fire Prevention and Building Code and the Energy Conservation Construction Code of NYS

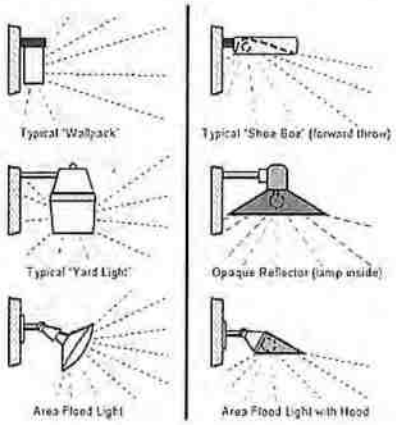
At a minimum, the conditions of approval are as follows:

1. The owner shall comply with any land restrictions (i.e., dead restrictions, easements, covenants, right-of-ways, etc.) as recorded on the deed of the property.

2. The owner shall not construct any structure over any utility (i.e., public water and sewer) and its associated right-of-ways.

3. The owner shall comply with the Residential Code of NYS, 2010 edition, and the Energy Conservation Construction Code of NYS, 2010 edition.

4. The owner shall ensure that any installed security lighting fixtures shall be shielded and aimed so that the main beam is directed toward the ground or designated area where security lighting is needed.



5. The owner shall ensure that all roof water runoff will not create an adverse impact at contiguous lots of record. It is highly recommended that all downspouts be directed away from such lots and designed to discharge roof water in an acceptable manner (e.g., lake, road drainage ditch, stream, etc.)

6. The owner fully understands and agrees that any work that was authorized by an Area Variance shall become null and void and all rights thereunder shall terminate if such work has not commenced within one (1) year of the date of such variance's issuance.

   Exemption(s):

   - The Code Enforcement Officer is authorized to grant, in writing, one or more extensions of time, for periods not more than one (1) year each. The extension shall be requested in writing by the owner and justifiable cause demonstrated.

The Town of Milo thanks you in advance for your anticipated cooperation as it pertains to this matter. Please do not hesitate to contact us if any concerns or questions arise.

Respectfully,

Anthony Validzic
Code Enforcement Officer

TOWN OF MILO, NEW YORK

Department of Code Enforcement and Administration
137 Main Street
Penn Yan, New York 14527
Telephone No.: (315) 531-8042
Facsimile No.: (315) 536-9760
TDD No.: (202) 720-6382
Email: codeofficer@townofmilo.com
Website: www.townofmilo.com

RECEIVED
APR 20 2016
TOWN OF MILO

- $250 fee
- Type II action - No SEQRA review
- Survey attached
- Pictorial image attached
- Bldg elevations

PAID
$250
John Busch
VISA
4/20/16

Reset Form

Print Form

APPLICATION FOR AN AREA VARIANCE

Part 1. General Information.

Owner of Record:

Name	John W. Busch / Lawrence Horning
Address	4591 State Route 226
City	Rock Stream
State	NY
Zip Code	14878
Telephone	315-694-8238
Email	clynne87@gmail.com

Property Information, which is the subject of the Area Variance:

Address	10 Keuka View Estates Road
City	Penn Yan
State	NY
Zip Code	14527
Tax Map Identification Number	61.65-1-20
Zoning District	Agricultural Residential
Occupancy Classification	Single Unit Dwelling

Part 2. Description of Area Variance(s).
Please describe each area variance requested in a concise manner and its applicable chapter and section from the Code of the Town of Milo.

Variance #1: Front Yard for a Principal Building at a Corner Lot (Section 140-14(E)(2)(a)) Zoning Law of Town of Milo (1/23/2016)

Chapter: 140 | Section: 14(E)(2)(a) | Proposed (feet, %, etc.): 34.3 feet | Required (feet, %, etc.): 50 feet

Variance #2:

Chapter: | Section: | Proposed (feet, %, etc.): | Required (feet, %, etc.):

Variance #3:

Chapter: | Section: | Proposed (feet, %, etc.): | Required (feet, %, etc.):

Variance #4:

Chapter: | Section: | Proposed (feet, %, etc.): | Required (feet, %, etc.):

Variance #5:

Chapter: | Section: | Proposed (feet, %, etc.): | Required (feet, %, etc.):

Part 3. Statement of Need.
Please state your justifications for the above-mentioned area variance(s). Please understand that this information will help the members of the Zoning Board of Appeals in making its determination and is your opportunity to explain why you need the above-mentioned area variance(s). For example, my lot is a nonconforming lot and I need this addition to create another bedroom, which will allow us to comply with the legal occupancy requirements for my family at this property. (Note: A nonconforming lot does not satisfy the minimum lot requirements mandated by the Zoning Law of the Town of Milo.) Lastly, your explanation(s) should be brief, concise, and avoid remarks that are discriminatory in nature.

The owner desires to install a single unit dwelling parallel to Bath Road for privacy purposes and to abide by the deed restrictions of Keuka View Estates, which is a homeowner's association. If such dwelling was parallel to Keuka View Estates Road, privacy would be lost since Bath Road is a county road and is frequently traveled (e.g., airport). In addition, detached structures are not permitted at Keuka View Estates so a garage would need to be attached to a dwelling at this homeowner's association. Furthermore, 34.3 feet would be provided from the edge of the right of way at Keuka View Estates so no obstructions would be created at the visibility triangle for the intersection at Keuka View Estates Road and Bath Road as well as the dwelling and attached garage are designed to provide a positive impact to the community. Lastly, the occupants do not want the longest dimension of the dwelling facing the old truss plant owned by Floyd Lane. Views from the dwelling are preferred to be towards Bath Road and Keuka Lake. (Note. Lot is a corner lot so it has two front yards and two side yards, no rear yard.)

Part 4. New York State Review Criteria for an Area Variance.

If requesting an area variance, that is, permission to build in an otherwise restricted portion of the property (such as in the required front, side or rear yards, or above the required building height, or in excess of the lot coverage regulations), then State law requires the applicant to show that the benefit the applicant stands to receive from the variance will outweigh any burden to health, safety and welfare that may be suffered by the community. State law requires the Zoning Board of Appeals to take the following factors into consideration in making its determination:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance(s).

No. The dwellings located at Bath Road at this vicinity are constructed so its longest dimension is parallel to such road. Furthermore, the new single unit dwelling is a NYS approved modular home and the attached garage has been designed by a registered design professional to ensure compliance with all applicable building standards. Lastly, this lot is a corner lot and has two front yards and two side yards.

The greatest concern is to provide privacy for the occupants at this new single unit dwelling as well as the abutting neighbors. The placement of the dwelling so its longest dimension is parallel to Bath Road provides the greatest amount of privacy and is more aesthetically pleasing to the overall community. Lastly, the occupants do not want the longest dimension of the dwelling facing the old truss plant owned by Floyd Lane. The views from the dwelling are preferred to be towards Bath Road and Keuka Lake.

2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance(s).

No. The deed restrictions at the Keuka View Estates homeowner's association prohibits detached structures so the garage cannot be detached from the dwelling. Lastly, the greatest concern is privacy and the aesthetics of the new single unit dwelling at this lot of record. Placing the longest dimension of the single unit dwelling parallel to Bath Road will greatly reduce privacy to the occupants. Lastly, most dwellings in this vicinity have their longest dimension parallel to Bath Road. The proposed design would ensure that a positive impact is created at this neighborhood and helps to grant more privacy from Bath Road to contiguous lots of record at Bath Road as well as Keuka View Estates Road.

3. Whether the requested area variance(s) is substantial.

Yes. The proposed variance is requesting a decrease of 15.7 feet from the minimum front yard requirement of 50 feet. However, please understand that this lot is a corner lot and it has two front yards and two side yards. No rear yard is located at this lot of record so the occupants want to create privacy from Bath Road by creating a private exterior space between the new dwelling and #9 Keuka View Estates Road. Such action would benefit the abutting property owners from the traffic at Bath Road, which is a county road and is more traveled than Keuka View Estates Road (private road).

4. Whether the proposed area variance(s) will have an adverse effect on the physical or environmental condition in the neighborhood or zoning district.

No. As explained herein, this lot of record is a corner lot and has two front yards and two side yards, no rear yard. Privacy is a great concern and shielding the private exterior space from Bath Road is critical to the enjoyment of the occupants as well as safety for any children. Furthermore, 34.3 feet will be provided from the edge of the right of way to Keuka View Estates Road. Such dimension ensures that the visibility triangle at Keuka View Estates Road and Bath Road is not impacted but also grants additional space for any underground utility work (i.e., public underground utilities are located in the right of way of Keuka View Estates). Lastly, the single unit dwelling is a NYS approved modular home and the attached garage has been designed by a registered design professional licensed in NYS to ensure compliance with all applicable building standards.

5. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of an area variance(s).

Yes and No. The applicant understands that they are building a new dwelling at a vacant lot of record but the constraints of the Keuka View homeowner's association such as but not limited to no detached structures are permitted at this lot as well as this lot being a corner lot causes restrictions that were not created by the applicant. Lastly, the old truss plant owned by Floyd Lane is located across Keuka View Estates Road. It is highly preferred by the occupants to have views from the new dwelling towards Bath Road and Keuka Lake, not a commercial property.

Unlike the use variance test, the Zoning Board of Appeals need not find in favor of the applicant on every one of the above questions. Rather, the Zoning Board of Appeals must merely take each one of the factors into account.

Part 5. Stipulations of the Application.

Stipulation #1 - Certificate of Zoning Compliance or Building Permit prior to the start of construction. The owner hereby understands and agrees not to start construction of a building and/or structure unless a Certificate of Zoning Compliance or a Building Permit is issued pursuant to law.

Stipulation #2 - Disclosure Affidavit. The owner hereby understands and agrees that he/she/they have read and is familiar with the provisions of Section 809 of the General Municipal Law of the State of New York, which states:

a. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of plat, exemption of plat or official map, license or permit, pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state officer or any officer or employee of such municipality or of a municipality of which such municipality or a part, in the person, partnership or association making such application, petition, or request (hereinafter called the applicant) to the extent known to such applicant.

b. For the purpose of this section of law, an officer or employee shall be deemed to have an interest in the applicant when he/she, his/her spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them:

   i. Is the applicant;

   ii. Is an officer, director, partner or employee of the applicant;

   iii. Legally or benefically owns or controls stock of a corporate applicant or is a member of a partnership or association application; or

   iv. Is a party to an agreement with such an applicant, express or implied, whereby he/she may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.

c. Ownership of less than five percent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not contitute an interest for the purposes of this section.

d. A person who knowingly and intentionally violates this section shall be quilty of a misdemeanor.

The applicant shall disclose the full particulars on an attached sheet of paper if a state office or any officer or employee of a municipality or relative of either as defined in Section 809 of the General Munipal Law of the State of New York has any interest in this application.

Stipulation #3 - Disclaimer of liability. The owner hereby understands and agrees that the Town is not responsible for the accuracy of applications and associated documents submitted for acceptance to the Town and does not guarantee that reviews and/or inspections will detect all hazards, design defects, and/or violations.

Stipulation #4 - Indemnity and hold harmless. The owner hereby understands and agrees to indemnify and hold harmless this Town, its agents, servants and employees from:

a. Any claims and liability which may be made against this Town pertaining to the review of this application; and

b. Any and all liability, loss or damage this Town may suffer as a result of the claims, demands, costs or judgment against and arising from the review of this application. Furthermore, the owner hereby understands and agrees to defend, at his/her/their expense, any claims brought or actions filed against this Town with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed. Lastly, the owner hereby understandsand agrees to reimburse this Town from any unnecessary expenses, attorney fees, or other expenses incurred in the enforcement of this indemnity and hold harmless agreement.

Stipulation #5 - Inspection of property. The owner hereby understands and agrees to inspection by this Town's officers, employees or duly authorized representatives of the property for which an area variance(s) is sought. The owner also understands and agrees that during an inspection, this Town's officers, employees or duly authorized representatives may, among other things, take measurments, may analyze physical characteristics of the site including, but not limited to, soils and vegetation (taking samples for analysis), and may make drawings or take photographs.

Stipulation #6 - Refund of fee(s). The owner hereby understands and agrees that any fee paid to this Town is not refundable regardless if whether or not area variance(s) has been granted or the application has been revoked.

Stipulation #7 - Reimbursement of incurred expenses. The owner hereby understands and agrees that:

a. This Town has the authority to engage registered design professionals, financial analysts, planners, lawyers or other appropriate professionals who can assist this Town in analyzing a project to ensure compliance with all laws, bylaws and regulations. Such assistance may include, but is not limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Town's determinations, laws or regulations, or inspecting the project during construction or implementation.

b. This Town may require funds to retain such professionals prior to initiating the review process for this application. In the event that such funds are insufficient, this Town may require additional funds to pay for all incurred expenses.

c. Any funds received by this Town shall be deposited into a line item by the Town Clerk. Expenditures from this line item may be made at the direction of the Town Clerk without further appropriation. Expenditures from this line item shall be made only for services rendered in connection with a specific project or projects for which funds have been collected from the owner. Additionally, the failure of the owner to pay any incurred expenses shall be grounds for the denial of an application. Lastly, any outstanding incurred expenses shall be charged against the property and shall constitute a lien thereon in favor of this Town, and the amount of such expenses shall be entered on the tax rolls as being due and payable. Such expenses may also be recovered in any other lawful manner.

d. At the completion of the project, any excess funds in the line item attributable to such project shall be repaid to the owner. A final report of the line item shall be made available to the owner upon request within a reasonable amount of time.

e. Any owner may take an administrative appeal from the selection of third party agency to the Town Board. Such appeal shall be in writing and may be taken only within twenty (20) days after the Town has mailed or hand-delivered notice to the owner of the selection. The grounds of such appeal shall be limited to claims that the third party agency selected has a conflict of interest or does not possess the minimum required qualifications. The required time limit of action upon an application by this Town shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Town Board within one month following the following of the appeal, the selection of a third party agency made by this Town shall stand.

Part 6. Signature.

THE UNDERSIGNED HEREBY ATTESTS that he or she is the owner of the property subject of this application that has been submitted to this Town. Additionally, the owner hereby certifies that the information contained in this application is accurate, true and complete to the best of his or her knowledge, and understands that false statements made in this application are subject to the applicable provisions of the Penal Law of the State of New York. Furthermore, the owner comprehends that he or she is ultimately responsible for the compliance with all local, state and federal laws regardless of any contractual agreements. Lastly,the owner has read this entire application and agrees to comply with its stipulations as contained herein.

Owner's Signature: [signature] Date 4-20-16

GUIDE FOR APPLICANTS APPLYING FOR AN AREA VARIANCE

This publication has been written to aid potential applicants in understanding and appreciating the area variance process and to provide an explanation of the rules and standards of the Zoning Board of Appeals (ZBA) of the Town of Milo.

What is an area variance?
An area variance allows for a "use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulation." An area variance is needed when one proposes to construct a structure that does not comply with the setback, height or area requirements of the Zoning Law of the Town of Milo. For example, if an owner wants to build a deck on his or her house that encroaches slightly into a side yard setback area, he or she could apply to the ZBA for an area variance.

Who is entitled to apply for an area variance?
The owner of the property that is the subject of the area variance can only apply since such person has the legally enforceable right to use the land.

Why are area variances allowed?
Area variances provide flexibility in the application of the Zoning law and afford a landowner an opportunity to apply for administrative relief from certain provisions of such law. A property owner may seek an area variance when an application for a Building Permit is denied on the grounds that the proposal violates the dimensional or physical requirements of the Zoning Law. Please understand that an area variance balances the Zoning law against the constitutional rights of the individual. Remember: "...nor shall the government take private property for public use without just compensation." The U.S. and New York State constitutions instructs our understanding of the purpose of variances: they are to protect the individual against the unreasonable exercise of power by the government.

Who can help me understand the procedural steps and deadlines?
The Code Enforcement Officer can help an applicant to understand the procedural steps and deadlines as it pertains to an application for an area variance. Such officer can also help the applicant complete this application, if necessary, and review the necessary site plan/survey to ensure that all necessary information is provided. Lastly, the Code Enforcement Officer can explain typical conditions imposed upon the granting of an area variance to allow an applicant to comprehend their obligation(s) and ascertain any associated cost(s) prior to submitting an application.

Does an area variance "run with the land?"
If an area variance is granted for a property because of peculiarities (e.g., topography, nonconforming lot, etc.) of that lot, then the area variance would apply to the land regardless of ownership. However, area variances remain subject to the continuing regulatory powers of the government and if the area variance is not acted upon, the original grant of the area variance confers no vested right on a subsequent purchaser.

Must the area variance, if granted, be exactly what was applied for by the applicant?
Whether the ZBA decides to grant an area variance, State law requires the ZBA to grant the *minimum variance necessary* to provide relief, while at the same time taking care to protect the character of the neighborhood and the health, safety and welfare of the community. For these same reasons, the ZBA may also impose reasonable conditions on the grant of any variance.

Are area variances subject to neighbor's consent?
It is certainly an abuse of discretion for the ZBA to require the applicant seeking an area variance to obtain the consent of neighboring landowners. Such a condition is an improper delegation of legislative authority. However, it is highly recommended that the applicant speak to his or her neighbors since a Notice of Public Hearing will be sent by the Town to all landowners within a 500 feet radius. The simply courtesy of meeting with these individuals may not only pay off by eliminating any opposition but also help the applicant prepare to answer any objections in advance.

If there is no opposition to my area variance request, must the ZBA grant the request?
The rules and standards have been set forth in law and by the courts of the State, and cannot be modified by the Zoning Board of Appeals. If they are not followed, the municipality would be subject to costly lawsuits. The public is entitled to speak in favor of, or against, a proposed project, but opinions in and of themselves are not enough. Applicants and their representatives should be guided in advance by the appropriate legal standards in deciding whether an appeal would be appropriate. If an appeal is taken, the applicant should present clear, definite facts showing that the standards have been met. The ZBA cannot grant relief where proper legal proof is not adequately presented.

Is there any time limits on area variances?
Courts have approved area variances that are conditioned upon the applicant initiating such variance within a specific period of time. If the applicant does not exercise the area variance within the set time period, then such variance expires and the applicant must reapply. If, however, a request to extend the time period for the exercise of the area variance is submitted and justifiable cause demonstrated to the Code Enforcement Officer, it is improper, absent a showing of changed circumstances, to deny the extension of the area variance. With this information understood, the ZBA will typically condition an area variance to be initiated within six (6) months from the date of approval.

Should the applicant try to explain and discuss the area variance with Zoning Board of Appeals members prior to the meeting?
No. You should not have any communications with members of the Zoning Board of Appeals outside of the public hearing. Such ex parte communication is prohibited and may form the basis of an appeal by any party of record. Because the Zoning Board of Appeals hearings are quasi-judicial proceedings, Board members must disclose fully all communications regarding your variance request that may have taken place prior to the public hearing. If you have questions or need to explain your circumstances more completely, you should contact the Code Enforcement Officer and he/she will assist you. Such officer's contact information is located on the first page of this form.

Do I need to employ a professional to complete this application?
The only requirement is to have your site plan / survey prepared by a land surveyor or registered design professional who shall be licensed in NYS. Such surveyor or design professional shall affix his/her signature and seal on such site plan / survey.

What is the statutory standard for an area variance?
For a Zoning Board of Appeals to grant a variance from the dimensional and area requirements of a Zoning Law, it must find that the benefits of the requested variance outweigh the detriment it will cause to the health, safety and welfare of the neighborhood. Such board must weigh the benefits of the requested variance to the applicant against the five factors set forth in the statute.

a. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance?

b. Can the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?

c. Is the requested area variance substantial?

d. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

e. Is the alleged difficulty self-created? (Note: This consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.)

In Sasso v. Osgood, the Court of Appeals interpreted the statutory balancing test for area variances. The case involved an application for an area variance to allow the property owner to build a boat house on a lot that was smaller than the required minimum lot size. The Zoning Board of Appeals granted the area variance and several neighbors challenged that decision. In upholding the determination of the Zoning Board of Appeals, the Court found that the board had carefully considered the five statutory criteria and made a rational decision. The Zoning Board of Appeals had found that construction of the boat house would not cause a change in the character of the neighborhood as adjacent properties had similar structures; no alternatives other than an area variance existed because the subject parcel was smaller than required and there was no available adjacent land to be purchased so as to meet the minimum requirements. The fact that the hardship was determined to be self created was not fatal to the granting of the area variance. Even though the owner had knowledge that the lot was substandard when purchased, the statute specifically provides that this is just one factor to be considered and "shall not preclude the granting of an area variance." The Court found that the Zoning Board of Appeals properly weighed the benefit of the variance, which was full use of the property for a permitted use, against the detriment to the community and that the board's findings were amply supported by the record.

Will the ZBA make a decision the night of the public hearing?
Once the public hearing is closed, the ZBA may begin discussing the case and reach a decision, or may postpone discussion and/or its decision until a later meeting. If the ZBA deems it necessary, the public hearing may be reopened at any time upon consent of the applicant. Once the public hearing has been finally closed, the ZBA must make its decision within 62 days.

What if an applicant fails to comply with the conditions of the ZBA?
If an applicant who receives an area variance violates conditions imposed as part of the approval, the Town may immediately bring an action for injunctive relief. However, the Code Enforcement Officer will make a reasonable attempt to obtain voluntary compliance prior to pursuing such action.

Is precedent created when approving or denying an area variance?
The Courts have determined that the approval or denial of an area variance does not create a precedent for subsequent area variance requests. Because each variance is based upon special circumstances relating to the site for which it is proposed, the past grant or denial of variances for other properties in the area does not mandate similar action on the part of the Zoning Board of Appeals.

When is an environmental assessment review required for an area variance?
In accordance to the New York State Environmental Quality Review Act (SEQRA), the granting of individual setback and lot line variances and area variances for a single unit, two unit or three unt dwellings are a Type II action and, therefore, are exempt from an evironmental assessment review. Any other type of action may require an environmental assessment review to ensure compliance with the New York State Environmental Quality Review Act.It is highly recommended that you discuss your request with the Code Enforcement Officer prior to submitting your application for review and approval. He/She can help you complete this application and inform you of any additional reviews that might be required pursuant to law.

Application Checklist:
Please make ten (10) copies of each document, except for the application fee, and submit the entire application package to the Code Enforcement Officer.

- [x] Completed application form signed by the owner
- [x] Application fee made payable to the Town of Milo
- [x] Site Plan / Survey of property subject of the variance. Such plan/survey shall contain the signature and seal of a land surveyor or registered design professional licensed in NYS.
- [ ] Environmental Assessment Form (EAF) if use is not a single unit, two unit or three unit dwelling. N/A ← Not req'd

NEW YORK STATE OF OPPORTUNITY | Department of Environmental Conservation

B. SEQR Handbook: Type II Actions

In This Section You Will Learn:

- what are Type II actions;
- what major changes were made to SEQR in 1995;
- what are emergency actions;
- what is "grandfathering".

All Links to regulations leave DEC website.

A. TYPE II ACTIONS-ACTIONS REQUIRING NO REVIEW

1. Are there actions that, once classified, require no further agency review under SEQR?

Yes, there are, and they are called "Type II." (See also the definition of "action" in the Decisions Subject to SEQR section of this Handbook). Actions that can be classified "Type II" actions under the SEQR regulations do not require any further SEQR review, not even an EAF. The list of actions identified as Type II is found in 6 NYCRR Part 617.5

2. What is a Type II Action?

Type II actions are those actions, or classes of actions, which have been found categorically to not have significant adverse impacts on the environment, or actions that have been statutorily exempted from SEQR review. They do not require preparation of an EAF, a negative or positive declaration, or an EIS. Any action or class of actions listed as Type II in 617.5 requires no further processing under SEQR. There is no documentation requirement for these actions, although it is recommended that a note be added to the project file indicating that the project was considered under SEQR and met the requirements for a Type II action.

The agency classifying the action must make sure that all aspects of the whole action are included when determining that an action is Type II. Additionally, the applicant or agency working with the action must keep in mind that, although an action is classified as Type II under SEQR, it must still comply with all relevant local laws and ordinances and meet all the criteria or standards for approvals.

3. What do the items on the Type II list mean?

Based on DEC's experience, and on court decisions, the following additional examples are offered to illustrate Type II actions as discussed under 617.5(c).

617.5(c)(1)

"maintenance or repair involving no substantial changes in an existing structure or facility;"

This allows for the normal cleaning, upkeep and minor repairs to a structure or facility. Painting, repair of damaged wood around a window, retiling a ceiling, repairing a hole in an existing fence, sealing an asphalt parking lot, installing vinyl siding on a house in a historic district, or reshingling a roof would be examples of actions that would fit in this category.

Ordinary home repair, business repair, in-place, in-kind remodeling, or upgrading to meet fire or plumbing codes are not substantial changes, unless the repairs are extensive enough to trigger any of the Type I thresholds. Even if a building is damaged or destroyed by fire, if it is rebuilt in the same footprint, and is comparable in size, scale and intended use to the old structure, it is still not subject to SEQR.

Examples of repair and remodeling that would not exceed a Type II threshold and examples of actions that would be considered a "substantial change" that does exceed the Type II threshold are given below:

- If a school district decided to pave an narrow walkway denuded of vegetation and beaten into the ground by children running for the school bus, the action would not be considered a substantial change. However, paving a 12,000 square foot play area for handball, tennis, or basketball courts would be considered a substantial change.
- A commercial building located in a town with a population of 150,000 or fewer was damaged by a tornado. The owner decided to take advantage of a bad situation and knock out the side of the structure that was damaged and build a whole new wing on the building. The plan submitted to the town for approval is for a warehouse area that exceeds 50,000 square feet. This action would be a substantial change, and thus subject to SEQR.
- If a waterfront was bulkheaded, and the old wood was rotting, replacing the bulkhead with new wood, of the same length and as close to the old location as possible, would not be considered a substantial change. Placing the new bulkhead a sizeable distance from the old bulkhead (for example, several feet seaward), and filling in the area between the old and new bulkheads, would be considered a substantial change. Bulkheading an area that had never been bulkheaded before would also be considered a substantial change.

617.5(c)(2)

". . . replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part"

Replacement in kind refers to function, size and footprint. Stick for stick replacement is not needed to qualify as replacement in kind, especially where the changes are required by current engineering, fire and building codes. Actions such as building ramps as required by the Americans with Disabilities Act, installing new or improved fire escapes, or removal of asbestos shingles would be Type II.

After over twenty years of use, the Alfred E. Smith state office building in Albany needed to be rehabilitated and brought up to current codes. It was initially thought that this action would be classified as Type II because the action included repairs, upgrades and in-kind replacement. However, when the project manager for the New York State Office of General Services looked more closely at the wording of 617.(5)(c)(2), he realized that the action did not satisfy the final provision in the item ". . .unless such action meets or exceeds any of the thresholds in section 617.4 of this part." The scope of the work on this multi-story building far exceeded the threshold in 617.4(b)(6)(v):

"(6) activities, other than the construction of residential facilities, that meet or exceed any of the following thresholds; . . .

(v) in a city, town or village having a population of more than 150,000 persons, a facility with more than 240,000 square feet of gross floor area;"

Clearly the wording of 617.5(c)(2), combined with 617.4(b)(6)(v), leads us to the conclusion that the action was properly classified as Type I, instead of Type II.

617.5(c)(3)

"agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming."

Clearing a field to plant crops; construction, maintenance and repair of farm buildings and structures; building of dikes, ditching, or installing drainage piping, or erecting a farm stand would not require SEQR review. However, subdivision of land to sell off as lots would be subject to SEQR.

If a farmer decides to build a home for his son and the son's family, the action is not agricultural in nature, but would be Type II anyway pursuant to 617.5(c)(9), provided that local laws did not require a subdivision approval for the new house. If some sort of discretionary approval was needed before the house could be built, the action would no longer be Type II.

617.5(c)(4)

"re-paving of existing highways not involving the addition of new travel lanes;"

This runs parallel to the "in place, in-kind" replacement of structures. Routine maintenance and paving is not subject to SEQR, but changes or expansions such as the addition of lanes for traffic, a new interchange, or the building of a rest area would need SEQR review.

617.5(c)(5)

" street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;"

Again, this distinguishes routine recurring actions from new projects. In contrast to routine repair or maintenance, opening streets to install new utility distribution lines would be subject to SEQR unless the action falls under the description in 617.5(c)(11) below.

617.5(c)(6)

"maintenance of existing landscaping or natural growth;"

In a municipal park, routine trimming of trees or replacement of shrubbery that has died would be Type II under this section. In contrast, clear-cutting of a forested area of the park would not fit under the heading of maintenance.

617.5(c)(7)

"construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;"

The first place to look for a specific definition of gross floor area is your local code book (town/city/village). **If these local codes have no definition**, DEC provides this clarification: cellar or basement space not used for the main purpose of a non-residential facility is not considered part of the gross square foot area of the facility. However, a basement used as a sales floor, or for office space would be included as part of the gross floor area. The same logic also applies to attic space. Unless explicitly included by local codes, the footprints of structures such as gas pumps and canopies are not included in the definition of gross floor area. The calculations are for the floor area of the building itself.

The primary environmental impacts associated with these types of actions are usually infrastructure-related concerns such as traffic, storm water drainage and sewage disposal, or nuisance issues such as noise, lighting and littering. In communities with site plan review or special use permit requirements, these routine concerns can be managed well under those local review standards, without the need for the additional analysis or authority which an EIS could provide. For communities that have no land use controls, such as zoning or site plan review, these types of small commercial projects usually require only a building permit, which is a ministerial act and already exempt from SEQR.

Another issue with some such applications is the compatibility of the proposed use with existing uses (e.g., whether this fast food facility be constructed adjacent to an existing residential community). This issue should generally be addressed prospectively, under zoning, before an application is received. However, in communities which have not updated their local land use controls to reflect current development patterns, care must be taken to not overextend the SEQR process in an attempt to make up for out-of-date zoning.

Examples that fall in the Type II non-residential construction category are:

- Expansion of a local Elks Lodge facility by 3500 square feet, in a manner and location consistent with local zoning;
- Expansion, in a commercial zone, of a restaurant where the project involves less than 4,000 square feet, exclusive of an outdoor patio for serving patrons in good weather; and the final building meets setback requirements.

Radio and microwave transmission towers or other stand-alone facilities constructed specifically for radio or microwave transmission are specifically **not** included in the exemption for construction of small non-residential structures. However, if a small dish antenna or repeater box is mounted on an existing structure such as a building, radio tower, or tall silo, the action would be Type II.

617.5(c)(8)

"routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area and school closings, but not changes in use related to such closings;"

This section includes changing transportation schedules or policies, changes in curriculum, developing or changing after school activities, changing the school calendar, or transferring students from one school to another. It also includes an expansion of less than 10,000 square feet. This includes construction of new, elevators or storage space; or expansions for new classrooms (typically eight rooms or less), elevators, special facilities for handicapped access, libraries, lunch rooms, special education facilities, computer laboratories, garages, caretaker residences, teacher centers, child-care centers, storage buildings, pole barns, press boxes and greenhouses, etc.

The closure of a school is also included as a Type II action under this item. However, refitting an elementary school building to become a senior center or town hall administration building would not fit under this category. In addition, a school closing with the intention of leasing the building for non-school purposes would not be classified as Type II.

Educational institutions include all schools and libraries chartered and/or registered by the New York State Board of Regents.

617.5(c)(9)

"construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in section 617.5(c)(11) and the installation, maintenance and/or upgrade of a drinking water well and a septic system;"

Note that this item is specific to one, two and three-family dwellings on approved lots only. While the size of the project is an important factor in determining applicability of this item, approval of the lot is equally important. This provision does not apply where one or more new lots are being created but are not yet approved. SEQR review is still warranted in those instances.

Where a building lot has already been approved, then even when a single-family, two-family or a three-family residence requires one or more additional approvals, such as site plan approval or zoning variances from a local board, or other permits such as a DEC natural resources permit (freshwater wetlands, tidal wetlands, stream protection, etc.), **no further review under SEQR is required**. This does not mean that the permit or approval(s) can be ignored, nor does it mean that the governmental authority must issue the permit(s). The project must still meet all regulatory standards and be issued the approval(s) or permit(s).

Examples of actions that are classified as Type II by this item are:

- demolition of a small seasonal camp and its replacement by a large permanent home;
- building one, two or three-family homes on a few remaining lots in an older approved subdivision; or
- replacement of a single-family home destroyed by fire with a two-family home of similar dimensions in an area zoned for one or two-family residences.

This provision was added in the 1995 amendments to the SEQR regulations. Over twenty years of experience has shown that these kinds of actions do not have a significant adverse effect on the environment, and the preparation of an EIS will not provide better explanation or understanding of impacts nor provide the reviewing agency with significant additional authority.

The typical impacts associated with the construction of single, two or three family residences are limited to clearing, grading and filling of the site, noise, dust and runoff. These impacts are minor in nature and easily controlled by standard construction techniques. Additional impacts from occupancy of the structure can be from use of pesticides and herbicides for lawn and garden care; and the construction and operation of water supply wells and onsite sanitary systems. These activities for one-, two- and three-family homes seldom create a significant adverse environmental impact. Any of the non-significant impacts that result from the construction of a house are subject to review under other existing local, state and federal regulatory programs, and they can be controlled through these jurisdictions. Proper local land use planning, zoning and subdivision regulations can and do protect readily identifiable unique features from the impacts of inappropriate development.

There have been very few court cases in which an EIS was required for a one, two or three-family dwelling. In reviewing those cases, Department staff found that the decisions turned on whether the proposed projects met DEC, Department of Health or local permit issuance standards; whether the projects complied with local zoning; or a combination of the two. The broader environmental questions were not part of the decision to require an EIS. Additionally, the EISs that were reviewed did not substantively contribute information that added to the lead agency's decision.

617.5(c)(10)

"construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;"

The key to this item is that accessory/appurtenant structures must be "minor" ones having a "secondary" use, or facilities adjunct to, or supporting some main use of the facility. The list of appurtenant structures contains examples and is not intended to be complete or exclusive. Other examples of structures within this category are: catwalks, gazebos, swing sets, permanent basketball hoops on poles, hot tubs, skateboard ramps, dog kennels, and cabanas.

617.5(c)(11)

"extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list;"

If the extension of utility service is functionally dependent on an action on the Type II list, then all parts of the action constitute the whole action and are not subject to SEQR. If the destination of the utility line is a Type II action, it is reasonable that extending utility lines to the structure or facility is also Type II.

This item would not, however, apply to the extension of utility service to larger projects such as a new subdivision undergoing review by a planning board. In these cases, the SEQR review would include all phases or components of the activity consistent with the "whole action" concept of review. Separating the utility extension from the review for the rest of the project would constitute segmentation. If any component of an action being evaluated for applicability of this subsection has aspects that are Type I or unlisted actions, it should be reviewed as a Type I or unlisted action and not classified as Type II under this item.

In addition, this item covers only distribution lines, not transmission lines. High voltage transmission lines (defined as an electric transmission line of a design capacity of 125 kV or more extending a distance of one mile or more, or of 100 kV or more and less than 125 kV, extending a distance of ten miles or more) and gas transmission lines (defined as a gas transmission

line extending a distance of 1,000 feet or more to be used to transport fuel gas at pressures of 125 pounds per square inch or more) are reviewed under Article 7 of the Public Service Law, and therefore are not subject to SEQR review. Transmission lines below those thresholds may be subject to SEQR if they require discretionary approvals from any agencies.

617.5(c)(12)

"granting of individual setback and lot line variances;"

This section covers all variances for setback and lot line requirements including front, side, back, width and depth. In this item, "individual" denotes one project on one lot.

This section does not include use or area variances. A use variance is defined by the New York Planning Federation as "the authorization consistent with New York State Town Law Section 267-b (www.dos.state.ny.us/lgss/townlaw.html#267b) and by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations." For example, a variance to allow a driveway or parking area closer to a side property line than normally allowed would be a Type II. However, a use variance to allow a new business to locate in a residential district would not be allowable.

Area variance is defined in the discussion of section 617.5(c)(13) directly below.

617.5(c)(13)

Area Variance for 1unit dwelling Exempt

"granting of an area variance(s) for a single-family, two-family or three-family residence;"

Area variances for single-family dwellings, including lot coverage are defined by the New York Planning Federation as the "authorization consistent with New York State Town Law Section 267-b (www.dos.state.ny.us/lgss/townlaw.html#267b) and by the zoning boards of appeal for the use of land in a manner that is not allowed by the dimensional or physical requirements of the applicable zoning regulations." The reasons for including these actions in the Type II list are essentially the same as those for construction of one, two or three-family residences. That is, long term experience has shown that this kind of action rarely results in adverse environmental impacts.

Further, an EIS will not provide the decision-making board with any information that it doesn't already have regarding the requested relief from dimensional requirements. Including granting of area variances in the Type II list allows boards to issue or deny variances solely based on the standards and criteria established by the zoning code.

617.5(c)(14)

"public or private best forest management (silvicultural) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides;"

This section includes activities such as:

- pruning or shaping of trees,
- removal of slash and downed trees,
- removal of undergrowth, and
- controlled burning of vegetation involving less than 10 acres,
- selective cutting of trees.

Some local governments now require tree cutting or tree removal permits. If the permits are for activities listed here, then granting or denying them would not trigger an environmental review under SEQR.

Controlled burning of vegetation can be a useful forest management tool to: prevent accumulation of dry dead underbrush and thus prevent dangerous large fires; to revitalize the forest by returning nutrients to the soil; or to permit natural reforestation of trees requiring the heat of a fire to release seeds. While controlled burning is a useful tool, burning of areas larger than 10 acres would be a Type I action and so must be evaluated to identify potential adverse environmental impacts. Any agency reviewing or participating in a controlled burning must take care to evaluate the impacts of the whole controlled burn program, and avoid segmentation of the project into 10 acre parcels in an attempt to avoid SEQR analysis. (See the Handbook chapter on Segmentation.)

617.5(c)(15)

"minor temporary uses of land having negligible or no permanent impact on the environment;"

This section includes activities such as:

- allowing use of state lands for public gatherings,
- allowing use of a parking lot in a public park as a temporary leaf collection station while a permanent facility is being located, and
- the conversion of a small portion of a public park to parking for 18 months to allow renovation of a hospital.

617.5(c)(16)

"installation of traffic control devices on existing streets, roads and highways;"

This section includes installation of:

- signs,
- signals,
- rumble strips on road shoulders, and
- lane restriction devices such as jersey barriers.

It also includes:

- restriping of lanes,
- reconfiguring of traffic lanes within the existing paved area in a manner that does not require expansion of the paved roadbed; for example, lane shifts between the morning and evening rush hours.

617.5(c)(17)

"mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;"

This section does not include the planning process that involves creation of new zones or land use restrictions in a municipality. It does include land surveys, deed searches, interviews or questionnaires, and any other method used to gather or interpret data for mapping purposes. This also includes the use of any technology to record, capture or display data.

617.5(c)(18)

"information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any Type I or Unlisted action;"

Systematic collection of information is necessary to allow informed decisions to be made regarding the environmental impact of an action. This data gathering is an important preliminary tool for environmental analysis.

Examples of allowable tests and equipment are:

- park tests,
- test wells to check for groundwater contamination,
- water supply investigations, or
- meteorological towers to gather atmospheric data.

A very large example of this item is the plan by the New York State Office for Technology (OFT) to establish a statewide wireless network. Intended primarily for emergency response purposes; OFT initially examined what kind of technology is best, where antennas must be placed to facilitate complete coverage of the state, and how to install these antennas to minimize disturbance to the area in which each is located. The preliminary investigations to obtain data to make decisions on the various considerations for the action were deemed to fit into this Type II category. The actions that are subject to additional SEQR review include the actual creation of the plan for the network, including the decision making process for the siting and design of individual towers.

In another recent example, the DEC classified a one-time, two-week test burn of tire-derived fuel in an existing boiler as Type II under this item, and the classification was upheld in court.

617.5(c)(19)

"official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s);"

A ministerial act is an action performed as prescribed by law or regulation and based on a specific set of facts without the use of judgment or discretion. It is also called a non-discretionary decision. There is a longer discussion of this topic in the Decisions Subject to SEQR section of this Handbook.

By definition, SEQR applies to discretionary decisions only. For decisions where a permit or license must be issued if a given set of circumstances have been met, SEQR does not apply. In addition to the examples in the regulations, there are many others: dog licenses, resident permits to use a town swimming pool or other town facility, and voter registration.

A few municipalities have building permits that include some discretionary approvals. For a discussion of ministerial versus the less commonly occurring discretionary building permit see Atlantic Beach v. Gavalas,1993.

617.5(c)(20)

"routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;"

SEQR does not apply to the ordinary administration and continuing management of a governmental agency. It is when new actions are taken, or new programs are begun, that the environmental assessment must be done.

This section includes activities such as:

- decisions to relocate an office from one building to another,
- entering into a contract to operate an existing facility,
- setting tipping fees at a landfill,
- providing funding for an existing agency to allow it to conduct current programs,
- revising application/registration fees,
- changing the operating hours of a public facility, and
- the designation of a structure as a historic landmark.

617.5(c)(21)

"conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;"

This parallels the considerations in item 617.5(c)(18) of this section. Investigative studies are vital to making appropriate analytic decisions when choosing whether or not to undertake an action, deciding what scale of development is possible, or where to site a project. However, if the studies were commenced after the agency was committed to the action for which the studies were being conducted, SEQR would apply.

As an example, the New York State Office for Technology (OFT) is in the process of creating a Statewide Wireless Network. OFT's goal is to construct the network using the fewest new towers possible. To that end, there were discussions with various municipalities and counties to try to come to agreement on sharing towers. Tompkins County had a tower under construction, and had only one site left uncommitted for a repeater. The Office for Technology agreed to hold an "option" on that site, but was not permanently committed to locating its facility there. This kept the action as Type II under this section because the Office had made no final commitment regarding the actual construction of the network hardware. When design plans were completed, another site could have been used, and the "option" given up.

617.5(c)(22)

"collective bargaining activities;"

Labor-management bargaining in and of itself is not considered as having an adverse environmental impact. However, actions taken as a result of such bargaining, such as improvements to a workplace, changes due to safety concerns, different parking facilities, or construction necessary to accommodate larger maintenance equipment may be subject to SEQR review.

617.5(c)(23)

" investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;"

Again, these are primarily management decisions that do not have adverse environmental impacts. Note that re-financing is distinguished from an initial grant or loan, and that initial funding decisions by government entities remain subject to review under SEQR.

617.5(c)(24)

" inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;"

This section includes activities such as:

- the conduct of inspections for compliance with environmental, health, or construction standards;
- issuance of peddler permits and
- issuance of professional licenses.

617.5(c)(25)

"purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials;"

This section does include the purchase or sale of all:

- interior furnishings;
- fire trucks;
- garbage and recycling hauling trucks;
- school busses;
- maintenance vehicles,
- construction equipment such as bulldozers, backhoes, dump trucks;
- police cars,
- computers, scanners, and related equipment,
- firearms, protective vests, communications equipment, fuel, tools and office supplies.

As with investments and bargaining activities, the simple purchase or sale of materials does not create an adverse environmental impact. Also note that land transactions involving one or more government entities are not exempt from SEQR; this means that tax sales as well as other dispositions of excess property are subject to review under SEQR. In addition, note that government transactions involving specific hazardous materials also remain subject to review under SEQR.

617.5(c)(26)

" license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities;"

In its elemental form, each activity described in this section consists of a name or date change on a permit form. There is no environmental impact.

If the action does involve a material change, then it is no longer Type II. An example of material changes in a permit condition would be allowing a mine operator to excavate a mine to a greater depth than the previous permit allowed. Another example would be the redesign of access points to a shopping mall so that the shoppers would enter the highway at a different location.

617.5(c)(27)

"adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;"

This paragraph refers to enacting an ordinance or resolution to implement activities such as those in 617.5(c)(20) of this section.

Legislative decisions can only be made by bodies composed of members elected by voters from within a political jurisdiction. Thus the provision that allows agencies to refuse to consider legislative actions without applying SEQR pertains only to county, city, town and village legislative bodies and elected school boards [also see the discussion of actions of the Legislature under 617.5(c)(37)]. Appointed boards such as planning commissions and zoning boards of appeal must apply SEQR even though their members may agree in advance they are likely to disapprove a proposal before them.

617.5(c)(28)

" engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;"

This section refers to the identification of deficiencies and sufficiency of applications and the fact that these efforts need to be done before the action (application) can be further processed under SEQR or the underlying state or municipal law. These activities are designed to protect the environment and maintain compliance with state or municipal laws and ordinances. By definition there would be no adverse environmental impact. Early review conducted prior to SEQR may inform agencies of issues (for example, identification of a wetland on a project site).

617.5(c)(29)

"civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;"

Examples of law enforcement actions exempt from SEQR include:

- local enforcement of zoning code violations,
- replacement of pollution control equipment with better technology pursuant to administrative or judicial order,
- closure of landfills pursuant to administrative or judicial order,
- remediation of wetland violations or hazardous waste sites under administrative or judicial order, and
- construction of a new water filtration plant, as ordered by an "administrative tribunal", because the old one was failing. Because the action was to be undertaken to satisfy the mandate specified by an administrative determination issued by an agency, the town had no discretion as far as initiating the construction, and so that element of the project can be classified as Type II. However, if the order does not explicitly specify the location of the new plant, then that siting decision may still be subject to SEQR.

When such court or administrative orders are explicit with regard to a component of this activity, the action is entirely exempt from SEQR. If, however, the orders have left some discretion as to the methods of implementing the order, those discretionary aspects of the action may still be subject to SEQR review. For example:

- A respondent was found to have an illegal dump of construction debris. If he is merely ordered to apply for a permit to construct a disposal site, but DEC is not ordered to approve the application, SEQR would apply.
- A developer has begun construction on a subdivision, and his crew bulldozes a 15 acre wetland and small pond. A DEC Environmental Conservation Police Officer catches the crew in the process of this destruction, stops the work and gives the developer a summons. The developer and DEC enforcement attorneys agree to settle the case civilly rather than criminally. In addition to paying a fine, the developer is mandated to obtain a DEC wetlands permit before he proceeds with any work for his subdivision. He is also required to reestablish the wetland and pond that he destroyed. Again, SEQR would apply to the actions covered by the wetlands permit application. However, the restoration of the wetland to its former state would be a Type II action because it was directly required by the terms of the settlement.

617.5(c)(30)

"adoption of a moratorium on land development or construction;"

By its very nature, something that stops people from altering or reconfiguring the landscape, is protective of the environment.

Often a town or village will place a temporary moratorium on development while a master plan for the municipality can be finalized. This allows the enactment of desired zoning rather than allowing the potential patchwork of uses that might occur without the plan.

A temporary moratorium on construction might also be adopted while the citizens of the town decide whether they wish to allow a project such as a "big box store," which may cause some hardship for small local businesses; or a large stadium, which may have adverse effects on the surrounding neighborhoods.

617.5(c)(31)

"interpreting an existing code, rule or regulation;"

This item involves the understanding that local governments often act separately on the interpretation of an action and the action itself; acting on fundamental laws or regulations in balancing their decisions, not always SEQR (for example, a ZBA in deciding what zoning rules apply to a proposed new use not specifically named in their ordinances). Still, actions proposed as a result of an interpretation of the provisions of the law may not always be Type II and may qualify as Type I, or Unlisted actions, under SEQR.

617.5(c)(32)

"designation of local landmarks or their inclusion within historic districts;"

This is comparable to the explanation in **617.5(c)31** above. The **designation** has no effect on the environment. However, actions proposed as a result of the designation, or courses of actions changed as a result of this designation, may still be subject to SEQR.

617.5(c)(33)

" emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part;"

This paragraph is very specific. An emergency action must do the least environmental harm possible, and the duration of the "emergency action" does not extend beyond the immediate crisis.

Emergency actions can include, but are not limited to:

- Agency responses to natural disasters such as wild fires in a forest, floods, ice storms, tornadoes, harmful insect infestations, etc.
- Agency responses to man-made disasters such as building fires, demolition of dangerously deteriorated buildings, chemical spills, transportation accidents or acts of terrorism.

Some real world examples:

- Restoration of utilities and clearing of tr ees, wires and other debris from roads after a huge ice storm.
- Immediate stabilization or repair of roads, culverts and bridges to prevent further damage or danger to human life after significant damage from flooding. The restoration of these roads, culverts and bridges would also be covered under the emergency action because of the necessity of restoring routine access to the affected areas and the potential need for quick access for police, fire or rescue purposes. Ancillary activities such as necessary traffic rerouting are generally considered part of the emergency action and are therefore Type II.
- Restoring electric power to an area after an outage caused by either natural materials breaking the lines or shorting out switches (ice, tree branches, lightning, animals) or human intervention (human error or deliberate disruptions at power stations, vehicle accidents).
- Controlling wild fires in forested or brushy areas is, of course, also considered an emergency response. Any reasonable response by firefighters in an attempt to control and extinguish the blaze is included in the Type II designation. These activities include, but are not limited to:
  - bulldozing of a fire break,
  - cutting of trees,
  - creating of access roads for fire equipment,
  - spraying of or aerial dumping of fire retardants,
  - damaging of wetlands, and
  - damaging of the bed or banks of regulated waterways, lakes or ponds in the process of gaining access to the fire or for siphoning off water to fight the fire.

Emergency actions are also further discussed in Questions 14 and 15 of this section of the Handbook.

617.5(c)(34)

"actions undertaken, funded or approved prior to the effective dates set forth in SEQR (see chapters 228 of the Laws of 1976, 253 of the Laws of 1977 and 460 of the Laws of 1978),

except in the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental impacts, or to choose a feasible or less environmentally damaging alternative, the commissioner may, at the request of any person, or on his own motion, require the preparation of an environmental impact statement; or, in the case of an action where the responsible agency proposed a modification of the action and the modification may result in a significant adverse impact on the environment, an environmental impact statement must be prepared with respect to such modification;"

Such previously-approved or undertaken activities are referred to as "grandfathered". Some examples of grandfathered actions are these:

- Development of individual lots in a subdivision where all approvals had been obtained before SEQR was enacted; or
- Continuation of mining within the original property lines in a quarry that was in operation before SEQR was enacted, using basically the same methods and procedures for the entire time.

For example, a rock crushing and cement manufacturing company that has continually operated in the same manner as it did before the effective date of SEQR in 1976 may be considered a grandfathered facility. However, if an individual or the Commissioner determines that it is still practicable either to modify the action to mitigate potentially adverse environmental impacts or to choose a feasible or less environmentally damaging alternative, or if the facility began to modify its working methods and appeared to be more likely to cause significant adverse environmental effect, the facility could also become "ungrandfathered". This would mean that the cement company may be required to draft an environmental impact statement (EIS) for the project or related action.

Grandfathering is further discussed in Questions 16 and 17 of this section of the Handbook.

617.5(c)(35)

"actions requiring a certificate of environmental compatibility and public need under articles VII, VIII or X of the Public Service Law and the consideration of, granting or denial of any such certificate;"

The Public Service Commission (PSC) has sole approval authority over actions involving electric power transmission lines, power plants, high pressure natural gas pipelines, and related actions. While DEC and other agencies can have input into the review of the application for an action, the ultimate decision is made by the PSC. The PSC's authority, created in statute, has its own "SEQR-like" review, record, and decision standards that apply to major gas and electric transmission lines (Public Service Law Article VII). The PSC review process has also applied to new generating facilities (under former Public Service Law Articles VIII and X), but those have now both expired, which means that SEQR does apply to new generating facilities at this time [October 2007].

Question 13 in this section of the Handbook includes additional related information.

617.5(c)(36)

"actions subject to the class A or class B regional project jurisdiction of the Adirondack Park Agency or a local government pursuant to section 807, 808 and 809 of the Executive Law, except class B regional projects subject to review by local government pursuant to section 807 of the Executive Law located within the Lake George Park as defined by subdivision one of section 43-0103 of the Environmental Conservation Law;"

Within the cited sections of NYS Executive Law, the Adirondack Park Agency Act establishes "SEQR-like" review, record and decision standards for the Adirondack Park Agency (APA) and for local governments with APA-approved local land use programs, and all decisions made under that authority are exempt from SEQR.

The Lake George Park and Lake George Park Commission were established later, under separate authority of Article 43 of NYS Environmental Conservation Law. Although the Lake George Park is within the Adirondack Park, the legislature specifically excepted local land use decisions within the Lake George Park from the general Adirondack Park Agency Act exemption; the practical effect is that all land use decisions by local governments within the Lake George Park as well as decisions by the Lake George Park Commission itself, are subject to review under SEQR.

[See also Question 13]
and
617.5(c)(37)

"actions of the Legislature and the Governor of the State of New York or of any court, but not actions of local legislative bodies except those local legislative decisions such as re-zoning where the local legislative body determines the action will not be entertained"

Until the 1995 lower court decision in Hudson River Sloop Clearwater et. al. v. Cuomo et. al. NYLJ 01/12/95 (see the section Landmark Court Decisions on SEQR), the DEC believed the conclusion that the Governor was exempt from SEQR was so obvious that it did not need to be added to the regulations. The DEC's position on the matter was upheld by the court. However, since the arguments of that case involved the absence of a specific exemption for the Governor in the regulations, the DEC explicitly clarified that the Governor is not a state agency as defined in ECL §8-0105(1) or 617.2(c) and (ah).

As a rule, the Governor does not directly approve, fund or undertake any actions subject to SEQR. The only direct actions the Governor takes involve emergencies such as dealing with disasters or calling out the National Guard, which are already exempt from SEQR review. The Governor will direct one of the Executive Agencies to take an action. These actions are subject to SEQR review and it is at this level that the SEQR process will be applied.

The National Environmental Policy Act (NEPA) upon which SEQRA is modeled similarly does not include the President as an agency subject to its requirements (40 CFR §1508.12; Alaska v Carter, 462 F. Supp. 1155, 1159-60 (1978)).

Although no explicit statutory exemptions have existed for the State Legislature and the Judiciary, the regulations have always exempted these branches of government from compliance with SEQR [see 617.5(37)]. The reasoning is the same as that for excluding the Governor. The Legislature does not directly take actions. Various state agencies must promulgate regulations to execute laws, and these regulations are subject to SEQR. The Courts adjudicate proceedings and may direct a party involved in the court proceedings to take an action that may be subject to SEQR, but it is not the court itself that will take the action.

4. Does the list of Type II actions in Part 617 apply to all agencies subject to SEQR?

Yes. All agencies that are subject to SEQR are bound by the Type II classifications contained in the statewide list found in Part 617.5.

5. What are the procedural requirements under SEQR for a Type II action?

There are no procedural requirements of any kind for a Type II action. No environmental assessments or determinations of significance are required.

However, a prudent agency should maintain, in its own files, a brief record showing that the proposed action had been considered under SEQR and had met the requirements for a Type II action. Those local agencies that use resolutions should simply note as a clause that the action has been considered under SEQR and classified as a Type II action. It is also good practice to cite the appropriate subdivision or paragraph of section 617.5.

6. If an agency has identified an action as requiring no review under SEQR, may the agency proceed with the action?

Yes. Once the agency has determined that no aspect of the action requires SEQR review, the agency may proceed in accordance with the criteria or standards for approval under other relevant laws, regulations and ordinances.

7. Can any agency add to the statewide Type II list?

Yes. As stated in sections 617.5(b) and 617.14(e), any agency may expand, for its own use, the statewide Type II list by adopting a list of additional Type II actions, provided that the list is not less protective of the environment than the statewide Type II list. Such additions do not apply to any agencies other than the one that added the action. Also, an agency that has listed an action as Type II cannot be an involved agency in the SEQR review of such action by other agencies.

8. Can an agency identify a statewide Type I action on its Type II list?

No. The regulations specifically prohibit an agency from designating as Type II any action on the statewide Type I list [see 617.4(a)(2)].

9. What happened to the Exempt and Excluded Categories of Actions?

All the actions once separately listed as "Excluded" actions, "Exempt" actions and "Type II" actions under pre-1996 versions of 617 have now been combined into the category of Type II. The aggregation of all these actions under the heading of Type II maintains the statutory intent of indicating that once the action is classified and found to be Type II, the SEQR process is concluded for that action. This aggregation simplifies the number of places a lead agency must look to make this determination.

Since an important first step in the environmental review process is to ascertain whether SEQR applies to an action, the public is well-served by having to refer to only one section to determine if SEQR applies. As a result, an agency's staff time, efforts and resources will be focused on reviewing those actions that may have potentially significant adverse impacts on the environment.

10. What commonly occurring actions were added to the Type II list in the 1996 SEQR regulation amendments?

In 1996, DEC added these items to the Type II list in Section 617.5.

- "granting of an area variance(s) for a single-family, two-family or three-family residence"
- "construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities"
- "adoption of a moratorium on land development or construction"
- "construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections and the installation, maintenance and/or upgrade of a drinking water well and a septic system;"

11. Didn't a court case nullify the "construction or expansion of a single-family, two-family, or three-family residence on an approved lot..." and small non-residential use provisions?

Yes, briefly, in a ruling that was ultimately overturned. The challenge to the Type II list was met and defeated, so the Type II list remains as adopted.

DEC was sued over the 1996 additions to the Type II list, primarily the addition of the small commercial exemption as well as construction of one, two, or three family dwellings on approved lots. The State Supreme Court ruled in favor of the challengers, however, DEC appealed that ruling and prevailed in the Appellate Division. Then, early in 2001, the Court of Appeals declined to hear and effectively refused to reverse the Appellate Division's ruling. Therefore, because the higher court upheld the inclusion of the new items in the Type II list, and affirmed reinstatement of that language in Part 617, these types of actions remain Type II statewide.

(See West Village Committee, Inc. et al. v. Zagata, 1998)

12. What other major change was made to the Type II list in the 1996 SEQR rulemaking?

One additional provision was also codified by its addition to the Type II list. This exemption was always a generally accepted unwritten provision of SEQR, but was added in the 1996 amendments to clarify the concept and make it clear to the public.

"actions of the Legislature and the Governor of the State of New York or of any court, but not actions of local legislative bodies except those local legislative decisions such as rezoning where the local legislative body determines the action will not be entertained"

13. What kinds of actions are specifically named by statute as exempt or excluded from review under SEQR?

The Legislature has specifically exempted or excluded the actions of certain agencies from review under SEQR. These agency actions were exempted by the Legislature because they already had SEQR-like analysis processes incorporated into their review. The requirement of an additional SEQR review would therefore be redundant.

Exemptions listed under ECL Article 8, SEQR:

- The Adirondack Park Agency (APA) or local governments to whom the APA has that are delegated specified APA review functions, for actions on private land within the Adirondack Park pursuant to Executive Law sections 807-809, are exempt for these actions.
- The Public Service Commission is exempt for actions requiring a permit certificate of environmental compatibility and public need pursuant to Articles VII, VIII and X of the Public Service Law (e.g. high pressure natural gas pipelines, transmission lines and power plants). However, the Article X statute expired January 1, 2003, and to date, has not been reinstated in law by the legislature; so SEQR does apply at this time to the review of power plants. **Question 3 (617.5(c)(35)** of this section of the Handbook further discusses these PSC actions.
- Grandfathered actions - **Question 3 617.5(c)(34)** and **Questions 16 and 17** in this section of the Handbook further discuss these actions.

In addition, there are a few narrowly focused exemptions enacted in laws other than the ECL:

- **The Metropolitan Transit Authority (MTA).** Prior to 1981 the (MTA) was fully subject to SEQR. However, in 1981 section 1266 of the Public Authorities Law was amended to exempt certain activities of the MTA from SEQR review. Section 1266-3 states that establishing, among other things, tolls, rates and fees are not "actions" under SEQR.

In addition, 1266-11 provides that: "[n]o project to be constructed upon real property theretofore used for a transportation purpose, or on an insubstantial addition to such property contiguous thereto, which will not change in a material respect the general character of such prior transportation use, shall be subject to the provisions of [SEQR]."

This subdivision also excludes from SEQR review the planning, design, acquisition, improvement, construction, reconstruction or rehabilitation of a transportation facility, other than a marine or aviation facility, if a federal environmental impact statement has been required pursuant to the National Environmental Policy Act (NEPA). This exemption applies even if the federal EIS is not sufficient to make findings under SEQR.

- **The New York Power Authority (NYPA)**, established pursuant to section 1002 of the Public Authorities Law, has the potential to be excluded from the provisions of SEQR only to the extent that compliance with SEQR is inconsistent with the terms and purposes of Section 1014 of the Public Authorities Law. Specifically, section 1014 provides that SEQR, as well as all provisions of the ECL and "every other law relating to the Conservation Department . . ." may be superseded under certain circumstances. Specifically, any such law may be "superseded, modified or repealed as the case may require 'when its provisions shall be found in conflict with the provisions of this title or inconsistent with the purposes thereof.'" However, this exemption is permitted only to the extent "necessary to make this title effective in accordance with its terms and purposes." Thus, SEQR (or any other environmental law) may be superseded only to the extent that full compliance with it prevents NYPA from carrying out its responsibilities.
- **The Long Island Power Authority (LIPA)**, established by the Public Authorities Law, was directed to close and decommission the Shoreham Nuclear Power Plant on Long Island. The statute specifically exempted from SEQR requirements, the LIPA acquisition of securities or assets of the Long Island Lighting Company, which included the transfer of the Shoreham facility as a separate asset.
- **The Thruway Authority** was granted an exclusion from SEQR in 1990 for the acquisition of Interstate Route 287 which connects the Tappan Zee Bridge to the New England Section of the Thruway.
- In 1990 **The Hudson River Waterfront Area** was similarly excluded from SEQR requirements. The exclusion only applied to those portions of the Hudson River shoreline in Manhattan that were removed from the West Side Roadway Construction Area, and subsequently designated as The Hudson River Waterfront area. The exclusion did not apply to individual projects within the designated area, only the change of designation.
- **The New York State Department of Transportation (NYSDOT).** Also in 1990, an amendment to section 14(i) of the Transportation Law granted NYSDOT a narrow exemption from SEQR for certain actions involving addition of travel lanes between exits 30 and 64, and construction between exits 49 and 57 of the Long Island Expressway. The exemption also spelled out when environmental impact statements were required, where segmentation of the action was appropriate, and allows commencement of design work concurrent with the environmental review process.
- In 2001 the Legislature created a new revenue bond financing program. The statute stated "the authorization, sale and issuance of revenue bonds pursuant to this section shall not be deemed an action as such is termed in [SEQR]. These bonds will be issued by the Dormitory Authority, the Empire State Development Corporation, the Thruway Authority, the Environmental Facilities Corporation, and the Housing Finance Agency.
- Occasionally there are exemptions created by statutory language (another category of statutory exemption). The Legislature can create exemptions from the provisions of any law, not just SEQR, and has in fact created SEQR exemptions. Some legislative enactments specifically name SEQR as the exempt law, while at other times there is generalized language to authorize activities with the phrase "notwithstanding any other provision of law to the contrary." This phrase has been construed by judicial decision as providing a legislative exemption from SEQR (for example, see Nature's Trees Inc. v County of Nassau in Landmark Court Decisions on SEQR).

14. What is an "emergency action"?

"Emergency actions" are actions taken in response to an urgent situation. These are actions "which are immediately necessary, on a limited and temporary basis, for the protection or preservation of life, health, property or natural resources" [see 617.5(c)(33).] Classification of something as an emergency action should be done only in extreme cases for true, unforeseeable emergencies, not to justify proceeding with an action despite poor planning by an agency or an applicant.

15. Is there any documentation required for emergency actions?

No. There are no formal requirements in Part 617 for documentation regarding emergency actions. However, any agency classifying an action as an emergency is advised to keep on file a brief statement of pertinent facts concerning the action and its classification. It is recommended that emergency action documentation contain the following:

- date and time when the need for the action was first identified,
- a description of the emergency situation,
- a description of the action including the location and date the action was undertaken,
- a description of how the action will be or has been performed, in the most environmentally sound way practicable under the circumstances, to ensure the least change or disturbance to the environment,
- when the emergency situation ended.

16. If an action was undertaken, funded or approved, or if substantial time, effort or money was expended prior to the effective dates of SEQR, is it Type II?

Yes. These sorts of actions are commonly called "grandfathered" actions and are included as Type II actions. However, because SEQR has been in effect for over 25 years, these actions are becoming increasingly rare. There are some examples of grandfathered actions in **Question 3 (617.5(c)(34)** of this section of the Handbook.

17. Can a "grandfathered" action be made subject to SEQR?

Yes. Under specific conditions, a project may be "ungrandfathered", or formally determined to be made subject to SEQR, by the Commissioner of DEC at the written request of any person, or on the Commissioner's own motion. To reach the decision to ungrandfather an action, the Commissioner must determine that it is still practicable either to modify the action to mitigate potentially adverse environmental impacts, or to choose a feasible or less environmentally damaging alternative.

18. If an elected local legislative body decides that an action will not be considered, is it necessary to take the action through the SEQR process?

No. If an elected local legislative body, such as a town, city or village board, is presented with a legislative decision such as an application for a zoning change, and the legislative body determines the action will not even be considered, SEQR need not apply. However, if the lead agency wishes to consider any aspect of the proposal for full or conditional approval or denial, SEQR must be applied. If the item is tabled and not considered at a given time, and then later is brought back for a decision, SEQR must be applied at that later time before a final decision is rendered. Note that this exemption is limited to actions of an elected local legislative body.

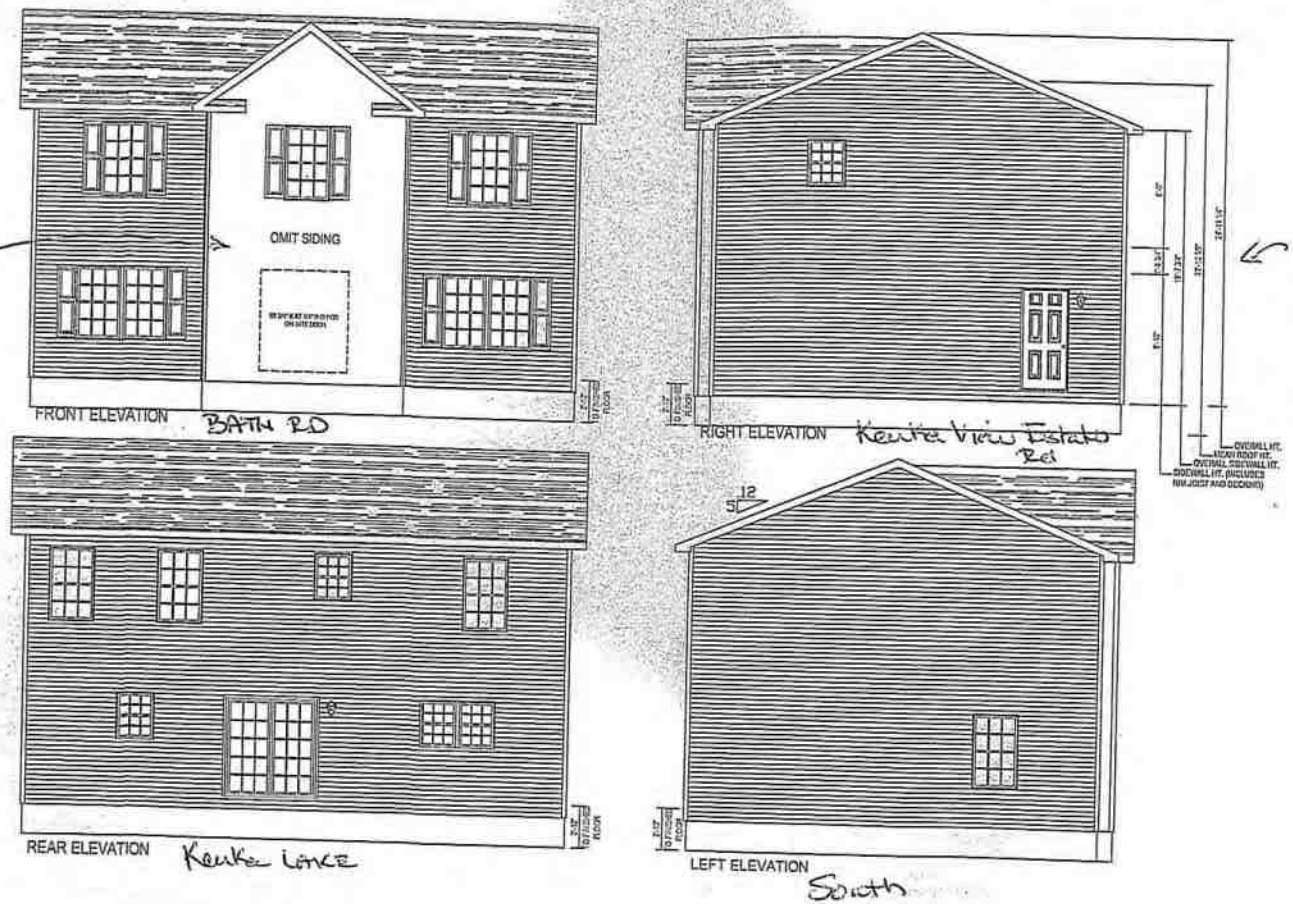
See also the explanation of **Question 3 617.5(c)(27)** in this handbook.

19. If an elected local legislative body begins to consider an action, and then decides not to consider it, must the local legislative body complete the SEQR process?

No. A local legislative body faced with an action involving a legislative decision does not have to complete the SEQR process if it has the authority to stop its consideration of the action. This is explained by the fact it would not be making a final decision on the action and therefore the application of SEQR is not required.

E-mail us if you wish to submit comments. Please be sure to indicate which section or item you are commenting on, and include your name.

Decorative Siding & Door to be field installed



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VATIONS SHOWN ON THIS PAGE REPRESENT BASIC COMPONENTS AND ARE NOT INTENDED TO BE ALL USIVE, NOR DO THESE ELEVATIONS DETAIL EVERY CODE REQUIRED ASPECT OF THIS BUILDING. SITE T STOOPS, STEPS, DECKS, PORCHES, HANDRAILS AND/OR SIMILAR ITEMS MUST BE PROVIDED BY ERS ON SITE FOR COMPLIANCE WITH APPLICABLE CODES. COMPLIANCE WITH ALL APPLICABLE CODES LOCAL AUTHORITY HAVING JURISDICTION, WHETHER DETAILED IN THIS SET OR NOT, MUST BE MET.

STATE OF NEW YORK
NADER TOMASSI
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Pg.: EL

STATE OF NEW YORK
DEPARTMENT OF STATE
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99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
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ANDREW M. CUOMO
GOVERNOR

CESAR A. PERALES
SECRETARY OF STATE

NOTICE OF APPROVAL

This notice serves to inform the local Code Enforcement Official that the New York Department of State (DOS) has reviewed and approved plans, as authorized pursuant to 19 NYCRR Part 1209, Regulation and Fees for Factory Manufactured Homes, to allow the construction of single family homes, two family homes, and/or other modular buildings or components in compliance with the State Uniform Fire Prevention and Building Code, as described herein:

Manufacturers Name:	The Commodore Corporation 1423 Lincolnway East Goshen, IN 46527
Building Description:	Detached One and Two-Family Dwellings and Multiple Single-Family Dwellings (Townhouses)
Approval Number:	**Modifications to Previously Approved System of Models M1185-2013-001** (Tracking Number: M1185-2015-012)
Applicable Code:	Residential Code of New York State 2010 (RCNYS 2010)
Expiration Date:	January 7, 2017
Maximum Ground Snow Zone:	105 PSF
Seismic Design Category:	A, B, C, Do - for Detached One and Two-Family Dwellings A, B - for Townhouses
Basic Wind Speed:	Up to 120 MPH with 3 sec
Exposure Category:	A, B, or C
DOS Contact Person:	Edmund F. Girzone, R.A.
Additional Conditions:	None
Approval Date:	February 19, 2015

Ronald Piester, AIA
Director

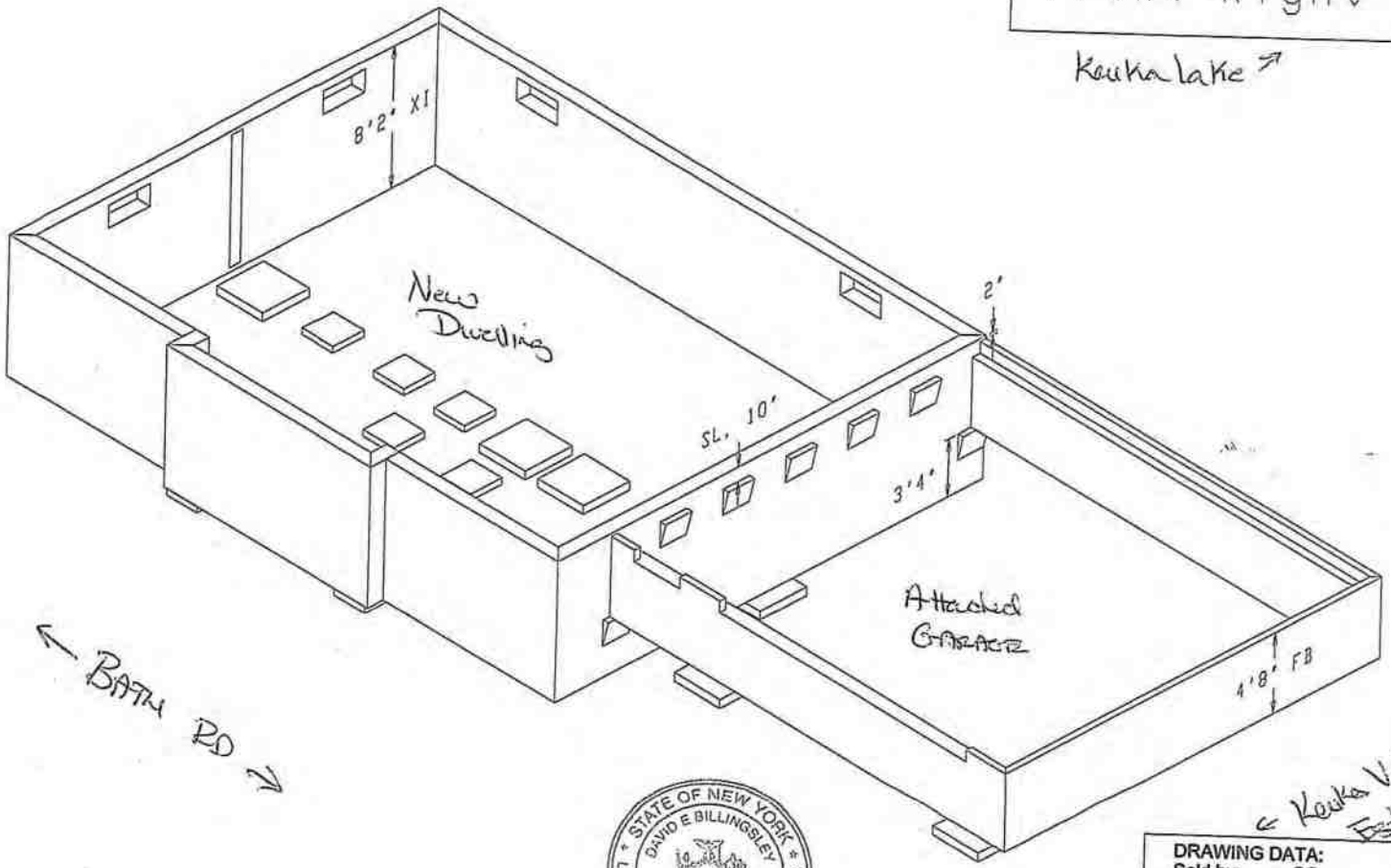
A copy of this Notice of Approval shall accompany all plans and specifications submitted as part of a permit application. Plans should not require a DOS seal provided the registered design professional references the approval number and certifies that the plans and specifications conform to the plans and specifications approved by and on file with the DOS.
The following statement may be used to provide this certification:

"The plans and specifications of this permit plan set are derived from and consistent with the systems set of plans and specifications approved and on file with the Department of State, which were approved on February 19, 2015 under systems number M1185-2013-001"

The approval identified above is limited to all construction that takes place in the factory. Site related work including installation and connection of the building and/or components, foundations, mechanical connections, stairs, decks, etc. is the responsibility of the Code Enforcement Official. The presence of the insignia of approval shall be presumptive evidence that the factory manufactured home or component complies with the provisions of the 2010 RCNYS. If the code enforcement official believes that any factory manufactured component is in violation of one or more provisions of the RCNYS, he/she should contact the DOS for further review and/or determination.

NEW YORK STATE OF OPPORTUNITY. | Department of State

Front Right View



STATE OF NEW YORK
DAVID E BILLINGSLEY
086250
LICENSED PROFESSIONAL ENGINEER

04/06/16

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Drawn by:	EF
Date Created:	3/16/2016
Last Revision:	4/6/2016
Revision #:	6
File Name:	sc11960

PROJECT NO. SC11960	Page 4 of 5

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Appeals for Area Variances

Area variances include all those that do not involve a use prohibited by the zoning law. The applicant complies with the zoning law as to the permitted uses, but cannot comply with one or more area requirements (i.e., setbacks or lot size). An area variance is defined by state law as "the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations." [Town Law §267 (1)(b); Village Law §7-712 (1)(b)]

Standards for Area Variance

Instead of requiring an applicant to meet specific tests such as those imposed for issuance of a use variance, or an overall test, the applicant simply applies for an area variance. The ZBA is then required to consider two factors in determining whether to grant the variance: 1) the benefit to the applicant if the variance is granted, and 2) the detriment to the neighborhood or community's health, safety and general welfare if the variance is granted. The state law specifies five factors the board must consider in weighing the interests of the applicant and the neighborhood or community:

No detriment foreseen (DW)

See application (DW)

1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
2. whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
3. whether the requested area variance is substantial;
4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance [Town Law §267-b (3)(b); Village Law §7-712-b (3)(b)].

The statutory requirements for issuance of an area variance were substantially changed by the State Legislature in 1991. The state law no longer requires an applicant to meet the overall test of showing "practical difficulty."

Minimum Variance

In the granting of area variances, the ZBA is required to "grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community." [Town Law §267-b (3)(c); Village Law §7-712-b (3)(c)]

Yes. Minimum will be granted. (DW)

Appeals for Interpretations

All zoning laws are complex enough that, from time to time, there will be trouble interpreting them. The ZBA may interpret the zoning law for an applicant only where there is an appeal from a decision of the ZEO, as in the case of variances. If a ZEO denies a permit on the basis of his interpretation of the zoning law, and the applicant disagrees, the applicant may appeal to the ZBA for a "second opinion," or interpretation, of a particular section of the law. Likewise, a neighbor who disagrees with the issuance of a permit may appeal for an interpretation of the law.

The ZBA must determine the facts of the case. The board may use the opinions of town officials such as the town attorney and planning board, and the context provided by the comprehensive plan to help them determine the intent of the law. The interpretation must be consistent with precedents. The ZBA's decision is final.

incurred by the town, they may, subject to the town board's discretion, be assessed, levied and collected by the town proportionately against all properties abutting the road.

5. Management of this activity will be performed by the undersigned so long as the undersigned own the property in the development and desires to manage it; thereafter, a manager shall be chosen by a vote of lot owners; written notice of the name and address of the successor manager shall be given to the Town of Milo within 10 days thereof.
6. A meeting of lot owners may be called by said manager or by any two lot owners, upon at least 7 days notice by personal service, telephone or mail, for the purpose, when appropriate, of selecting a new manager, for the purpose of approving said improvement, maintenance and repair activities.
7. Mail properly addressed to the residence of a lot owner, or a telephone message left at a lot owner's residence or work telephone number, will be deemed adequate notice if given in good faith in an attempt to provide actual notice of the meeting. For notice by mail, the notice must be mailed at least 10 days before the meeting.
8. At a meeting of lot owners duly called as provided herein, there will be no quorum requirement, and those who attend will be able to make decisions binding on all lot owners as set forth herein.
9. All lot owners are bound by this agreement and by decisions made in accordance with this agreement.

DEED RESTRICTIONS

1. There shall be no detached buildings of any kind; and
2. There shall be no livestock such as goats, cows, horses, poultry, swine, etc.; and
3. There shall be no unregistered vehicles such as cars, motor homes, motorcycles, tent campers, etc., to be stored on the exterior of the garage or on the lot; and
4. All driveways entering from garage to Keuka View Estate Road shall be black topped within one year of building the homes; and
5. There shall be only 2 cats and 2 dogs allowed per dwelling; and
6. Any housing unit constructed on the property shall comply with the following:
   a. There shall be no manufactured housing except that modular home construction shall be permitted; and
   b. All housing construction shall be either
      i. Ranch Style Homes – of not less than 1350 square feet – not including basement area; or
      ii. Cape Cod Style Homes – 2 stories or split foyers – not less than 1800 square feet.

The above covenants numbered 1 through 6 shall run with the land and shall be binding on all grantees of the aforementioned premises for a period of fifty years from January 1, 2014.

Deed for 10 Keuka View Estates Rd

Anthony Validzic

From: Anthony Validzic
Sent: Wednesday, April 20, 2016 2:04 PM
To: 'Casey Busch'
Subject: 10 Keuka View Estates Road_Attached Garage

Dear John Busch and Lawrence Horning:

Thank you for meeting me today at the site. As discussed, you will not proceed any further with the attached garage until the Zoning Board of Appeals approves your area variance for a front yard of 34.3 feet. I do appreciate you meeting with me today and understanding the need to obtain such variance.

(Note. You may proceed with the dwelling since that dimension to Keuka View Estates Road is compliant with the applicable provision of the Zoning Law of the Town of Milo.)

Thank you.

Respectfully,

Anthony Validzic
Code Enforcement Officer
TOWN OF MILO, NEW YORK
Department of Code Enforcement and Administration
137 Main Street - Town Hall
Penn Yan, New York 14527
Telephone No.: (315) 531-8042
Fax No.: (315) 536-9760
TDD No.: (202) 720-6382
Email: codeofficer@townofmilo.com

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Anthony Validzic

From: David Hartman <dhartman@yatescounty.org>
Sent: Thursday, April 21, 2016 8:48 AM
To: Anthony Validzic
Subject: RE: 10 Keuka View Estates Road_New Driveway unto Bath Road
Attachments: 20160421085700.pdf

We have an approved one on file dated 1/22/16 for a John Busch (applicant) for "10 Keuka View". See attached copy. Hopefully that is the one you are referring to. Thank you for your cooperation on this.

Dave

From: Anthony Validzic [mailto:codeofficer@townofmilo.com]
Sent: Thursday, April 21, 2016 8:31 AM
To: David Hartman <dhartman@yatescounty.org>
Subject: 10 Keuka View Estates Road_New Driveway unto Bath Road

Dear David Hartman:

Good morning and I hope all is well. I want to check that you approved the new driveway at 10 Keuka View Estates that grants access unto Bath Road. It is southeast of the old truss plant at Bath Road. Thank you.

Respectfully,

Anthony Validzic
Code Enforcement Officer
TOWN OF MILO, NEW YORK
Department of Code Enforcement and Administration
137 Main Street - Town Hall
Penn Yan, New York 14527
Telephone No.: (315) 531-8042
Fax No.: (315) 536-9760
TDD No.: (202) 720-6382
Email: codeofficer@townofmilo.com

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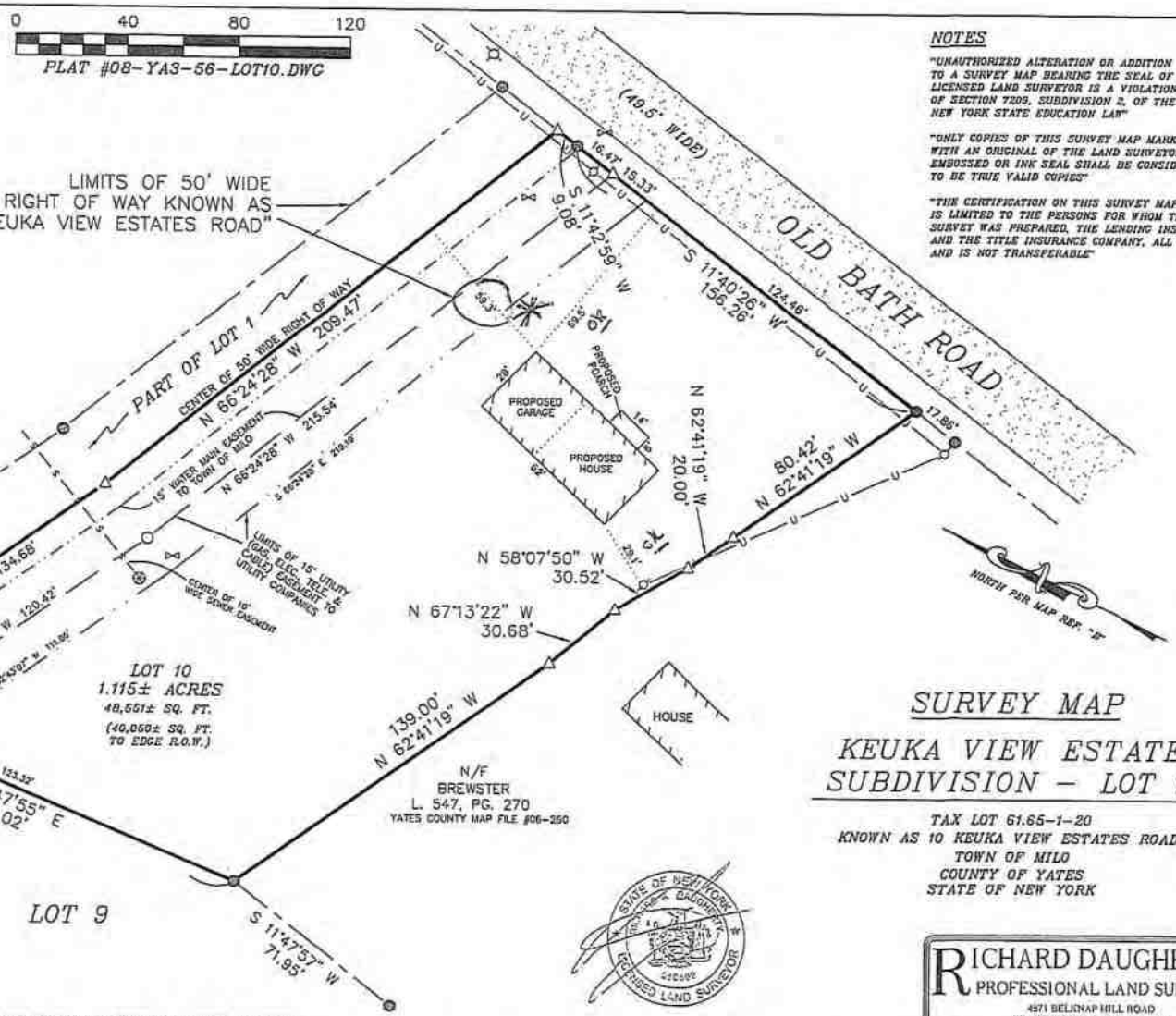
REFERENCES

[A.] - DEED -
THOMAS C. JENSEN, JR.
TO: (APRIL 1, 1982) L. 307, PG. 583
FLOYD D. LANE

[B.] - SURVEY MAP -
"SUBDIVISION MAP OF KEUKA VIEW ESTATES"
LAST DATED OCT. 30, 2016
PREPARED BY RICHARD A. DAUGHERTY, LS

LEGEND

-- ⊗ -- IRON PIN FOUND
-- ○ -- IRON PIN & CAP SET
-- △ -- CORNER NO PIN
-- ○ -- UTILITY POLE
-- ⊠ -- FIRE HYDRANT
— U — OVERHEAD UTILITY LINE
-- ⋈ -- WATER LINE GATE VALVE
-- ⊗ -- SEWER LINE GATE VALVE



NOTES

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"THE CERTIFICATION ON THIS SURVEY MAP IS LIMITED TO THE PERSONS FOR WHOM THE SURVEY WAS PREPARED, THE LENDING INSTITUTION, AND THE TITLE INSURANCE COMPANY, ALL AS NOTED, AND IS NOT TRANSFERABLE"

SURVEY MAP

KEUKA VIEW ESTATES SUBDIVISION – LOT 10

TAX LOT 61.65-1-20
KNOWN AS 10 KEUKA VIEW ESTATES ROAD
TOWN OF MILO
COUNTY OF YATES
STATE OF NEW YORK

I HEREBY CERTIFY TO:

[A.] JOHN & CASEY BUSCH

I AM A LICENSED LAND SURVEYOR AND THIS MAP DATED APRIL 18, 2016 IS BASED ON AN INSTRUMENT SURVEY COMPLETED BY ME PER THE STANDARDS ADOPTED BY THE NEW YORK STATE ASSOCIATION OF PROFESSIONAL LAND SURVEYORS.

STATE OF NEW YORK · RICHARD A. DAUGHERTY · 049698 · LICENSED LAND SURVEYOR

RICHARD DAUGHERTY
PROFESSIONAL LAND SURVEYOR
4571 BELKNAP HILL ROAD
BRANCHPORT, NEW YORK 14418
PHONE 607-522-4702

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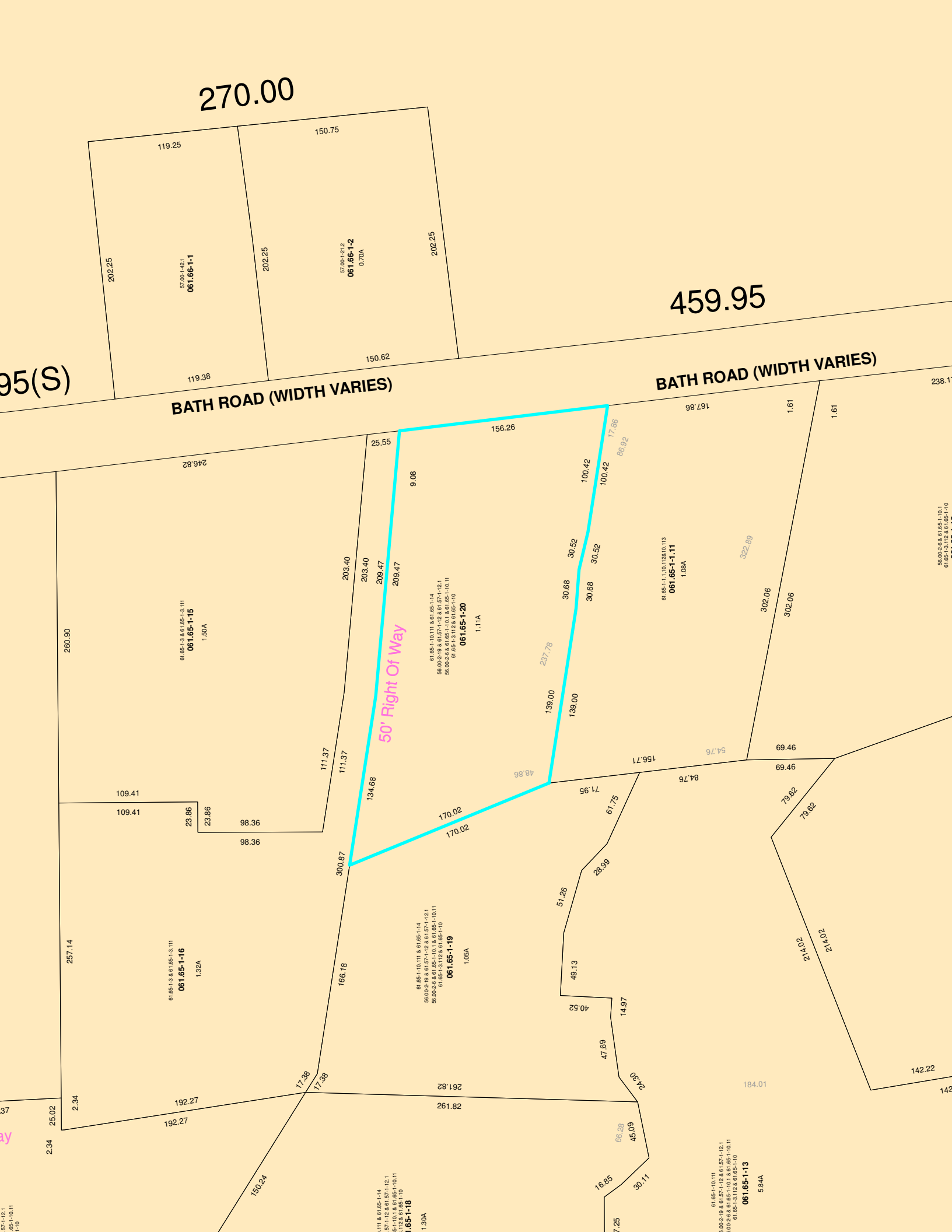
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119.25
150.75
202.25
57.00-1-42.1
061.66-1-1
202.25
57.00-1-21.2
061.66-1-2
0.70A
202.25
119.38
150.62
459.95
95(S)
BATH ROAD (WIDTH VARIES)
BATH ROAD (WIDTH VARIES)
50' Right Of Way
061.65-1-15
1.50A
061.65-1-16
1.32A
061.65-1-20
1.11A
061.65-1-19
1.05A
061.65-1-18
1.30A
061.65-1-13
5.84A
061.65-1-11
1.08A
246.82
260.90
257.14
109.41
109.41
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23.86
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111.37
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25.02
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79.62
79.62
214.02
214.02
142.22
184.01
66.28
45.09
16.85
30.11

270.00
459.95
BATH ROAD (WIDTH VARIES)
BATH ROAD (WIDTH VARIES)
95(S)
57.00-1-42.1
061.66-1-1
57.00-1-21.2
061.66-1-2
0.70A
061.65-1-3 & 61.65-1-3.111
061.65-1-15
1.50A
061.65-1-20
1.11A
061.65-1-11
1.08A
061.65-1-16
1.32A
061.65-1-19
1.05A
061.65-1-18
1.30A
061.65-1-13
50' Right Of Way