

McNamee, Lochner, Titus & Williams, P.C.

ATTORNEYS AT LAW

MEMORANDUM

To: File
From: John J. Privitera
McNamee, Lochner, Titus & Williams, P.C.
Date: March 30, 2017
Re: Density Analysis

TEC will be an advanced school of higher learning that will pursue college accreditation, working and collaborating with existing schools and accredited colleges. The campus will host a resident population of 2,508 students, supported by a resident faculty of 276.

The campus will include a home for the President of the school: a 100-room inn for visitors including visiting academics; and, an array of boarding accommodations for the students and faculty. Specifically, the campus will include 732 student dormitories for the 2,508 resident students.

According to Town law, "Density" analysis counts the "number of dwelling units per acre of the site". A "dwelling unit" is defined as a building "containing housekeeping facilities for only one family". And "family" is defined as "one or more persons occupying a dwelling unit as a single, non-profit housekeeping unit", but "more than five persons, exclusive of domestic servants, not related by blood, marriage or adoption shall not be considered to constitute one family".

A "boardinghouse" is "a building containing a single dwelling unit and accommodating for compensation persons who are not the keeper's family." Faculty boarding houses at TEC meet this definition.

Finally, the definition of "dwelling unit" specifically excludes "a boardinghouse, dormitory, hotel [or] inn".

The dormitory rooms are not dwelling units; the six-bedroom group houses do not constitute a family and thus are not dwelling units; the boardinghouses do not constitute single family dwellings; and, the rooms at the inn do not count as dwelling units.

Among these various living quarters and boarding accommodations, only the President's house, the caretaker/security house and the 22 benefactor houses qualify as a "dwelling units" as a matter of law; therefore, the accommodation of 2,650 residents on the campus, supported by faculty and a 100 room inn does not trigger any density concerns.

Importantly, there are no specific density standards in the Town of Thompson Zoning Law for schools, colleges, dormitories, group housing or student housing.

Specifically, there are no standards for density units per acre in the RR-2 (Rural Residential – 2 District) for parks, libraries, museums, clubhouses and related recreational facilities, schools or colleges including playgrounds and other related uses. There is a specific reason for these blank spaces, because these permitted uses are not capable of density analysis using the definitions in the code for "dwelling unit" and "family"; dorms are not housekeeping units.

To read the Zoning Law as having density standards for schools, colleges, dormitories, group housing or student housing would violate well-established principles of law that, “[z]oning regulations, being in derogation of the common law, must be strictly construed against the municipality which has enacted and seeks to enforce them, and any ambiguity in the language used must be resolved in favor of the property owner”. Albany Basketball & Sports Corp. v. City of Albany, 116 A.D.3d 1135, 1137 (3d Dep't 2014), *citing* Matter of Hess Realty Corp. v. Planning Commn. of Town of Rotterdam, 198 A.D.2d 588, 589 (3d Dep't 1993); Matter of Ohrenstein v. Zoning Bd. of Appeals of Town of Canaan, 39 A.D.3d 1041, 1042, 833 N.Y.S.2d 763 (3d Dep't 2007); Van Nostrand v. Dalmata, 43 A.D.2d 752, 752 (3d Dep't 1973); *see also* Off Shore Rest. Corp. v. Linden, 30 N.Y.2d 160, 164 (1972); Thomson Ind., Inc. v. Inc. Vill. of Port Washington North, 27 N.Y.2d 537, 539 (1970).

Thus, although it would be unreasonable to assume that the blanks for density units per acre in the Code can be "filled in" by the reader, the density of the TEC Project is below the maximum permitted density, even if the reader "assumes" a density of 4 dwelling units per acre. The TEC project will have a density of just 2.95 "units" per acre, using a 4 unit per net acre "assumption", calculated as follows:

BULK REQUIREMENTS

ZONE RR-2 (RURAL RESIDENTIAL – 2 DISTRICT)

USE GROUP: SCHOOLS AND COLLEGES INCLUDING

PLAYGROUNDS AND OTHER RELATED USES

	<u>MIN. REQUIRED</u>	<u>PROVIDED</u>
LOT AREA (AC.)	3	568±
*LOT WIDTH (FT.)	150	1830±
*LOT DEPTH (FT.)	150	6500±
*FRONT YARD (FT.)	50	1573
*REAR YARD (FT.)	50	50
SIDE YARD (FT.)	50	50
BOTH SIDE YARDS (FT.)	100	140
HAB. DWELL. AREA (S.F.)	N/A	N/A
DENSITY (UNITS/AC)	4	2.95

MAX. PERMITTED

LOT COVERAGE (%)	15	8.76
*BLDG. HEIGHT (FT).	35	35

*Values taken from previous use in bulk table with a numerical value

DENSITY CALCULATIONS
(TAX LOT 26-1-6 ONLY)

TOTAL GROSS AREA	=	568.0± acres
WETLAND AREA (INCLUDING 100' ADJACENT AREA)	=	218.6± acres
<u>EASEMENT/ROW AREA</u>	=	<u>0.0 acres</u>
TOTAL NET AREA	=	349.4 acres

FOR SCHOOLS & COLLEGES: 4 UNITS PER NET ACRE

349.4 ACRES X 4 UNITS/NET ACRE	=	1397.6 UNITS
TOTAL NO. OF UNITS ALLOWED	=	1397
TOTAL NO OF UNITS PROPOSED	=	1031

DENSITY = 1031 UNITS/349.4 AC. = 2.95 UNITS/ACRE

LOT COVERAGE CALCULATIONS:
(TAX LOT 26-1-6 ONLY)

TOTAL GROSS AREA	=	568.0± acres
WETLAND AREA (INCLUDING 100' ADJACENT AREA)	=	218.6± acres
<u>EASEMENT/ROW AREA</u>	=	<u>0.0 acres</u>
TOTAL NET AREA	=	349.4 acres

TOTAL ACADEMIC/REC
BLDG FOOTPRINT AREA = 998,074 sq. ft.

TOTAL HOUSING BLDG
FOOTPRINT AREA = 1,169,924 sq. ft.

TOTAL BLDG FOOTPRINT AREA = 2,167,998 sq. ft.
COVERAGE = 49.77 acres

GROSS LOT COVERAGE = 49.77 AC./568.0 AC. = 8.76%

NET LOT COVERAGE = 49.77 AC./349.4 AC. = 14.24%