



**Town of Marbletown**  
**Zoning Board of Appeals**  
 PO Box 217, Stone Ridge, NY 12484  
 (845) 687-7500 Ext. 171  
 Email: [planning@marbletown.net](mailto:planning@marbletown.net)



**Appeal - 2021-01**

**Approval/Denial**

**Applicant:** Duchess Farms Equestrian Community, LLC

**Reason for Request:** Appeal of four (4) Notices of Violation/Orders to Remedy containing eight (8) specific citations issued to Duchess Farms Equestrian Community, LLC on April 1, 2020.

**Location:** Warren Way, Palomino Path, Bridle Path Lane, Town of Marbletown, County of Ulster, State of New York

<b>S/B/L:</b> 69.2-5-64.500	69.2-5-22.122	69.2-5-64.500	69.2-5-22.121
69.2-5-22.110	69.2-5-22.126	69.2-5-22.129	69.2-5-22.123

**Zoning District:** R1

**File Number:** 2021-01 CEQA - Appeal

**Appeal Filed:** Notice of intent to appeal received 4/29/20

**Code Enforcement Determination:** Four (4) Notices of Violation/Orders to Remedy with eight (8) specific citations issued to the Duchess Farm Equestrian Community, LLC. The Notices of Violation, identified as Complaint Numbers: 04022020A, 04022020B, 04022020C, and 04022020D are appended here to.

**Application Fees:** Received 7/23/21

**SEQR Type:** Not Applicable – Appeal does not contemplate approval of a project that would have an environmental impact.

**Documents considered by the Zoning Board of Appeals for review of application:**

1. Code Enforcement Officer’s Notices of Violation dated 4/1/2020
2. Notice of Intent to appeal from Warren S. Replansky, Esq received 4/29/20
3. Appeal Application received 7/23/2021
4. Letter of Authorization dated 6/1/2020 received 7/23/2021
5. Letter of Receipt to applicant confirming Application Packet and Fee dated 7/27/21
6. Road Width As Built Document submitted via email by Applicant on 8/9/2021
7. You Tube Video link and associated video provided by Applicant received 8/9/2021
8. Digital Documents Submitted into Record by the Applicant via Flash Drive 8/25/2021
9. Supporting Document Packet provided to each ZBA member at 8/25/2021 ZBA Meeting
10. Indexed Document Binder and contents provided by Applicant received 8/25/2021
11. Exhibit A Document Packet submitted to ZBA by applicant 8/25/2021
12. Exhibit B Document Packet submitted to ZBA by applicant 8/25/2021
13. Exhibit C Peak Engineering Inspection Letter dated 2/7/2020
14. Exhibit D Peak Engineering Inspection Letter dated 7/2/2021
15. Exhibit 2A submitted by the Applicant with submission date of 9/16/2021
16. Letter from Warren S. Replansky, Esq to the Town Clerk dated 4/6/2020
17. SWPPP provided by the Applicant with a date of March 2007 noted as part of “140 pages”



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received 9/16/2021

18. Exhibit 3A Memorandum from Kyle Barnett Esq, received 9/22/2021
19. Exhibit 3B with title "Chapter 99 Building Construction" entered into record 9/22/2021
20. Exhibit 3C with title "Chapter 169 Subdivision of Lands" entered into record 9/22/2021
21. Exhibit 3D with title "Chapter 200 Zoning" entered into record 9/22/2021
22. Exhibit 3E with title "Chapter A206 Road Specifications" entered into record 9/22/2021
23. Memorandum to ZBA from Kyle Barnett, Esq. 9/22/2021
24. Four sets of Approved Subdivision Plans signed by the Marbletown Planning Board and filed in the Ulster County Clerk's Office under file numbers: #07-126 filed April 26, 2007, #10-70 filed March 29, 2010, #11-73 filed May 26, 2011, and #18-13 filed February 5, 2018.
25. Letter from CEO Allen to Property Owners at Duchess Farm dates 1/7/2020
26. Report and Findings of Inspection completed by CEO S. Marks on 2/26/2020
27. Photos taken by CEO S. Marks during Site Inspection on 2/26/2020
28. Affidavit of CEO S. Marks dated 3/12/2020 with results of inspection of 2/26/2020
29. Site Inspection report prepared by Peak Engineering dated 2/7/2020
30. Findings of a Site Inspection by High Falls Fire Dept. Chief Art Lapp Jr. on 2/27/2020
31. Violation Index: Violation(s) No. 04022020 A, 04022020B, 04022020C, 04022020D; Issued April 1<sup>st</sup>, 2020 by CEO Allen
32. "Road Width As Built Survey" dated February 5<sup>th</sup>, 2021, submitted by the applicant
33. Site Visit Document of Attendance into record on 9/16/2021
34. Document Packet provided to ZBA on 9/16/21 site visit into record 9/21/2021
35. Photo packet provided by applicant on 9/16/21 into record 9/21/2021
36. Memorandum to ZBA from Kyle Barnett, Esq, dated 10/18/2021
37. Review and Comment letter from North Engineers to Michael Warren dated 10/20/2021
38. Letter to ZBA from Kyle Barnett, Esq, dated 11/15/2021 requesting date postponement
39. Memorandum to ZBA from Kyle Barnett, Esq. dated 12/8/2021
40. Town of Marbletown Code: Parts I, II, and Appendices (where applicable)
41. New York State 19 NYCRR-NY Part 1203

**Notice of Public Hearing:**

1. Notice of Special Meeting scheduled for 8/10/2021 sent to Applicant dated 8/3/2021
2. Daily Freeman Legal Advertisement for 8/10/2021 Special Meeting on 8/5/2021
3. Notice of Special Meeting posted to Town Website and Facebook Page
4. Public Hearing notice published in the Daily Freeman on 8/16/2021 and 8/20/2021
5. Notice by mail to known adjacent landowners within 500 feet of parcel sent 8/12/2021
6. Posted on the Town of Marbletown Zoning Board of Appeals bulletin board and Town website and Facebook Page.

**Dates of Public Hearing:** August 25, 2021, September 22, 2021, October 21, 2021, and November 17, 2021. The public hearing was opened on August 25th, 2021, closed for comments on October 27, 2021, and closed for



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document submission on December 8<sup>th</sup>, 2021.

**Place:** Room M-1, Rondout Municipal Center, 1915-1925 Lucas Avenue, Cottekill, NY 12419

**Public Comment:** Documented in Transcribed Minutes of Marbletown ZBA Meetings conducted on 8/25/2021, 9/22/2021, 10/21/2021, and 11/17/21. The Public Hearing was closed for comments on 10/21/2021 and closed for documents on 12/8/2021.



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**Background:**

Duchess Farms Equestrian Community, LLC is the developer of a subdivision known as Duchess Farms Equestrian Community located on NYS highway 213 between High Falls, NY and Stone Ridge, NY. The subdivision designs were approved, for construction, by the Marbletown Planning Board in four phases between 2007 and 2017. The initial subdivision plan included 24 lots for residential development and three lots dedicated to both open space and an equestrian center. Through the final phase of Planning Board approval the subdivision plan was reduced in scope to a total of 19 lots for residential development and two lots dedicated to open space and the equestrian center.

The appellant representing Duchess Farms Equestrian Community LLC, Mike Warren, has held positions on the Town of Marbletown Town Board and Planning Board and was the Town Supervisor. These positions require a working knowledge of the codes of the Town of Marbletown.

The Duchess Farm Equestrian Community subdivision plats that were approved by the Town of Marbletown Planning Board were filed in the Ulster County Clerk's office as each phase of design was approved. The four sets of approved plats were filed in the Ulster County Clerk's Office as follows:

Phase	Planning Board Approval Date	Ulster County Clerk's Filing Date	Ulster County Records File Number
Phase I	March 14, 2007	April 26, 2007	#07-126
Phase II	March 25, 2010	March 29, 2010	#10-70
Phase III	April 13, 2011	May 26, 2011	#11-73
Phase IV	December 20, 2017	February 5, 2018	#18-13

Four Notices of Violation/Orders to Remedy, dated April 1, 2020, were issued to Duchess Farm Equestrian Community LLC by the Town of Marbletown Code Enforcement Officer. The Notices of Violation/Orders to Remedy cite violations of Town of Marbletown Code related to site improvements associated with the development.

The Notice of Intent to Appeal was issued to the Town of Marbletown Building Department on April 29, 2020 on behalf of the Appellant by Warren S. Replansky, Esq. The request was filed less





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than 30 days after the Notices of Violation/Orders to Remedy were issued as is required by Town of Marbletown Code §200-73-A. While the notice was issued in a timely manner the associated fee was not paid at that time. The review of this appeal was also delayed by an Executive Order issued by Governor Andrew Cuomo in the spring of 2020 temporarily staying legal proceedings in response to Covid-19. The Appellant was notified in a letter from Kevin P. Barry, Esq., on behalf of the Town of Marbletown, and dated July 22, 2021 that the continued failure to submit the required fee had triggered the Zoning Board of Appeals to remove the case from its docket. The letter further notified the Appellant that a fee and confirmation of intent to proceed with the appeal would need to be received by the Town by August 13, 2021 if the Appellant desired to proceed with their appeal. The fee and intent to proceed were received by the Town the following week and the completed application was referred to the Zoning Board of Appeals.



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**Findings of the ZBA upon review of Application #2021-01 Appeal**

**Notices of Violation:**

The Code Enforcement Officer issued four Notices of Violation/Orders to Remedy (Complaint numbers: 04022020A, 04022020B, 04022020C, and 04022020D) containing a total of eight specific violations on April 1, 2020 to Duchess Farms Equestrian Community, LLC as summarized below:

- A. Complaint # 04022020A: Two (2) violations of Chapter 169 of the Code of the Town of Marbletown (Subdivision of Land):
1. Failure to construct storm water management and other improvements as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office.
  2. Failure to construct private roadways with proper base, width, grade, and proper vertical and horizontal alignments as shown on the subdivision plats approved by the Planning Board for the Town of Marbletown, and filed in the Ulster County Clerk's Office.
- B. Complaint # 04022020B: Two (2) violations of the Code of the Town of Marbletown:
1. Failure to comply with the subdivision regulations of the Town contained in Chapter 169-44-I (Subdivision of Land-Streets) and Chapter A206-41 (Road Specifications) of the Town Code by failing to construct private roads pursuant to the rules, regulations and specifications therein and as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office.
  2. Failure to comply with the subdivision regulations of the Town contained in Chapter 169-50-D of the Town Code concerning common facilities protection, ownership and maintenance, by failing to establish a homeowners association as an incorporated not-for-profit corporation operating under recorded land agreements for the Property, and responsible for the operation and maintenance of the common land facilities as shown on subdivision plats, and further by failing to transfer title to all property under common ownership to the homeowners association as required by Chapter 169-50-D of the Code of the Town of Marbletown.



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C. Complaint # 04022020C: Three (3) violations of Chapter 167 of the Code of the Town of Marbletown (Stormwater Management and Erosion and Sediment Control):

1. Failure to comply with the storm water management regulations of the Town by failing to construct storm water management and other improvements as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office.
2. Failure to comply with the storm water management regulations of the Town by failing to maintain the storm water management improvements and other improvements as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office.
3. Failure to comply with the storm water regulations of the Town by prohibiting a right of entry by Town personnel for inspection of the storm water management improvements and private roadway improvements as required by Chapter 167-5-E of the Code of the Town of Marbletown.

D. Complaint # 04022020D: One (1) violations of Chapter 200-53 of the Code of the Town of Marbletown (Zoning) a violation pursuant to Chapter 200-90-A of the code of the Town of Marbletown:

1. Failure to comply with the zoning regulations for storm water management and erosion and sediment control of the Town, and by failing to construct storm water pollution prevention improvements and other improvements and as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office.

The Notices of Violation included an opportunity to cure, a deadline to cure, and outlined penalties for failure to cure the cited conditions. The Notices of Violation were based on multiple site inspections conducted in the months preceding the issuance of the violations. The site inspections included:

1. Peak Engineering issued an inspection report to the Code Enforcement Officer outlining the results of an inspection of the roads and stormwater improvements at Duchess Farms Equestrian Community. The report dated February 7, 2020 does not specify the inspection date, is four (4) pages in length, is signed by Scott Davis, P.E., and was submitted on letterhead.
2. On or about February 26, 2020 the Municipal Code Assistant, Shawn Marks, conducted an



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inspection of the site. Mr. Marks' inspection resulted in a written single page report on a document entitled "Inspection Results" that was dated February 26, 2020 but was not signed. The document was created in an electronic records system called Muncity utilized by the Town for documentation purposes. The site inspection also resulted in sixty-six (66) photographs of the site.

3. On or about February 27, 2020 Arthur Lapp, Jr., the Chief of the High Falls Fire Department, inspected the site at the request of the Code Enforcement Officer. Chief Lapp's inspection resulted in a written report of his findings. The report was a single typed paragraph with the Chief's name and title provided on a separate line below the paragraph. The report was not dated nor signed.

### **Zoning Board Review of Appellant's Grounds for Dismissal**

The Appellant's initial attorney, Warren S. Replansky, PC, submitted an initial set of arguments as the grounds for appeal with the Notice of Appeal on April 29, 2020. The list of arguments from Mr. Replansky includes eleven specific points. Subsequently, during the public hearing the Appellant was represented by another attorney, Kyle Barnett, Esq. with Van DeWater & Van DeWater LLP, who submitted additional arguments as the grounds for appeal of the Notices of Violation/Orders to Remedy. The list of arguments from Mr. Barnett includes seven specific points.

The Appellant's arguments for dismissal are provided below with the arguments submitted by Mr. Replansky provided in **dark orange** and cited as RGFD #\_\_\_\_. Similarly, the arguments submitted by Mr. Barnett are provided in **light blue** and cited as BGFD #\_\_\_\_.

The ZBA notes several discrepancies and facts that refute or support the appellant's grounds for dismissal. Immediately following each argument for dismissal the findings of the Zoning Board of Appeals related to that specific argument are provided in **bold**.

#### **RGFD #1**

**This subdivision was approved in four phases (I-IV) by the Town of Marbletown Planning Board in accordance with the Town's Subdivision Regulations. Prior to the approval of each phase, the private roads were inspected by the Town's engineers and approved by those engineers. The Planning Board's approvals of each phase of the subdivision constituted a confirmation that the private roads were, in fact, constructed in accordance with the plans and specifications, as set**





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forth in the subdivision plats as the same may have been modified by the Planning Board during the review and approval process.

The plats that were approved by the Town of Marbletown Planning Board were filed in the Ulster County Clerk's office as each phase of design was approved. The four sets of approved plats were filed in the Ulster County Clerk's Office under file numbers: #07-126 filed April 26, 2007, #10-70 filed March 29, 2010, #11-73 filed May 26, 2011, and #18-13 filed February 5, 2018.

When compared side by side some of the details within a particular phase deviate from the two sets of approved plats. It is apparent, that deviations from prior phases were approved in the drawings submitted for approval of a subsequent phase. As an example, Morgan Lane was denoted as a "Private Road" in the filed Phase I maps (#07-126) but modified to a "Private Drive" on the Phase II maps (#10-70). The Appellant, Mr. Warren, stated during the ZBA site visit on September 16, 2021 that this particular change was allowed due to a reduction of the number of lots serviced by the road, and as a result reduced the development requirements of the road. If the reduction in lots and subsequent change of Morgan Lane from a "Private Road" to a "Private Drive" was completed prior to the approval of the Phase I drawings it would have been reflected on the Phase I drawings. The fact that details of Phase I were changed for the Phase II approved drawings is evidence the roads were in fact not constructed in accordance with the plans and specifications, as set forth in the subdivision plats prior to each phase of approval. To the contrary, it is evident that site improvement development occurred subsequent to the phased plat approvals.

The Appellant also provided a copy of an inspection report from the Phase I site development as follows:

- The report is dated March 13, 2008, and was an inspection of Morgan Lane, which is part of Phase I of the subdivision. This report notes the road base as 16' wide, however the approved plans filed with the Ulster County Clerk on April 26, 2007 call for Morgan Lane to be 20' wide. The report further states that drainage swales and Stormwater Pond PE1 have not been started yet.

The inspection report was drafted almost a full year after Phase I of the subdivision was approved, and indicates the work in Phase I was underway at the time of the report and clearly not complete.

Further evidence of development work being performed after a phase of design was approved can be found in the Phase III and Phase IV site improvements which were not consistent with the approved drawings at the time of the Municipal Code Assistant's inspection on or about February 26, 2020 even though the Phase IV plat was filed with the Ulster County Clerk's Office two years prior on February 18, 2018.





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The Appellant's claim is further refuted by a statement filed on December 8, 2021 on behalf of the appellant by Mr. Barnett, Esq., acknowledging the site improvements were not complete at the time of inspection on or about February 26, 2020:

"The photographs purport to show the noncompliance of the constructed roadways within the development, but were taken before the construction of the roadways was completed. The photographs, taken during the inspection of the site on February 26, 2020, show stockpiles of topping near the roadway. After the inspection, this material was used to complete the construction of the roads."

The photos referred to above show sections of the subdivision site improvements for Phase III and Phase IV of the development.

**RGFD #2**

All roads within the subdivision have been constructed in accordance with the road standards applied to this subdivision by the planning Board during its approval process. All roads have been suitably improved for the safe passage of motor vehicles and emergency vehicles. These facts have been confirmed by inspections performed by the Town's engineers and, upon information and belief, other officials of the Town prior to the approval of each subdivision phase by the Planning Board.

As stated in the response to RGFD #1 above evidence exists that site development occurred subsequent to the approval of at least three phases of construction. In particular the condition of the Phase III and Phase IV roads at the time of the Municipal Code Assistant's inspection on or about February 26, 2020 indicates the roads had not been completed as evidenced by a lack of a topping course and a narrow travel lane.

The Appellant provided copies of multiple invoices for site inspections dated between March 2007 and August 2008. The Appellant also provided copies of two inspection reports as follows:

- The first report is dated March 13, 2008, and was an inspection of Morgan Lane, which is part of Phase I of the subdivision. The report was completed on a "Town of Marbletown Road Inspection" form and notes Doug Stevens, Michael Warren, Tony Jarvis, and Joe Mihm were in attendance. This report notes the road base as 16' wide, however the approved plans filed with the Ulster County Clerk on April 26, 2007 call for Morgan Lane to be 20' wide. The report also notes there are new plans dated October 16, 2006, which call for a shorter road. The report



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further states that drainage swales and Stormwater Pond PE1 have not been started yet.

- The second report is dated July 15, 2008, and was an inspection of the first 1,000' of Palomino Path, which is part of Phase II of the subdivision. The report was completed on a "Town of Marbletown Road Inspection" form and notes Doug Stevens, Michael Warren, and Joe Mihm were in attendance. This report notes that Stormwater Pond PE1 was not built to specification as per the October 16, 2006 plans. The report further notes "Michael reported that these had been changed." The report has a handwritten note at the bottom that states "\* Get Latest Plans."

The Appellant has not provided copies of reports that state the site improvements were completed in conformance with the approved plans for any phase of the development prior to the issuance of the April 1, 2020 Notices of Violation/Orders to Remedy, nor has the Appellant produced any other evidence to support the claim that inspection reports exist confirming the improvements had been constructed in accordance with the standards and engineering designs applied to this subdivision by the Planning Board during its approval process at the time the Notices of Violation/Orders to Remedy were issued.

The Appellant has provided a survey dated February 5, 2021 and titled "Road Width As Built Survey." There was no report accompanying the survey. The survey indicates the road is substantially within the right of way; however, the survey does show the edge of the road crosses out of the Right of Way in a couple locations. The Appellant also submitted an inspection report prepared by Michael North, PE, of North Engineers & Design Associates dated October 20, 2021 which is based on an inspection conducted on October 18, 2021 by Mr. North and an Assistant Engineer. The inspection was structured as a follow up to the February 7, 2020 Peak Engineering report and the As-Built Survey prepared by John Post. In summary the report indicates:

"The Duchess Farm roads appear, in my professional opinion, to be in substantial compliance with the approved design and the intent of the design as approved by the Marbletown Planning Board. The stormwater design, as installed, appears to be performing quite well. However, the pond in the vicinity of Palomino Path Station 10+ does not appear to be constructed in accordance with the plans. In my opinion, the approved plans show a poor design and does not fit well with into the site."

The North Engineers report acknowledges observing deviations in the stormwater and road improvements from the approved plans during their site inspection. Also of note, the North inspection was conducted approximately a year and a half after the initial site inspections, and after additional site improvement work was completed.

The Appellant's claim is further refuted by a statement filed on December 8, 2021 on behalf of the appellant by Mr. Barnett, Esq., acknowledging the site improvements were not complete at the time of



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inspection on or about February 26, 2020:

“The photographs purport to show the noncompliance of the constructed roadways within the development, but were taken before the construction of the roadways was completed. The photographs, taken during the inspection of the site on February 26, 2020, show stockpiles of topping near the roadway. After the inspection, this material was used to complete the construction of the roads.”

The photos referred to above show sections of the subdivision site improvements for Phase III and Phase IV of the development.

**RGFD #3**

The Subdivision Regulations of the Town of Marbletown provide, in relevant part, that subdivision bonds may be posted by the developer to ensure completion of the private roads and other infrastructure in amount and manner as set by the Planning Board, the Town’s engineers and the Town Board for all roads and other infrastructure. Alternatively, the Subdivision Code provides that the subdivision roads and other infrastructure may be installed prior to the Planning Board’s approval of the subdivision or phases of the subdivision in lieu of the requirement of a bond. In the instant case, the roads and other infrastructure was constructed by Duchess Farm and inspected and approved by the Town’s Engineer and other officials of the Town prior to the approval of each phase and, as a result, no bonds to guarantee the construction of the roads and infrastructure were required by the Planning Board in conjunction with the approval of this subdivision.

It is unclear why the Planning Board did not require a bond prior to signing the plat for each phase of development. As stated in the response to RGFD #1 and RGFD #2 above evidence exists that site development occurred after the approval of the phases of construction. The Planning Board Chair should have required a surety, per Town of Marbletown Code §169-36-A, or required all improvements be completed, per §169-36-B, before signing each plat. The Appellant has not provided evidence the site improvements were inspected, and subsequently approved by the Town Engineer and/or Town Highway Superintendent as required by Town Code §169-36-E. The Town and Appellant both provided evidence to demonstrate inspections of the site improvements had been conducted and deficiencies were noted in each inspection report relative to the installation of the road and stormwater improvements compared to the plans approved by the Town of Marbletown Planning Board.





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### RGFD #4

Even if bonding was required for the roads or other infrastructure for this subdivision, the Planning Board, the Town Board and the Town's engineers, CEO and other officials have failed to specify the amounts and manner of bonding required for this subdivision as required by the Town Code and §277(9) of the New York State Town Law.

In July 2007 Brinnier and Larios, PC prepared a public improvements bond estimate for the construction of Morgan Lane; however, no evidence was presented to indicate a surety was required for any phase of this subdivision as part of the Planning Board approval process.

### RGFD #5

The Chairman of the Planning Board signed each phase of the subdivision plat, after approval by the Planning Board, and the maps were duly filed in the Office of the Ulster County Clerk. In addition, four building permits have been issued by the Town's Building Inspector for residential structures within the subdivision and no issues concerning the construction of the roads or other infrastructures were raised by the Building Inspector prior to the issuance of those building permits and certificates of occupancy for the same.

No evidence was presented to indicate subdivision plats were not approved, signed, or properly filed. The four building permits for residential structures were issued and the structures were built on lot numbers 2, 7, 8, and 9 as identified on the Phase IV signed plat which was filed with the Ulster County Clerk's office on February 5, 2018 file #18-13. These structures were built on parcels developed during Phase I and Phase II of the development. All four of the structures were completed prior to the commencement of approvals for Phase IV. The Notices of Violation/Orders to Remedy do not purport there to have been any issues concerning the construction of the roads or other infrastructures at the time of the construction of these four residential structures. Regardless, a failure to previously issue citations does not preclude the Town's right to issue citations at a later date if the condition triggering the citation remains in effect.

### RGFD #6

The records of the subdivision approval for this project will demonstrate that all homeowner association and/or road maintenance requirements for this subdivision, if any, were approved prior to the Planning Board's approval of each phase of the subdivision by the then attorneys to



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the Town of Marbletown Planning Board and the applicant has complied, or substantially complied, with all of those requirements.

The Planning Board resolutions to approve each phase of the subdivision indicate the Appellant provided proof of Road Maintenance Agreements and CPS-7 documentation being submitted to the Attorney General Securities Bureau at the time of the Planning Board approvals. The Appellant provided the Zoning Board of Appeals with copies of executed Road Maintenance Agreements between Duchess Farms Equestrian Community LLC and the owners of Lot 2 and Lot 3 which were filed with the Ulster County Clerk's Office on July 31, 2009 as well as an executed Road Maintenance Agreement between Duchess Farms Equestrian Community LLC and the owner of Lot 8 which was filed with the Ulster County Clerks' Office on August 16, 2010. No other road maintenance agreements were presented to the Zoning Board of Appeals for consideration even though other lots within the subdivision have been sold by the developer. Single family residences were constructed and occupied on both Lot 7 and lot 9 prior to the 2018 approval of Phase IV; however, no evidence of a Road Maintenance Agreement was presented to the Zoning Board of Appeals for these lots.

The Appellant provided copies of a Certificate of Incorporation of Duchess Farm Homeowners Association Inc. which was executed on December 12, 2020, over eight months after the Notices of Violation/Orders to Remedy were issued.

**RGFD #7**

In the event that additional homeowner association and/or road maintenance documents may have been lawfully required by the Planning Board in conjunction with this subdivision, no time was specified in the subdivision approvals for compliance with those requirements and, given the fact that all of the lots within the subdivision have not, to date, been sold or conveyed to third parties, Duchess Farm is not in violation of those requirements.

Section 169-50-B-3-b of the Town of Marbletown Code states:

"Title to all common property shall be placed in the homeowners' association or definite and acceptable assurance shall be given that it automatically will be so placed within a reasonable period of time, in no instance more than one year from the initial occupancy of the first dwelling."

The first dwelling to be built in the Duchess Farm Equestrian Community is located at 17 Morgan Lane and was built in 2008, which triggered the requirement to create the HOA before the end of 2009,





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however as noted above in RGFD #6 the Duchess Farm Homeowner Association Inc. was not in existence on April 1, 2020, when the Notices of Violation/Orders to Remedy were issued. The HOA was ultimately created on December 12, 2020, over eleven years after it was supposed to have been created.

### RGFD #8

In the event it is alleged that the construction of roads and other infrastructure for the subdivision was required to be completed subsequent to the approval of each phase of the subdivision, there was no time period imposed by the Planning Board approvals for the completion of these requirements, and, as such, Duchess Farm is not in violation of any of these requirements.

Section 169-36-a of the Town of Marbletown Code relates to the requirement of performance sureties for subdivision development. While a surety was not required by the Planning Board for any of the phases of project approval the section speaks to the intent of the Town to limit the amount of time an applicant may be allowed to complete site improvements subsequent to the approval of their project. In pertinent part the statute states:

“A period of one year, or such other period as the Planning Board may determine appropriate, but not to exceed three years, shall be set forth in the bond and as a condition of the final plat approval within which required improvements must be completed.”

The intent of the Town Code is clear that applicants are expected to complete development work associated with each phase of a subdivision within one year by default, and a maximum of three years from the date of approval, may be approved by the planning board. Absent a specified timeline to complete site improvements for each phase of development the appellant is allowed one year by default to complete all site improvements from the date of Planning Board approval. The signature of the Chairman of the Planning Board on the plat for each phase constitutes design approval of that phase. Phase III was approved on April 13, 2011, and included site improvements from roughly station 8+50 to roughly station 11+40 on Palomino Path. Phase IV was approved on December 20, 2017, and included site improvements from roughly station 11+40 on Palomino Path to the cul-de-sac at the end of Bridal Path Lane. The letter submitted to the Zoning Board of Appeals dated December 8, 2021, by the Appellant’s attorney, Mr. Barnett, Esq., states in pertinent part:

“The photographs purport to show the noncompliance of the constructed roadways within the development, but were taken before the construction of the roadways was completed. The photographs, taken during the inspection of the site on February 26, 2020, show stockpiles of topping near the roadway. After the inspection, this material was used to complete the



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construction of the roads.”

The images taken during the site inspection of February 26, 2020, show the site improvements had been started, but not completed beyond station 8+50 on Palomino Path and all of Bridal Path Lane. The stockpile of material referenced above was located at roughly station 8+40 on Palomino Path. The site improvement work for Phase III on Palomino Path should have been completed one year from approval of that phase. The timeline to complete Phase III site improvements expired on April 13, 2012. The Notices of Violation/Orders to Remedy were issued eight years and eleven months after the Phase III plans were approved which is 7 years 11 months beyond the maximum prescribed timeframe for completion of site improvements for that phase of the development. The timeline to complete Phase IV site improvements expired on December 20, 2018. At the time the Notices of Violation/Orders to Remedy were issued the Phase IV improvements had exceeded the maximum prescribed timeframe for completion of site improvements for that phase of development.

### RGFD #9

The CEO is not vested with any authority in the Town Code to enforce the conditions of subdivision approval, as opposed to separate and distinct violations of the Zoning Code and, as such, the CEO is without the requisite authority to file these Notices of Violation/Orders to Remedy.

The Town of Marbletown Code clearly vests the Code Enforcement Officer with the authority to enforce all chapters of the Town Code, and the chapter related to subdivisions establishes the standards for enforcement of that chapter.

Section 99-3-A of the Town of Marbletown Code relates to the duties of the Code Enforcement Officer. In pertinent part the statute states:

“The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code, this chapter of the Town Code, and any other chapters of this Code.”

Chapter 169-10-A of the Town of Marbletown code relates to enforcement of the subdivision regulations of the town. The section states:

“Penalties. Any person who violates any provision of these subdivision regulations shall be subject to the penalties set forth in §268 of the New York State Town Law and any amendments thereto. For the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of these regulations shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week’s continued





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violations shall constitute a separate additional violation.”

**RGFD #10**

Any inspections and observations made by the Code Enforcement Officer on or about February 26<sup>th</sup>, as stated in the Notices of Violation/Orders to Remedy was made by the Code Enforcement Officer without express approval of Duchess Farm or pursuant to a valid search warrant and, as such, those inspections constitute a criminal trespass onto Duchess Farm’ property and any documentation or information received or gathered by the CEO during those visits is inadmissible in this, or any other, proceeding with regard to alleged violations of the Town Code.

New York State Town Law §138 defines the roles and responsibilities of a Code Enforcement Officer. The law states in pertinent part:

“Such inspector shall have charge of the enforcement of such codes, ordinances, rules and regulations of the town and of the zoning ordinance of the town, if there be one, and for such purposes such inspector, and his assistants, if any, shall have the right to enter and inspect at any time any building, structure or premises and to perform any other act necessary for the enforcement of such codes, ordinances, rules or regulations, or any of them.”

State law clearly authorizes the Code Enforcement Officer and his assistants to enter upon a premises for the purpose of conducting inspections at any time without reference to any obligation to obtain property owner permission or a search warrant.

The Appellant’s claim is further refuted by a statement filed on December 8, 2021, on behalf of the Appellant by his attorney, Mr. Barnett, Esq., acknowledging the site improvements were not complete at the time of inspection on or about February 26, 2020:

“The photographs purport to show the noncompliance of the constructed roadways within the development, but were taken before the construction of the roadways was completed. The photographs, taken during the inspection of the site on February 26, 2020, show stockpiles of topping near the roadway. After the inspection, this material was used to complete the construction of the roads.”

Section 169-36-E-4 of the Town of Marbletown Code pertains to the inspection of subdivision improvements and states in pertinent part:



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"The Town Engineer or other duly designated official may inspect required improvements during construction to assure their satisfactory completion prior to commencement of construction or development of the approved final plat."

Additionally, in an affidavit of Shawn Marks conducted on March 12, 2020, he stated the inspection was conducted at the invitation of property owners within the subdivision.

**RGFD #11**

The Notices of Violations/Order to Remedy are fatally defective and insufficient as a matter of law in that they fail to specify with particularity the deficiencies in construction or the acts which constitute a violation of the Town's subdivision approvals and/or regulations and further fail to particularize with specificity the remedial action required by Duchess Farm to satisfy the alleged violations.

Section 99-15-A-1 of the Town of Marbletown Code relates to the requirements of Compliance Orders issued by the Code Enforcement Officer. In pertinent part the statute states:

- 1) The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this chapter. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a compliance order as a notice of such violation. The compliance order shall:
  - a) Be in writing;
  - b) Be dated and signed by the Code Enforcement Officer;
  - c) Specify the condition or activity that violates the Uniform Code, the Energy Code, or this chapter;
  - d) Specify the provision or provisions of the Uniform Code, the Energy Code, or this chapter which is/are violated by the specified condition or activity;
  - e) Specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance;
  - f) Direct that compliance be achieved within the specified period of time; and



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- g) State that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time.

Subsections c & d of §99-15-A-1 are relevant to the Appellant's claim in that they require the Code Enforcement Officer to specify the condition or activity triggering the violation as well as the provision of the code that is being violated. The Appellant claims the Notices of Violation/Orders to Remedy are fatally defective and insufficient as a matter of law for failing to particularize the deficiencies of construction and the provisions within the code that were violated. While the Code calls for both of these matters to be specified it does not require them to be particularized. The Code does not explicitly require the Code Enforcement Officer to name the particular subsections of the code which were allegedly violated nor does it explicitly require the Code Enforcement Officer to provide detailed descriptions of the alleged violations.

The Appellant also claims the Code Enforcement Officer should specify the remedial steps necessary to correct the violation, however there is no provision within §99-15-A-1 requiring the Code Enforcement Officer to provide specific steps to remedy the violations.

The relevant sections of each Notice of Violation/Order to Remedy are provided below with assessment:

**Complaint # 04022020A:** Two (2) violations of Chapter 169 of the Code of the Town of Marbletown (Subdivision of Land):

1. Failure to construct storm water management and other improvements as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office.
2. Failure to construct private roadways with proper base, width, grade, and proper vertical and horizontal alignments as shown on the subdivision plats approved by the Planning Board for the Town of Marbletown, and filed in the Ulster County Clerk's Office.

This complaint specifies the chapter of the Town of Marbletown Code that was found in violation and specifies two shortcomings of the subdivision construction.

**Complaint # 04022020B:** Two (2) violations of the Code of the Town of Marbletown:

1. Failure to comply with the subdivision regulations of the Town contained in Chapter 169-44-I (Subdivision of Land-Streets) and Chapter A206-41 (Road Specifications) of the Town Code by failing to construct private roads pursuant to the rules, regulations and specifications therein and as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office.
2. Failure to comply with the subdivision regulations of the Town contained in Chapter 169-50-D of the Town Code concerning common facilities protection, ownership and maintenance, by failing to establish a homeowners association as an incorporated not-for-profit corporation operating under recorded land agreements for the Property, and responsible for the operation and maintenance of the common land facilities as shown on subdivision plats,





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and further by failing to transfer title to all property under common ownership to the homeowners association as required by Chapter 169-50-D of the Code of the Town of Marbletown.

This complaint specifies the chapters and subsections of the Town of Marbletown Code that were found in violation and specifies one shortcoming of the subdivision construction. It also specifies a failure to establish an HOA and failure to transfer the property under common ownership to the HOA. The second violation in this complaint specifies a subsection of the code that does not exist. This appears to be a typographical error and based on the detail provided within the description of the condition that violates the Code the correct reference should be §169-50-B.

**Complaint # 04022020C:** Three (3) violations of Chapter 167 of the Code of the Town of Marbletown (Stormwater Management and Erosion and Sediment Control):

1. Failure to comply with the storm water management regulations of the Town by failing to construct storm water management and other improvements as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office.
2. Failure to comply with the storm water management regulations of the Town by failing to maintain the storm water management improvements and other improvements as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office.
3. Failure to comply with the storm water regulations of the Town by prohibiting a right of entry by Town personnel for inspection of the storm water management improvements and private roadway improvements as required by Chapter 167-5-E of the Code of the Town of Marbletown.

This complaint specifies the chapter of the Town of Marbletown Code that was found in violation and specifies one shortcoming of the subdivision construction, one shortcoming of the maintenance of common facilities within the subdivision, and one shortcoming to comply with town law by denying access to a code enforcement officer.

**Complaint # 04022020D:** One (1) violation of Chapter 200-53 of the Code of the Town of Marbletown (Zoning) a violation pursuant to Chapter 200-90-A of the code of the Town of Marbletown:

1. Failure to comply with the zoning regulations for storm water management and erosion and sediment control of the Town, and by failing to construct storm water pollution prevention improvements and other improvements and as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office.

This complaint specifies the chapter of the Town of Marbletown Code that was found in violation and



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specifies a shortcoming of the subdivision construction related to stormwater management facilities.

Each Notice of Violation/Order to Remedy meets the minimum requirements as defined in the Town of Marbletown Code §99-15-A-1. While additional detail may be provided it is not required by the Town's Code.

**BGFD #1**

The Code Enforcement Officer lacks authority to enforce subdivision regulations.

The Code Enforcement Officer (CEO) has no authority under the Marbletown Code (Code) to enforce the conditions of subdivision approval. In particular, the CEO has no authority to interpret such conditions on the basis of reading an approved and filed subdivision plat. The CEO is not enforcing any express conditions for the approvals, since there were none, but is assuming the existence of conditions based on the maps that the Planning Board approved. For reasons not yet explained, the Town Planning Board is unable to produce critical sections of the file regarding its multi-year review and approval of this phased project. The CEO has authority to enforce only those provisions of the Code where such authority is expressly granted.

Section 5-3 of the Marbletown Code, states that the "Code Enforcement Officer" is:

*The Town employee who is charged by such law with enforcing Chapter 200, Zoning, Chapter 115, Flood Damage Prevention, and any other zoning, construction, building or fire prevention law, ordinance, rule or regulation, of or effective in the Town of Marbletown, under which laws and ordinances said employee has been referred to as the Zoning Inspector, the Building Inspector, the Fire Code Inspector, the local administrator or any other name...*

The Town's subdivision regulations are found in Chapter 169 of the Code. Chapter 169, providing the procedures and standards for subdivision approval by the Marbletown Planning Board is not listed among those to be enforced by the CEO. It is not a zoning regulation, a flood damage prevention regulation, zoning, construction, building or fire prevention law, ordinance, rule or regulation and does not refer to the CEO or any inspector or local administrator with enforcement power.

The Town Code expressly limits the authority of the CEO to the enforcement of those laws or ordinances which refer to an enforcement officer of some description. Chapter 169 does not, either expressly or implicitly, refer to any enforcement officer of any description other than the





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Town Engineer. Rather, Chapter 169 merely provides that a violation of its provisions is a misdemeanor and that all Town officers will deny applications for "building and zoning permits, subdivision, special permits, site plans, use or area variances, or zoning amendments" where a violation of the subdivision regulations exist.

Chapter 169-38 of the Marbletown Code states, with regards to ensuring that improvements have been constructed as approved, that:

If the *Town Engineer* shall find, upon inspection of improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, he shall so report to the Town Board and Planning Board. The Town Board shall then notify the subdivider and, if necessary, the bonding company, and take all necessary steps to preserve the Town's rights under the bond. No plat shall be approved by the Planning Board as long as the subdivider is in default on a previously approved plat.

The conspicuous absence of reference to the CEO in Chapter 169 evidences the Town's intention to keep authority over subdivisions with the Planning Board. Nothing in the chapter indicates that the Planning Board delegated its authority to the CEO. Therefore, any enforcement proceeding to be brought, must be brought by the Planning Board or the Town Board.

**Section 99-3-A of the Town of Marbletown Code relates to the duties of the Code Enforcement Officer. In pertinent part the statute states:**

**"The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code, this chapter of the Town Code, and any other chapters of this Code."**

**Chapter 169-10-A of the Town of Marbletown Code relates to enforcement of the subdivision regulations of the town. The section states:**

**"Penalties. Any person who violates any provision of these subdivision regulations shall be subject to the penalties set forth in §268 of the New York State Town Law and any amendments thereto. For the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of these regulations shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violations shall constitute a separate additional violation."**

**The Town of Marbletown Code clearly vests the Code Enforcement Officer with the authority to enforce all chapters of the Town Code, and the chapter related to subdivisions establishes the standards for**



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enforcement of that chapter.

BGFD #2

The Zoning Board of Appeals must dismiss the Notices of Violation/Orders to Remedy since they are beyond the jurisdiction of the Code Enforcement Officer.

The duties and powers of the Zoning Board of Appeals (ZBA) are specifically set forth in the New York Town Law. The Town Law empowers the ZBA with appellate jurisdiction. It has the power to hear and decide appeals from decisions of those officials charged with the administration and enforcement of the zoning ordinance or local law.

Town Law Section 267-b(1) outlines those powers. It provides that:

The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official *charged with the enforcement of such ordinance...*

The ZBA, therefore, has the same and no greater authority than the CEO whose determination is under review. If the CEO lacked the power to make the determination appealed from, the ZBA must make such an order as *ought* to have been made by the CEO. Here, the CEO ought to have recognized the limits of his authority to enforce the subdivision regulations and ought not have issued the Notices of Violation/ Orders to Remedy that are on appeal. The ZBA must dismiss the Notices of Violation/Orders to Remedy as an unlawful usurpation of the jurisdiction of the Planning Board.

**As established in the response to BGFD #1 above Section 99-3-A of the Town of Marbletown Code empowers the Code Enforcement Officer to enforce all chapters of the Town of Marbletown Code. Therefore, pursuant to Town Law §267-a-4 the Zoning Board of Appeals is authorized to hear an appeal of the Notices of Violation/Orders to Remedy issued by the Code Enforcement Officer to Duchess Farm Equestrian Community LLC.**





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BGFD #3

The notices of violation do not meet the minimal due process requirements.

**Complaint No.: 047022020A**

The first Notice of Violation/Order to Remedy alleges that, on February 26, 2020, the CEO observed "two (2) separate violations of Chapter 169 of the Code of the Town of Marbletown (Subdivision of Land)."

The first violation observed was a "failure to construct storm water management and other improvements as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office." The Notice, however, does not describe what the CEO observed on February 26, 2020, or how it deviates from what was required by the filed plats. The Notice provides no indication of what condition must be cured to bring the storm water management facilities into compliance and the demand to remedy the defect is so undefined as to be meaningless.

The second violation cited related to the construction of three (3) different roadways providing access to eight (8) specified lots. The roadways were: Warren Way, Palomino Path, and Bridle Path and the deviation was the "failure to construct private roadways with proper base, width, grade and proper vertical and horizontal alignments as shown on the subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office."

The second violation in the Notice fails to identify or measure any alleged deviation from the requirements of the approved subdivision plat and in its hyperbolic overbreadth, the second specification of a violation is as uninformative as the first. It does not specify which roads or what locations on any particular road were constructed without the required base, width, grade or alignment. Taking the reported violation literally would require a complete reconstruction of three roadways already serving residents in the community.

The Order to Remedy required corrective measures to be completed by May 15, 2020, and provided, in the alternative, that the developer post a performance bond, cash, or irrevocable letter of credit to cover the cost of bringing the roads and stormwater management system into compliance. The amount of required surety was not specified.

**Complaint No.: 047022020B**

Item one of the second Notice of Violation/Order to Remedy is a reworking of item two in the first Notice of Violation. Item one repeats the assertion that the roadways deviate from the approved





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and filed subdivision plat, but instead of relying solely on alleged deviations from the plats, the CEO alleges that the same conditions also violate Chapter 169-44-I and Chapter A206-41 of the Town Code. Again, the Notice fails to specify what features of the roadways deviate from the requirements of the Code, the extent to which the approved subdivision plat modified Code requirements, or how the Code relates to what was observed in the field during the February 26, 2020 site visit. The Notice lacks sufficient detail to provide any understanding of the nature and extent of the alleged violation and how it might be cured.

Item two of the second Notice of Violation has nothing to do with what was observed during the CEO's site visit. Rather, it asserts that the Planning Board's approval of the subdivision plat without requiring creation of a Homeowners Association (HOA) to hold and maintain the common roads and stormwater management facilities violated Chapter 169-50-D.

The Town Code has no Chapter 169-50-D. The basis for the CEO's assertion that a HOA was required is not identified. The Planning Board's approval resolution for the plat depicting Phase II of the development shows that only the developer's submission of a Road Maintenance Agreement (RMA) and CPS-7 documentation to the Attorney General's Securities Bureau was required for purposes of the Planning Board's review. It notes that the developer satisfied those requirements.

The CEO lacks any authority to pass judgment of the approval given by the Planning Board or to, intentionally and retroactively, add new conditions to that approval. Where appropriate, the remedy for any alleged violation of the requirements of the Planning Board's approval available to the CEO is not to bring an enforcement proceeding, but to deny any request for permits and, if challenged, defend the basis and justification for the permit denial before the ZBA and the courts.

**Complaint No.: 047022020C**

The third Notice of Violation/Order to Remedy alleges three (3) violations, each having to do with stormwater management improvement. The first allegation is of the failure to construct stormwater improvements and other improvements as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk's Office; the second is the failure to maintain such stormwater improvements; and the third is for allegedly prohibiting a right of entry by Town personnel in order to conduct inspections of the stormwater management improvements.

The first two violations appear redundant of the storm water violations alleged in the Notices previously discussed and the third violation is nonsensical. The CEO asserts, on the basis of an inspection made on February 26, 2020, that the developer has prohibited inspection. It is not clear



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when the developer prevented or prohibited an inspection, but it is clear that such prohibition did not stop the inspection, and that Town personnel had access sufficient to conduct their inspection. This is demonstrated from the face of the Notice.

**Complaint No.: 047022020D**

The fourth and final Notice of Violation/Order to Remedy alleges one (1) violation in the developer's failure to comply with Chapter 200-53, that provision requires filing of a sufficient Stormwater Pollution Prevention Plan (SWPPP) as a condition for the Planning Board's review of proposed land development activity. The Notice also alleges the developer's failure to construct stormwater management improvements that are substantially consistent with the approved and filed subdivision plat.

The Notice, again, does not identify what, if any, deviation there is between what was actually constructed and what was approved by the Planning Board or between what was constructed and what Chapter 200-53 of the Town Code requires. The Notice is unclear as to whether the CEO is contending that the approvals *granted* by the Planning Board were improper and that he is seeking to use this enforcement proceeding to supplement and add new conditions to those approvals, or whether the developer has failed to comply with the conditions of the approvals as granted.

The cited provision, contained in Chapter 200-53, establishes a condition for the Planning Board's review and approval of a subdivision plat and describes what standard the Planning Board should apply in its review of submissions. Here, the Planning Board *has* approved the plat, thus indicating its satisfaction that the developer has complied with the requirements of Chapter 200-53. If the CEO disagrees with the approval that was given and contends that it did not satisfy Chapter 200-53, that is a matter that should have been taken up with the Planning Board not used as the basis for charging an alleged violation by the developer. Both the developer and the CEO are bound to comply with the approvals as granted.

Again, as stated above, if the CEO determines that what was constructed deviates from the approvals given by the Planning Board, the remedy available is to deny any requests for further required permits and to justify those denials before the ZBA and the courts.

**The majority of the arguments outlined in this section were addressed in the response to RGFD #11 above from the original Appellant submission regarding a lack of specificity in the Notices of Violation/Orders to Remedy.**

**The argument regarding HOA requirements pursuant to Complaint No.: 047022020B was addressed in response to RGFD #7 above from the original appellant submission.**





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The argument regarding failure to allow the Code Enforcement Officer access to perform inspections pursuant to Complaint No.: 047022020C being nonsensical is refuted by a letter from the Appellant's other attorney, Warren Replansky, Esq., dated March 26, 2020. The letter was addressed to the Town's attorneys and states in pertinent part:

"Additionally, as I am sure you are aware, the property is posted as private, and no representatives, officials or employees of the Town may enter upon my client's property without my client's written permission."

As outlined in RGFD #10 above, New York State's Town Law and the Marbletown Code both confer representatives of the Town with the right to enter upon a premises for the purpose of conducting inspections without reference to obtaining property owner permission prior to entry. The letter dated March 26, 2020 is a clear attempt to impede the Code Enforcement Officer's right to inspect.

Regarding the Appellant's argument that the Code Enforcement Officer issued the Notices of Violation/Orders to Remedy in an effort to add conditions to the determination of the Planning Board granting authorization for Duchess Farms Equestrian Community LLC., there is nothing within the Notices of Violation/Orders to Remedy that suggest this is the intent of the Code Enforcement Officer. As drafted the Notices of Violation/Orders to Remedy cite: inconsistencies between the site improvement conditions as installed when compared to the plans that were approved by the Planning Board, a failure to maintain the improvements, a failure to create the HOA and transfer the property under common ownership to the HOA, and prohibiting the right of entry by Town Personnel for the inspection of storm water management improvements. Each of the items cited in the Notices of Violation/Orders to Remedy refer to failures to conform to the plans as approved by the Planning Board, or a violation of another Town Code without suggestion to modify the Planning Board's decisions.

The one item that could be interpreted to suggest an additional condition to those established by the Planning Board is the option for the Appellant to post a surety within the timeframe to remedy as an alternative to correcting the violations within that same timeframe. The Town of Marbletown Code does not empower the Code Enforcement Officer to offer an alternative to achieving compliance when issuing Notices of Violation/Orders to Remedy. Therefore, offering an option to secure a surety naming the Town within the specified compliance timeframe as an alternative to correcting all violations within the specified compliance timeframe is not a viable option.

BGFD #4

[The Notices of Violation lack factual support.](#)





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All Notices of Violation/Orders to Remedy are dated April 1, 2020, and purport to be based on observations made by the CEO during a site visit on February 26, 2020. Details about the visit are unknown. The CEO has provided no information about his site visit, whether he made it alone or in the company of others, and there is no contemporaneous documentation provided, or apparently available, describing the scope and nature of the CEO's inspection or memorializing what conditions were observed on that date. The Notices speak generally to the entire project, stormwater management improvements, and internal roadways. There is no specification of particular problems at identified locations, nor any measurements that may speak to the significance of any alleged deviations between what was approved and what was built.

The CEO, in the Notices of Violation, does refer to improvements shown on subdivision plats approved by the Planning Board and on file with the Ulster County Clerk. This was a phased development, however, and there are three (3) plats approved by the Planning Board and filed with the Ulster County Clerk's Office. The CEO does not identify which of the filed plats is being referenced. The references in the Notices of Violation and the description of the alleged violations are so broad and ill-defined that it is not possible to identify what deviation the CEO is noting, its significance, or how it could be remedied. If the information being referenced and relied on by the CEO was identified in some fashion. The only identification being provided, however, is that the alleged violations and the information supporting them existed when the site visit occurred on February 26, 2020.

Instead of providing the particular information that was relied on in support of the April 1, 2020 Notices, sometime prior to May 12, 2021, the CEO engaged Peak Engineering, PLLC (Peak) to prepare a survey and assessment of the developments roadways and storm water management improvements as a justification for the earlier determinations of violation. The CEO contacted Peak to conduct the survey and limited the survey's scope to whether the roadways and storm water management facilities on site were constructed in compliance with the approved and filed subdivision plats "at the transition from and including Phase III and Phase IV" of the Duchess Farm and Equestrian Community development. The Peak survey did not attempt to identify or define any violations of the Town's Code. It merely identified *any* observed deviation from the approved plans and made no assessment of the significance, if any, of that deviation.

The observations described in the Peak Engineering Report were based on a single site visit which took place more than a year *after* the Notices of Violation were issued. It provides a mere listing of purported deviations between what was built and what was approved in the filed subdivision plans and provides no engineering assessment of the significance of any identified deviations. Additionally, there is no way to determine whether the supposed deviations noted by Peak are the same deviations referenced by the CEO in his April 1, 2020 Notices or whether these are new





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and additional issues to be considered and, if necessary, resolved. The only alleged violations and deviations from approved plans that are relevant in the matter before *this* Board, however, are those that can reasonably be identified as the basis for the CEO's April 1, 2020 Notices of Violation. There is no identification of what the CEO referenced or relied on during the February 26, 2020 visit.

The July 2, 2021 Peak Engineering Site Assessment Report cannot provide a retrospective justification for the April 1, 2020 Notices of Violation. The report did not exist when the CEO issued the Notices, and the Notices clearly address some matters Peak Engineering was unable to assess.

Peak acknowledges that its report was prepared without an as-built survey or coring of the roadways and it was unable to assess whether the roadways were, in fact, constructed with proper base, width, grade and proper vertical and horizontal alignments, as alleged in the April 1, 2020 Notice of Violation issued by the CEO. Peak has no information regarding how the base of the roadways were constructed and no survey or observed field monuments that would allow it to assess whether the vertical and horizontal alignment of the roadways were proper. Peak acknowledged that minor deviations and field changes in the roadway construction might have little significance in assessing the site's as-built construction.

Finally, Peak Engineering should be prohibited from representing the Town with regard to any enforcement action brought against the developer or this project due to a conflict of interest. The developer was a client of Peak Engineering during the development and construction of the subdivision project in question. During that time, Peak performed substantial engineering work, specifically with regards to the septic system constructed on the site. Additionally, Scott Davis has testified, in a sworn deposition on July 23, 2021, that he was not involved in the preparation of the report. Rather, he explained that the report was prepared entirely by Nadine Carney, an employee who does not have an engineering degree, and that he was merely involved in reviewing the report. As such, there are doubts as to the objectivity and accuracy of the report itself.

The Notices of Violation before the ZBA merely express the CEO's conclusion that what was built either deviated from approved plans or that the approved plans themselves deviated from standards and requirements imposed by the Town Code. The CEO, however, does not have the authority to question and look behind the approvals granted by the Planning Board and is not empowered to enforce strict and unvarying compliance with the conditions of the Planning Board's approvals.

**The public hearing revealed the Notices of Violation/Orders to Remedy were generated as a result of a site inspection report generated by Peak Engineering on or about February 7, 2020, a site inspection**



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conducted by the Municipal Code Assistant on or about February 26, 2020, and a site inspection conducted by the High Falls Fire Department Chief on or about February 27, 2020. All of these inspections predate the Notices of Violation/Orders to Remedy. The inspection report prepared by Peak Engineering in July 2021 was the result of a follow up inspection to document items from the February 7, 2020 that had been corrected, and were clearly not the basis of the Notices of Violation/Orders to Remedy.

At the time of the February 7, 2020 site inspection Peak Engineering was approved as one of the Town's engineers. The approval was by resolution #1-2020 of the Town Board on January 7, 2020. Scott Davis, of Peak Engineering, stated in the public hearing he did provide design consultant services for the Board of Health drawings for Phase IV of the Duchess Farm Equestrian Community subdivision; however, he did not provide any design consultant services for any phase of the road or stormwater portions of the project. Mr. Davis further stated at the public hearing that the design work had been completed prior to the Phase IV Planning Board approval in December of 2017 and he had been paid in full for all services rendered. The scope of the design work Mr. Davis completed in 2017 is entirely different from the scope of work associated with the inspection report that became the basis for the Notices of Violation/Orders to Remedy.

Mr. Davis delegated some or all of the site inspection and report preparation duties to one of his staff. However, Mr. Davis was the signatory certifying the contents of the site inspection report, a practice common in many professions, including engineering.

#### BGFD #5

The Developer was not required to post bonds

The subdivision regulations of the Town of Marbletown provide that subdivision bonds may be posted by the developer in order to ensure completion of private roads and other infrastructure in an amount and manner set by the Planning Board, the Town's engineer, and the Town Board. In the alternative, the Subdivision Code provides that the private roads and other infrastructure may be installed prior to the Planning Board's approval of the subdivision, or phases of the subdivision, in lieu of posting a bond.

That was the case here, the Developer constructed the roads and other infrastructure prior to the Planning Board's approval of each phase and what was constructed was inspected and approved by Town officials. As such, no bonds were required by the Planning Board to guarantee the





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construction.

Even if bonding was required for the roads or other infrastructure within the Duchess Farms subdivision, the Planning Board, Town Board, and the Town's engineers or other representatives never specified the amount and manner of bonding as required pursuant to New York Town Law.

Town Law Section 277(9) provides as follows:

**Performance bond or other security.** (a) Furnishing of performance bond or other security. As an alternative to the installation of infrastructure and improvements, as above provided, *prior to planning board approval*, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the planning board or a town department designated by the planning board to make such estimate, where such departmental estimate is deemed acceptable by the planning board, shall be furnished to the town by the owner.

Here, the Marbletown Planning Board required *no* bonding prior to issuing approvals for each phase of the subdivision between 2007 and 2018. The Planning Board had authority and opportunity to require bonding prior to issuing approvals at each of the four phases over those thirteen years and, because approvals were issued, necessarily determined that bonding was not required for this project.

The CEO, by requiring the posting of a bond as an alternative to the curing of the violations, assumes to exercise the power that is conferred on the Planning Board.

**It is unclear why the Planning Board did not require a bond or other surety prior to signing the plats. As stated in the response to RGFD #1 and RGFD #2 above, evidence exists that site development occurred subsequent to the Planning Board approvals. The Planning Board should have required a surety, per Town of Marbletown Code §169-36-A, or required all improvements be completed, per Town of Marbletown Code §169-36-B, before the Planning Board Chair signed the plats.**

**The Appellant, Mr. Warren, asserted during the public hearing and during the site visit of September 16, 2021 that construction inspections were conducted and completed site improvements were approved by the Planning Board; however, the only evidence presented to corroborate these assertions were associated with Phase I and Phase II of the project. Receipts for inspections during Phase I were provided, and only two inspection reports, one for Phase I and one for Phase II, were provided to the Zoning Board of Appeals. Both site inspection reports noted deficiencies in the on-site conditions relative to the approved plans. Otherwise, no further evidence was provided to support the claim that the required site inspections were completed and resulted in approval of conditions on-site. Therefore,**



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it is unknown if the site improvements were properly installed and approved as is required by Town of Marbletown Code.

Penalties for Offenses of the Town of Marbletown Code are defined in §99-15. In particular, the details required to be included in a Compliance Order, relative to the remediation of a violation, are defined in §99-15-a-1 of the Town of Marbletown Code in subsections (e) and (f) which state:

- e) Specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance;
- f) Direct that compliance be achieved within the specified period of time;

As noted in the response to BGFD #3 the Town of Marbletown Code does not empower the Code Enforcement Officer to offer an alternative to achieving compliance when issuing Notices of Violation/Orders to Remedy. Therefore, offering an option to secure a surety naming the Town within the specified compliance timeframe as an alternative to correcting all violations within the specified compliance timeframe is not a viable option.

**BGFD #6**

The photographs presented by the Code Enforcement Officer, which were requested at the October 21, 2021, meeting, but not yet provided. The photographs purport to show the noncompliance of the constructed roadways within the development, but were taken before the construction of the roadways was completed. The photographs, taken during the inspection of the site on February 26, 2020, show stockpiles of topping near the roadway. After the inspection, this material was used to complete the construction of the roads.

As such, the inspection conducted on February 26, 2020, and the photographs showing the conditions of the roads at that time are not an accurate representation of the completed roadways and should not be used to justify a finding that the roadways violated Chapter 169-44-I and Chapter A206-41 of the Town Code.

As stated in the response to RGFD #8 above the sections of roadway (and other site improvements) for Phase IV of the subdivision, Bridal Path Lane, were still within the maximum allowed timeframe for completion at the time of the site inspections, which were the basis of the Notices of Violation/Orders to Remedy. At that same time however the sections of roadway (and other site improvements) for Phase III of the subdivision, Palomino Path, had exceeded the maximum allowed timeframe for completion by many years.





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**BGFD #7**

Shawn Marks, the individual who conducted the February 26, 2020, inspection that resulting in the findings of violation, is not a Code Enforcement Officer for the Town of Marbletown nor an authorized inspector. Therefore, he was without authority to conduct such inspection.

Marbletown Code Chapter 99-3 outlines the duties and qualifications of the Code Enforcement Officer. The section makes it the exclusive duty of the CEO to “conduct construction inspections” and to “review and investigate complaints.” The Chapter goes on to authorize the appointment of inspectors “to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfilment of the duties conferred upon the Code Enforcement Officer by this chapter.” However, pursuant to the Code, any such appointment must be made by resolution of the Town Board and any such inspectors must obtain the proper training required of the Code Enforcement Officer.

The Marbletown website currently identifies Mr. Marks as holding the positions of “municipal code assistant” and “planning/zoning secretary.” He is not identified as a Code Enforcement Officer or inspector. Therefore, unless the Town Board formally resolved to appoint Mr. Marks as an inspector prior to February 26, 2020, he was wholly without the authority to conduct such inspection under the Marbletown Code. Any violation resultant from his unauthorized inspection should be found invalid.

**At the time of the site inspection Shawn Marks was a Municipal Code Assistant. Mr. Marks was appointed to the position of Provisional Municipal Code Assistant by resolution #89-2019 at the November 7, 2019, Town Board Meeting. Mr. Marks is included in a listing of Building Department Staff in resolution #4-2020 of the Town Board on January 7, 2020, and is listed as the Municipal Code Assistant (note “Provisional” has been removed from his title). In the same listing David Allen is listed as the MCO (Municipal Code Officer) and Bldg. Insp. (Building Inspector). While Mr. Marks’s title does not identify him as a “Code Enforcement Officer” he clearly reports to the individual responsible for code enforcement who may delegate inspection responsibilities per New York State Town Law §138, which defines the roles and responsibilities of a Code Enforcement Officer and his/her assistants. The law states in pertinent part:**

**“Such inspector shall have charge of the enforcement of such codes, ordinances, rules and regulations of the town and of the zoning ordinance of the town, if there be one, and for such purposes such inspector, and his assistants, if any, shall have the right to enter and inspect at any time any building, structure or premises and to perform any other act necessary for the enforcement of such codes, ordinances, rules or regulations, or any of them.”**





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In an affidavit dated March 12, 2020, Mr. Marks stated in pertinent part:

*"I am employed as a Municipal Code Official with the Town of Marbletown, New York. My duties include performing inspections and determining compliance with the Town Code and subdivision approvals on record."*

While his title does not include the term "inspector" it is clear he is expected to conduct inspections in the performance of his duties in support of the Code Enforcement Officer.



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### **Zoning Board's Overall Findings**

This appeal is of four Notices of Violation/Orders to Remedy, which include a total of eight citations and impacts multiple parcels consisting of the lots within the subdivision that have not been sold by the developer. Each aspect of the Notices of Violation/Orders to Remedy including each specific citation was evaluated independently prior to arriving at the final determination.

One of the parcels cited in the Notices of Violation/Orders to Remedy is incorrectly listed and appears to be a typographical error. A parcel owned by Carolyn M. Warren and William H. Warren, SBL# 69.2-5-22.110, is located at 7 Warren Way, which is not part of the Duchess Farm Equestrian Community, but is listed as being on Palomino Path in the Notices of Violation/Orders to Remedy. The parcel that should have been cited is SBL# 69.2-5-64.110 and is located at 28 Palomino Path.

Based on the evidence presented to the Board it is readily apparent that when the Notices of Violation/Orders to Remedy were issued there existed conditions on the Duchess Farm Equestrian Community subdivision site that deviated from the subdivision plans approved by the Marbletown Planning Board. The Phase I and Phase II sections of the site appeared to have been substantially complete; however, the improvements had not been maintained in a manner consistent with the approved plans and as such the improvements to the site deviated from the approved site plans. Similarly, there were inconsistencies between the Phase III improvements and the approved plans for that phase. The most significant variation was in the condition of Palomino Path in this section of the subdivision, which appeared to have been partially completed (a road foundation course appears to have been placed, but the wearing course did not appear to have been placed). Phase IV improvements had not been completed and were within the maximum allowed timeframe for completion; however, some of the installed infrastructure was not consistent with the approved plans. The evidence also demonstrated that the HOA had not been created and therefore the common lands also had not been transferred to the HOA as required by Town Code.

The Notices of Violation/Orders to Remedy provide general references to the sections of code which were violated, and the conditions observed on-site which had triggered the violations; an average person with the ability to read site plans can reasonably be expected to recognize deviations from the approved plans and the actual conditions on the site. It is further reasonable to expect that individuals engaged in subdivision development would have the ability to read and understand site plans or have an appropriately skilled individual employed to represent them in



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the development process. A brief review of the site improvements during the Zoning Board's site visit in September 2021 with the approved plans in hand, revealed an extensive list of deviations of the conditions of the site from the approved plans. A few examples of items observed during the site visit that deviated from the approved plans include:

- a. A stormwater retention pond with an island in the middle when the plans showed no island (improper installation or design change)
- b. A lack of reserve ponds around the same stormwater retention pond (improper installation or design change)
- c. Road crossing culverts installed without outlet devices (improper installation)
- d. Road crossing culverts with inadequate coverage over the pipe (improper installation or inadequate maintenance)
- e. Roadbeds that were soft underfoot (improper material, improper installation, or inadequate material depth and structure)
- f. Undersized culverts relative to those specified (improper material)
- g. Sections of road shown on the drawing that do not exist on the site (design change)
- h. A stormwater management feature shown on one of the building lots that does not exist on the site (improper installation or design change)
- i. Lack of properly installed stormwater outlet control structure (improper installation or design change)
- j. Lack of a guiderail shown on the site plan (design change)

While the list is not all inclusive it is provided to illustrate items that were readily obvious to, and noted by, members of the ZBA on their first visit to the site, over a year after the Notices of Violation/Orders to Remedy were issued.

The Appellant, Mr. Warren, has a working knowledge of the approved site plans as evidenced by his responses to questions asked at the site visit of September 16, 2021. When asked about details of the road and stormwater improvements on the site that deviated from those shown on the site plans approved by the Town of Marbletown Planning Board Mr. Warren was quick to explain the deviations as changes to the design without first reviewing the designs as noted on the drawings. This level of familiarity with the plans and knowledge of changes in design speak to the Appellant's ability to review the Notices of Violation/Orders to Remedy and understand the cited violations as drafted. In addition, the Notices of Violation/Orders to Remedy all included instructions to contact the Building Department Offices upon receipt of the Notices of Violation/Orders to Remedy, which would provide an opportunity to request clarity if the violations were not clearly understood by the Appellant.





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When the ZBA conducted a site visit the Appellant, Mr. Warren, was asked about deviations of the actual road and stormwater improvements on the site relative to those shown on the approved plans. Mr. Warren explained the deviations were due to changes that were made during construction and approved by the Planning Board. This statement was also made by Mr. Warren during the public hearing when questioned about the variance between site conditions and the approved plans. The changes do not appear to have been subsequently approved by the Planning Board and although proof of this assertion was requested of the Appellant by the Zoning Board of Appeals during the public hearing on September 22, 2021, no evidence was provided to support the claim.

Subsequent to the April 2020 issuance of the Notices of Violation/Orders to Remedy the Appellant claims to have completed all site improvement work within the subdivision. No evidence was presented to the Zoning Board of Appeals that a representative of the Town had inspected and approved the installation process or the final site improvements per Town Code.

Section 169-36-E-5 of the Town of Marbletown Code provides clarity on the ultimate responsibility of the developer to properly install site improvements. The statute states:

“Subdivider responsible for compliance. Whether or not the Town Engineer or other duly designated official carries out inspection of required improvements during construction, the subdivider shall not in any way be relieved of his responsibilities to comply with this chapter.”

Section 169-37 of the Town of Marbletown Code relates to changes to the design of required improvements. The statute states:

“If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the Town Engineer and the Planning Board that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Planning Board may authorize modifications, provided these modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board.”

These two sections of the Code clearly place the responsibility on the Appellant to develop the site consistent with the approved engineering designs and provide a mechanism to seek approval



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for modifications to the approved design. Based on a lack of evidence to support the Appellant’s claim that design changes had been approved by the Planning Board the subdivision should have been developed and maintained in accordance with the site plans as approved by the Planning Board and filed with the Ulster County Clerk as summarized below.

Phase	Planning Board Approval Date	Ulster County Clerk’s Filing Date	Ulster County Records File Number
Phase I	March 14, 2007	April 26, 2007	#07-126
Phase II	March 25, 2010	March 29, 2010	#10-70
Phase III	April 13, 2011	May 26, 2011	#11-73
Phase IV	December 20, 2017	February 5, 2018	#18-13

The evidence presented to the Zoning Board of Appeals demonstrates there was sufficient grounds for the Town of Marbletown Code Enforcement Officer to issue Notices of Violation/Orders to Remedy to Duchess Farm Equestrian Community LLC.



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**Zoning Board's Determination**

Adopted February 2, 2022

**RESOLVED,**

The Town of Marbletown Zoning Board of Appeals grants an Appeal to Duchess Farms Equestrian Community, LLC of 35 Warren Way, High Falls, NY 12440, also known as the following SBL's: 69.2-5-22.122, 69.2-5-64.500, 69.2-5-22.121, 69.2-5-22.110, 69.2-5-22.126, 69.2-5-22.129, and 69.2-5-22.123 of: the Notices of Violation numbered: 04022020A, 04022020B, 04022020C, 04022020D, which were all issued on 4/1/2020.

**The Application for Appeal of the Code Enforcement Officer's Notice of Violation number 04022020A is Approved and the Notice of Violation shall be AMENDED as follows;**

- **Strike the paragraph outlining the required corrective measures and replace the paragraph with the following language:**
  - **"The following corrective measures shall be taken no later than May 15, 2020 or penalties may be assessed: Construct all road and storm water improvements to specifications shown on the subdivision plats approved by the Town of Marbletown Planning Board."**
- **Strike SBL# 69.2-5-22.110 from the Notice of Violation and replace the struck text with SBL# 69.2-5-64.110.**
- **All other components of the Code Enforcement Officer's Notice of Violation number 04022020A are to remain as drafted and issued on April 1, 2020;**

**The Application for Appeal of the Code Enforcement Officer's Notice of Violation number 04022020B is Approved and the Notice of Violation shall be AMENDED as follows;**

- **Strike the paragraph outlining the required corrective measures and replace the paragraph with the following language:**
  - **"The following corrective measures shall be taken no later than May 15, 2020 or penalties may be assessed: Construct all road and storm water improvements to specifications shown on the subdivision plats approved by the Town of Marbletown Planning Board. Establish a homeowners association as an incorporated not-for-profit corporation operating under recorded land agreements for the Property, and responsible for the operation and maintenance of the common land facilities as shown on the**





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subdivision plats, and transfer title to all property under common ownership to the homeowners association.”

- Strike SBL# 69.2-5-22.110 from the Notice of Violation and replace the struck text with SBL# 69.2-5-64.110.
- Remove the references to §169-50-D of the Town of Marbletown Code and replace the deleted text with references to §169-50-B of the Town of Marbletown Code.
- All other components of the Code Enforcement Officer’s Notice of Violation number 04022020B are to remain as drafted and issued on April 1, 2020;

The Application for Appeal of the Code Enforcement Officer’s Notice of Violation number 04022020C is Approved and the Notice of Violation shall be AMENDED as follows;

- Strike the paragraph outlining the required corrective measures and replace the paragraph with the following language:
  - “The following corrective measures shall be taken no later than May 15, 2020 or penalties may be assessed: Construct all storm water management improvements to specifications shown on the approved subdivision plats. Perform maintenance to restore completed stormwater management and erosion control facilities to a condition consistent with the specifications shown on the subdivision plats approved by the Town of Marbletown Planning Board.”
- Strike SBL# 69.2-5-22.110 from the Notice of Violation and replace the struck text with SBL# 69.2-5-64.110.
- All other components of the Code Enforcement Officer’s Notice of Violation number 04022020C are to remain as drafted and issued on April 1, 2020;

The Application for Appeal of the Code Enforcement Officer’s Notice of Violation number 04022020D is Approved and the Notice of Violation shall be AMENDED as follows;

- Strike the paragraph outlining the required corrective measures and replace the paragraph with the following language:
  - “The following corrective measures shall be taken no later than May 15, 2020 or penalties may be assessed: Construct all storm water management improvements, erosion control improvements, sediment control improvements, and other improvements to specifications shown on the



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subdivision plats approved by the Town of Marbletown Planning Board.”

- **Strike SBL# 69.2-5-22.110 from the Notice of Violation and replace the struck text with SBL# 69.2-5-64.110.**
- **All other components of the Code Enforcement Officer’s Notice of Violation number 04022020D are to remain as drafted and issued on April 1, 2020;**

The ZBA determines the Code Enforcement Officers Notices of Violation/Orders to Remedy numbered 04022020A, 04022020B, 04022020C, 04022020D are valid with a noted amended language and shall remain in full force and effect.

**Draft resolution was prepared, read, discussed, and amended by the Zoning Board of Appeals.**

**Motion to adopt the resolution by: Brendan Masterson**

**Seconded by: Zachary Bowman**

**Adopted 02/02/2022 by the following vote:**

**Kathleen Grambling – Aye**  
**Egidio Tinti – Aye**  
**Zachary Bowman – Aye**  
**Thomas Smiley, Chair – Aye**  
**Brendan Masterson (Alternate Member) – Aye**

**Andrew Nilsen – Recused from Case**

**Ayes: 5      Nays: 0      Absent: 0**

**Clarifications to the Zoning Board’s Determination, meeting held on February 7<sup>th</sup>, 2022 as follows:**

The attorney for the Zoning Board of Appeals’ raised a procedural question during the February 2, 2022 meeting regarding the determination that was adopted for Appeal – 2021-01. Where on February 2, 2022 the Zoning Board of Appeals voted unanimously supporting its determination on Appeal-2021-01.



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Upon consultation with Council from New York State's Department of State's Land Use Division it was advised additional clarification would be desirable and appropriate. This document is to provide further clarification to the determination, which will be incorporated and appended to Appeal – 2021-01.

The Board's review of the appeal was delayed by a variety of factors including: an Executive Order issued by Governor Andrew Cuomo in the spring of 2020 temporarily staying legal proceedings in response to Covid-19, delayed submission of the required application fee (which is not required to be submitted with the request for appeal), additionally the Appellant changed attorneys, and the new attorney initially was unaware of the Violation Notices. The Appellant was notified in a letter from Kevin P. Barry, Esq., on behalf of the Town of Marbletown, and dated July 22, 2021 that the continued failure to submit the required application fee had triggered the Zoning Board of Appeals to remove the case from its docket. The letter further notified the Appellant that a fee and confirmation of intent to proceed with the appeal would need to be received by the Town by August 13, 2021 if the Appellant desired to proceed with their appeal. The fee and intent to proceed were received by the Town the following week and the completed application was referred to the Zoning Board of Appeals.

The findings of the Zoning Board of Appeals are based on a record consisting of:

- The records, which were the Code Enforcement Officer's basis for the Notices of Violation, submitted to the Zoning Board of Appeals by the Code Enforcement Officer.
- The evidence presented by the Appellant during the public hearing from August 25, 2021 through December 8, 2021
- The evidence presented by the Code Enforcement Officer during the public hearing from August 25, 2021 through December 8, 2021
- The evidence presented by the public during the public hearing from August 25, 2021 through December 8, 2021
- Publicly available documents and records
- The observations of members of the Zoning Board of appeals on the site inspection of September 16, 2021

**Clarifications to the Zoning Board's Determination follows:**

**For the Appeal**

The Zoning Board of Appeals has determined that the Application for Appeal initiated on April 29, 2020 by Warren Replansky, Esq on behalf of Duchess Farm Equestrian Community LLC, is accepted. The Board finds the application for appeal was submitted in a timely manner, the submission meets the requirements of a request for appeal, and the Appellant has standing.





**Town of Marbletown  
Zoning Board of Appeals  
PO Box 217, Stone Ridge, NY 12484  
(845) 687-7500 Ext. 171  
Email: [planning@marbletown.net](mailto:planning@marbletown.net)**

**The Town of Marbletown Zoning Board of Appeals finds the Appeal is accepted as submitted.**

**Motion to adopt the resolution by: Brendan Masterson**

**Seconded by: Zachary Bowman**

**Adopted 02/07/2022 by the following vote:**

**Kathleen Grambling – Aye**

**Egidio Tinti – Aye**

**Zachary Bowman – Aye**

**Thomas Smiley, Chair – Aye**

**Brendan Masterson (Alternate Member) – Aye**

**Andrew Nilsen – Recused from Case**

**Ayes: 5      Nays:      0      Absent:**

**For the Individual Violations Cited within the Notices of Violation**

**In the matter of the first violation cited in Complaint Number 04022020A**

**The violation reads as follows:**

“Failure to construct storm water management and other improvements as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk’s Office.”

**The Zoning Board of Appeals finds, based on the available information included in the record, that the Code Enforcement Officer’s Finding is upheld as originally issued.**

**This Resolution was prepared, read, and discussed by the Zoning Board of Appeals.**

**Motion to adopt the resolution by: Kathleen Grambling**



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**Seconded by: Egidio Tinti**

**Adopted 02/07/2022 by the following vote:**

**Kathleen Grambling – Aye**  
**Egidio Tinti – Aye**  
**Zachary Bowman – Aye**  
**Thomas Smiley, Chair – Aye**  
**Brendan Masterson (Alternate Member) – Aye**

**Andrew Nilsen – Recused from Case**

**Ayes: 5      Nays:      0      Absent:**

**In the matter of the second violation cited in Complaint Number 04022020A**

**The violation reads as follows:**

“Failure to construct private roadways with proper base, width, grade, and proper vertical and horizontal alignments as shown on the subdivision plats approved by the Planning Board for the Town of Marbletown, and filed in the Ulster County Clerk’s Office.”

**The Zoning Board of Appeals finds, based on the available information included in the record, that the Code Enforcement Officer’s Finding is upheld as originally issued.**

**This Resolution was prepared, read, and discussed by the Zoning Board of Appeals.**

**Motion to adopt the resolution by: Zachary Bowman**

**Seconded by: Brendan Masterson**

**Adopted 02/07/2022 by the following vote:**

**Kathleen Grambling – Aye**  
**Egidio Tinti – Aye**



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**Zachary Bowman – Aye  
Thomas Smiley, Chair – Aye  
Brendan Masterson (Alternate Member) – Aye**

**Andrew Nilsen – Recused from Case**

**Ayes: 5      Nays:            0      Absent:**

**In the matter of the first violation cited in Complaint Number 04022020B**

**The violation reads as follows:**

“Failure to comply with the subdivision regulations of the Town contained in Chapter 169-44-I (Subdivision of Land-Streets) and Chapter A206-41 (Road Specifications) of the Town Code by failing to construct private roads pursuant to the rules, regulations and specifications therein and as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk’s Office.”

**The Zoning Board of Appeals finds, based on the available information included in the record, that the Code Enforcement Officer’s Finding is upheld as originally issued.**

**This Resolution was prepared, read, and discussed by the Zoning Board of Appeals.**

**Motion to adopt the resolution by: Zachary Bowman**

**Seconded by: Kathleen Grambling**

**Adopted 02/07/2022 by the following vote:**

**Kathleen Grambling – Aye  
Egidio Tinti – Aye  
Zachary Bowman – Aye  
Thomas Smiley, Chair – Aye  
Brendan Masterson (Alternate Member) – Aye**





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Andrew Nilsen – Recused from Case

Ayes: 5      Nays:      0      Absent:

**In the matter of the second violation cited in Complaint Number 04022020B**

**The original violation reads as follows:**

“Failure to comply with the subdivision regulations of the Town contained in Chapter 169-50-D of the Town Code concerning common facilities protection, ownership and maintenance, by failing to establish a homeowners association as an incorporated not-for-profit corporation operating under recorded land agreements for the Property, and responsible for the operation and maintenance of the common land facilities as shown on subdivision plats, and further by failing to transfer title to all property under common ownership to the homeowners association as required by Chapter 169-50-D of the Code of the Town of Marbletown.”

**This specific violation identified a section of code that does not exist. Therefore, the reference to the section of The Town of Marbletown Code “169-50-D” in the violation is not upheld. However, based on the language in the violation, the Board’s interpretation is that the intention of the Code Enforcement Officer was to cite Chapter 169-50-B of the Town of Marbletown Code. The amended violation shall read as follows:**

“Failure to comply with the subdivision regulations of the Town contained in Chapter 169-50-B of the Town Code concerning common facilities protection, ownership and maintenance, by failing to establish a homeowners association as an incorporated not-for-profit corporation operating under recorded land agreements for the Property, and responsible for the operation and maintenance of the common land facilities as shown on subdivision plats, and further by failing to transfer title to all property under common ownership to the homeowners association as required by Chapter 169-50-B of the Code of the Town of Marbletown.”

**The Zoning Board of Appeals finds, based on the available information included in the record, the Code Enforcement Officer’s Finding is upheld with modification as amended.**



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**This Resolution was prepared, read, discussed, and amended by the Zoning Board of Appeals.**

**Motion to adopt the resolution by: Egidio Tinti**

**Seconded by: Zachary Bowman**

**Adopted 02/07/2022 by the following vote:**

**Kathleen Grambling – Aye**

**Egidio Tinti – Aye**

**Zachary Bowman – Aye**

**Thomas Smiley, Chair – Aye**

**Brendan Masterson (Alternate Member) – Aye**

**Andrew Nilsen – Recused from Case**

**Ayes: 5      Nays:      0      Absent:**

**In the matter of the first violation cited in Complaint Number 04022020C**

**The violation reads as follows:**

“Failure to comply with the storm water management regulations of the Town by failing to construct storm water management and other improvements as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk’s Office.”

**The Zoning Board of Appeals finds, based on the available information included in the record, the Code Enforcement Officer’s Finding is upheld as originally issued.**

**This Resolution was prepared, read, and discussed by the Zoning Board of Appeals.**

**Motion to adopt the resolution by: Kathleen Grambling**



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**Seconded by: Zachary Bowman**

**Adopted 02/07/2022 by the following vote:**

**Kathleen Grambling – Aye  
Egidio Tinti – Aye  
Zachary Bowman – Aye  
Thomas Smiley, Chair – Aye  
Brendan Masterson (Alternate Member) – Aye**

**Andrew Nilsen – Recused from Case**

**Ayes: 5      Nays:            0      Absent:**

**In the matter of the second violation cited in Complaint Number 04022020C**

**The violation reads as follows:**

“Failure to comply with the storm water management regulations of the Town by failing to maintain the storm water management improvements and other improvements as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk’s Office.”

**The Zoning Board of Appeals finds, based on the available information included in the record, the Code Enforcement Officer’s Finding is upheld as originally issued.**

**This Resolution was prepared, read, and discussed by the Zoning Board of Appeals.**

**Motion to adopt the resolution by: Zachary Bowman**

**Seconded by: Brendan Masterson**

**Adopted 02/07/2022 by the following vote:**





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**Kathleen Grambling – Aye  
Egidio Tinti – Aye  
Zachary Bowman – Aye  
Thomas Smiley, Chair – Aye  
Brendan Masterson (Alternate Member) – Aye**

**Andrew Nilsen – Recused from Case**

**Ayes: 5      Nays:            0      Absent:**

**In the matter of the third violation cited in Complaint Number 04022020C**

**The violation reads as follows:**

“Failure to comply with the storm water regulations of the Town by prohibiting a right of entry by Town personnel for inspection of the storm water management improvements and private roadway improvements as required by Chapter 167-5-E of the Code of the Town of Marbletown.”

**The Zoning Board of Appeals finds, based on the available information included in the record, the Code Enforcement Officer’s Finding is upheld as originally issued.**

**This Resolution was prepared, read, and discussed by the Zoning Board of Appeals.**

**Motion to adopt the resolution by: Egidio Tinti**

**Seconded by: Brendan Masterson**

**Adopted 02/07/2022 by the following vote:**

**Kathleen Grambling – Aye  
Egidio Tinti – Aye  
Zachary Bowman – Nay  
Thomas Smiley, Chair – Aye  
Brendan Masterson (Alternate Member) – Aye**



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**Andrew Nilsen – Recused from Case**

**Ayes: 4      Nays:            1      Absent:**

**In the matter of the first violation cited in Complaint Number 04022020D**

**The violation reads as follows:**

“Failure to comply with the zoning regulations for storm water management and erosion and sediment control of the Town, and by failing to construct storm water pollution prevention improvements and other improvements and as shown on subdivision plats approved by the Planning Board for the Town of Marbletown and filed in the Ulster County Clerk’s Office.”

**The Zoning Board of Appeals finds, based on the available information included in the record, the Code Enforcement Officer’s Finding is upheld as originally issued.**

**This Resolution was prepared, read, and discussed by the Zoning Board of Appeals.**

**Motion to adopt the resolution by: Zachary Bowman**

**Seconded by: Kathleen Grambling**

**Adopted 02/07/2022 by the following vote:**

**Kathleen Grambling – Aye**  
**Egidio Tinti – Aye**  
**Zachary Bowman – Aye**  
**Thomas Smiley, Chair – Aye**  
**Brendan Masterson (Alternate Member) – Aye**

**Andrew Nilsen – Recused from Case**



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Ayes: 5      Nays:            0      Absent:

**For the Notices of Violation Overall**

**In the matter of Complaint Number 04022020A**

- 1. The original violation applies to seven parcels with the following SBLs: S/B/L: 69.2-5-22.122 (Palomino Path), S/B/L: 69.2-5-64.500 (Warren Way), S/B/L: 69.2-5-22.121, 69.2-5-22.110 (Palomino Path), S/B/L: 69.2-5-22.126 (Bridle Path Lane), S/B/L: 69.2-5-22.129 (Bridle Path Lane), and S/B/L: 69.2-5-22.123 (Palomino Path). Six of the listed parcels were owned by **Duchess Farm Equestrian Community LLC (the Appellant)** at the time the Notice of Violation/Order to Remedy was issued. The seventh parcel (SBL 69.2-5-22.110) was not owned by the Appellant at that time, and therefore should not be included in the Notice of Violation/Order to Remedy. There is a seventh parcel (SBL 69.2-5-64.110) that is part of the subdivision that was owned by the Appellant at the time, and was not listed in the Notice of Violation/Order to Remedy.**

**The reference in the Notice of Violation to SBL 69.2-5-22.110 is not upheld and based on the information provided to the Board; the Board’s interpretation is the intention of the Code Enforcement Officer was to cite SBL 69.2-5-64.110 instead. The list of parcels to which the Notice of Violation shall apply shall be amended to read as follows:**

“S/B/L: 69.2-5-22.122 (Palomino Path), S/B/L: 69.2-5-64.500 (Warren Way), S/B/L: 69.2-5-22.121 (Palomino Path), 69.2-5-64.110 (Palomino Path), S/B/L: 69.2-5-22.126 (Bridle Path Lane), S/B/L: 69.2-5-22.129 (Bridle Path Lane), and S/B/L: 69.2-5-22.123 (Palomino Path)”

- 2. The paragraph outlining corrective measures includes an option to secure a surety naming the Town within the specified compliance timeframe as an alternative to correcting all violations within the specified compliance timeframe. The Notice of Violation reads in pertinent part as follows:**

“The following corrective measures should be taken no later than May 15, 2020 or penalties may be assessed: Construct all improvements to specifications shown on the approved subdivision plats or post a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guaranties





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satisfactory completion of all of the aforesaid improvements and names the Town of Marbletown as beneficiary. The security shall be in an amount necessary to insure completion of the aforesaid improvements as determined by the Town.”

**The reference in the Notice of Violation allowing a surety as an alternative to correcting all violations is not upheld. However, based on the information provided to the Board; the provision in the Notice of Violation outlining corrective measures as follows is found to be appropriate:**

“The following corrective measures should be taken no later than May 15, 2020 or penalties may be assessed: Construct all road and storm water improvements to specifications shown on the subdivision plats approved by the Town of Marbletown Planning Board.”

**The Zoning Board of Appeals finds, based on the available information included in the Record, the Code Enforcement Officer’s finding is upheld in regard to the citation of seven parcels, and is upheld and amended to correct the misstated S/B/L number.**

**Further, the Zoning Board of Appeals finds, based on the available information included in the Record, the Code Enforcement Officer’s finding is upheld in regard to requiring timely completion of the construction of improvements. However, it is the ZBA’s determination that under these circumstances the offer of a bonding option is outside of the CEO’s authority, and therefore, the Code Enforcement Officer’s finding is upheld and amended to correct the overreach of authority.**

**This Resolution was prepared, read, discussed, and amended by the Zoning Board of Appeals.**

**Motion to adopt the resolution by: Egidio Tinti**

**Seconded by: Kathleen Grambling**

**Adopted 02/07/2022 by the following vote:**

**Kathleen Grambling – Aye**

**Egidio Tinti – Aye**

**Zachary Bowman –Aye**



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Thomas Smiley, Chair – Aye  
Brendan Masterson (Alternate Member) – Aye

Andrew Nilsen – Recused from Case

Ayes: 5      Nays:            0      Absent:

**In the matter of Complaint Number 04022020B**

- 1. The original violation applies to seven parcels with the following SBLs: S/B/L: 69.2-5-22.122 (Palomino Path), S/B/L: 69.2-5-64.500 (Warren Way), S/B/L: 69.2-5-22.121, 69.2-5-22.110 (Palomino Path), S/B/L: 69.2-5-22.126 (Bridle Path Lane), S/B/L: 69.2-5-22.129 (Bridle Path Lane), and S/B/L: 69.2-5-22.123 (Palomino Path). Six of the listed parcels were owned by Duches Farm Equestrian Community LLC (the Appellant) at the time the Notice of Violation/Order to Remedy was issued. The seventh parcel (SBL 69.2-5-22.110) was not owned by the Appellant at that time, and therefore should not be included in the Notice of Violation/Order to Remedy. There is a seventh parcel (SBL 69.2-5-64.110) that is part of the subdivision that was owned by the Appellant at the time, and was not listed in the Notice of Violation/Order to Remedy.**

**The reference in the Notice of Violation to SBL 69.2-5-22.110 is not upheld and based on the information provided to the Board; the Board’s interpretation is the intention of the Code Enforcement Officer was to cite SBL 69.2-5-64.110 instead. The list of parcels to which the Notice of Violation shall apply shall be amended to read as follows:**

**“S/B/L: 69.2-5-22.122 (Palomino Path), S/B/L: 69.2-5-64.500 (Warren Way), S/B/L: 69.2-5-22.121 (Palomino Path), 69.2-5-64.110 (Palomino Path), S/B/L: 69.2-5-22.126 (Bridle Path Lane), S/B/L: 69.2-5-22.129 (Bridle Path Lane), and S/B/L: 69.2-5-22.123 (Palomino Path)”**

- 2. The paragraph outlining corrective measures includes an option to secure a surety naming the Town within the specified compliance timeframe as an alternative to correcting all violations within the specified compliance timeframe. The Notice of Violation reads in pertinent part as follows:**



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“The following corrective measures should be taken no later than May 15, 2020 or penalties may be assessed: Construct all improvements to specifications shown on the approved subdivision plats or post a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guaranties satisfactory completion of all of the aforesaid improvements and names the Town of Marbletown as beneficiary. The security shall be in an amount necessary to insure completion of the aforesaid improvements as determined by the Town. Establish homeowners association and transfer title to real property constituting common land facilities to said homeowners association”

**The reference in the Notice of Violation allowing a surety as an alternative to correcting all violations is not upheld. However, based on the information provided to the Board; the provision in the Notice of Violation outlining corrective measures as follows is found to be appropriate:**

“The following corrective measures shall be taken no later than May 15, 2020 or penalties may be assessed: Construct all road and storm water improvements to specifications shown on the subdivision plats approved by the Town of Marbletown Planning Board. Establish a homeowners association as an incorporated not-for-profit corporation operating under recorded land agreements for the Property, and responsible for the operation and maintenance of the common land facilities as shown on the subdivision plats, and transfer title to all property under common ownership to the homeowners association.”

**The Zoning Board of Appeals finds, based on the available information included in the Record, the Code Enforcement Officer’s finding is upheld in regard to the citation of seven parcels, and is upheld and amended to correct the misstated S/B/L number.**

**Further, the Zoning Board of Appeals finds, based on the available information included in the Record, the Code Enforcement Officer’s finding is upheld in regard to requiring timely completion of the construction of improvements, the timely creation of a Home Owner’s Association, and the timely transfer of common land facilities to the HOA. However, it is the ZBA’s determination that under these circumstances the offer of a bonding option is outside of the CEO’s authority, and therefore, the Code Enforcement Officer’s finding is upheld and amended to correct the overreach of authority.**

**This Resolution was prepared, read, discussed, and amended by the Zoning Board of Appeals.**





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**Motion to adopt the resolution by: Zachary Bowman**

**Seconded by: Kathleen Grambling**

**Adopted 02/07/2022 by the following vote:**

**Kathleen Grambling – Aye**  
**Egidio Tinti – Aye**  
**Zachary Bowman – Aye**  
**Thomas Smiley, Chair – Aye**  
**Brendan Masterson (Alternate Member) – Aye**

**Andrew Nilsen – Recused from Case**

**Ayes: 5      Nays:            0      Absent:**

**In the matter of Complaint Number 04022020C**

- 1. The original violation applies to seven parcels with the following SBLs: S/B/L: 69.2-5-22.122 (Palomino Path), S/B/L: 69.2-5-64.500 (Warren Way), S/B/L: 69.2-5-22.121, 69.2-5-22.110 (Palomino Path), S/B/L: 69.2-5-22.126 (Bridle Path Lane), S/B/L: 69.2-5-22.129 (Bridle Path Lane), and S/B/L: 69.2-5-22.123 (Palomino Path). Six of the listed parcels were owned by Duches Farm Equestrian Community LLC (the Appellant) at the time the Notice of Violation/Order to Remedy was issued. The seventh parcel (SBL 69.2-5-22.110) was not owned by the Appellant at that time, and therefore should not be included in the Notice of Violation/Order to Remedy. There is a seventh parcel (SBL 69.2-5-64.110) that is part of the subdivision that was owned by the Appellant at the time, and was not listed in the Notice of Violation/Order to Remedy.**

**The reference in the Notice of Violation to SBL 69.2-5-22.110 is not upheld and based on the information provided to the Board; the Board's interpretation is the intention of the Code Enforcement Officer was to cite SBL 69.2-5-64.110 instead. The list of parcels to which the Notice of Violation shall apply shall be amended to read as follows:**



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“S/B/L: 69.2-5-22.122 (Palomino Path), S/B/L: 69.2-5-64.500 (Warren Way), S/B/L: 69.2-5-22.121 (Palomino Path), 69.2-5-64.110 (Palomino Path), S/B/L: 69.2-5-22.126 (Bridle Path Lane), S/B/L: 69.2-5-22.129 (Bridle Path Lane), and S/B/L: 69.2-5-22.123 (Palomino Path)”

- 2. The paragraph outlining corrective measures includes an option to secure a surety naming the Town within the specified compliance timeframe as an alternative to correcting all violations within the specified compliance timeframe. The Notice of Violation reads in pertinent part as follows:**

“The following corrective measures should be taken no later than May 15, 2020 or penalties may be assessed: Construct all improvements to specifications shown on the approved subdivision plats or post a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guaranties satisfactory completion of all of the aforesaid improvements and names the Town of Marbletown as beneficiary. The security shall be in an amount necessary to insure completion of the aforesaid improvements as determined by the Town.”

**The reference in the Notice of Violation allowing a surety as an alternative to correcting all violations is not upheld. However, based on the information provided to the Board; the provision in the Notice of Violation outlining corrective measures as follows is found to be appropriate:**

“The following corrective measures shall be taken no later than May 15, 2020 or penalties may be assessed: Construct all storm water management improvements to specifications shown on the approved subdivision plats. Perform maintenance to restore completed stormwater management and erosion control facilities to a condition consistent with the specifications shown on the subdivision plats approved by the Town of Marbletown Planning Board.”

**The Zoning Board of Appeals finds, based on the available information included in the Record, the Code Enforcement Officer’s finding is upheld in regard to the citation of seven parcels, and is upheld and amended to correct the misstated S/B/L number.**

**Further, the Zoning Board of Appeals finds, based on the available information included in the Record, the Code Enforcement Officer’s finding is upheld in regard to requiring timely completion of the construction of stormwater improvements and the timely maintenance of the stormwater improvements. However, it is the ZBA’s determination that under these circumstances the offer of a bonding option is outside of the CEO’s authority, and therefore,**



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the Code Enforcement Officer’s finding is upheld and amended to correct the overreach of authority.

This Resolution was prepared, read, discussed, and amended by the Zoning Board of Appeals.

Motion to adopt the resolution by: Egidio Tinti

Seconded by: Kathleen Grambling

Adopted 02/07/2022 by the following vote:

- Kathleen Grambling – Aye
- Egidio Tinti – Aye
- Zachary Bowman – Aye
- Thomas Smiley, Chair – Aye
- Brendan Masterson (Alternate Member) – Aye

Andrew Nilsen – Recused from Case

Ayes: 5      Nays:      0      Absent:

**In the matter of Complaint Number 04022020D**

1. **The original violation applies to seven parcels with the following SBLs: S/B/L: 69.2-5-22.122 (Palomino Path), S/B/L: 69.2-5-64.500 (Warren Way), S/B/L: 69.2-5-22.121, 69.2-5-22.110 (Palomino Path), S/B/L: 69.2-5-22.126 (Bridle Path Lane), S/B/L: 69.2-5-22.129 (Bridle Path Lane), and S/B/L: 69.2-5-22.123 (Palomino Path). Six of the listed parcels were owned by Duches Farm Equestrian Community LLC (the Appellant) at the time the Notice of Violation/Order to Remedy was issued. The seventh parcel (SBL 69.2-5-22.110) was not owned by the Appellant at that time, and therefore should not be included in the Notice of Violation/Order to Remedy. There is a seventh parcel (SBL 69.2-5-64.110) that is part of the subdivision that was owned by the Appellant at the time, and was not listed in the Notice of Violation/Order to Remedy.**



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**The reference in the Notice of Violation to SBL 69.2-5-22.110 is not upheld based on the information provided to the Board; the Board's interpretation is the intention of the Code Enforcement Officer was to cite SBL 69.2-5-64.110 instead. The list of parcels to which the Notice of Violation shall apply shall be amended to read as follows:**

“S/B/L: 69.2-5-22.122 (Palomino Path), S/B/L: 69.2-5-64.500 (Warren Way), S/B/L: 69.2-5-22.121 (Palomino Path), 69.2-5-64.110 (Palomino Path), S/B/L: 69.2-5-22.126 (Bridle Path Lane), S/B/L: 69.2-5-22.129 (Bridle Path Lane), and S/B/L: 69.2-5-22.123 (Palomino Path)”

- 2. The paragraph outlining corrective measures includes an option to secure a surety naming the Town within the specified compliance timeframe as an alternative to correcting all violations within the specified compliance timeframe. The Notice of Violation reads in pertinent part as follows:**

“The following corrective measures should be taken no later than May 15, 2020 or penalties may be assessed: Construct all improvements to specifications shown on the approved subdivision plats or post a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guaranties satisfactory completion of all of the aforesaid improvements and names the Town of Marbletown as the beneficiary. The security shall be in an amount necessary to insure completion of the aforesaid improvements as determined by the Town. Enter into a formal maintenance agreement with the Town for storm water management facilities binding on all subsequent land owners.”

**The reference in the Notice of Violation allowing a surety as an alternative to correcting all violations is not upheld. However, based on the information provided to the Board; the provision in the Notice of Violation outlining corrective measures as follows is found to be appropriate:**

“The following corrective measures shall be taken no later than May 15, 2020 or penalties may be assessed: Construct all storm water management improvements, erosion control improvements, sediment control improvements, and other improvements to specifications shown on the subdivision plats approved by the Town of Marbletown Planning Board. Enter into a formal maintenance agreement with the Town for storm water management facilities binding on all subsequent land owners.”





**Town of Marbletown  
Zoning Board of Appeals  
PO Box 217, Stone Ridge, NY 12484  
(845) 687-7500 Ext. 171  
Email: [planning@marbletown.net](mailto:planning@marbletown.net)**

The Zoning Board of Appeals finds, based on the available information included in the Record, the Code Enforcement Officer's finding is upheld in regard to the citation of seven parcels, and is upheld and amended to correct the misstated S/B/L number.

Further, the Zoning Board of Appeals finds, based on the available information included in the Record, the Code Enforcement Officer's finding is upheld in regard to requiring timely completion of the construction of stormwater improvements and the timely execution of a maintenance agreement with the Town for the stormwater improvements. However, it is the ZBA's determination that under these circumstances the offer of a bonding option is outside of the CEO's authority, and therefore, the Code Enforcement Officer's finding is upheld and amended to correct the overreach of authority.

This Resolution was prepared, read, discussed, and amended by the Zoning Board of Appeals.

Motion to adopt the resolution by: Zachary Bowman

Seconded by: Egidio Tinti

Adopted 02/07/2022 by the following vote:

Kathleen Grambling – Aye  
Egidio Tinti – Aye  
Zachary Bowman – Aye  
Thomas Smiley, Chair – Aye  
Brendan Masterson (Alternate Member) – Aye

Andrew Nilsen – Recused from Case

Ayes: 5      Nays: 0      Absent:

**Appending Clarification to Appeal – 2021-01**

This clarification shall be appended to the Zoning Board's determination on Appeal - 2021-01 as adopted on February 2, 2022.



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**This Resolution was prepared, read, discussed, and amended by the Zoning Board of Appeals.**

**Motion to adopt the Resolution by: Kathleen Grambling**

**Seconded by: Brendan Masterson**

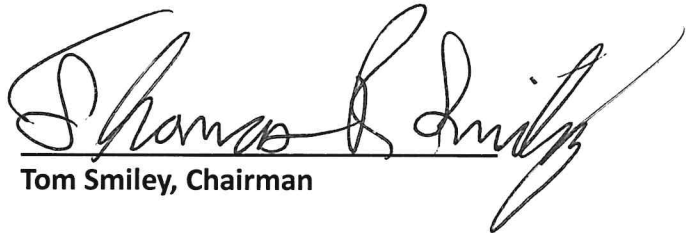
**Adopted 02/07/2022 by the following vote:**

- Kathleen Grambling – Aye**
- Egidio Tinti – Aye**
- Zachary Bowman – Aye**
- Thomas Smiley, Chair – Aye**
- Brendan Masterson (Alternate Member) – Aye**

**Andrew Nilsen – Recused from Case**

**Ayes: 5      Nays:      0      Absent:**

2/7/2022  
 Date

  
 Tom Smiley, Chairman

- cc: Heather Moody, Town Clerk, T/ Marbletown  
 Jeremy Barraca, Assessor, T/ Marbletown  
 Dept. of Building & Safety. T/Marbletown  
 Duchess Farm Equestrian Community, LLC