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OF COUNSEL

May 15, 2014

By Facsimile and Federal Express

Harley E. Doles III, Town Supervisor and the
Members of the Town Board
Town of Monroe
Town Hall
11 Stage Road
Monroe, New York 10950

**Re: Constitutional Issues Concerning
Proposed Annexation of Portions of Town;
Proposed Ca. 510 Acre Land Annexation by
Village of Kiryas Joel from Town of Monroe**

Dear Supervisor Doles and Members of the Town Board:

This Firm has been retained by United Monroe to represent its interests, concerns, and objections to the above-referenced Proposed Annexation. While United Monroe has a variety of concerns about the Proposed Annexation, it wishes to advise your Board that the proposal appears fundamentally flawed from the onset. Any Town Board action in favor of the Proposed Annexation would violate the Establishment Clause of the United States Constitution.

The United States Supreme Court's Decision in Board of Education of Kiryas Joel Village School District v. Grument, et al. ("Kiryas Joel"), 512 U.S. 687, 114 S. Ct 2481 (1994) is highly instructive in this regard. In that case, the Supreme Court held that a New York State legislative Act, which created a separate school district solely to serve the Village of Kiryas Joel's "distinctive population" (the "School Act"), violated the Establishment Clause of the First Amendment of the United States Constitution. The Court held that such action was "tantamount to an allocation of political power on a religious criterion and neither presupposes nor requires governmental impartiality toward religion." 114 S. Ct. at 2485.

By way of background, the Establishment Clause “compels the State to pursue a course of ‘neutrality’ toward religion,’ favoring neither one religion over others nor religious adherents collectively over nonadherents.” *Id.* at 2487 (citations omitted). A governmental entity violates the “wholesome neutrality” guaranteed by the Establishment Clause when its actions cause a “‘fusion of governmental and religious functions’ by delegating ‘important, discretionary governmental powers’ to religious bodies, thus impermissibly entangling government and religion.” *Id.* at 2487-88. Based on this premise, the Supreme Court held that the School Act violated the Establishment Clause, because it was “substantially equivalent to defining a political subdivision and hence the qualification for its franchise by a religious test, resulting in a purposeful and forbidden ‘fusion of governmental and religious functions.’” *Id.* at 2490 (citation omitted).

The Supreme Court noted that it was irrelevant that the School Act generically delegated power to “residents of the ‘territory of the Village of Kiryas Joel,’” rather than containing an “express reference to the religious belief of the Satmar community.” *Id.* at 2489. “[T]he context here persuade[d] the Court] that [the Act] effectively identifies these recipients of governmental authority by reference to doctrinal adherence, even though it does not do so expressly.” *Id.* As the Court noted, “[i]t is undisputed that those who [initially] negotiated the Village boundaries when applying the general village incorporation statute drew them so as to exclude all but Satmars, and that the New York Legislature was well aware that the village remained exclusively Satmar in 1989 when it adopted [the Act].” *Id.*

In his concurring opinion, Justice Kennedy noted that the Court was not addressing the constitutionality of the Village of Kiryas Joel itself. *Id.* at 2504. Justice Kennedy noted, however, that the process for incorporating a Village was largely procedural, and did not necessitate any discretionary action by the government. *Id.* By contrast, here, the annexation process specifically requires the Town to make a discretionary determination as to whether the proposed annexation is in the over-all public interest. *See* N.Y. Gen’l Muni. L. § 705. A determination by your Board that the annexation is in the public interest would effectively be a decision to cede electoral territory to Kiryas Joel, which would result in a constitutionally suspect delegation of political power to the Village. *See Kiryas Joel*, 114 S. Ct. at 2494 (holding that School Act impermissibly delegated political power “to an electorate defined by common religious belief and practice, in a manner that fails to foreclose religious favoritism”). Such a determination could improperly cause “the forced separation that occurs when the government draws political boundaries on the basis of people’s faith.” *Id.* at 2505 (Kennedy, J., concurring).

In sum, a determination by your Board in favor of annexation would be “tantamount to an allocation of political power on a religious criterion, and impermissibly result in the “‘fusion of governmental and religious functions’ by delegating ‘important, discretionary governmental powers’” to a political subdivision whose franchise is, in effect, determined by a religious test. *See id.* at 2485, 2487-88, 2490 & 2494.

Monroe Town Board
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Accordingly, before your Board proceeds to expend substantial municipal funds considering the Proposed Annexation, United Monroe respectfully submits that your Board should carefully consider the constitutionality of this course of action.

We would be pleased to amplify these principles to your Board or to answer any questions your Board may have at a mutually convenient time.

Please let us know if you have any questions.

Very truly yours,

ZARIN & STEINMETZ

By: 

Daniel Richmond

cc: United Monroe

Village of Kiryas Joel (Updated Budget Model)							
Orange County, New York							
EFC Project #16906 Analysis							
		Actual	Actual				
Fiscal Year Ended May 31:		2012	2013	2014 (9)	2015	2016	2017
Base Usage Assumptions:							
Residential:							
	Annual Water Sold (gallons):	395,509,000	395,095,000	399,260,472	421,408,797	443,557,122	465,705,447
	Total Water Connections:	3,889	4,056	4,056	4,281	4,506	4,731
	Annual Water Sold per Connection:	101,699.41	97,410.01	98,437.00	98,437.00	98,437.00	98,437.00
	Existing Water Rents (per kgal):	\$2.75	\$2.75	\$2.75	\$3.75	\$3.75	\$3.75
	Increase/(Decrease) Water Rents (per kgal):	\$0.00	\$0.00	\$1.00	\$0.00	\$0.00	\$0.00
	Total Residential Water Rents:	\$2.75	\$2.75	\$3.75	\$3.75	\$3.75	\$3.75
Commercial/Industrial:							
	Annual Water Sold (gallons) (1):	154,207,400	144,367,600	146,117,098	155,419,395	164,721,691	174,023,988
	Total Water Connections (1):	155	161	N/A	N/A	N/A	N/A
	Annual Water Sold per Connection (1):	994,886.45	896,693.17	N/A	N/A	N/A	N/A
	Existing Water Rents (per kgal):	\$2.75	\$2.75	\$2.75	\$5.50	\$5.50	\$5.50
	Increase/(Decrease) Water Rents (per kgal):	\$0.00	\$0.00	\$2.75	\$0.00	\$0.00	\$0.00
	Total Commercial/Residential Water Rents:	\$2.75	\$2.75	\$5.50	\$5.50	\$5.50	\$5.50
	Fees to NYC Water Supply System (per kgal) (2):	\$1.33230	\$1.33230	\$1.49676	\$1.58357	\$1.70867	\$1.78898
	New Improvement Charges (per connection) (3):	\$0.00	\$0.00	\$6,000.00	\$6,000.00	\$6,000.00	\$10,000.00
Annual Expenditures:							
	Debt Service from Project (4):	\$0.00	\$0.00	\$61,172.00	\$144,405.00	\$2,815,000.00	\$2,815,000.00
	Project cost: \$44,862,313	(incl. in O&M below)	(incl. in O&M below)				
	Operations & Maintenance (5):						
	Old System (Maintenance):	\$1,412,534.00	\$1,705,564.20	\$1,769,352.30	\$1,835,526.08	\$1,904,174.75	N/A
	New System:	\$0.00	\$0.00	\$0.00	\$0.00	(\$104,297.53)	N/A
	Total O&M:	\$1,412,534.00	\$1,705,564.20	\$1,769,352.30	\$1,835,526.08	\$1,799,877.22	\$1,867,192.63
	Fees to NYC Water Supply System (per kgal):	\$0.00	\$0.00	\$0.00	\$0.00	\$1,039,350.36	\$1,144,464.42
	Total Expenditures:	\$1,412,534.00	\$1,705,564.20	\$1,830,524.30	\$1,979,931.08	\$5,654,227.58	\$5,826,657.05
Annual Revenues:							
Existing Residential Customers:							
	Water Rents to Customers (Base)	\$1,087,649.75	\$1,086,511.25	\$1,097,966.30	\$1,580,282.99	\$1,663,339.21	\$1,746,395.43
	Increase to Charged Water Rents (6)	\$0.00	\$0.00	\$165,874.50	\$0.00	\$0.00	\$0.00
Existing Commercial/Industrial Customers:							
	Water Rents to Customers (Base)	\$424,070.35	\$397,010.90	\$401,822.02	\$854,806.67	\$905,969.30	\$957,131.93
	Increase to Charged Water Rents (6)	\$0.00	\$0.00	\$172,649.70	\$0.00	\$0.00	\$0.00
New Customers (7):							
	New Residential Connections:	-	-	225	225	225	225
	New Commercial/Industrial (in EDUs):	-	-	40	40	40	40
	New Improvement Charges (per connection):	\$0.00	\$0.00	\$556,500.00	\$1,590,000.00	\$1,590,000.00	\$2,650,000.00
	Water Rents to New Residential Customers (6):	\$0.00	\$0.00	\$70,082.36	\$83,056.22	\$83,056.22	\$83,056.22
	Water Rents to New Commercial/Industrial Customers (6):	\$0.00	\$0.00	\$32,732.33	\$46,290.00	\$46,290.00	\$46,290.00

	Total Revenues:		\$1,511,720.10	\$1,483,522.15	\$2,497,627.21	\$4,154,435.88	\$4,288,654.73	\$5,482,873.58
	Annual Operating Surplus/(Deficit):		\$99,186.10	(\$222,042.05)	\$667,102.91	\$2,174,504.80	(\$1,365,572.85)	(\$343,783.48)
	Cumulative Surplus/(Deficit) (8):		\$656,186.10	\$434,144.05	\$1,101,246.96	\$3,275,751.76	\$1,910,178.91	\$1,566,395.43
(1) Annual water sold to commercial/industrial properties is based off the assumption that 42% of the Village's water user base is comprised of this category of users. The annual increases in the amount of water sold to commercial/industrial users is calculated by adding 42% of the year over year increase in residential water sold to the previous year's commercial/industrial water sold.								
(2) Rate for water provided to users outside City of New York by the NYC Water Board, effective July 1, 2013 and assumes the NYC Water Board's projected growth of 5.8% in 2015, 7.9% in 2016, 4.7% in 2017 and 2% annual projected rate increases are particularly high in the next few years due to NYC pension cost spikes and capital improvements to the system. (Source: NYC Water Board Report on Cost of Supplying Water to Upstate Customers for the 2014 Rate Year, draft dated May 14, 2013.)								
(3) Assumes new improvement charge of \$6,000 for the second half of 2014, all of 2015 and 2016 and increases to \$10,000 in 2017. The increase in the new improvement charge will be partially offset by the elimination of the charge upon the retirement of the Village's existing EFC loan in August 2018. (There will be a 2-year overlap).								
(4) Years 2014 through 2016 assume required principal and interest payments due to financing through short-term loans during this period. Assumes long-term bonds issued in March 2015 with first impact of debt service occurring in the Village's 2016 fiscal year. Interest rates on long-term bonds based off of 'AAA' MMD on 10.23.13 plus 20 bps for EFC's pricing spread plus an additional 50 bps for potential market movement.								
(5) Assumes that the portion of O&M that changes with water demand (i.e., power and chemicals) increases at +/- 6%. The remainder of the O&M will increase at 2%. Blended rate is 3.74%.								
(6) The 2014 increase in water rents to existing customers and water rents to new customers assumes the Village increases water rates as of January 1, 2014 generating five months worth of increased revenues in the 2014								
(7) The Village expects the growth of users in the system to be more parabolic than is represented in this table. As such, the Village believes the new customer growth estimated in this table to be conservative.								
(8) Cumulative surplus/(deficit) represents the carry over over the system's prior year operations. These figures include the Village's estimated fund balance in its water fund of approximately \$657,000 at May 31, 2012.								
(9) Base Usage for 2014 is equal to total usage in 2013. New customers added to the system in 2014 (and thereafter) are shown below in those corresponding years.								

2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	
487,853,772	512,463,022	537,072,272	561,681,522	586,290,772	610,900,022	635,509,272	660,118,522	684,727,772	709,337,022	733,946,272	
4,956	5,206	5,456	5,706	5,956	6,206	6,456	6,706	6,956	7,206	7,456	
98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	
\$3.75	\$3.75	\$3.75	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00	\$4.25	\$4.25	\$4.25	
\$0.00	\$0.00	\$0.25	\$0.00	\$0.00	\$0.00	\$0.00	\$0.25	\$0.00	\$0.00	\$0.00	
\$3.75	\$3.75	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00	\$4.25	\$4.25	\$4.25	\$4.25	
183,326,284	193,662,169	203,998,054	214,333,939	224,669,824	235,005,709	245,341,594	255,677,479	266,013,364	276,349,249	286,685,134	
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
\$5.50	\$5.50	\$5.50	\$5.75	\$5.75	\$5.75	\$5.75	\$5.75	\$6.00	\$6.00	\$6.00	
\$0.00	\$0.00	\$0.25	\$0.00	\$0.00	\$0.00	\$0.00	\$0.25	\$0.00	\$0.00	\$0.00	
\$5.50	\$5.50	\$5.75	\$5.75	\$5.75	\$5.75	\$5.75	\$6.00	\$6.00	\$6.00	\$6.00	
\$1,82476	\$1,86126	\$1,89848	\$1,93645	\$1,97518	\$2,01468	\$2,05498	\$2,09608	\$2,13800	\$2,18076	\$2,22437	
\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	
\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
\$1,937,025.63	\$2,009,470.39	\$2,084,624.59	\$2,162,589.55	\$2,243,470.39	\$2,327,376.19	\$2,414,420.06	\$2,504,719.37	\$2,598,395.87	\$2,695,575.88	\$2,796,390.42	
\$1,224,743.60	\$1,314,280.34	\$1,406,908.66	\$1,502,716.39	\$1,601,793.67	\$1,704,232.96	\$1,810,129.10	\$1,919,579.39	\$2,032,683.65	\$2,149,544.24	\$2,270,266.18	
\$5,976,769.23	\$6,138,750.73	\$6,306,533.24	\$6,480,305.94	\$6,660,264.07	\$6,846,609.15	\$7,039,549.16	\$7,239,298.76	\$7,446,079.52	\$7,660,120.12	\$7,881,656.60	
\$1,829,451.65	\$1,921,736.33	\$2,014,021.02	\$2,246,726.09	\$2,345,163.09	\$2,443,600.09	\$2,542,037.09	\$2,640,474.09	\$2,910,093.03	\$3,014,682.34	\$3,119,271.66	
\$0.00	\$0.00	\$134,268.07	\$0.00	\$0.00	\$0.00	\$0.00	\$165,029.63	\$0.00	\$0.00	\$0.00	
\$1,008,294.56	\$1,065,141.93	\$1,121,989.30	\$1,232,420.15	\$1,291,851.49	\$1,351,282.83	\$1,410,714.17	\$1,470,145.51	\$1,596,080.19	\$1,658,095.50	\$1,720,110.81	
\$0.00	\$0.00	\$50,999.51	\$0.00	\$0.00	\$0.00	\$0.00	\$63,919.37	\$0.00	\$0.00	\$0.00	
250	250	250	250	250	250	250	250	250	250	275	
45	45	45	45	45	45	45	45	45	45	50	
\$2,950,000.00	\$2,950,000.00	\$2,950,000.00	\$2,950,000.00	\$2,950,000.00	\$2,950,000.00	\$2,950,000.00	\$2,950,000.00	\$2,950,000.00	\$2,950,000.00	\$3,250,000.00	
\$92,284.69	\$92,284.69	\$98,437.00	\$98,437.00	\$98,437.00	\$98,437.00	\$98,437.00	\$104,589.31	\$104,589.31	\$104,589.31	\$115,048.24	
\$51,433.33	\$51,433.33	\$53,771.21	\$53,771.21	\$53,771.21	\$53,771.21	\$53,771.21	\$56,109.09	\$56,109.09	\$56,109.09	\$61,720.00	

2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041
761,016,447	788,086,622	815,156,797	842,226,972	869,297,147	896,367,322	923,437,497	950,507,672	977,577,847	1,004,648,022	1,034,179,122	1,063,710,222	1,093,241,322
7,731	8,006	8,281	8,556	8,831	9,106	9,381	9,656	9,931	10,206	10,506	10,806	11,106
98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00	98,437.00
\$4.25	\$4.50	\$4.50	\$4.50	\$4.50	\$4.50	\$4.50	\$4.75	\$4.75	\$4.75	\$4.75	\$4.75	\$5.00
\$0.25	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.25	\$0.00	\$0.00	\$0.00	\$0.00	\$0.25	\$0.00
\$4.50	\$4.50	\$4.50	\$4.50	\$4.50	\$4.50	\$4.75	\$4.75	\$4.75	\$4.75	\$4.75	\$5.00	\$5.00
298,054,608	309,424,081	320,793,555	332,163,028	343,532,502	354,901,975	366,271,449	377,640,922	389,010,396	400,379,869	412,782,931	425,185,993	437,589,055
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
\$6.00	\$6.00	\$6.25	\$6.25	\$6.25	\$6.25	\$6.25	\$6.50	\$6.50	\$6.50	\$6.50	\$6.50	\$6.75
\$0.00	\$0.25	\$0.00	\$0.00	\$0.00	\$0.00	\$0.25	\$0.00	\$0.00	\$0.00	\$0.00	\$0.25	\$0.00
\$6.00	\$6.25	\$6.25	\$6.25	\$6.25	\$6.25	\$6.50	\$6.50	\$6.50	\$6.50	\$6.50	\$6.75	\$6.75
\$2,26886	\$2,31424	\$2,36052	\$2,40773	\$2,45589	\$2,50501	\$2,55511	\$2,60621	\$2,65833	\$2,71150	\$2,76573	\$2,82104	\$2,87747
\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
\$2,900,975.42	\$3,009,471.90	\$3,122,026.15	\$3,238,789.92	\$3,359,920.67	\$3,485,581.70	\$3,615,942.46	\$3,751,178.70	\$3,891,472.79	\$4,037,013.87	\$4,187,998.19	\$4,344,629.32	\$4,507,118.46
\$2,402,885.75	\$2,539,902.00	\$2,681,437.74	\$2,827,618.95	\$2,978,574.83	\$3,134,437.91	\$3,295,344.07	\$3,461,432.71	\$3,632,846.75	\$3,809,732.78	\$4,001,906.00	\$4,200,242.25	\$4,404,911.19
\$8,118,861.17	\$8,364,373.89	\$8,618,463.89	\$8,881,408.87	\$9,153,495.50	\$9,435,019.61	\$9,726,286.53	\$10,027,611.41	\$10,339,319.54	\$10,661,746.65	\$11,004,904.19	\$11,359,871.57	\$11,727,029.64
\$3,234,319.90	\$3,546,389.80	\$3,668,205.59	\$3,790,021.37	\$3,911,837.16	\$4,033,652.95	\$4,155,468.74	\$4,514,911.44	\$4,643,494.77	\$4,772,078.10	\$4,912,350.83	\$5,052,623.55	\$5,466,206.61
\$190,254.11	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$230,859.37	\$0.00	\$0.00	\$0.00	\$0.00	\$265,927.56	\$0.00
\$1,788,327.65	\$1,856,544.49	\$2,004,959.72	\$2,076,018.93	\$2,147,078.14	\$2,218,137.35	\$2,289,196.55	\$2,454,665.99	\$2,528,567.57	\$2,602,469.15	\$2,683,089.05	\$2,763,708.96	\$2,953,726.12
\$0.00	\$77,356.02	\$0.00	\$0.00	\$0.00	\$0.00	\$91,567.86	\$0.00	\$0.00	\$0.00	\$0.00	\$106,296.50	\$0.00
275	275	275	275	275	275	275	275	275	300	300	300	300
50	50	50	50	50	50	50	50	50	50	50	50	50
\$3,250,000.00	\$3,250,000.00	\$3,250,000.00	\$3,250,000.00	\$3,250,000.00	\$3,250,000.00	\$3,250,000.00	\$3,250,000.00	\$3,250,000.00	\$3,500,000.00	\$3,500,000.00	\$3,500,000.00	\$3,500,000.00
\$121,815.79	\$121,815.79	\$121,815.79	\$121,815.79	\$121,815.79	\$121,815.79	\$128,583.33	\$128,583.33	\$128,583.33	\$140,272.73	\$140,272.73	\$147,655.50	\$147,655.50
\$61,720.00	\$64,291.67	\$64,291.67	\$64,291.67	\$64,291.67	\$64,291.67	\$66,863.33	\$66,863.33	\$66,863.33	\$72,941.82	\$72,941.82	\$75,747.27	\$75,747.27

2042	2043	2044	2045
1,122,772,422	1,152,303,522	1,181,834,622	1,211,365,722
11,406	11,706	12,006	12,306
98,437.00	98,437.00	98,437.00	98,437.00
\$5.00	\$5.00	\$5.00	\$5.25
\$0.00	\$0.00	\$0.25	\$0.00
\$5.00	\$5.00	\$5.25	\$5.25
449,992,117	462,395,179	474,798,241	487,201,303
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
\$6.75	\$6.75	\$6.75	\$7.00
\$0.00	\$0.00	\$0.25	\$0.00
\$6.75	\$6.75	\$7.00	\$7.00
\$2,93501	\$2,99371	\$3,05359	\$3,11466
\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
\$2,815,000.00	\$2,815,000.00	\$2,815,000.00	\$2,815,000.00
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
\$4,675,684.69	\$4,850,555.29	\$5,031,966.06	\$5,220,161.59
\$4,616,086.78	\$4,833,947.44	\$5,058,676.09	\$5,290,460.31
\$12,106,771.47	\$12,499,502.74	\$12,905,642.15	\$13,325,621.90
\$5,613,862.11	\$5,761,517.61	\$5,909,173.11	\$6,359,670.04
\$0.00	\$0.00	\$295,458.66	\$0.00
\$3,037,446.79	\$3,121,167.46	\$3,204,888.13	\$3,410,409.12
\$0.00	\$0.00	\$118,699.56	\$0.00
300	300	300	300
50	50	50	50
\$3,500,000.00	\$3,500,000.00	\$3,500,000.00	\$3,500,000.00
\$147,655.50	\$147,655.50	\$155,038.28	\$155,038.28
\$75,747.27	\$75,747.27	\$78,552.73	\$78,552.73

AQUEDUCT CONNECTION PROJECT BUSINESS PLAN
SUPPLEMENT II

JANUARY 31, 2014

At the request of the New York State Environmental Facilities Corporation (“NYSEFC”), on or about October 28, 2013, the Village of Kiryas Joel (“Village”) submitted a Business Plan in support of the Village’s request for extension of its existing short term financing with NYSEFC. On or about December 4, 2013, the Village submitted Supplement I which responded to questions raised by NYSEFC with regard to that Plan. This Supplement II now responds to additional comments and requests for information by NYSEFC contained in an email dated January 7, 2014. The content of that email is incorporated herein below. Village responses are identified in bold italics with relevant appendices attached.

NYSEFC Concerns:

1. Can the growth projections for the Village be viewed as reasonable given that the available space within the Village does not support the long-term projections and limited historical basis to perform an analysis.

Yes, Village options for accommodating projected internal population growth include redevelopment of existing lots, increasing existing density by allowing for increased building heights and other zoning law amendments, and annexation/expansion of Village boundaries. The annexation option is now coming to fruition. On December 27, 2013 the Village received a certified petition from a number of property owners in the Town of Monroe seeking to annex approximately 500 acres of land in the Town into the Village. That petition is in the initial stages of review by both the Town and Village, including a full SEQRA review. A copy of the annexation petition is attached hereto as Appendix SIIA. Based on the time frames provided in Article 17 of the General Municipal Law, it is anticipated that a decision by the respective municipal boards could be resolved in late summer 2014, with a special election thereafter. While there are no immediate plans to rezone or develop such properties, if indeed annexed into the Village, that opportunity exists and would reasonably accommodate the anticipated growth described in the Business Plan. Indeed, owners of many of these parcels have already requested and agreed to purchase water from the Village at rates consistent with the local law and Business Plan, either as out of district purchases or via annexation. Based on current Town of Monroe zoning, the “as of right / build per zoning” totals 1264 dwelling units in the annexed lands. This would equate to over \$31 million in new connection fees over time. This does not account, however, for potential rezoning for increased densities. Copies of the model water purchase agreement and a confidential listing of property owners under contract are included in Appendix SIIB hereto.

2. Should future annexation or service to outlying areas be accepted as the alternative to growth within the Village boundaries.

Yes, future annexation or expansion of the Village is a viable alternative to be considered in addition to the aforementioned increased density and redevelopment scenarios within the current Village boundaries. As previously described to NYSEFC, the growth in Village population is internally and culturally driven and therefore inevitable and will be accommodated in the variety of ways described herein. The latest petition for annexation described above appears to bear this out.

3. What steps should the Village pursue to have a viable project, and how does that timeframe for those steps impact the availability of funds pursuant to the current financing.

The general steps for a viable project are set forth below. The plan of finance to support these steps is set forth later in this supplement and in the cost summaries prepared by CDM Smith and attached hereto in Appendix SIIE.

- i. Completion of Phase I (pipeline to Mountainville)(July 2014);***
- ii. Control of phase IA by receipt of final NYSDEC Water Supply Permit (June 2014);***
- iii. Completion of Phase IA construction (Mountainville Wells)(July 2015);***
- iv. Interim connection of pipeline to Mountainville Wells supply (August 2015);***
- v. Control of Phases II & III by receipt of final approvals for construction of Phases II & III (Fall 2014);***
- vi. Execution of Water Supply Agreement with NYCDEP (Fall 2014);***
- vii. Completion of Phases II& III construction (May 2016);***
- viii. Connection to Aqueduct supply (June 2016).***

4. Based on the current information provided, growth of new EDU's on available acreage is only supported until 2022.

This conclusion fails to acknowledge the Village's explanation regarding increased density on existing developed lots which could be achieved through change in zoning densities and height restrictions and redevelopment of existing underutilized lots. For example, the owner of a property on Acres Road recently merged two lots and replaced the existing 2 single family residences (sfr) with multi-family housing. Another property on Lemberg Court was redeveloped from sfr to a condominium complex of 250 units; a like parcel on Van Buren Drive was redeveloped with 18 units; two separate properties on Quickway Road and another on Fillmore Court were also redeveloped from sfr to over 20 units each. These planning tools should also be considered in conjunction with the current annexation proposal now before the Village and Town.

5. Phase I (Southern Transmission Main) gets the new pipeline to Mountainville. In order to determine how the Village plans on funding Phases 1A (Mountainville Wells & Ridge Road Pump Station and Phases II & III (Northern Transmission Main, TAP Aqueduct Facilities & Water Filtration Plant), a Plan of Finance including a listing of sources and uses and updated cash flows must be developed and submitted to EFC for review.

See response including the plan of finance below.

As a result of the discussion points above, the following information was provided by the Village and Consultants.

1. According to the Village, approx. 500 acres in the Towns of Monroe and Woodbury are owned by Developers who are willing to annex such land to the Village. The Village indicated it has approx. 100 acres for development. It is unknown if either Town will approve annexation.
1. According to the Village, annexation is an intense process and might be challenged in Court. Legislative action would be required for annexation.

As noted above, a petition has been recently filed for annexation of over 500 acres in the Town of Monroe alone. The Annexation Process is controlled by Article 17 of the General Municipal Law (GML) and the State Environmental Quality Review Act (SEQRA) process (Article 8 of the Environmental Conservation Law). The Village has identified its intent to serve as the SEQRA lead agency. The Village intends to complete a Generic Environmental Impact Statement as part of the SEQRA proceedings. The Village anticipates scheduling a joint annexation and SEQRA hearing in conjunction with the Town in early April, consistent with GML and SEQRA timeframes. Pursuant to GML, a decision on annexation must be resolved by both the Town and Village within 90 days of the hearing, so it is anticipated that such decisions will be reached by July. Upon approval of the Town and Village, a special election of the electors within the annexed parcels will be scheduled within 90 days thereafter. Subsequent to the election, the Village will enact a local law to amend its boundaries to incorporate the annexed properties. It is reasonable, therefore, to anticipate that the annexation process can be fully completed by the end of 2014. Of course, the Village cannot predict whether the municipal boards and/or the electors will indeed approve the annexation or whether there will be any legal challenges to the process.

2. The Village would charge new residents as a result of annexation a \$25,000 connection fee. This would serve as a commitment from those residents to pay for the costs of the pipeline. Current residents would pay a \$6,000 connection fee.

The Village has obtained commitments from property owners in the Town of Monroe seeking annexation into the Village to acquire connections to the Village water supply. These commitments reflect over 200 new connections and include over \$1 million in current deposits and payments for previously approved development projects. The commitments have been made based on the model water supply agreement attached here as Appendix SIIB and clearly reflect connection fees consistent with the local law and Business Plan. These commitments will be serviced as out of Village district users until annexation is complete if necessary and then as Village users once annexed into the Village.

3. Phases 1 and 1A are expected to cost approx. \$21.4 million. There are two sources of supply at the Mountainville site. The Mountainville & Star Well Fields. A manufacturing facility that has since closed existed on the Star Well Field. When the facility closed, the Village of Kiryas Joel bought the well field. The Village has filed a permit application with NYSDEC to increase the capacity to 100,000 gallons per day thereby doubling the water supply before connecting to the Aqueduct. NYSDEC has informed the Village that the permit is on hold because if the permit was granted, the Star Well Field in conjunction with Mountainville would result in an over-supply of water. Currently, NYSDEC is having the Village evaluate the condition of the Star Well Field pipe. This analysis should be complete by the end of January 2014.

The Village is working with NYSDEC to reactivate the administrative hearing process for the Mountainville Wellfield. It is anticipated that this process can be completed and the final water supply permit issued by summer 2014, ahead of the anticipated time that construction of the pipeline will be completed to the Mountainville Wellfield property in the Town of Cornwall. The Village continues to assess the viability of the existing infrastructure at the Star Mountain wellfield property and continues to view this as a viable interim alternative and eventual backup water supply source for the future. A copy of the existing NYSDEC water supply permit for the Star Mountain wells is attached here as Appendix SIIC.

4. The Village owns and controls the pipeline, but NYCDEP controls who is the end user of NYC water. The Village has the right to sell off water to other municipalities, but cannot do so until permission is granted from NYCDEP.

Limitations on the sale of water are applicable only with respect to Aqueduct water purchased from NYC. The Village is authorized pursuant to Village Law Section 11-1120 to enter into contracts to sell Village water outside of the Village district. Indeed, as noted, the Village already provides water to communities outside of the Village and as described above has recently entered into additional water supply contracts related to some of the properties that have petitioned the Village and Town for annexation into the Village. These contracts would be serviced as needed in the interim with water obtained from the Mountainville or Star Mountain wells and then eventually by the Aqueduct.

5. At this time, phases II and III are not within the Village's control since approvals have not been granted from NYSDOH or NYSDEC.

Phase II and III applications are anticipated to be filed with the various agencies later this spring. These permits will be consistent with those obtained for Phase I and will also include the execution of the water supply agreement with NYCDEP. As the same agencies have already approved the design and work for Phase I, the Village does not anticipate delays in obtaining these approvals.

6. Village would use monies from the County to fund Phase 1A. These monies would come from sewer rents charged to the County for treatment of wastewater. WWTP is leased to OCSD #1.

Ideally, the Village would prefer to utilize the short term financing secured through NYSEFC to finance completion of Phase IA. In the event the timing for gaining control over the construction of Phase IA is not completed by the time the pipeline construction is completed to Mountainville, the Village would not delay construction of the Mountainville Wells but would be prepared to fund the construction through excess revenues on hand as a result of its sewage treatment facility lease with Orange County Sewer District #1.

7. A resolution to pass the new water rate structure was going to the Village Board on Friday December 21, 2013.

A copy of the local law as adopted on December 20, 2013 and filed with the NYS Department of State is attached as Appendix SIID.

8. CDM Smith informed that 23,000 lin.\ft. out of 36,000 lin.\ft. of pipeline had been installed thus far.

Construction is scheduled to resume in March, 2014.

9. Work is scheduled to resume in mid-March with the remaining 13,000 lin.\ft. of pipeline including final paving to be completed by July 2014.

Disbursement #32 was released on December 26, 2013 in the amount of \$2,002,653.55. Please be advised that any future disbursements are contingent upon satisfaction of the terms expressed in the extension of this short-term financing. EFC continues to have concerns regarding the viability of the project as mentioned above. It is our hope and expectation that the Village & Consultants will continue to work with EFC and DOH to continue to develop project viability and affordability. In the immediate future, please submit the following information so that our analysis may continue without further delay. Specifics are as follows:

1. A plan of finance that addresses the sources of funding for each major component of the project along with an associated timetable for execution.

Please see the steps below for the plan of finance:

- i. Fund Phase I with existing short term financing.***
- ii. Obtain approval of revised project (Phase IA) scope and costs by NYSEFC. This will require the Village to demonstrate control over the revised project. The Village intends to resume the administrative hearing and permit review process for the Mountainville wellfield later this winter and anticipates this process would be completed and the final water supply permit issued by the NYSDEC by early summer, ahead of the completion of the pipeline which is expected to reach the wellfield site by***

July 2014. As the costs of the completion of Phase I and IA are within the total approved loan, NYSEFC approval will not require additional financing.

- iii. Fund approved project costs in the near term through NYSEFC short-term note program until a significant portion of project costs have been incurred. The Village would make the required principal paydowns and interest payments due on the short-term financing during this period.*
 - iv. Convert short-term financing to long-term, subsidized NYSEFC bonds once the final project costs are known for Phases I/IA.*
 - v. Obtain all approvals for control of Phases II & III.*
 - vi. Apply for NYSEFC short term financing for Phases II & III.*
 - vii. Fund approved project costs in the near term through NYSEFC short-term note program until a significant portion of project costs have been incurred. The Village would make the required principal paydowns and interest payments due on the short-term financing during this period.*
 - viii. Convert short-term financing to long-term, subsidized NYSEFC bonds once the final project costs are known for Phases II & III.*
2. A detailed plan articulating how the Village intends to connect the Phase I pipeline to the new source (Mountainville Wells or NYC Aqueduct) for Phase 1A, along with an associated timetable for execution given that the Phase I component currently under construction is of no use until connected to a new source.

A detailed engineering plan for development and connection of the pipeline to the Mountainville wells has been prepared by CDM Smith and is attached hereto as Appendix SIIE. NYSDOH has already reviewed and endorsed this plan (see Appendix SIIF). A copy of relevant SEQRA documents for the Mountainville Wellfield, including the full EAF and Negative Declaration, are attached as Appendix SIIG. The Draft Water Supply Permit issued by NYSDEC is attached as Appendix SIIIH. NYSOPRHP sign off for the Mountainville Wellfield site is attached as Appendix SIII.

In addition, CDM Smith has prepared a detailed cost plan for Phases I & IA as well as for the remainder of the overall project (Phases II & III) (see Appendix SIIJ). The Appendix SIIJ cash flows can also be used to estimate when and how much drawdown from the short term financing is needed, ahead of the Village making reimbursement requests. Likewise, the cost plans also correlate with the anticipated construction schedule for the various project phases.

3. Provide updated information regarding the new user charges and the annexation/"contracts"

The Village has obtained commitments from property owners in the Town of Monroe seeking annexation into the Village to acquire connections to the Village water supply. These commitments reflect over 200 new connections and include over \$1 million in current deposits and payments for previously approved

development projects. The commitments have been made based on the model water supply agreement attached here as Appendix SIIB and clearly reflect connection fees consistent with the local law and the Business Plan. These agreements will be serviced in the interim by the Mountainville wells supply (Phase IA) and ultimately by the Aqueduct supply either as outside of Village water district users or as in Village users upon annexation.

NYS Environmental Conservation Law
Village of Kiryas Joel

**SEQRA
Resolution Adopting Amended Findings Statement**

Project # DWSRF 16906

Date: March 31, 2009

BE IT RESOLVED by the Board of Trustees of the Village of Kiryas Joel, as lead agency, in compliance with the applicable laws, rules and regulations, including the October 9, 2007 Decision and Order of the Appellate Division, Second Department, that an Amended Findings Statement as hereinafter set forth be and hereby is adopted.

On a motion by Mayor Wieder, seconded by Trustee LANDAU, this resolution is adopted on a vote of 5 Ayes, 0 Nays, 0 Abs.

NAME OF ACTION: Catskill Aqueduct Connection

SEQR STATUS: Type 1 X Positive Declaration – August 6, 2002
DEIS Complete - October 7, 2003
SEQRA Hearing - November 14, 2003
FEIS Complete - May 4, 2004
Findings Statement – July 8, 2004
Amended FEIS Complete - March 3, 2009

DESCRIPTION OF ACTION: Construction of a tap of the Catskill Aqueduct and a transmission main to transport water supply to the Village of Kiryas Joel. The project will include a water treatment plant and pumping station.

LOCATION OF ACTION: The water supply pipeline will extend from the NYC Catskill Aqueduct connection in New Windsor, NY along Riley Rd, continuing east on NYS Route 94 to Vails Gate; then south along NYS Route 32 and west on County Route 44, terminating at a new water treatment facility in the Village of Kiryas Joel, Orange County, NY.

FOR FURTHER INFORMATION:

CONTACT PERSON: Hon. Gedalye Szegedin, Village Administrator

ADDRESS: PO Box 566, Monroe, NY 10950

TELEPHONE NUMBER: (845) 783-8300

**State Environmental Quality Review Act (“SEQRA”)
Amended Statement of Findings
Village of Kiryas Joel
Connection to the New York City Catskill Aqueduct**

I. Introduction

On October 9, 2007, the Supreme Court of the State of New York, Appellate Division, Second Judicial Department (“Appellate Division”), affirmed, in part, a lower court decision that annulled the original Final Environmental Impact Statement (“FEIS”) and Findings Statement issued by the Board of Trustees of the Village of Kiryas Joel (“Village”). In its Decision and Order, the Appellate Division remitted the matter to the Village “for the preparation and circulation of an amended final environmental impact statement ... which analyzes the impact of the project on wetlands, sewage facilities, and the discharge of wastewater and treated effluent into surface and ground waters, includes a phase I-B archaeological study and review, analyzes the growth-inducing effects of the project, and analyzes those alternative to the project which were identified in the final environmental impact statement with respect to these impacts.”

With respect to wetlands, the Appellate Division found that the Village needed to more fully identify the “nature and extent of all of the wetlands that would be disturbed or affected by the construction of the proposed water pipeline, how those wetlands would be disturbed, and how each disturbance, if any, would affect the salutary flood control, pollution absorption, groundwater recharge, and habitat functions of those wetlands.”

Additionally, the Court directed the Village to identify “the location, nature, or extent of the bodies of surface water in which wastewater from the proposed treatment plant would be discharged, and which State classes and standards of quality and purity apply to those water bodies” and “how much effluent would be discharged into those bodies of water over what periods of time, what the nature of the effluent might be, and what the effect upon those bodies of water are likely to be.”

With respect to historical and archaeological resources, the Court directed the Village to prepare “a site-specific and design-specific phase I-B archaeological study.” Finally, the Court directed the Village to conduct a “demographic analysis or projections with respect to the effect of the availability of a steady and stable supply of potable water on population movement into or out of the Village” to support the prior conclusions that “the Village birth rate would continue to grow at a steady rate of 6% per year.”

As directed by the Appellate Division, the Village retained additional consultants to expand on its original environmental impact analysis and to prepare an Amended FEIS. On March 3, 2009, after substantial review and study, the Village accepted the Amended

FEIS as complete. The notice of completion and Amended FEIS were subsequently distributed to all required agencies and others. Notice of completion was also published in the Environmental Notice Bulletin on March 11, 2009.

This document serves as the Amended SEQRA Findings Statement and decision by the Village as lead agency to undertake a water supply connection to the New York City Catskill Aqueduct (the "Project" or "Action"). It was prepared in compliance with Article 8 of the Environmental Conservation Law and its implementing regulations in 6 NYCRR Part 617. This Amended Findings Statement includes a description of the proposed Action, a summary of SEQRA procedural compliance, an identification of potentially significant adverse and beneficial environmental impacts anticipated as a result of the action, and a reasoned elaboration of how the Village, as Project sponsor and lead agency, will minimize or avoid potential adverse effects to the greatest extent practicable, in light of social, economic, and other essential considerations. It incorporates the Village's original Findings Statement and expands upon it as a result of the additional analysis undertaken at the direction of the Appellate Division.

SEQRA was designed to foster a careful review by all interested parties of any potentially significant environmental impacts at the earliest possible time, when discussion of such impacts has the most meaning. This review is conducted when the Project is still in its conceptual and formative stages, prior to any agency decisions. Notably, here, the City of New York has issued only conceptual approval for the planning of the Project. More detailed plans for the connection to the Aqueduct, the final pipeline route and the treatment facility still need to be developed. The Project is currently on the NYS Drinking Water State Revolving Loan Fund Readiness List for 2008-2009. Compliance with SEQRA is required before any funds may be released by the NYS Environmental Facilities Corporation. It is this initial agency action that has triggered the need to complete the SEQRA review.

This environmental review, including the additional areas of analysis directed by the Appellate Division, has afforded the Village an even clearer understanding of the potential adverse environmental impacts that might arise from the actual construction and operation of the Project. The Village has carefully and thoroughly reviewed the information contained in the Amended FEIS, together with the original Draft and Final Environmental Impact Statements and associated appendices, as well as oral and written comments thereon received from the general public and government agencies. The Village found it to be a complete and adequate examination of all important potential impacts which may result from the Project and responsive to the Appellate Division's direction.

On balance, and after careful consideration of all relevant documentation and comments, the Village believes it has more than adequate information to evaluate all of the benefits and potential adverse environmental impacts of the Project.

The Village will continue to work closely with the City of New York and other involved agencies to ensure that all appropriate steps are taken to avoid or minimize any risk to

public health and the environment that might arise from the proposed Project and to implement any necessary mitigation.

II. Proposed Action

A. Public Need.

The Village is an incorporated village in the Town of Monroe, Orange County, New York, approximately 45 miles north of New York City. The Village depends on groundwater wells for its entire supply of potable water to its residents. While average per-capita consumption of water in Kiryas Joel is substantially lower than in Orange County and New York State as a whole, the Village has had difficulty providing a sufficient and reliable volume of groundwater for its residents. This is due, in part, to internal growth of the Village population, as well as increased regional pressure on limited groundwater resources.

Since the completion of the original FEIS, due to the delay in constructing the Project, the Village was compelled to increase its available water supply and reliance on groundwater wells through the expansion of its Brenner well-field by an additional 621,000 gpd, enabling the Village to draw in excess of 1.9 mgd, depending on environmental conditions.

As the rate of groundwater withdrawal in the vicinity of Kiryas Joel increases in comparison to the groundwater recharge rate, it will become increasingly difficult for a groundwater-dependent system to maintain an adequate and reliable water supply for a growing community. To increase the reliability of its potable water supply, without adversely affecting its neighbors who also draw on the same groundwater resource, the Village needs access to an alternative source of potable water. Based, in part, on the conclusions supported by this environmental impact analysis, connecting to the NYC Catskill Aqueduct ("Aqueduct") is the most viable source of such water. Accordingly, satisfying the public's need for a more reliable, safe and adequate source of drinking water remains a priority and obligation of the Village.

B. The Project.

The Village proposes to connect to the Aqueduct near Riley Road in the Vails Gate section of the Town of New Windsor. The Vails Gate location is preferred to other locations because it is just upstream of the point where the Aqueduct descends more than 1,000 feet to cross under the Hudson River and it provides for the most efficient and direct choice of routes to the Village for installation of the transmission pipeline.

Water will be withdrawn from the Catskill Aqueduct using a vacuum priming system, and the water will be conveyed to a pump station. The untreated water will be pumped through a 12-13-mile pipeline that would follow one of two proposed alternative routes. Alternative Route A would run east from Riley Road along NYS Route 94 to Vails Gate; then south along NYS Route 32 and West on County Route 44, terminating at a new water treatment facility on an undeveloped lot in the Village of Kiryas Joel south of

Seven Springs Road (CR 44) and west of Bakertown Road. Alternative Route C also continues along NYS Route 94 to County Route 27 to NYS Route 208 to County Route 17 to Shunnemunk Road in the Village of Kiryas Joel, terminating at a new water treatment facility at the site of the existing water treatment facility on Berdichev Road in the Village. After treatment, the Aqueduct water would be fed into the Village's existing water distribution system. The Project does not involve the expansion of the Village's distribution system into previously undeveloped or subserved areas but will allow the existing Village to be served with a new source of water supply.

In September 2000, the Village of Kiryas Joel filed an official request with the New York City Department of Environmental Protection ("NYCDEP") for conceptual approval to establish a connection to the Aqueduct that would be designed to withdraw up to 2.0 mgd of water. As set forth in the NYC Administrative Code, the volume of water the Village is entitled to withdraw is calculated by multiplying the Village population - - as reported in the most recent Census - - by the per capita consumption of NYC residents. On November 27, 2000, NYCDEP conceptually approved the Village's request. Final approval of the proposed connection to the Aqueduct must still be obtained from the City of New York. As an involved agency, NYCDEP provided comments on the DEIS which were carefully reviewed by the Village and responded to in the FEIS and considered in preparing this Amended Findings Statement.

III. SEQRA Procedural Compliance

Project planning began with the examination of alternative potential technologies, pipeline routes, water treatment plant and pump station locations, pipeline sizes and the preparation of a series of environmental documents in compliance with SEQRA procedures.

As the agency directly undertaking the Project, the Village determined that the Project was a Type I action subject to SEQRA. On or about July 2, 2002, the Village commenced the SEQRA coordinated review process by preparing and distributing Part 1 of the full Environmental Assessment Form ("EAF") to all other involved and interested agencies that it was able to identify, notifying them of its desire to serve as lead agency. All involved agencies assented to the Village serving as lead agency and, on or about August 6, 2002, the Village formally assumed the lead agency role for the coordinated review. Based on the EAF, and other Project information, the Village prepared, filed and published a Positive Declaration indicating its intention to prepare a Draft Environmental Impact Statement ("DEIS"). On April 2, 2003, the Village issued a Draft Scoping Document for the DEIS followed by a 23-day comment period. Written comments were accepted and the Final Scoping Document was issued by the Village on June 3, 2003. On October 7, 2003, the DEIS was accepted as complete and made available for agency and public review. Notice was provided to all involved and interested agencies and persons and published in the Environmental Notice Bulletin ("ENB") on October 15, 2003. A properly noticed public hearing was held at the Ezras Choilim Health Center in the Village of Kiryas Joel on November 14, 2003. Written comments were received until the end of the DEIS comment period on November 24, 2003.

Public and agency comments on the DEIS were carefully reviewed and thoroughly considered and responses to all substantive comments received were incorporated into the original FEIS. The Village accepted the original FEIS as complete on May 4, 2004 and subsequently filed the FEIS with all involved and interested agencies on or about May 5 and 6, 2004. Notice of completeness of the FEIS was published in the ENB on May 12, 2004. The Village subsequently issued and distributed its original Findings Statement on or about July 9, 2004.

The original FEIS and Findings Statement were subsequently challenged by Orange County. On October 20, 2005, Supreme Court, Orange County, (Rossenwasser, J.), granted Orange County's petition and annulled the FEIS and Findings Statement. On October 9, 2007, the Appellate Division, Second Department, affirmed in part and remitted the matter to the Village for the preparation and circulation of an amended final environmental impact statement. The Village undertook the required studies and analysis as directed by the Appellate Division and caused its environmental consultants to prepare an Amended FEIS which was accepted as complete on March 3, 2009. Notice of completeness of the Amended FEIS was published in the ENB on March 11, 2009. While not expressly required by the Appellate Division Order, this Amended Findings Statement is intended to complete the Village's SEQRA review. In accordance with SEQRA, the Village's findings and decision-making are required to incorporate suitable consideration and balance to the protection and enhancement of the environment, human and community resources, social and economic factors.

IV. Significant Beneficial and Adverse Impacts

Sections 2 and 3 of the DEIS describe the existing conditions, potential impacts, mitigation measures and alternatives considered for the Project. It included analyses of groundwater and surface water resources; ecological resources; geologic and topographic resources; air quality; agricultural resources; historic and archaeological resources; socioeconomics; land use; transportation and traffic; noise; aesthetics; utilities; energy; solid waste management; hazardous materials; and cumulative impacts.

It is evident that the majority of potential adverse environmental impacts identified will be short-term in duration and related to construction. These include impacts related to noise, dust, traffic, soil erosion, wetlands and stream crossings. Potentially adverse long-term impacts are focused primarily on growth inducement, cultural resources, wastewater treatment and pipeline maintenance. In direct response to the Appellate Division Decision and Order, the Amended FEIS also included additional analyses of wetlands, archaeology, sewage treatment, and population growth with respect to the alternatives.

The following narrative identifies the considerations that the Village has weighed and the reasoning behind its decision to move forward with the Project. It identifies the potential environmental impacts of the Project and describes mitigation measures that will be incorporated into the final Project plans to avoid or minimize those impacts. This section

has been expanded to account for the additional analyses, field work and reports prepared by the Village at the direction of the Appellate Division.

A. *Groundwater Resources.*

Under existing conditions and the no action alternative, the Village would continue to rely entirely on groundwater resources as its sole drinking water source. To accommodate the forecasted growth in the Village, the Village would be compelled to develop new and higher yielding wells which may not be viable and would place an increased burden on the limited resource and ultimately the surrounding communities that share this resource. Indeed, since the completion of the FEIS and original Findings Statement, due to the delay in the Project caused by the litigation brought by Orange County, the Village obtained approval from the New York State Department of Environmental Conservation ("NYSDEC") for additional groundwater wells, increasing its available capacity to 1.9 mgd. Because the Project will provide the Village with a new primary surface water source of potable water, no adverse impacts on the groundwater resource are anticipated to result from the Project. Rather, after completion of the Aqueduct connection, the Village of Kiryas Joel's dependence on groundwater would decrease, with the existing wells functioning entirely as a required backup system. The decrease in daily withdrawal would reduce stress on the aquifer and, therefore, provide a beneficial impact not only to the Village but the surrounding communities and the resource.

B. *Surface Water Resources.*

Potential impacts on surface water resources identified in the DEIS and Amended FEIS include impacts from stream crossings and erosion caused by construction of the pipeline as well as the potential for increased generation of wastewater once operating.

1. *Stream Crossings.*

There are a number of stream crossings along both alternative routes. The major streams crossed by the pipeline include Moodna Creek and Woodbury Creek, both NYSDEC Class C streams. As described in the DEIS and Amended FEIS, mitigation measures will be employed at these and other minor crossings to avoid potential adverse impacts to streams at these crossings. Where practical, the water main will be attached to the underside of the bridge crossing the stream. This will not affect the flow of water under the bridge. Where attaching the pipeline to the bridge is not practical, the water main will be jacked beneath the stream following standard engineering practices. Construction will be a minimum of 50 feet from the stream bank and the top of the water main will be at least 5 feet beneath the stream bottom to ensure that there is no permanent disturbance to the stream. Any affect on the flow or water quality of the streams at these locations would be temporary and construction-related. Mitigation measures including sediment traps, sediment barriers, erosion control blankets, rip-rapping, drainage diversions, vegetative restoration and minimizing land disturbance will be incorporated into the final construction plans. None of the streams that will be crossed are regulated by NYSDEC and, therefore, there is no requirement for a Protection of Waters permit from NYSDEC.

A NYSDEC SPDES General Permit for stormwater discharges associated with construction activities will be required. Compliance with the General Permit (GP-0-08-001), the technical standards for erosion and sediment control and the required stormwater pollution prevention plan will further protect surface water resources. Similar mitigation measures as those listed directly above will be incorporated into the Project.

2. WWTP Capacity and Potential for Water Quality Impacts

The Village of Kiryas Joel is within Orange County Sewer District ("OCSD") No.1 and is entitled to discharge its wastewater to the Harriman Wastewater Treatment Plant ("WWTP"). Expansion of the Harriman WWTP to 6.0 mgd has recently been completed and is now on line. This additional capacity is available for use by residents of municipalities served by OCSD No. 1. In August 2008, the Orange County Supreme Court, Environmental Claims Part, issued a Decision and Order enjoining the County from selling over 1.0 mgd of the newly created capacity to any communities outside of OCSD No.1 until such time as it was determined that there was adequate capacity first to accommodate the District, including the Village. It is, therefore, further evident that there is now an adequate, secure and dedicated capacity available to accommodate the potential increase in wastewater to be generated by the Project now and into the foreseeable future.

Even before the most recent Harriman WWTP expansion, it was evident that there was adequate capacity available to the Village between the Village WWTP and the Harriman WWTP to accommodate the potential increase in wastewater generated by the Project. On March 9, 2005, subsequent to the completion of the original FEIS and Findings Statement, NYSDEC approved a new groundwater well (Well #27) that increased the Village's water supply (and corresponding wastewater production) by 135,000 gpd. In addition, on August 17, 2005, NYSDEC approved another new groundwater well for the Village (Well #28) with an output of 486,000 gallons per day. In total, both approvals by NYSDEC represented an addition of 621,000 gpd of new water supply to the Village. As a result, the Village now has approval to draw in excess of 1.9 mgd from its existing wells, with a corresponding potential volume of wastewater generated. In authorizing this significant increase in the Village's water supply and corresponding wastewater generation potential, NYSDEC expressly determined that this expanded water supply would have no adverse impact on the Harriman WWTP or the Ramapo River. Significantly, in response to public comments regarding the potential impact of this additional water supply on growth, wastewater and the Ramapo River, NYSDEC stated:

In regards to the concern about growth impacts, particularly upon the sewage treatment capacity in the Ramapo River Basin, this Department carefully reviewed its files in regards to the capacity of both the Village's Sewage Treatment Plant and Orange County's Harriman Sewage Treatment Plant to treat this additional wastewater. We determined that there is sufficient excess capacity to treat this additional water, without adverse impacts on the Ramapo River.

Also since the time the DEIS and FEIS were completed in 2006, Orange County engaged CDM to complete the "Harriman Wastewater Treatment Facility Membrane Bioreactor Pilot Study" pursuant to a grant from the New York State Energy Research and Development Authority ("NYSERDA Study"). The NYSERDA Study assessed the feasibility, effectiveness, and cost of implementing a membrane bioreactor treatment system at the Harriman WWTP. The Study concluded that facility capacity could be cost effectively increased an additional 3.0 mgd, from 6.0 mgd to 9.0 mgd. Additionally, the Study's results demonstrated that the anticipated discharge permit standards for such an increase are readily achievable and technologically feasible for the Harriman WWTP and will also actually increase the quality of the effluent discharged to the Ramapo River. The NYSERDA Study lends still further support for the conclusion that there is adequate treatment capacity to accommodate the Project and that there will be no adverse environmental impacts from the Project with regard to wastewater treatment capacity and no adverse environmental impact with regard to the receiving water body, the Ramapo River. As a result, all wastewater, including any wastewater from the water treatment plant, will be properly treated and not result in any adverse impacts to surface water resources.

Accordingly, considering the available 6.0 mgd capacity at the Harriman WWTP (including the recently constructed 2.0 mgd which remains exclusively available to OCS No. 1) and the Village's own 0.97 mgd treatment plant, plus available technology for future expansion of the Harriman WWTP, sufficient wastewater treatment capacity is available to accommodate the gradual growth in wastewater generation in Kiryas Joel resulting from the proposed Aqueduct connection.

C. *Wetlands.*

The DEIS included a thorough desktop survey and field verification of federal and State wetlands in the vicinity of the alternative pipeline routes. As directed by the Appellate Division, State and federal wetlands were further delineated in the field. For the Amended FEIS, the Village's consultants delineated those wetlands located within or immediately adjacent to the roadway right-of-way s(50 feet on either side) for both Alternative A and C. All areas beyond the right-of ways will be avoided for both pipeline construction and any equipment staging. This delineation demonstrated that there is sufficient room within the right-of-ways to complete construction of the proposed pipeline without direct impact or alteration of any of the identified wetlands. Nevertheless, protective mitigation measures will be implemented to avoid any indirect impacts to wetlands in these areas where the wetlands are located near to the right-of-way.

Along Alternative Route A, thirty-eight wetlands units were delineated. Fourteen of these units were associated with stream crossings. As noted, none of the stream crossings are regulated by NYSDEC. No other NYSDEC regulated wetlands or buffers were identified in the vicinity of the right-of-ways for this route. Fifty-one wetland units were identified along Alternative Route C. As with Route A, eight involved stream crossings, none of which would require permits from NYSDEC. A number of NYSDEC regulated wetlands

and adjacent buffer areas were identified along Route C. None were located directly in the right-of-way. No construction activity will occur directly within any of these NYSDEC regulated wetlands. However, where there is the potential for temporary disturbance of the wetland buffer, a letter of permission will be obtained from NYSDEC. Conditions under the letter of permission require that any construction related impacts in a wetland adjacent area be temporary and that the excavated area be restored to its pre-construction condition.

The majority of the wetland units delineated along both alternative routes are presumed to be federal wetlands regulated by the U.S. Army Corps of Engineers ("ACOE"), though some appear to be isolated and may, therefore, fall outside of ACOE regulation. None of these wetlands were located directly within the right-of-way; instead being located at or adjacent to the limits of the visible roadway right-of-way. Because the pipeline will be installed either within the roadway right-of-way or the roadway bed itself where the right-of-way is not accessible, no loss of federal wetlands is anticipated. In the event that final construction plans require any of these identified federal wetlands to be encroached, the construction would be regulated by ACOE Nationwide Permit # 12, Utility Line Activity. Moreover, as noted, all appropriate protection measures will be utilized in the field during construction as part of the compliance with the NYSDEC SPDES General Permit.

Because no direct or indirect impacts to wetlands along the water transmission main route are anticipated (as well as at the sites of the Aqueduct connection and water treatment plant), no effects on flood control, pollution absorption, groundwater recharge and habitat function of the wetland units will result from the construction of the Project.

D. *Air Quality.*

The Project would generate minor, local, short-term increases in fugitive dust from exposed soil and use of operating machinery. Dust generation would be temporary and limited to areas of active construction. Standard dust suppression measures such as use of wind breaks, keeping areas wetted down, cleaning roadways, covering trucks, truck washing and reducing the size of disturbed areas will be employed to the greatest extent practical.

E. *Induced Growth.*

SEQRA requires the lead agency to discuss the growth-inducing aspects of a proposed action "where applicable and significant." When discussed, the EIS is required to describe the likelihood that the proposed action will cause significant increases in local population and trigger further development by increasing employment opportunities or providing public services or utilities that encourage people to move there. As noted, SEQRA requires this discussion where such growth impacts are a result of the proposed action and are significant.

In the DEIS, the Village considered its historic growth, future growth projections and remaining build-out potential. The Village also considered that: (i) the Project was not intended to provide water to areas outside the Village; (ii) the Project involves only a new water source tying directly into the existing distribution system; not creation or expansion of the distribution system; and (iii) the Project will not bring water to an undeveloped or unserved area. The DEIS also recognized that once constructed, the Project will create limited permanent employment opportunities and thus job creation will not induce people to move into the Village. Based on these considerations, the Village concluded the Project will not significantly induce new growth inside or outside of the Village.

This conclusion is now further supported by a supplemental growth study conducted by AKRF for the Amended FEIS. That study continues to project routine natural internal growth consistent with historic trends and the community's religious culture. Events over the Village's relatively short history support the conclusion that the Village's population is not significantly affected by outside forces such as availability or lack of new utilities. For example, from the mid-1980's through mid-1990's, NYSDEC had imposed a moratorium on new sewer connections to the Harriman WWTP. Notwithstanding the fact that the Village was subject to that moratorium, there was no significant or noticeable leveling off or decline in Village population during this time period. Likewise, once the moratorium was lifted, there was also no subsequent significant or noticeable spike in internal population growth or in-migration. Similarly, with respect to water supply, at the time of the DEIS, the Village was experiencing difficulty satisfying demand for water supply with its existing inventory of groundwater wells. During this time, Village population continued to grow at consistent rates as shown by the AKRF study. More recently, since the completion of the original FEIS, the Village has increased its available groundwater supply through the expansion of its Brenner well-field. As noted in the wastewater discussion, the Village expanded its well-water supply capacity by an additional 621,000 gpd to a total in excess of 1.9 mgd. When compared to existing water demand in the Village, the new well capacity has created an actual surplus of over .3 mgd above peak demand and approximately .5 mgd above average daily demand. Notwithstanding this significant increase in available water capacity, the Village population has not experienced a corresponding surge in growth or in-migration. Instead, the Village's growth has remained constant and the level of in-migration has still continued its downward trend.

Notwithstanding the Project, internal growth will undoubtedly continue. Any potential change in the rate of increase once the Project comes on-line is not anticipated to be so significant to be quantifiable. Rather than a growth inducement, the Project is a carefully considered and measured response to meet the internal needs for reliable services as forecasted in the manner required of any responsible municipality. Therefore, the projected growth of the Village, as set forth in the DEIS and FEIS and now the Amended FEIS, will not be quantifiably different as a result of the proposed Project as it would be under the no action alternative.

Good planning practices require the Village to provide for the basic needs of the projected population resulting from the maturing of young men and women starting their

own family units. Therefore, the Village is undertaking the Project to assure an adequate potable water supply to meet the anticipated needs of a growing population. The Project is in full accord of the Village's comprehensive plan. The Village uses smart growth principles which provide for growth in central locations where needs and services may be provided efficiently. Moreover, in addition to the Village's zoning code and comprehensive plan, other growth management factors include New York City's formulaic allotment of entitlement water based on the current census record, the availability of sewage treatment capacity, and the current amount of developable land within the Village (as outlined in the original FEIS). Therefore, based on all of these considerations, the Village has determined that the provision of basic human services to its existing and growing internal population outweighs any minor or insignificant additional growth that could result directly from the provision of Aqueduct water.

F. *Historic and Archeological Resources.*

The final location and placement of the transmission pipeline has the potential to disturb historic and archeological resources. As noted in the original FEIS and Findings Statement, the Village adopted a mitigation protocol, approved by the New York State Office of Parks Recreation and Historic Preservation ("OPRHP") on or about March 16, 2004, that would avoid or minimize adverse impacts to such resources. The protocol, as set forth below, remains in place as a mitigation measure and condition to any future permit approval for the Project. The OPRHP-approved protocol is as follows:

1. The Stage 1-A investigation will be used to assess and identify general areas of potential archeological or historic sensitivity in the project corridor including alignment, staging areas, temporary access roads, etc. Maps of the preferred pipeline route shall also be assessed to confirm that construction will occur in areas of prior disturbance.
2. For the known archeological site locations and the areas of potential sensitivity identified in step 1, an evaluation based on construction drawings, USGS topographic maps, and observations made during a site visit will be completed to verify those areas that have been disturbed and can be eliminated from further consideration.
3. Stage 1B archeological testing, per Office of Parks, Recreation and Historic Preservation (OPRHP) guidelines, will be conducted at sites or areas of sensitivity within the preferred route that cannot be documented to have been disturbed. The archeological field-testing will be done sufficiently in advance of construction to allow appropriate consultation regarding potential impacts to archeological sites.
4. When Stage 1B evaluation results in the discovery of archeological materials, additional investigation will be carried out to determine the extent of archeological site integrity and significance. OPRHP shall be consulted and given the opportunity to review and approve avoidance or mitigation plans prior to the start of construction in the area.

5. The implementation of the work identified in steps 1-4 will be administered by an archeologist qualified pursuant to 35 CFR 61.

In its Decision and Order, the Appellate Division directed the Village to prepare a site-specific phase 1B archaeology study. In response to that directive, the Village expanded on its phase 1A study undertaking steps 1-3 of the mitigation protocol along alternative Routes A and C. A site-specific phase 1B study was conducted for alternative Route A in the right-of-way along Route 32 in Cornwall, NY, immediately north of the Cornwall-Woodbury boundary line. In accordance with the protocol, the specific site was determined based the expanded phase 1A findings that this was an area along the route that appears sensitive for archeological resources and was not determined to have been previously disturbed. OPRHP was consulted on the location of the phase 1B. The fieldwork found no precontact material in any of the thirty separate shovel tests. Historical and modern material was limited to a small assortment of 19th and 20th century artifacts, most post-dating the construction of Route 32 in the 1930s. A limited amount of 19th century material was found along the east side of Route 32. A stone foundation was noted about twenty-four feet east of the right-of-way boundary. A review of historical maps and atlases show that in 1851 a Toll Gate stood to the east of Route 32 in the approximate vicinity of the positive shovel tests, and that to the south of this was the F. Smith farmhouse. However, the exact locations of these former structures are uncertain given the age of the historic maps and changes to the landscape. Artifacts from these shovel tests are potentially related to one of these structures.

In the event that the final pipeline route is located on the east side of Route 32 in the vicinity of this sensitive area, then additional archaeological investigations and documentary research, pursuant to the approved protocol and in consultation with OPRHP, would be conducted to determine the significance of the site and to more firmly associate artifacts with a specific source. However, the preferred option would be to preserve the potential resource in place. This can be accomplished by locating the pipeline on the west side of Route 32 or under the roadway itself in this area, which would appear to be far enough removed and separated by significant amount of disturbed area to avoid potential impacts to these resources. Rerouting and redesign of final construction plans will also avoid potential impacts to any other sensitive sites.

Along Route C, the site-specific area identified for a phase 1B was located in the vicinity of a 19th century cemetery that was disturbed by the early 20th century rerouting of Route 208 directly across it. Although records indicate that graves were removed from the roadbed and reinterred when Route 208 was constructed, the archaeologist concluded that it is entirely possible that human remains that were not recovered at that time may still exist within the ROW. Due to the inherent difficulty and cost of conducting a phase 1B study of an area that may disturb human remains, as well as the difficulty of completing construction and even avoiding such area, the decision was made to defer study of this area pending results from other areas and final determination that this route would continue to be the preferred route for the pipeline. In the event that this route remains as the preferred route, further 1B study will need to be conducted unless the Project can be rerouted and redesigned to completely avoid this area.

G. *Economics.*

It is anticipated that the Project will generate several jobs during construction. The construction of the Project will also generate an increased demand for necessary construction materials and secondary services to support the construction. Once operating, it is anticipated that the Project would employ a limited number of additional persons to help operate the treatment facility and maintain the pipeline and other equipment.

The proposed Project may create temporary disturbances to retail businesses along the pipeline route during construction. The number of businesses involved is anticipated to be small and mitigation measures will be employed including strategic construction sequencing, pre-construction notices to the affected businesses and maintaining continuous access to businesses. There will be no impacts on such businesses from the operation of the pipeline.

Operation of the Project would increase the cost of water in Kiryas Joel, since the existing groundwater pumping system would be maintained as backup to the Aqueduct connection.

H. *Traffic.*

In each of the alternate routes, the pipeline would be installed either in the highway right-of-way outside of the limits of the roadway (preferred); in the shoulder of the roadway; in one or two of the travel lanes; or a combination of all three. Traffic impacts associated with construction of the pipeline, including delays and modified traffic patterns, would be concentrated along the pipeline corridor during construction and be temporary in duration. It is anticipated that less than 300 feet of roadway would be closed at any one time and in most locations would only involve partial lane closures. A minor unavoidable impact to residents, businesses, emergency vehicles, school buses and public transit is anticipated. Appropriate pre-construction safety design and planning, including pre-construction notice, signage, lighting, safety personnel and fencing will ensure that conditions during pipeline construction would not be hazardous to pipeline workers and the traveling public. Comparatively, the potential impacts along each of the alternative routes would be similar in scope and intensity. Specifically, the area along the Rt. 32 corridor (Alternative A) contains the most consistent shoulder and right-of-way enabling less disturbance of existing roadway and thus fewer delays. However, this route would also temporarily create a potentially more significant impact to the 5-point intersection (Rts. 94/32) in Vails Gate. This intersection includes NYS routes 94, 300, and 32.

The New York State Department of Transportation ("NYSDOT") has jurisdiction for permitting any construction activity along its roadways. A NYSDOT Highway Work Permit will be obtained that will include traffic safety measures, a detailed work schedule and plans and profile of the water main to be installed.

In order to mitigate potential impacts to traffic safety, a number of mitigation measures will be employed, including among others, proper signage to alert motorists that construction activities are ahead, use of reflective barrels, flag persons to direct traffic as required, and reduction of speed through the construction zone. To mitigate disruption to traffic, contractors would be required to maintain one lane in operation at all times and, to the extent practical, two passable lanes would be provided at the end of each day. In order to avoid a major disruption in traffic at higher volume intersections, construction may be conducted in the overnight period. Similarly, construction will be sequenced so that the work for the day/night includes setting up the maintenance and protection of traffic devices, excavation, pipe installation, backfill excavated area, and the installation of temporary pavement or plates to enable continued traffic movement during non-construction periods of the day. To the extent practical, installation would be limited to only that length of pipe that could be installed and backfilled within the same day. This is typically 100-300 feet. Use of alternating one-way traffic in the vicinity of pipe installation is also anticipated. Additional strategic construction sequencing and timing (i.e., restrictions on construction activity during the morning and afternoon rush hours) will be employed where necessary. Access to residential and business driveways would be maintained at all times during construction. Regular contact with local governments, government agencies, emergency services, utility companies, television and radio to inform them of project status will also help to minimize impacts.

There will be no operational phase impacts on traffic.

I. *Noise.*

Noise generated by the Project would come primarily from the construction phase. Long-term operations noise would be limited to two sources: the pump station and the water treatment plant.

Construction noise impacts generally occur only during typical daytime working hours of 7:00 a.m. to 5:00 p.m., and would be highest during the clearing and trenching phases of construction. The noisiest equipment would likely be earthmoving equipment, such as dozers, graders, loaders and other heavy-duty diesel equipment. Proper maintenance and use of mufflers will help to reduce this noise. Noise levels decrease by 6 dBA for every doubling of distance from the source. It is anticipated that the daytime L_{max} noise levels will not exceed 80 dBA at 150 feet away and the daytime L_{eq} noise level would not exceed 75 dBA at 150 feet away.

Nighttime and weekend construction work does not appear to be generally necessary, and will be avoided to the maximum possible extent. Nighttime construction would be considered only if necessary to mitigate impacts to daytime traffic conditions. This will be evaluated further during final design; however, based on current traffic conditions, placing restrictions on construction during normal commuting hours is expected to sufficiently address daytime traffic control such that nighttime construction can be avoided.

The major long-term noise-generating piece of stationary equipment associated with the aqueduct connection component of the Project is the pumping station to be located on the west side of Riley Road at the New Windsor Water Treatment Plant. The maximum sound level from the pump station would be specified as 60 dBA at the property boundary (the nearest property boundary to the pump station is expected to be approximately 50 feet from the pump station). At the residence nearest the pump station, more than 300 feet from the site property line, the pumping station noise would be inaudible.

The nearest residential receptors to the proposed water treatment plant site on Berdichev Road are the boarding students at the UTA Mesivta rabbinical college, about 100 feet across Berdichev Road from the site property line. The nearest houses are on top of a hill overlooking the site, about 300 feet from the property line. At these distances, a minor to moderate increase in noise (3 to 6 dBA) is projected. The alternative water treatment plant site at the terminus of Alternative Route A is a 30-acre parcel located just off the intersection of Seven Springs Road and Bakertown Road. There is a single residence located across the street from the property. As noted in the DEIS, the treatment plant would be located well off of the road, out of site from this residence and there would be no increase in noise anticipated at this single nearby receptor during operations.

State-of-the-art pumping station and water treatment plant equipment will be specified to keep noise generation as low as practical. Therefore, no significant permanent noise impact is anticipated.

J. *Energy.*

Approximately 4,900 kWh of electrical energy per day would be required to pump 2 mgd of water out the top of the Aqueduct, over to the proposed pumping station in Vails Gate, and from the pumping station through the proposed 12-13 mile pipeline to Village. Although significant, this is a small amount of electrical power in comparison to the total amount consumed in the region. Adequate electricity is available to accommodate the Project.

A 24-inch pipeline diameter was originally proposed primarily because less electrical energy would be required to pump 2 mgd of water through a 24-inch pipeline than through a 12-inch or 18-inch pipeline. After consideration of comments on the DEIS, the Village has determined that an 18-inch diameter pipeline would still provide sufficient capacity for Village needs, while increasing energy consumption about 10%. Once operating, most routine pumping from the Village's groundwater wells would cease, thereby reducing associated energy consumption there. This will partially offset the energy consumed by the Project.

K. *Other Issues*

Based on the environmental analyses of the Project described in the DEIS, no impacts are anticipated in the following areas:

Land use

Construction of the Aqueduct connection, pumping station and water treatment facility would be consistent with existing surrounding land uses. Improvement of the Village water supply infrastructure is consistent with the Orange County Comprehensive Plan.

Agriculture

No agricultural land would be affected at the sites of the proposed pumping station and water treatment facility. The pipeline would be constructed within the rights-of-way of existing roads, and thus no impact on agricultural resources would result.

Aesthetics

The pumping station and water treatment facility would be designed to be visually compatible with existing similar uses on the proposed sites. The pipeline would be underground in existing roads, except for bridge crossings. Very few trees would be removed for the pipeline construction.

Ecology

No regulated wetlands exist in the area of the proposed connection, pumping station and water treatment facility. As noted elsewhere, the pipeline will be designed to avoid to the extent practical placement in or adjacent to regulated wetland areas or associated buffers. No federal or State-listed or proposed endangered or threatened species are known to exist in the proposed area of construction.

Geology/topography

Geology and topography would be impacted only temporarily during project construction. No long-term changes to geologic features and topography would occur.

Cumulative Impacts

No projects similar to the proposed Aqueduct connection are planned within the area affected by the Project. The Village is not aware that Orange County and the NYS DOT have planned any major road and bridge improvement projects for the roads proposed for the pipeline during the time the pipeline would be constructed.

V. Alternatives Considered

The DEIS explored and described a range of reasonable alternatives to the proposed action-including the following:

1. *No Action Alternative.* Continuing reliance on groundwater and the drilling of additional groundwater wells would be required under this alternative. Given the limits on the groundwater resource, this alternative is not practical.
2. *Alternative Pipe Size.* Trench size, construction duration and potential adverse environmental impacts would be the same for a 24-inch diameter pipeline as for any other size pipeline. As noted previously, consumption of electricity would be about 10% less for the 24 inch pipeline. On the other hand, a smaller pipe would provide less capacity for future demand. Nevertheless, due to concerns expressed by NYCDEP that the pipe is

oversized, a reduction in pipeline diameter to 18 inches would provide sufficient capacity to meet the Village's objectives.

3. *Alternative Pipeline Route.* The Village has considered three alternative routes for bringing the pipeline from the Aqueduct connection in New Windsor to the water treatment plant in the Village.

Alternative Route A: NYS Route 32/County Route 44.

The easternmost alternative is the shortest alternative with a 12-12.5 mile route beginning at the New Windsor Aqueduct connection on Riley Road and continuing east on NYS Route 94 to Vails Gate; then south along NYS Route 32 and west on County Route 44, terminating at a new water treatment facility in the Village of Kiryas Joel south of Seven Springs Road and west of Bakertown Road. The land use along this route is a mix of residential, rural and commercial development. This route maximizes the use of State highways versus County and local roads. The Route 32 corridor contains the most consistent shoulder and right-of-way providing for less disturbance of existing roadway and therefore less disruption to local traffic patterns. However, this route would also create a potentially more significant temporary impact to the 5-point intersection in Vails Gate. This intersection includes NYS routes 94, 300, and 32. Here, traffic mitigation measures as described in the traffic section would likely be required. This route contains no NYSDEC regulated stream crossings and no NYSDEC regulated wetlands or wetland buffers at or within the affected right-of-ways. Likewise, this route contains significantly less delineated federal wetlands at or within the right-of-ways than Alternative Route C. The expanded phase 1A archaeology study (refinement study) for the Amended FEIS found that Route A has less archaeologically sensitive areas than Route C. The most significant difference between the two routes is that much of Route A travels along a road that has far fewer areas of historical sensitivity since it was laid out through what appears to have been undeveloped farmland. The site-specific phase 1B study conducted along this route found no precontact materials and only a limited amount of 19th century material on the south side of Route 32 in the general vicinity of a former 1851 tollgate. The area on the north side of Route 32 did not disclose any similar materials, thereby making this side of the road the preferable path for the pipeline.

Alternative Route C: County Routes 94/27/208.

The westernmost alternative is a 13 mile route that also begins at the New Windsor Aqueduct connection on Riley Road and continues on NYS Route 94 to County Route 27 to NYS Route 208 to County Route 17 to Shunnemunk Road in the Village of Kiryas Joel, terminating at the site of the existing water treatment plant on Berdichev Road. Land use along this route is a mixture of residential and rural with discrete pockets of commercial development. This route relies more on County highways than Alternative A. The shoulders along this route appear to be adequate. Similar traffic mitigation measures would be required to avoid or minimize any traffic impacts along the route. This route also contains no NYSDEC regulated stream crossings, but does contain a couple of NYSDEC wetlands and buffer areas adjacent to the right-of-ways in the vicinity of NYS Route 94 (Cornwall) and County Route 27 (Blooming Grove). A letter of permission may be required from NYSDEC for work along this area. Likewise, this

route contains more delineated federal wetlands at or within the affected right-of-ways. A preconstruction notice may be required to apply a nationwide wetlands permit for installation of the pipeline in such areas. The expanded phase 1A archaeology study found that Route C has more archaeologically sensitive areas than Route A. A significant difference between the two routes is that Route C also passes through a 19th century cemetery that was disturbed by the early 20th century rerouting of Route 208 directly across it. Although records indicate that graves were removed from the roadbed and reinterred when Route 208 was constructed, it is possible that human remains that were not recovered at that time still exist within the right-of-way. Due to the inherent difficulty and cost of conducting a phase 1B study of an area that may disturb human remains, as well as the difficulty of completing construction in such an area, the decision was made to defer a phase 1B study of this area pending the final determination that this route would continue to be the preferred route for the pipeline.

Alternative Route B: NYS Routes 87/County Route 44

A third alternative was identified in the DEIS that followed NYS Routes 87 (NYS Thruway) and 32 and County Route 44. Due to the impracticability of obtaining approval for locating the pipeline along the NYS Thruway, this alternative is no longer considered reasonable or feasible, considering the objectives and capabilities of the Village.

Based, in part, on the results of the additional studies and analyses conducted for the Amended FEIS, the Village finds that Alternative Route A is the preferred route for the proposed pipeline corridor and the alternative that would present the least potential for significant adverse environmental impact while being feasible and considerate of the objectives and capabilities of the Village.

4. *Alternative Location for Connection and Pump Station.* Locating the pump station on New York City-owned land adjacent to the Aqueduct would not reduce environmental impacts or construction cost and would require approval by New York City.

5. *Alternative Surface Water Sources.* Evaluation of Hudson River water as an alternative surface water source found this alternative to be prohibitive because the brackish water would require costly treatment and would generate a large quantity of wastewater requiring treatment.

None of the other examined alternatives would perform as well as the proposed project in meeting the Village's objective: to provide its residents with a reliable, high-quality source of potable water while minimizing environmental impact and conflict with other communities.

The Town of Blooming Grove and the Village of Washingtonville originally requested in comments to the DEIS that they be allowed to tap the proposed pipeline as an emergency backup water supply. The Project as proposed does not contemplate any

interconnections. Providing emergency access to the Aqueduct water through a connection from the proposed Village pipeline would require preparation of an application to NYCDEP accompanied by an environmental assessment of the potential effects of such an action. This type of arrangement would work best if the water were treated at the existing Aqueduct tap rather than at a new plant in Kiryas Joel. Formal consideration of such an action by the Village and other potentially involved agencies must await preparation of plans by Blooming Grove and Washingtonville and is subject to environmental review and requisite governmental approvals, including NYCDEP. Since the time of the Town and Village comments, each has passed a resolution to oppose the Project, thereby implying that they are no longer interested in water from the Aqueduct.

The NYCDEP and the NYSDEC suggested in comments to the DEIS that the Village consider the benefits and impacts of sharing the Town of New Windsor tap and/or joint use of the New Windsor water filtration plant. These alternatives were not analyzed in the DEIS/FEIS because ownership of the tap and treatment facility rests entirely with the Town of New Windsor. Nevertheless, upon consideration of these comments, discussions have taken place between the two municipalities regarding the viability of sharing the New Windsor tap and/or joint use of the New Windsor treatment facilities. The Village continues to explore these options, recognizing that any such change to the proposed Project would require approval by New York City and analysis of the environmental impact significance under SEQRA. ✓

VI. Mitigation Measures.

In its preliminary plans for the Project, the Village identified a number of measures designed to mitigate or eliminate the potential for significant environmental impacts as a result of construction and operation of the Project. These mitigation measures, as well as mitigation measures identified in the public review process, are summarized below.

1. Soil erosion and sediment control measures such as sequencing of construction, limiting the extent of disturbance at any one time, the use of hay bales or silt fencing, and prompt re-vegetation and mulching will be implemented as necessary to prevent erosion and soil-laden runoff from exiting the site.
2. Soil stockpiles will be covered with tarps, straw or hay mulch when not in use to prevent erosion of the stockpiled materials. Should stockpiles remain in place over the winter, they will be seeded with an annual rye grass or winter wheat mixture to stabilize the soil. Removal and proper disposal of excess fill will be carried out.
3. Erosion control measures will be checked regularly for proper functioning during construction and maintained as needed.
4. To minimize impacts due to dust generation, natural vegetation at the limit of clearing will remain intact to serve as wind breaks. Cleared areas of the site will be

watered as necessary to reduce on-site dust. Trucks and offsite roadways will be cleaned as necessary.

5. Disturbed site areas will be re-vegetated. Existing trees and vegetative habitats will be protected in all areas beyond the limits of proposed construction.

6. A NYSDEC SPDES general permit for stormwater discharge associated with construction activity (GP-0-08-001) will be applied to the Project and required erosion and sediment controls will be employed as well as a stormwater pollution prevention plan.

7. During the operational phase of the Project the building architecture and planting will reflect existing site aesthetics and neighborhood character.

8. The contractor hired to construct the Project will be an experienced construction management firm.

9. Performance requirements on equipment noise output can be integrated in construction contracts to minimize community noise impacts. The maximum sound level for the pump station will be 60 dBA at the property boundary.

10. The Village has reduced the pipe size to 18 inches. Reduction in pipe size, however, will not result in a reduction of construction related adverse environmental impacts.

11. To the extent practical, the pipeline will be attached to bridges and culverts to avoid disturbance impacts from stream crossings. Where jacking beneath the stream is necessary, a minimum of 50 feet buffer between the stream and the entry/exit points will be maintained as well as a minimum of 5 feet beneath the stream bottom to the top of the pipe.

12. At stream crossings, where the pipeline is attached to the bridge, the pipe will be painted to blend visually with the bridge.

13. The pipeline will be re-routed to the shoulder of roads or under roadways, if necessary, to avoid impacts to delineated wetlands/buffers or sensitive archaeological sites.

14. To avoid impacts to archaeological resources, the Village will implement the OPRHP-approved protocol. The Village has selected Alternative Route A to avoid potential disturbance impacts to the area of the former cemetery along Route 208. The

Village will locate the pipeline on the west side of Route 32 or under the roadway in the area of the 1851 Toll Gate.

15. The Village and its construction contractor will develop a pre-construction schedule to avoid traffic and other construction related impacts to the greatest extent practical and notice of the schedule to affected municipalities, businesses, residences, NYSDOT and the news media.

16. The Village will employ traffic control measures such as peak hour restrictions, alternating one-way traffic, signage and compliance with the NYSDOT manual of uniform control devices to avoid or reduce impacts from traffic congestion and address safety issues. Specifically, contractors will be required to maintain one lane in operation at all times and, to the extent practical, two passable lanes would be provided at the end of each day. At higher volume intersections, such as the 5-point intersection (Rts. 94/32) in Vails Gate, construction may be conducted in the overnight period. Construction will be sequenced so that the work for the day/night includes setting up the maintenance and protection of traffic devices, excavation, pipe installation, backfill excavated area, and the installation of temporary pavement or plates to enable continued traffic movement during non-construction periods. To the extent practical, installation would be limited to only that length of pipe that could be installed and backfilled within the same day. Additional strategic construction sequencing and timing (i.e., restrictions on construction activity during the morning and afternoon rush hours) will be employed where necessary. Access to residential and business driveways would be maintained at all times during construction.

17. Construction noise controls will include appropriate scheduling, properly operating mufflers, and minimizing idling time.

18. Encouraging reuse and recycling of construction and demolition debris.

19. Storage of water treatment chemicals in accordance with applicable regulations and safety standards.

VII. Conclusions.

In issuing this Amended Findings Statement, the Village of Kiryas Joel has carefully examined and given due consideration to the Draft Environmental Impact Statement for the Proposed Connection to the New York City Catskill Aqueduct (October 2003); the Final Environmental Impact Statement for the Proposed Connection to the New York City Catskill Aqueduct (May 2004) (including public and agency comments on those documents); and the Amended Final Environmental Impact Statement prepared at the direction of the Appellate Division.

After careful and thorough consideration, the Village of Kiryas Joel finds the proposed Project examined in the above referenced documents to be environmentally sound and the

best alternative to provide a reliable and adequate replacement supply of high-quality potable water for the Village. Based on the analysis conducted for the Amended FEIS, Alternative A has been selected as the preferred pipeline route.

Specific conclusions that support these findings include:

- Existing resource limitations and projections of internal growth in Kiryas Joel establish the need for development of a dependable water supply to prevent the significant adverse effects of water shortages.
- Changes in the existing and forecasted patterns of growth in the Village are not expected to result from the Project and would remain the same as under the No Action alternative. Other limiting factors to future growth include limits on entitlement water by NYC; wastewater treatment capacities; limits on developable space within the Village; and the Village zoning code.
- The majority of the potential adverse environmental impacts identified is construction-related and therefore temporary or short-term and will be minimized or avoided by mitigation measures and project design.
- No alternatives identified for providing adequate water supply provide the significant advantages of the preferred alternative. The No Action alternative would not provide an essential service for a growing population.

Therefore, in consideration of the above, the Village of Kiryas Joel, as the Lead Agency in this matter, issues this Amended Statement of Findings, and certifies under Section 8-1019.8 of the Environmental Conservation Law and 6 NYCRR Section 617.11, that:

1. The Village has carefully examined and given due consideration to the relevant environmental impacts, facts, and conclusions disclosed in the Draft, Final, and Amended Final EIS on the Proposed Connection to the New York City Catskill Aqueduct and public and agency comments.
2. The requirements of Article 8 of the New York State Environmental Conservation Law, and regulations promulgated thereunder at 6 NYCRR Part 617, have been met and fully satisfied.
3. The Village has carefully weighed and balanced the relevant environmental impacts with social, economic, and other essential considerations.
4. The foregoing Amended Findings Statement sets forth the Village's judgment and basis for moving ahead with the proposed action.
5. Consistent with social, economic, and other essential considerations from among the reasonable alternatives available, the proposed action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating, as conditions to the decision, those mitigation measures which were identified as practicable.
6. While the proposed action is one that, in fact, avoids or minimizes adverse environmental impacts, nevertheless, the imperative necessity to meet the current and anticipated basic need of the residents of Kiryas Joel to have a safe, reliable water supply is of such critical importance that the members of the Board of Trustees would be grossly negligent in their duty as elected representatives of the

people if they did not take responsible action, by means of this Project, to meet such need. The adverse impacts, human and environmental, of a failure to take such responsible action are manifest and inevitable. Therefore, the Board of Trustees does hereby legislatively determine that the undertaking of the Project by the Village of Kiryas Joel is in the public interest and that such public interest outweighs any balancing factors which might weigh against undertaking the Project.

Now therefore, Be It Resolved by the Board of Trustees of the Village of Kiryas Joel, Orange County, New York, that the Village of Kiryas Joel, be, and hereby is, authorized to undertake the Project. On a vote of 5 ayes, 0 nays, 0 abs., the foregoing Amended Findings Statement is adopted.

Dated: 2/31/09

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MARSHA RUBIN GOLDSTEIN
HELEN COLLIER MAUCH^
LISA F. SMITH°
OF COUNSEL

August 18, 2014

By Certified Mail, Return Receipt Requested

Gedalye Szegedin, Village Clerk
Village of Kiryas Joel
Village Hall
P.O. Box 566
Monroe, New York 10949

Re: FOIL Request

Dear Mr. Szegedin:

This is a request pursuant to New York State's Freedom of Information Law, Public Officers Law § 84 et seq. ("FOIL"), on behalf of our client, John Allegro.

Please provide the undersigned with the opportunity to review and, if desired, to copy any and all Records (as that term is defined by FOIL) in the Village of Kiryas Joel's ("Village") possession regarding or relating to the following items:

- (1) Identities of the members of the Village Planning Board;
- (2) All documents relating to Village Planning Board Members' satisfaction of applicable training requirements since January 2012 (see N.Y. Village Law § 7-718(7-a));
- (3) All agendas prepared or issued by the Village Planning Board since January 2012;
- (4) All minutes prepared in connection with Village Planning Board Meetings since January 2012;
- (5) All resolutions issued by the Village Planning Board since January 2012;

- (6) Identities of the members of the Village Zoning Board of Appeals;
- (7) All documents relating to Village Zoning Board of Appeals Members' satisfaction of applicable training requirements since January 2012 (see N.Y. Village Law § 7-712(7-a));
- (8) All agendas prepared or issued by the Village Zoning Board of Appeals since January 2012;
- (9) All minutes prepared in connection with Village Zoning Board of Appeals Meetings since January 2012;
- (10) All resolutions issued by the Village Zoning Board of Appeals since January 2012;
- (11) Copy of the Village comprehensive planning document(s);
- (12) Copy of the Village Zoning Code or Ordinance;
- (13) Copies of all determinations by any Village agency(ies) pursuant to the New York State Environmental Quality Review Act ("SEQRA"), including positive declarations, negative declarations, conditioned negative declarations, and/or findings statements; and
- (14) Copies of all referrals made to the Orange County Planning Department pursuant to Section 239-m of the New York State General Municipal Law since January 2012.

We will, of course, pay all appropriate photocopying costs.

Thank you for your attention to this matter. Please contact me with any questions.

Very truly yours,

ZARIN & STEINMETZ

By: 

Daniel Richmond

cc: John Allegro (via email)
Javid Afzali, Esq. (via email)

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September 29, 2014

VIA First-Class

Daniel Richmond
Zarin & Steinmetz
81 Main Street
Suite 415
White Plains, New York 10601

Re: RE: FOIL #0818-14-001
DATE RECEIVED: August 18, 2014

Dear Mr. Richmond:

This letter responds to your request for access to records under New York State's Freedom of Information Law (FOIL) dated August 18, 2014 and subsequent Appeal of Denial dated September 15, 2014.

Please find attached documents (total 238 pages) in partial response to your request. Due to the breadth of your request, the Village continues to review its records to identify additional non-exempt responsive documents. The Village will provide you with such documents within a reasonable timeframe given the extensiveness of the request.

If all records are not provided because the records are excepted from disclosure, you will be notified of the reasons and of your right to appeal the determination.

Very truly yours,

Javid Afzali

JA/alw

Encls.

cc: Village of Kiryas Joel

**Comprehensive Plan
for the
Village of Kiryas Joel**

Parish Weiner & Shuster, Inc., Planning Consultants

December, 1999

VILLAGE OF KIRYAS JOEL

Abraham Wieder, Mayor

Board of Trustees

Jacob Mittelman

Solomon Wertzberger

Yudel Kahan

Mendel Schwimmer

Village Clerk

Gedalye Szegedin

PARISH WEINER & SHUSTER, INC.

Planning Consultants

Nathaniel J. Parish, AICP, Principal

Richard Hyman, Senior Consultant

December 1999

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SUMMARY OF FINDINGS AND PROPOSALS

1. The current population of the Village is estimated to be about 12,000. The population at the time of the 2000 Census (April 2000) is projected to be about 13,000. The population in the Year 2005 is projected to be between 15,000 and 18,000 and in the Year 2010 between 17,000 and 23,000. Therefore the population will increase by at least 50% by the Year 2010 and could possibly double the current population.
2. The current lack of commercial and industrial uses severely limits the job opportunities for the residents. Economic development should be pursued aggressively including zoning for such uses and outreach to potential businesses.
3. The Village is in dire need of fire protection with a shorter response time and has applied for a Community Development Block Grant to construct a fire house east of Bakerktown Road.
4. The Village has no public parks, and has applied for a NYS grant to construct a municipal park west of Bakertown Road. The park would contain a children's playground, a tot lot, an open play area, sitting areas, nature trails and a picnic area.
5. The new Sewer Treatment Plant constructed in 1999 has sufficient capacity to accommodate all projected population growth through the Year 2010 if it is expanded to its maximum capacity.
6. The Village needs to continue studying and exploring various options to provide water resources to the growing population.
7. The Community Health Center recently completed in 1999 will be able to meet the health needs of the population for the future.

8. Several existing minor collector streets will have to be upgraded as major collectors as additional development occurs. A more direct connection between Dunderberg Road and the Village Center should be explored.
9. Sidewalks are an important mode of transportation for the Village residents and several streets have deteriorated sidewalks and other streets have no sidewalks at all. A \$1 million State grant has been approved for the Village to start sidewalk improvements and another grant application has been submitted.
10. The Village has a limited amount of vacant land totaling about 270 acres and some of the land has development limitations including wetlands, flood plains and steep slope.
11. There are eight major vacant parcels suitable for residential development totaling 185 acres. At the current type and density of development in the Village, between 1,400 and 1,800 dwelling units could be built on these parcels. Based on family size, the population growth generated by these parcels could range between 6,000 and 11,000 persons.
12. If the Village continues to grow at its current and projected rate, there will be little developable land left by the year 2010. There are about 300 acres of vacant land within areas in the Towns of Monroe and Woodbury that are contiguous to the Village of Kiryas Joel. Since the land is so located as to constitute a unity of purpose and facilities with the Village, a study should be made regarding the potential for annexation.
13. The Village Zoning Ordinance being updated to meet the growth needs of the Village Residential District should accommodate this growth and provide a choice in housing type, densities, and costs. Commercial and Industrial Districts should be created to provide economic development opportunities. An Institutional District should be created to provide security for those uses requiring privacy.

14. **The Village should prepare and adopt Subdivision Regulations to provide better control over new development to insure that it is compatible with existing development.**

15. **The Village should develop a Capital Projects Program that sets priorities for meeting the Village's needs consistent with its financial resources.**

II. INTRODUCTION

The Village of Kiryas Joel is a unique community. It was started in 1974 by leaders of the Satmar Williamsburg, Brooklyn community to accommodate the needs of the growing number of large families. At that time, a total of 800 acres of vacant land was acquired in Orange County and construction was started. By 1977, the population exceeded 500 persons, and Kiryas Joel was formally incorporated as a Village. Kiryas Joel continued to grow rapidly and currently has a population estimated to be about 12,000.

While Orange County is a largely semi-rural area, Kiryas Joel has excellent transportation connections (Route 17 and the NYS Thruway) and is only about an hour's drive from New York City where many Kiryas Joel residents work. It was necessary for Kiryas Joel to develop all of the infrastructure, community facilities, and municipal services from scratch - - streets, sidewalks, utilities, private schools, shopping, etc. Except for employment opportunities, Kiryas Joel is largely a self-contained community. As the population continues to grow at a very high rate, the development of housing is a priority. The future challenge is to continue to provide for the growth of the Village with additional housing, infrastructure, community services, shopping and sufficient economic development to meet some of the employment needs of the growing population.

III. POPULATION AND HOUSING PROFILE

Kiryas Joel, a Village in Orange County, differs significantly from other villages in the County as well as from the State and the County itself based on the data below which is drawn from "Census Profiles, Orange County," prepared by the Orange County Department of Planning, and the 1990 U.S. Census, Summary of Population and Housing Characteristics.

Kiryas Joel and Other Orange County Villages

The Village's size, in terms of area and number of households, is within the range of other villages in Orange County. One of 17 villages in Orange County, Kiryas Joel is one of the smallest, in terms of land area, containing only 1.1 square miles. Only three villages are smaller. In terms of total households, Kiryas Joel is in the middle range, with 1,158 households in 1990; seven of the villages were smaller and nine were larger. However, the Village's 1990 population density of 6779.4 persons per square mile, is between two and four times that of most other villages. It is also the largest Village in terms of total population.

There are two reasons for this high population density. First, the prevalence of multi-family dwellings in the Village, as shown later in this report. Second, is the high average family size in Kiryas Joel: 6.52 persons per family, as compared with 2.96 to 3.43 in the other Orange County villages. Given the large size of Kiryas Joel families, it is not surprising that the median age of its residents is 13.8 years. The median age in the other villages ranges from 29.2 to 41.8 years, two to three times older than Kiryas Joel. Because Kiryas Joel itself is a new community, having been incorporated in 1977, its population does not reflect the age distribution found in older communities. It is primarily made up of young families.

The growth rate of Kiryas Joel from 1980 to 1990 was over 20 times most of the other villages. The growth rate was at least 50% above the next fastest growing village. The estimates of the July 1, 1994 population prepared by the New York State Department of Economic Development shows a continuation of this growth trend.

Kiryas Joel, in Relation to the Town of Monroe, Orange County, and New York State

As a relatively new Village formed only 22 years ago, its demographic characteristics vary greatly from those of the Town of Monroe, Orange County and New York State. Since the population of Kiryas Joel represents about one-third of the Town of Monroe, its statistics skew that for the Town of Monroe as a whole. Therefore, when comparing Kiryas Joel to the Town of Monroe, for the purposes of this analysis the statistics are utilized only for the balance of the Town (excluding Kiryas Joel). These statistics will provide a better basis for comparison and distinction.

The most striking difference between Kiryas Joel and the Town of Monroe, Orange County and New York State is in the age of the population. As indicated above, the median age at Kiryas Joel is 13.8. This is compared to 32.7 for the Town, 32.9 for the County and 33.9 for the State. The difference is dramatic and more than anything else demonstrates the uniqueness of Kiryas Joel. Further examination of the age data illustrates further differences. A total of 53.8% of the population of Kiryas Joel is 14 years old or less, compared to 24.1% for the Town, 23.6% for the County, and 19.8% for the State. This large proportion of children provides special challenges to Kiryas Joel in terms of schools, health care, and other community services needs. At the other end of the spectrum, only 3.8% of the population of Kiryas Joel is 55 years old or older compared to 17.2% for the Town, 18.0% for the County, and 22.2% for the State. The age group of 25-55, which normally constitutes the majority of a labor force, represents only 19.3% of the population of Kiryas Joel compared to 46.4% for the Town, 43.7% for the County and 43.4% for the State. The much smaller labor force has a direct relation to family income which is discussed later in the analysis. The proportion of residents in the total labor force (16 years old and over) is 43.4% for Kiryas Joel, 74.5% for the Town, 75.1% for the County, and 78.9% for the State.

Another dramatic difference between Kiryas Joel and the Town, County, and State is household size. The average persons per household in Kiryas Joel is 6.27, more than double the 3.01 for the Town, 2.89 for the County, and 2.63 for the State. This difference is

obviously related to the large population of children under 14 years of age. Almost one-half of all Kiryas Joel households (47.1%) contain 7 or more persons compared to 1.5% for the Town, 2.2% for the County and 1.9% for the

State. Conversely, only 5.2% of the households of Kiryas Joel contain 1 person, compared to 14.9% for the Town, 19.5% for the County and 27.0% for the State.

Consistent with the high proportion of children in the Village and the low median age, the fertility ratios of the Kiryas Joel women is high. Among women 35-44 years old, Kiryas Joel reports 8,736 children per 1,000 women, or an average of 8.7 children per woman. In the Town of Monroe, the average per woman in this age group is 3.6, in Orange County, 2.1, and in New York State, 1.9.

Among persons five years and over, almost all of Kiryas Joel residents (96.8 percent) speak a "language other than English at home," and 60.5 percent "do not speak English very well." In the Town, the percentages are 9.4% and 3.2%. In the County and State, 14.1 percent and 23.2 percent respectively speak other than English at home, 5.6 percent and 10.5 percent respectively do not feel they speak English very well.

In sharp contrast to the Town, County and State, 94.6 percent of Kiryas Joel children attend private (parochial) school. In the Town, County and State, only 12.3, 12.8 and 14.8 percent respectively of children attend private school. This extreme difference clearly reflects the religious orientation of the community, and has significant fiscal impacts in terms of household expenditures.

The educational attainment of the residents of Kiryas Joel in the traditional educational institutions (high school, college, etc.) are substantially less than the Town and County. Only 58.5 percent of the persons 18 years old and over in Kiryas Joel have attained a high school

degree or higher while in the Town 82.8% have at least a high school degree and in the County 77.5 percent have attained a high school degree.

The comparison of those obtaining college degrees (AA, BA, or higher) is even more striking. Only 6.4 percent of Kiryas Joel residents 18 years and older have obtained advanced degrees while in the Town over five times as many persons (33.2 percent) have obtained advanced degrees and in the County about four times as many (24.4 percent). This disparity is largely due to the predominant cultural preferences of the Kiryas Joel population.

Generally educational attainment correlates with household income. In Kiryas Joel in 1989, the median household income is \$14,702 which is less than one third of the median household income for the Town (\$49,235) and just over one-third of the County (\$39,198) and State (\$32,965). In Kiryas Joel 59.0% of the families are below the poverty line in 1989, compared to 4.3% of the Town, 6.4% for the County and 10.0% for the State. While the unique lifestyle of the residents of Kiryas Joel may mitigate somewhat the impact of low family income, the extraordinary incidence of families below the poverty level does have a major impact on the families and the community as a whole.

Although unemployment in 1990 was roughly similar for the four levels of government studied, in Kiryas Joel a relatively low proportion of age appropriate persons is in the labor force. In the Village only, half of all males 16 and over are in the labor force; in the Town, County and State, three-quarters are in the labor force. Among Village females 16 and over, only one-fifth are in the labor force, compared with half or more in the Town, County and State. While the occupational distribution of Kiryas Joel residents is generally similar to that of the other units of government, a high proportion of Village residents report working in "educational services": 35.4 percent, compared with 15.2, 10.1 and 9.6 percent in the Town, County and State respectively.

Commutation to work and automobile ownership differs greatly between Kiryas Joel and the Town, County, and State. Only 27.8% of the Kiryas Joel workers drive to work alone which is a rate 2 to 3 times higher than that in the Town (67.6%), County (73.7%) and State (54.3%). This no doubt results from the fact that three-fifths (59.2%) of households in Kiryas Joel own no automobile, while in the Town the rate is only 16.2%, the County 10.7% and the State 30.0%.

The housing stock of Kiryas Joel reflects the differences in the population compared to that of the Town, County and State. In Kiryas Joel only 6.5 percent of the housing units are one-family detached houses compared to the Town where over 10 times as many (71.7%) of the units are one-family detached houses. In the County 61.1 percent of the dwelling units are one-family detached houses and within the State 40.5 percent are in this category. The predominant housing type in Kiryas Joel are buildings containing two to four housing units accounting for over half (51.4 percent) of the total housing units. In the Town such housing units make up less than one-fifth (9.0 percent) as many of the total housing units. Within the County 17.0 percent of the total housing units are in this category and within the State there are 18.3 percent in this category. There is a similar differential for buildings containing five to nine housing units. In Kiryas Joel they represent 19.1 percent of the total, while in the Town they constitute only 4.8 percent of the total, within the County 5.1 percent, and within the State 5.2 percent.

The prevalence of buildings with multiple housing units is reflected in the owner occupancy rate. In Kiryas Joel only 30.7 percent of the housing units are owner occupied, while in the Town over two and one half times (78.3 percent) of the housing units are owner occupied. In the County owner occupied units represented 67.5 percent of the total, and in the State 52.2 percent.

The large family size in Kiryas Joel also affects the occupancy of the housing units. A total of 42.9 percent of the population live in housing units where the occupancy was over 1.01

person per room. In the Town only 2.0 percent of the population have a similar occupancy status and in the County it is 3.3 percent and in the State 6.5 percent. The high occupancy rate in the Village is a clear index that many of its households live in overcrowded conditions.

The population density of Kiryas Joel far exceeds that of other Orange County Villages. Kiryas Joel whose density is 6,779.4 persons per square mile is over eight times as dense as the Town of Monroe (6779.4 persons per square mile v. 819.4) and it is 20 times as dense as the County (376.8 persons per square mile).

Kiryas Joel Growth Trends 1990-1998/Population Estimate 1998

The population growth of Kiryas Joel has been explosive. Incorporated in 1977 with 525 persons, Kiryas Joel grew to 2,088 persons in 1980 and 7,437 persons in 1990. The growth from 1980 to 1990 was 256.2 percent. By comparison, the Town grew only 21.3 percent from 1980 to 1990 and the County grew only 18.5 percent during the same period.

The Village has continued to grow since 1990. An estimate of the April 1998 population of Kiryas Joel was made based on the number of Building Permits issued from 1989 through August 1997. For the purposes of this study, it was assumed that all building permits issued during this period resulted in the construction and occupancy of units from April 1990 to April 1998. It was also assumed that the average number of persons per household remained the same at 6.27. Building Permits were issued for a total of 615 units during this 8 year period yielding a population growth of 3,856 persons. Therefore, the population estimate for April 1998 for Kiryas Joel is 11,293 persons, an increase of 52% over the April 1990 population. It should be noted that this method of estimating the population produces an estimate of 8,456 persons in Kiryas Joel on July 1, 1994, an increase of 13.7% from 1990. This is comparable to the population estimate for July 1, 1994, prepared by the NYS Department of Economic Development, stating that Kiryas Joel grew 15.9 percent from 1990 until 1994 to 8,616. The New York State July 1, 1994 population estimate for the County is 320,510 and the NYS population estimate for the balance of the Town is 16,532 for 1994.

The fertility rate method of population projection results in a similar population estimate for Kiryas Joel in April 1998. Applying the fertility rates from the 1990 Census to the female population age 8-34 in 1990 who were 18-44 years old by the Year 2000, results in an estimated total of 3,825 births from April 1990 through April 1998. Assuming that during this period deaths and net migration cancel each other out, the population estimate for April 1998 based on this method is 11,261. Averaging the two estimates we get an estimate of 11,277 for the April 1998 population of Kiryas Joel.

There are several interesting aspects of the Building Permit Data from 1989 to 1997. Over 80% of the new units built in Kiryas Joel during this period were in multi-family buildings (81.1%) while only 12.7% were in one family buildings. This contrasts with the balance of the Town of Monroe where all new units were in one family houses during this period.

The Building Permits issued also show a significant variation from year to year -- from as low as 2 to 3 new units in 1992 and 1993 to as many as 170 new units in 1996. In general, construction was moderate from 1989-1991 (averaging 50 units per year); very slow for 1992-1994 (averaging 7 units); and very active for 1995-1997 (averaging over 145 units per year). This recent spurt in construction of new housing units was not matched in the Town which had a steady production of 12 to 31 new one family homes during the whole period. Orange County also had a steady production of all types of housing units during the period with the exception of a spurt in multi-family construction in 1995 and 1996.

Population Projections

Based on the current population characteristics and goals of the Village, it is likely that Kiryas Joel will continue to grow at a rate of between 500 to 1,000 persons per year. Almost all of this growth will be internal, through births. New family formations will require the development of 75 to 150 new housing units each year to accommodate the growth. The major factors that could limit the growth of Kiryas Joel will be available land for development, and infrastructure to support new development. Community facilities will also need to expand in order to support the increased population.

Based on the above assumptions, the projected population for Kiryas Joel by April 2000 (the time of the next Census) is between 12,000^(A) and 13,000^(B). (See Chart 3) The projected population for 2005 is between 15,000^(A) and 18,000^(B) and for 2010 between 17,000^(A) and 23,000^(B). Thus the population by 2010 will increase by at least 50% (6,000 persons) and could possibly double (increase by 11,000 persons) in just over 12 years (1998 to 2010).

TABLE I

AGE - 1990

Age	KIRYAS JOEL		BALANCE MONROE TOWN		ORANGE COUNTY		NEW YORK STATE	
	%	#	%	#	%	#	%	#
Total Population	100.0	7,437	100.0	15,552	100.0	307,647	100.0	17,990,455
Under 5 years	17.7	1,316	8.7	1,351	8.4	25,842	6.9	1,241,341
5-14 years	36.1	2,685	15.4	2,396	15.2	46,762	12.9	2,320,769
15-24 years	23.1	1,718	12.3	1,914	14.7	45,224	14.6	2,626,606
25-34 years	7.1	528	17.7	2,759	17.3	53,223	17.5	3,148,330
35-44 years	10.7	796	17.2	2,675	16.0	49,224	15.1	2,716,559
45-54 years	1.5	112	11.5	1,796	10.4	31,995	10.8	1,942,969
55-64 years	1.1	82	7.8	1,205	7.5	23,074	9.1	1,637,132
65-74 years	2.4	178	5.4	834	6.0	18,459	7.5	1,349,284
75 years and over	0.3	22	4.0	622	4.5	13,844	5.6	1,007,465
Median Age		13.8		32.7		31.9		33.9

Source: 1990 US Census.

TABLE II
PERSONS IN HOUSEHOLDS - 1990

	KIRYAS JOEL		BALANCE		MONROE TOWN		ORANGE COUNTY		NEW YORK STATE	
	%	#	%	#	%	#	%	#	%	#
Households	100.0	1,158	100.0	5,137	100.0	101,730	100.0	6,634,434		
1 person	5.2	60	14.9	765	19.5	19,837	27.0	1,791,297		
2 persons	16.2	187	28.9	1,487	28.5	28,993	29.2	1,937,255		
3 persons	10.6	123	21.0	1,029	18.9	19,125	17.0	1,127,854		
4 persons	7.0	81	20.8	1,071	18.6	18,922	14.8	981,896		
5 persons	8.8	102	9.8	502	9.4	9,563	7.3	484,314		
6 persons	5.1	59	3.0	155	3.0	3,052	2.8	185,764		
7 or more persons	47.1	545	1.5	78	2.2	22,238	1.9	126,054		
Persons per Household	6.27		3.01		2.89		2.63			

Source: 1990 US Census.

TABLE III

HOUSEHOLD INCOME - 1989

	KIRYAS JOEL		BALANCE MONROE TOWN		ORANGE COUNTY		NEW YORK STATE	
	%	#	%	#	%	#	%	#
Households	100.0	1,158	100.0	5,137	100.0	101,730	100.0	6,634,434
less than \$5,000	11.1	129	2.6	135	3.7	3,764	6.1	404,700
\$5,000 to \$9,999	26.8	310	4.7	244	7.0	7,121	9.5	630,271
\$10,000 to \$14,999	12.5	145	3.1	158	6.5	6,612	7.4	490,948
\$15,000 to \$24,999	22.0	255	9.5	488	13.0	13,335	15.1	1,001,800
\$25,000 to \$34,999	12.8	148	9.2	475	14.1	14,344	14.3	948,724
\$35,000 to \$49,000	10.2	118	21.7	1,116	20.2	20,550	17.3	1,147,757
\$50,000 to \$74,999	4.1	47	27.4	1,407	22.1	22,482	16.7	1,107,951
\$75,000 or more	0.4	5	20.7	1,065	13.4	13,632	13.6	902,283
Median household income (\$)	14,702		49,235		39,198		32,965	

Source: 1990 US Census.

TABLE IV
HOUSING CHARACTERISTICS - 1990

	KIRYAS JOEL		BALANCE		ORANGE COUNTY		NEW YORK STATE	
	%	#	%	#	%	#	%	#
Total Housing Units								
1 Family Detached	6.5	87	71.7	4,085	61.1	67,645	40.5	2,929,333
1 Family Attached	11.0	146	2.1	119	5.7	6,338	4.2	301,794
2-4 Units	51.4	684	9.0	510	17.0	18,802	18.3	1,320,073
5-9 Units	19.1	254	4.8	271	5.1	5,561	5.2	374,858
10+ Units	11.9	158	8.2	469	6.2	6,856	27.6	1,998,074
Mobile Home	—	3	4.2	238	4.9	5,472	4.2	302,759
Total		1,332		5,698		110,814		7,226,891
Occupied 1.01+ Persons/Room	42.9	490	2.0	104	3.3	3,394	6.5	431,733
Owner Occupied	30.7	350	78.3	4,016	67.5	68,470	52.2	3,464,436
Renter Occupied	69.3	791	21.7	1,113	32.5	33,036	47.8	3,174,886
Median Rent (\$)		459		606		513		428

Source: 1990 US Census.

TABLE V

**BUILDING PERMITS ISSUED,
KIRYAS JOEL, 1989-AUGUST 1997
By Number of Units**

	Single Family	Two Family	Multi Family	Total
1989	0	32	21	53
1990	5	0	60	65
1991	3	4	32	39
1992	2	0	0	2
1993	3	0	0	3
1994	2	2	13	17
1995	26	0	109	135
1996	21	0	149	170
1997*	16	0	115	131
TOTAL	78	38	499	615
*Through August.				
Source: Orange County Department of Planning, Bureau of the Census, Construction Statistics Division.				

Chart 1
POPULATION GROWTH
 Kiryas Joel and Remainder of Town of Monroe

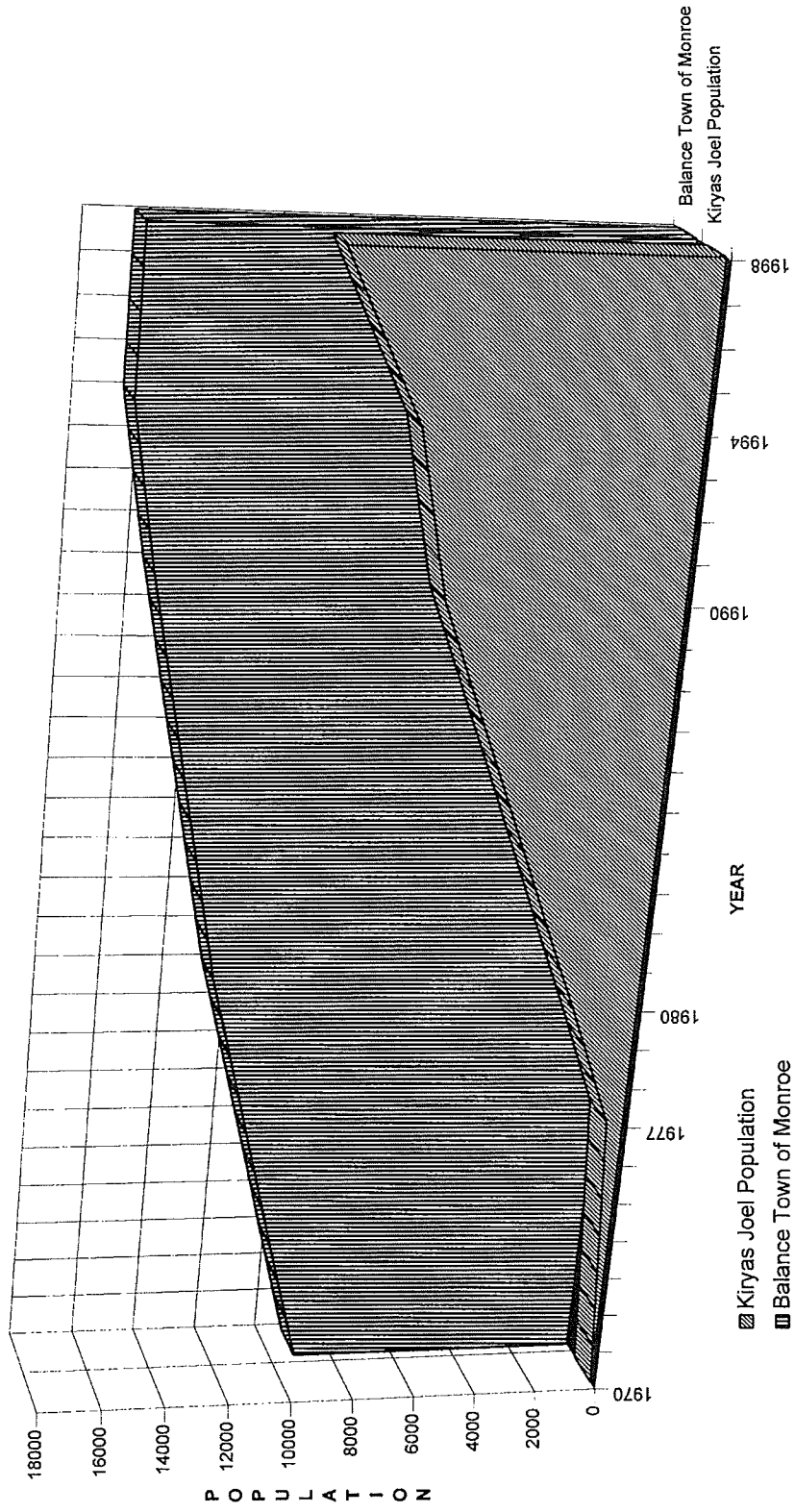


Chart 2
Population Growth Percent Increase
Kiryas Joel and Remainder of Town of Monroe

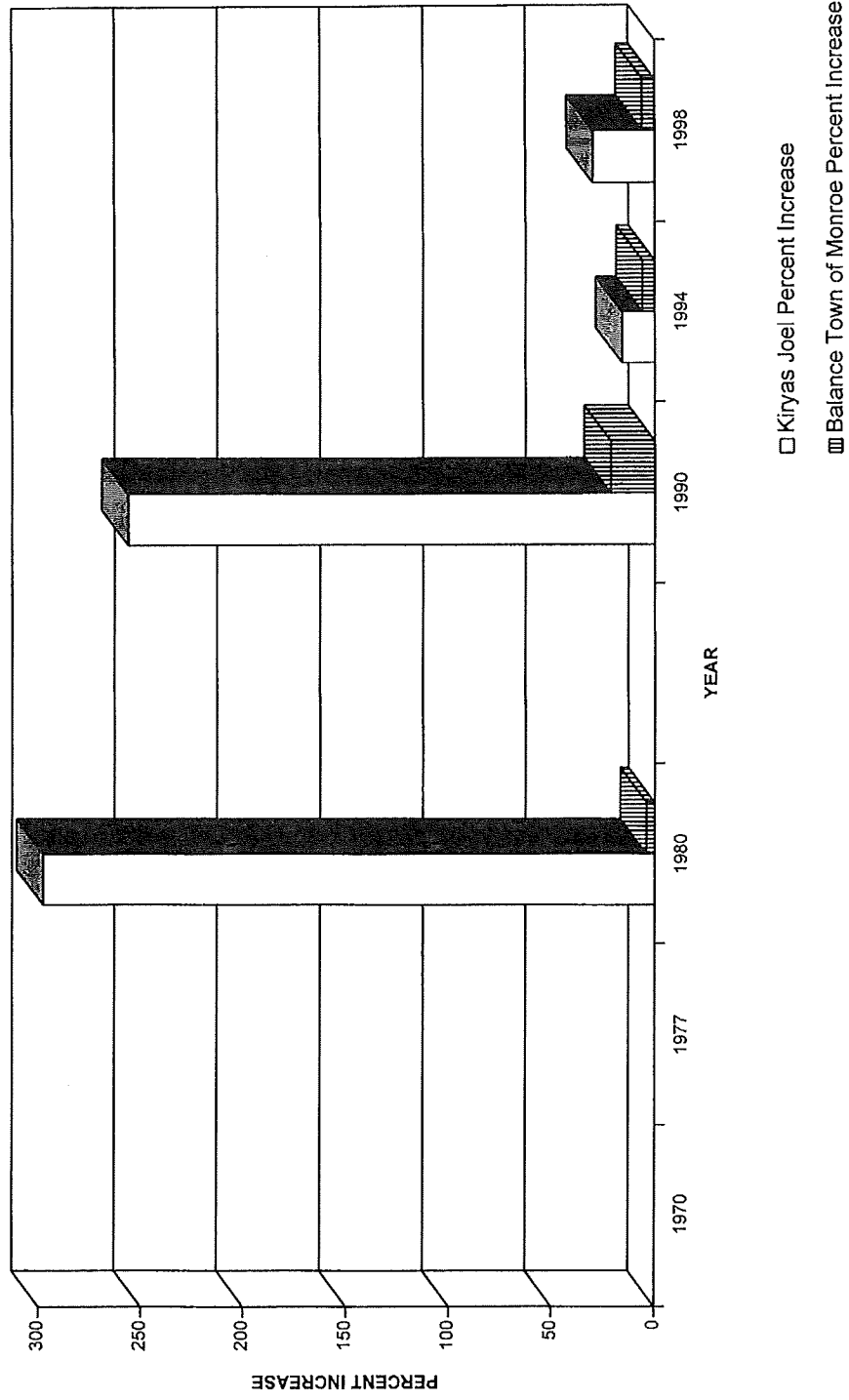
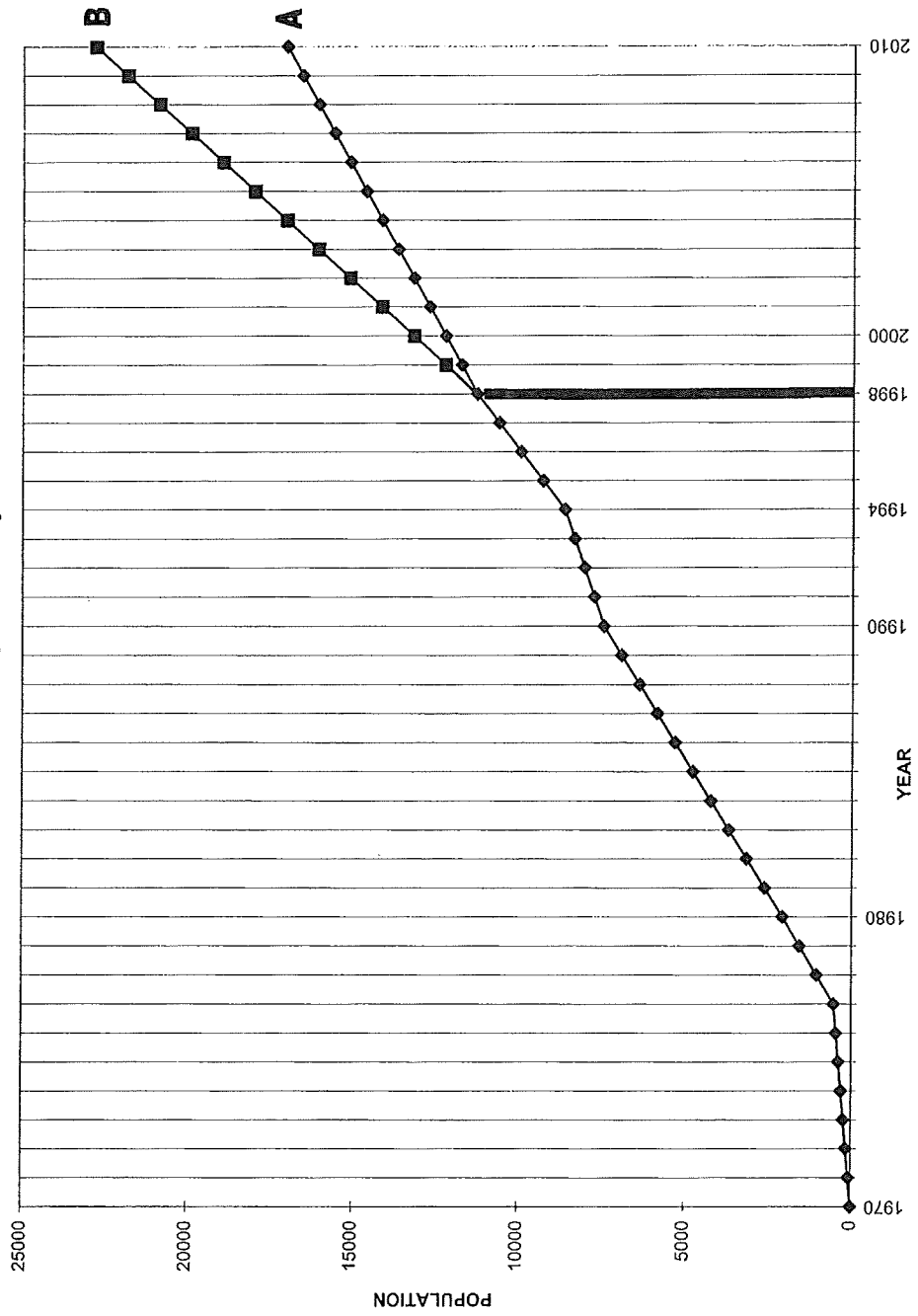


Chart 3
Kiryas Joel, Population Projections 1999 to 2010



IV. EXISTING CONDITIONS

Existing Land Use/Community Facilities

The Village of Kiryas Joel has, from its inception, grown dramatically. The initial development was mostly in the form of one to four family residences, one commercial shopping area, and numerous religious institutions including synagogues, schools and a college. As of 1990, almost 70% of the housing units were in one to four family residences. Starting in 1995 a substantial number of multi-family buildings were constructed and that is the current predominant form of construction, representing over 85% of the building permits issued from January 1995 through August 1997. Several subsidized housing developments for families and senior citizens have been developed utilizing federal and state housing programs. As shown on Map 4, the major predominant land use in the Village is for various types of residential uses.

The initial development of the Village was largely between Forest Road and Bakertown Road. The most recent development has been west of Forest Road with the exception of development south of Getzil Berger Boulevard. The area to the east of Bakertown Road is largely vacant except for a few commercial uses and a new sanitary sewer plant. The area in the northwestern corner of the Village on both sides of Mountain Road is also vacant but has several residential projects under construction.

In spite of the tremendous growth of population there has been practically no commercial development other than the main shopping center on Forest Road. There are scattered businesses in homes, ranging from food sales and clothing sales to computer businesses and travel agencies. While clearly serving a need, these scattered businesses are sometimes unsightly with outdoor storage and sales, large signs and limited off-street parking. There are no large industrial uses or office buildings in the Village which reduces potential job opportunities.

The Village has been trying to develop community facilities to keep up with the growing population (See Map 5). Municipal offices and various community services are located on the second floor of the shopping center. The existing Health Center quickly outgrew its current facility, and construction was recently completed on a new Community Health Center adjacent to the central shopping center.

The Village has a Volunteer Ambulance Corps and has applied for a federal grant to construct a municipal fire station on a site east of Bakertown Road. There are no public parks in the Village and the Village has applied for a State grant to construct a municipal park on a Village owned site west of Bakertown Road.

Infrastructure must keep up with growth. The Village is part of Sewer District #1 and recently completed construction of a Sewer Treatment Plant utilizing various State and federal funds. The plant will serve new construction in the Village. Existing development is served by the Orange County sewer plant in Harriman. The current capacity of the plant can serve about 1,250 additional families and it can be expanded to serve up to 2,500 families. The Village is served by subsurface water from 12 wells, and there currently are two water tanks. The water distribution system is sufficient for the current population and meets engineering design standards and has good fire flows and no bacteria or leaks. The storm drainage system meets engineering design standards with large culverts draining into the wetlands.

The Kiryas Joel community provides its own private educational system from day care through college. It is by far the largest employer in the Village. There is one public school in the Village for special education students that, while supported by both the Kiryas Joel and Monroe-Woodbury School Districts, continues to be the subject of ongoing litigation.

Fire protection is provided by the Mombasha Fire Company located in the Village of Monroe. The Village has applied for a federal grant to construct a fire station within the Village to decrease response time. The State Police provide coverage for the Village.



Circulation

The existing road system in the Village is made up of local and collector streets. The major collector streets are Bakertown Road, Acres Road and Forest Road. The minor collectors are Schunnemunk Road and Mountain Road (County Road #44). On the eastern border of the Village are two minor arterials County Routes #105 and #64. Based on 1997 traffic volumes these arterials currently provide adequate levels of service. On the southern border of the Village is Route 17 which is a major arterial. However, there is no interchange in the immediate vicinity of Kiryas Joel. Local streets are generally in good condition, and additional local roads are being constructed as part of new developments. Since the level of car ownership is quite low in the Village (about one-fourth that of the State) the current street system is adequate. The Village provides an extensive bus system serving more than 80,000 passenger trips a year.

The Village of Kiryas Joel is a most unique community in its dependence on walking as the major mode of transportation for most Village residents. Very low household incomes preclude the ownership of an automobile by most families and consequently there is a very low rate of vehicle ownership. Based on the 1990 Census, almost three fifths (59.2%) of the households own no vehicle compared to 16.2% in the Town of Monroe and 10.7% in Orange County. Based on the 1990 Census Journey to Work, 29.7% of employed residents (330) in Kiryas Joel walk to work compared to 2.4% for the Town of Monroe and 48% for Orange County. Only 27.8% of the employed residents drove to work alone compared to 67.6% of the Town of Monroe and 73.7% for Orange County. The balance of the employed residents in Kiryas Joel utilized either car pools (18.3%) and public transportation (22.1%). These forms of commuting obviously require pedestrian trips to the pickup points. Given the cultural tradition of the residents of Kiryas Joel where the women do not drive, and the strict religious observance of the Village residents, the result is about 65 days a year when even those who own vehicles do not drive. Thus, for almost 20% of the year, all Village residents must walk to synagogue services and they will typically make two or three trips from home to synagogue on those days. Kiryas Joel residents are also highly dependent on internal Village shopping, schools, health, social service and religious facilities. The Village is very compact (only 1.1 square miles) and has an extraordinarily high population density. The distance from the center

of the Village where many activity centers are located to the furthest housing development is about three-fourths of mile or about 15 minute walk. Of a total of 3,471 school children between the ages of 5 and 17 (1996 data), many walk to school which is in session often from dusk to dawn. When taken together, all of the above data on vehicle ownership, journey to work and cultural characteristics, it is clear that walking is the major mode of transportation for Village residents. Many of the streets in the Village have no sidewalks. Many of the sidewalks that do exist are in serious disrepair and are hazardous. These sidewalks need to be completely reconstructed. Maintenance and patchings will not adequately deal with the situation.

The absence of sidewalks and the poor condition of existing sidewalks creates a serious problem for residents of Kiryas Joel since, as indicated above, they are so dependent on pedestrian trips. This is a public safety issue with women pushing baby strollers in the street and the elderly and handicapped facing trip hazards on broken sidewalks. Also needed is the provision of lighting that also improves pedestrian safety at night, and sidewalk ramps for the handicapped. Unlike many suburban communities where pedestrian sidewalks are largely recreational in Kiryas Joel they are an essential component of the transportation network. The Village has applied for several State and federal grants for sidewalk improvements.

Development Limitations

As shown on Map 6, several major factors limit the development of land in the Village of Kiryas Joel. First, some of the land is designated as wetlands or flood plain areas and cannot be developed except in special circumstances with a permit from the State and the US Corps of Engineers. Second, some of the land has steep sloping topography. While no site is impossible to develop, it is very difficult to develop steep sites. Land with slopes of less than 15% can be most easily developed. Land with slopes between 15% and 20% is difficult and expensive to develop and land with slopes over 20% is normally infeasible to develop. Third, there is a limited amount of vacant land, with about 185 vacant acres proposed to be zoned for multiple dwelling residential use, 15 vacant acres for commercial uses and 70 vacant acres for industrial uses.

very difficult

V. ANALYSIS OF VACANT LAND

The major parcels of vacant land in the Village were analyzed as to the development potential for housing. (See Table and Map 7.) A range of densities (dwelling units per acre) was utilized to estimate the number of dwelling units that could be developed on these sites. However, no site plans were completed nor were the property owners contacted about their future plans beyond what has already been proposed. Each of the parcels analyzed has specific limitations on development: including steep slopes, wetlands; and well and water tank sites. Therefore the density range chosen for this analysis reflects currently proposed developments on similar parcels. The proposed density ranged from 7 dwelling units per acre (similar to Atzei Timurin Phase 1) to 9 dwelling units per acre (similar to K.J. Gold Phase 1). Both of these developments contain 3 story buildings with a maximum of 12 dwelling units per building and are located in the proposed MD-1A Zoning District. Should the Village decide it desires additional denser developments similar to Kiryas Timurin containing 5 story buildings with 40 dwelling units per building (about 20 dwelling units per acre in the proposed MD-2 Zoning District), the projected number of dwelling units would increase.

Based on the above assumptions a total of about 1,400 to 1,800 dwelling units could be built on the eight parcels totaling about 185 acres (about one-quarter of the Village land area). From 1995 through 1997, Kiryas Joel issued building permits for an average of about 150 dwelling units per year. Therefore at this rate, the available vacant land will be sufficient for development over the next 10 to 15 years. The total population growth on these parcels could range from 6,000 to 11,000 persons (depending on family size), which could almost double the current population of the Village. There are also several scattered smaller vacant parcels in the Village that could be developed, but the number of dwelling units would not be significant compared to the larger parcels.

Discussions with the Village Engineer indicate that this level of development could be supported by the Village's existing utility systems. The new sewer plant can currently serve a total of 1,250 additional dwelling units (at 400 gallons/family/day), and it could be expanded to serve a total of 2,500 dwelling units. The storm drainage system is adequate to serve the additional development provided such development includes retention basins where necessary. The 84 inch culverts draining

into the wetlands are adequate to take the projected flows. The water supply is the most problematic. The existing system is in good condition but additional water-sources may be needed to serve the new development in later years. If the Village is to grow at this rate beyond 10 years, a detailed hydrology study will be required to establish future sources of water supply.

PROJECTED NEW CONSTRUCTION/MAJOR VACANT LAND

VILLAGE OF KIRYAS JOEL

Project	Zoning District	DWELLING UNITS				Area (Acres)
		Built	Approved	Projected*	Total	
Delta Bronze	R-3					
Delta Bronze 1&2		36	52-78	-	88-114	14.6
Delta Bronze 3		20	36-54	-	56-74	8.4
Delta Bronze 4		-	-	130-200	130-200	18.6
Delta Bronze 5		-	-	35-50	35-50	4.0
Subtotal		56	88-132	165-250	309-438	45.6
Atzei Timurim	MD-1A					
Phase 1		-	48	-	48	7.0
Phase 2		-	-	55	55	7.8
Subtotal		-	48	55	103	14.8
Kiryas Timurim	MD-2	-	225	-	225	11.7
K.J. Gold	MD-1A					
Phase 1		-	70	-	70	8.0
Phase 2		-	-	25	25	2.9
Subtotal		-	70	25	95	10.9
North of Seven Springs/Mtn	PD	-	-	165-215	165-215	23.8
South of Seven Springs/Mtn	PD	-	-	200-260	200-260	28.8
East of Bakertown Road	PD	-	-	270-345	270-345	38.3
College Site	MD-1B	-	-	80-100	80-100	11.5
Total		56	431-475	960-1250	1447-1781	185.4

*Estimates based on density assumptions.

VI. COMPREHENSIVE PLAN OBJECTIVES

Purposes and Principles

The chief aim of the Land Use Plan is to guide the development of the community, with proper regard for health, safety and welfare, aesthetics, and economic practicality. If developed in accordance with a plan, even at the time that it reaches its ultimate development, the Village will continue to provide a sound environment for family living and a sound economic structure, as well as a healthy fiscal foundation for the financing of necessary public services and facilities.

The Land Use Plan proposes the most desirable locations and standards for residential, commercial, industrial, recreational, public and institutional uses. It should never be considered as an inflexible blueprint. When adopted, it should be accepted as a general guide for the Village in the establishment of future land development policies.

Due to the established character of a large portion of the Village, the direction of its ultimate growth has, in certain respects, been determined. There are, however, several notable exceptions which are discussed in this and other chapters of this report, namely:

1. The future development of vacant or underutilized land.
2. The future development of commercial and industrial uses.
3. The future development of medium and high density apartments in the Village.
4. The future role of some of the land now occupied by institutions.

The Land Use Plan includes two basic components, specifically:

1. A plan for the use of lands which are subject to direct public action (such as streets, public buildings and land); and
2. A plan for the future use of privately owned land.

With respect to the latter, the Village can exercise only what might be termed “indirect jurisdiction,” establishing certain limits within which property owners are free to develop their property. Positive public action with respect to the use of privately-owned land is limited therefore, to either the provision of services and facilities (such as streets, sewers, parks or playgrounds), or to the zoning of private land by given land use classifications. By regulating the use of land in each such classification, the Village can attempt to guide eventual development towards the objectives set forth in the Land Use Plan.

In some instances, the Land Use Plan development proposals may not be achievable at this time, or in the very immediate future. Such areas could, therefore, be zoned first in accordance with their present use and then rezoned in accordance with the Land use Plan at such times as conditions warrant.

Basic Assumptions and General Objectives

The Land Use Plan (shown graphically on the Land Use Plan map) sets forth broad planning policy with respect to all future land uses. The Plan is based on the previously presented analysis of existing conditions, and on relevant projections of population, transportation, and economic development trends. The objective of the Plan is to further and guide, rather than arrest, future growth.

Throughout the preparation of the Land Use Plan, it is assumed that residential development should accommodate the natural growth of the community. If the Village’s major vacant land were to be developed in accordance with the proposed land use plan, its eventual population could double to about 23,000 people. This figure is based on current Village boundaries, household size and the proposed densities for designated residential areas.

Plan Objectives

The Village of Kiryas Joel should provide a safe, healthy, pleasant, and convenient environment for all its residents and businesses, both in the near future, and when the level of “ultimate development” takes place. The major objectives of the Land Use Plan, are as follows:

1. There should be available a variety of housing (with respect to types, costs and densities of homes and apartments) in order to enable families with different requirements, and incomes to live in the Village.
2. In order to accommodate future growth and provide unified services, the Village should examine the possibility of annexing adjacent land.
3. The Village should encourage and facilitate economic development in the Commercial and Industrial Districts so as to better serve the local population as well as to provide job opportunities and upgrade the tax base.
4. While provision should be made for employment in commerce and industry, these uses should not be permitted to infringe upon, or detract from, the character of residential areas.
5. Community facilities and services should be provided to serve adequately the needs of the residents and to be so located as to be easily accessible.
6. Traffic congestion should be prevented and sidewalks should be designed to make walking both safe and convenient.
7. The Village should plan for the expansion of its infrastructure to keep pace with development.
8. Every effort should be made to preserve the attractiveness of the environment and encourage good design in future development.

VI. LAND USE PLAN

Residential Development (See Map 8)

The projected population growth of Kiryas Joel over the next 10 to 25 years will require extensive residential development to meet the needs of a growing population. To accommodate this growth and provide choice, housing of various types, densities and costs should be encouraged.

W. Low Density Residential (Zoning District R-1 - up to 5 dwelling units per acre)

Residences ranging from single family houses to two and three family houses constituted large portion of the initial residential development of the Village. Some infill development on vacant lots is proposed at this density within the areas previously so developed.

X. Medium Density Residential (Zoning District R-2 - up to 14 dwelling units per acre)

Small apartment buildings with four to six dwelling units were also originally developed in the Village and there are new developments of this type being developed on vacant land. Some developments are proposed on subdivided lots served by existing local streets or their extension.

Y. High Density Residential (Zoning Districts R-3, MD-1, MD-1A and MD-2 - 14-34 dwelling units per acre)

In order to provide a variety of housing at affordable rents, and maximize the limited land resources, the plan proposes housing at higher densities for a number of areas. Initially, most such developments have been limited to three stories in height but there is at least one current proposal to develop five story apartment buildings. This height would be the maximum due to requirements of religious observance of the Sabbath and other religious holidays which preclude total dependence on elevators. While higher densities more efficiently utilize the land, attention must be paid to the overall site planning so such developments will provide a successful overall living environment. Optimally, such development would take place within walking distance of the center of the Village. In some cases where vacant land adjoins

collector streets, high density development supported by bus transportation is appropriate, such as along Mountain Road and Bakertown Road.

Commercial Industrial Development (Zoning Districts C & I)

As indicated above, economic development is an important objective for the Village. It is necessary to provide job and shopping opportunities for the residents and provide more balanced development. The main areas for future development are along Bakertown and Dunderberg Roads. These roads provide good transportation access to Route 17 and the surrounding communities. They are also separate from residential areas so as to avoid any conflict in uses. There is sufficient vacant and underutilized land (25 acres proposed to be zoned commercial and 70 acres proposed to be zoned industrial) to make such development feasible. This zoning pattern would permit the development of approximately 200,000 square feet of additional retail, and service uses and about 900,000 square feet of office, industrial and distribution type uses. The Village must actively pursue economic development opportunities utilizing to the maximum extent feasible State and Federal programs which provide assistance tools

Commercial uses to supplement the existing shopping center on Forest Road include retail, office, and service businesses. Given the special requirements of the population of Kiryas Joel, retail and service uses meeting these needs (food, clothing, etc.) should be emphasized. Office uses could range from general services (travel, computers, professionals) to businesses employing local residents but serving a larger population.

Industrial uses could range from light manufacturing to office and research. The Village of Kiryas Joel has a large labor force available that is disciplined and educated and is an important resource for attracting uses to a corporate-business park type area.

Circulation Plan (See Map 9)

The street systems of the Village is largely developed and needs only minor improvements. As development takes place on Mountain Road (County Highway 44) which currently functions as a

minor collector street, it will need to be upgraded (width and shoulders) so it can function as a major collector street.

Studies should be undertaken to see if a more direct street connection can be developed between Bakertown Road and Dunderberg Road (County Routes 105 and 64) and the Village center without negatively impacting the local residential streets. One possibility is to utilize streets to be developed as part of the Delta Bronze subdivision to connect to an extension of Van Buren Drive.

In addition, if a shopping center proposed nearby comes to fruition, traffic counts should be conducted to determine if a traffic signal is necessary at the intersection of County Route 105 and Dunderberg Road (County Road 64).

As discussed in the Existing Conditions section, many Village sidewalks are in serious need of reconstruction and some streets have no sidewalks. The Village has applied for several grants to remedy this situation. Recently, \$1 million was included in the State Transportation Improvement Program (TIP) for sidewalk construction. In addition, an Application has been submitted for an additional \$1 million under the Transportation Enhancement Program (TEA-21). Engineers have estimated that the total cost to upgrade the Village's sidewalks is about \$4.5 million. The location of the sidewalks included in this estimate are shown on Map 10.

Community Facilities

Community facilities such as parks, fire houses, schools and government buildings are essential to the functioning of any community. As a fast growing community, it is important that Kiryas Joel plan to keep up with the current and projected needs.

Recreation

There currently is no park within the Village. Using the generally accepted standard of 10 acre of park land for each 1,000 population, the Village currently should have some 200 acres of park land to provide for its ultimate population. However, given the unique cultural characteristics of the Village residents, this standard would be excessive and probably a considerably reduced standard would meet Village needs.

The Village intends to utilize 15 acres of land it already owns to construct a Municipal Park containing children's playgrounds, a tot lot, an open play area, sitting areas for parents and senior citizens, nature walking trails and a picnic area. This will be the first public park in the Village and after its construction, the Village should further evaluate future recreation needs.

The Municipal Park will be a major public benefit. As of 1990, there were 1,316 children under the age of 5 and 2,685 children between 5 and 14 years old. By the year 2000, these numbers will most likely have doubled to over 8,000 children. These children currently have no park or recreation area within the Village. The predominant housing type in the Village of Kiryas Joel is multi-family buildings. Therefore, very few families have access to their own backyards that could serve some of their recreation needs.

The existing 15 acre site is part of a 60 acre site that contains Class II N.Y.S. Freshwater wetlands. It is intended that the wetlands be undisturbed and that the recreation areas be developed on 1 to 2 acres along the perimeter and outside of the wetlands. The site is currently totally undeveloped. There are two major utility easements that cross the site with underground utilities, and with an access road to a pump station. The project will include the transfer of the Village land to recreation

use and the construction of a Municipal Park including play equipment, an open play area, picnic tables and benches, walking trails, lighting, fencing, landscaping, comfort station, security booth, signage, improvement of an access road and a parking area.

Since a portion of the site contains wetlands, the wetlands constitute a special resource. Creating a Municipal Park on the land adjoining the wetlands will enhance their preservation as well as to integrate the wetlands as an attractive backdrop to the recreation areas and nature trail. Some portions of the trail will be adjacent to a brook running through the site.

Grade disturbance will be kept to a minimum. There currently is an access road on the perimeter of the wetlands that leads to the areas to be developed for recreation purposes which road was approved as part of a permit by the NYS Department of Environmental Conservation. This existing road will be improved and a parking area built. The land adjoining the wetlands is generally flat and all walkways and trails will be of natural materials. The play areas will be developed outside of the wetlands on flat ground. The surface beneath the play equipment will be wood chips for safety and the least interference with the natural environment. There will also be large open grass play area.

Fire Protection

There is a critical need in the Village of Kiryas Joel to provide improved fire protection services through the construction of a fire station within the Village to assure speedier arrival of first response fire fighting equipment at the scene of village fires.

The need for more immediate fire protection is clearly shown by the Map 11 titled "Location of Existing Fire Stations Serving Kiryas Joel." Currently, the Village of Kiryas Joel receives public fire protection services from the Mombasha Fire Company located in the Village of Monroe. New York State Route 17, the major east-west highway serving the region, separates the Village's of Kiryas Joel and Monroe, and severely limits direct access between the two villages. The Mombasha Fire Company in the Village of Monroe provides fire services in accordance with the terms of an agreement dated June 1, 1998.

Mombasha is a volunteer fire company with approximately 25 active volunteer members. It is housed in two separate stations in the Village of Monroe.

- One station, the main one, is known as the Mombasha Fire House. It is on the north side of Ramapo Street between Freeland and Mill Streets and houses four pieces of firefighting equipment: two pumpers, one ladder and one rescue truck.

It takes approximately 11 minutes to drive from the main fire station to the most distant point in the Village of Kiryas Joel. At times of traffic congestion the response time is far greater.

- The second fire station is the Mombasha Sub Station (at the northeast corner of State Routes 105 and 208). It houses three pieces of firefighting equipment: a pumper and two smaller rescue vehicles.

It takes approximately eight minutes to drive from the sub station to the farthest point in the Village of Kiryas Joel. The response time is longer during times of traffic congestion.

While the two Mombasha fire stations were adequate for the Village's fire protection needs when there were much fewer residents, the Village's population growth and current size emphasize the need for a first response station within the Village's boundaries to assure a significantly quicker first response; the difference of a minute or two, and even of only seconds, in the arrival of the first response, can be the difference between life and death and/or between a controlled fire and uncontrolled fire spread. The Mombasha Fire Company's incident recapitulation records for 1996 and 1998 indicate a significant increase - a near doubling - in the annual number of fire incidents in the Village of Kiryas Joel: a jump from an annual level of 70 incidents in 1996 to a 1998 level of over 120 incidents. Thus, Kiryas Joel had a 1998 average of 10 fire incidents every month. It is also important to note that while the number of fire incidents in Kiryas Joel doubled between 1996 and 1998, in both the Village of Monroe and Town of Monroe they remained virtually unchanged during this same period.

The average Village apartment building has 10 apartments and each such building is home to between 60 and 70 residents. Therefore, a fire in any one of these apartment buildings quickly can become a calamity of major proportions involving the building's 60 to 70 residents and multiples of this number if the fire were to spread to similar nearby structures. A speedier first response by firefighters has become one of Kiryas Joel's most critical needs. In a number of instances flames already had spread through an apartment house while residents stood outside awaiting the arrival of a fire truck and firemen. Given the Village's current size and continued population growth, it is imperative that Kiryas Joel take appropriate steps at this time to provide a speedier first response for all Village fires by developing a first response fire station within the Village itself.

The Insurance Services Office (ISO) is a private fire protection rating agency that evaluates the adequacy of public fire protection services in communities throughout New York State. In their most recent evaluation of the Village of Kiryas Joel, they classified the entire Village in Public Protection Class 4. In the ISO classification system, Class 1 indicates public conditions are such that they are likely to result in the highest degree of protection from fire damage and Class 10 indicates they are likely to result in the least protection from fire damage. The Village's Class 4 designation is a clear indication of the need for significant improvement in the degree of fire protection available to Village residents. To improve on the Class 4 designation there is a need for the reserve pumper truck to the fire fighting facilities (recently purchased) and for the location of a fire station within the Village to serve as a first response supplement to the two Mombasha Fire Company fire stations now serving Kiryas Joel. For some time now, the Village has recognized the need for an in-Village supplemental fire station that would result in a speedier arrival of first response fire fighting equipment at Village fires.

In a 1996 letter addressed to the Village of Kiryas Joel, CRS of the Insurance Services Office (ISO) reviews the factors evaluated in arriving at Kiryas Joel's overall fire protection classification rating.

- ISO indicates the Village should have one fully equipped reserve pumper truck, and they note the Village does not have such a reserve pumper truck.

The Village, in December of 1998, in fact purchased such a truck as a first step in improving its fire protection services and plans to house it in a new fire station. It is important to note that it cannot now use the fire truck during the winter months because water in its pumps would freeze with absence of a warm fire station to house the vehicle.

- ISO indicates that all sections of Kiryas Joel should be within 1½ miles of a first-due engine company and within 2½ miles of a ladder-service company. ISO indicates that based on their review of the community, only some 55% of the built-up area meets this requirement.

The proposed development of a fire station to be located on the east side of Bakertown Road (see Map 10) and its inclusion of appropriate equipment and trained fire fighters, will significantly increase the proportion of the community that meets the ISO 1½ and 2½ mile criteria.

Infrastructure

As indicated in the section on Existing Conditions, the new Sewer Treatment Plant has the capacity to serve up to 2,500 families or 15,000 persons. This is sufficient capacity for the projected ultimate Village population within its current boundaries. Water resources are a major concern, and the Village is studying many options to provide for the growing population. A hydrological study should be undertaken so the Village can develop water resources to meet the future needs. This study should examine surface as well as ground water options. The storm drainage system is adequate to meet future needs, however, some retention areas may be necessary for new development upstream of the wetlands.

VIII. LONG TERM DEVELOPMENT

The Land Use Plan designates 185 acres of vacant land as potentially developable for various types of residential use. At the densities proposed in the Land Use Plan, this would provide for up to 1700 additional dwelling units within the Village. Assuming new developments are ultimately occupied by the current average household size, this new housing will accommodate up to 11,000 persons. If the Village maintains its current annual rate of population increase of up to 1,000 persons per year, it will reach a saturation population of about 23,000 in the year 2010. At a slower rate of growth of 500 persons per year, the Village would reach its ultimate population around the year 2020. After this land is developed, there would be no remaining undeveloped land in the Village to accommodate additional housing demand.

The Village of Kiryas Joel is unique in that as children grow and marry and develop their own families they characteristically remain within the community. They retain strong day to day relationships with their respective families; they continue to worship at the same synagogue; their social activities continue within the same circle of friends and relatives and those bonds also result in a very strong inter-generational support system. Thus, it becomes a very important planning objective to provide land to accommodate this future household growth. This will therefore require consideration of the annexing of additional lands to meet the Village's expanding needs.

This land should be so located that when added to the Village, the whole constitutes a unity of purpose and facilities. There should be common road access, drainage and water supply for the annexed property and the Village. It is also important that lands be as close as possible to the Village so that Village facilities would be easily accessed.

Within a reasonably contiguous area in the Towns of Monroe and Woodbury (bounded by Seven Springs Road, Acres Road, Bakertown Road and Route 105), there are about 300 acres of vacant developable land (See Map 12). Most of this land^(A) is in the Town of Monroe on the northern boundary of the Village. There are also two large areas in the Town of Woodbury north and east of the Village boundary. Development of this land at current densities of nine dwelling units per acre

would accommodate 2,700 dwelling units. At the current occupancy rate of 6.27 persons per household, the additional lands would accommodate up to 17,000 persons. At the current rate of population growth, these lands would be fully developed in between 15 and 30 years.

In addition, there are also other developed properties -- occupied in part by persons who currently use Kiryas Joel facilities and houses of worship -- within the Village's contiguous area that also could be annexed to the Village to unify the facilities serving both areas. These properties^(B) are within the Town of Monroe on the western and eastern boundaries of the Village. There also are developed and undeveloped parcels in the Town of Woodbury^(C) north of the Village. In total the annexed area could almost double the current Village area of 1.1 square miles. Since the annexation process can be time-consuming, it is appropriate to start planning for this growth at the earliest feasible time.

**LANDS TO BE CONSIDERED FOR ANNEXATION TO
VILLAGE OF KIRYAS JOEL**

<u>Parcels That Might Be Considered</u>	<u>Areas* (Acres)</u>
A. Major parcels of vacant land, or underutilized land (house on lot of several acres) owned by people who use Kiryas Joel facilities.	300
B. Small Developed Parcels (mostly houses) owned by people who use Kiryas Joel facilities.	230
C. Undeveloped Parcels and Developed Parcels (mostly houses on large lots) not owned by people who use Kiryas Joel facilities.	100
	630
Total Area to be Annexed:	630
Current Village Area (1.1 square miles)	704
Proposed Village Area	1,304

*Areas are approximate. See Map 12.

IX PLAN IMPLEMENTATION

The preparation and eventual adoption of a Comprehensive Plan does not alone insure the development of Kiryas Joel in accordance with the Plan's objectives and proposals. The Plan is on the one hand a guide which gives the community a framework within which to view necessary public improvements and proposed private developments. On the other hand, the tools required to realize or effectuate the Comprehensive Plan are not guides, but laws which should reflect the Plan. Whenever changing conditions in Kiryas Joel justify the modification of the Plan, or the legal instruments for implementing it, the Planning Board should consider appropriate measures to keep these documents current and meaningful. Prior to adopting the Comprehensive Plan and the related legal tools, it is necessary to prepare and approve a Generic Environmental Impact Statement in accordance with the State Environmental Quality Review Act (SEQRA).

The basic tools available for effectuating the Comprehensive Plan are:

1. Zoning Ordinance
2. Subdivision Regulations
3. Capital Project Programming *

Zoning Ordinance

Land development is the result of private as well as public actions. For this reason, it is useful for each community to guide private development through the powers granted to it by State statute. The zoning power is one of the most significant measures whereby a Village can give direction to private uses of land -- both in the continuation of desirable land use patterns which exist today, and in guiding areas to be developed in the future.

*This would include use of various State and Federal programs which are available to aid communities in providing housing, an adequate level of public facilities and services and in the carrying out of economic development programs.

A proposed Zoning Ordinance and Map has been prepared as part of the comprehensive plan process and should be considered by the Planning Board. The proposed Zoning Ordinance includes several new sections that provide additional regulation of development, as well as a site plan review process that allows the Village to carefully monitor new development. Several new Zoning Districts are created both to more closely conform to existing development patterns and to upgrade the standards of new development. There are specific regulations relating to parking, loading, signs, fences, landscaping and screening, recreation areas, etc. There are six proposed Residential Districts, of which four are new and provide for different densities of development. There are new Commercial and Industrial Districts to help promote economic development. An Institutional District has been added to provide security for those uses requiring privacy. A Planned Development District is retained for any future large scale mixed use development. The Planning Board's recommended version of the revised Zoning Ordinance should, after review, be submitted to the Mayor and Board of Trustees for their final consideration.

Subdivision Regulations

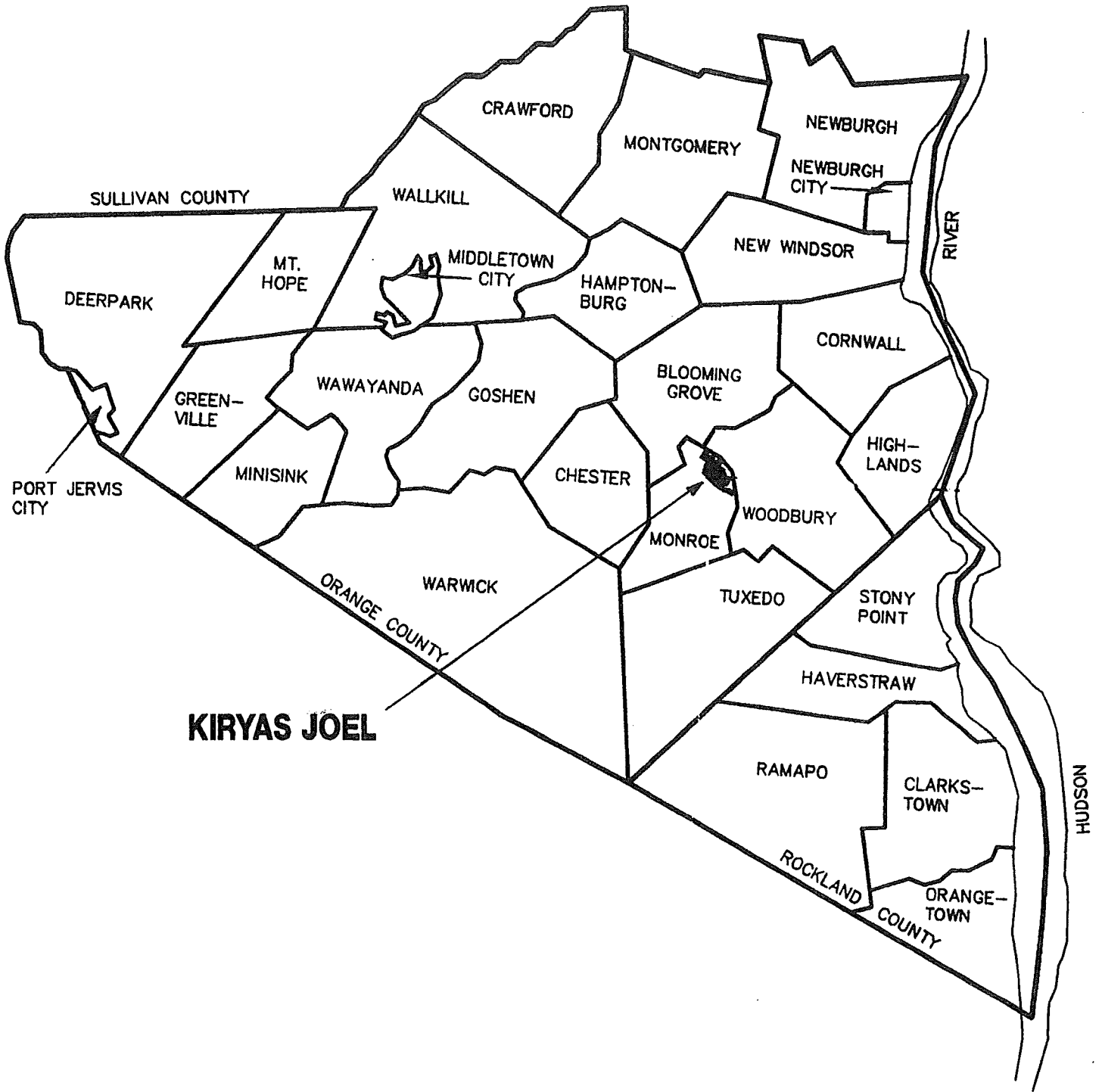
Though predominantly built-up, there are still areas of the Village where residential subdivisions will take place. Since the manner in which new streets and lots are laid out have a direct effect not only on the land directly involved, but also on adjoining properties and the entire surrounding area, there is a community-wide interest in the proposed layout of each subdivision. New lots, land uses and streets can change or intensify traffic and they can affect area drainage and utilities. Subdivision regulations also assist developers and financing institutions in that they provide for an efficient and orderly way of recording land ownership, easements, etc.

Subdivision Regulations spell out specific minimum requirements with which developers must comply. Items such as street standards, drainage, utilities, are included, which when coupled with other implementation tools, insure development in conformance with the objectives of the Comprehensive Plan. The Subdivision Regulations also prescribe the procedure for filing of subdivisions. It is recommended that the Village adopt Subdivision Regulations.

Capital Project Programming

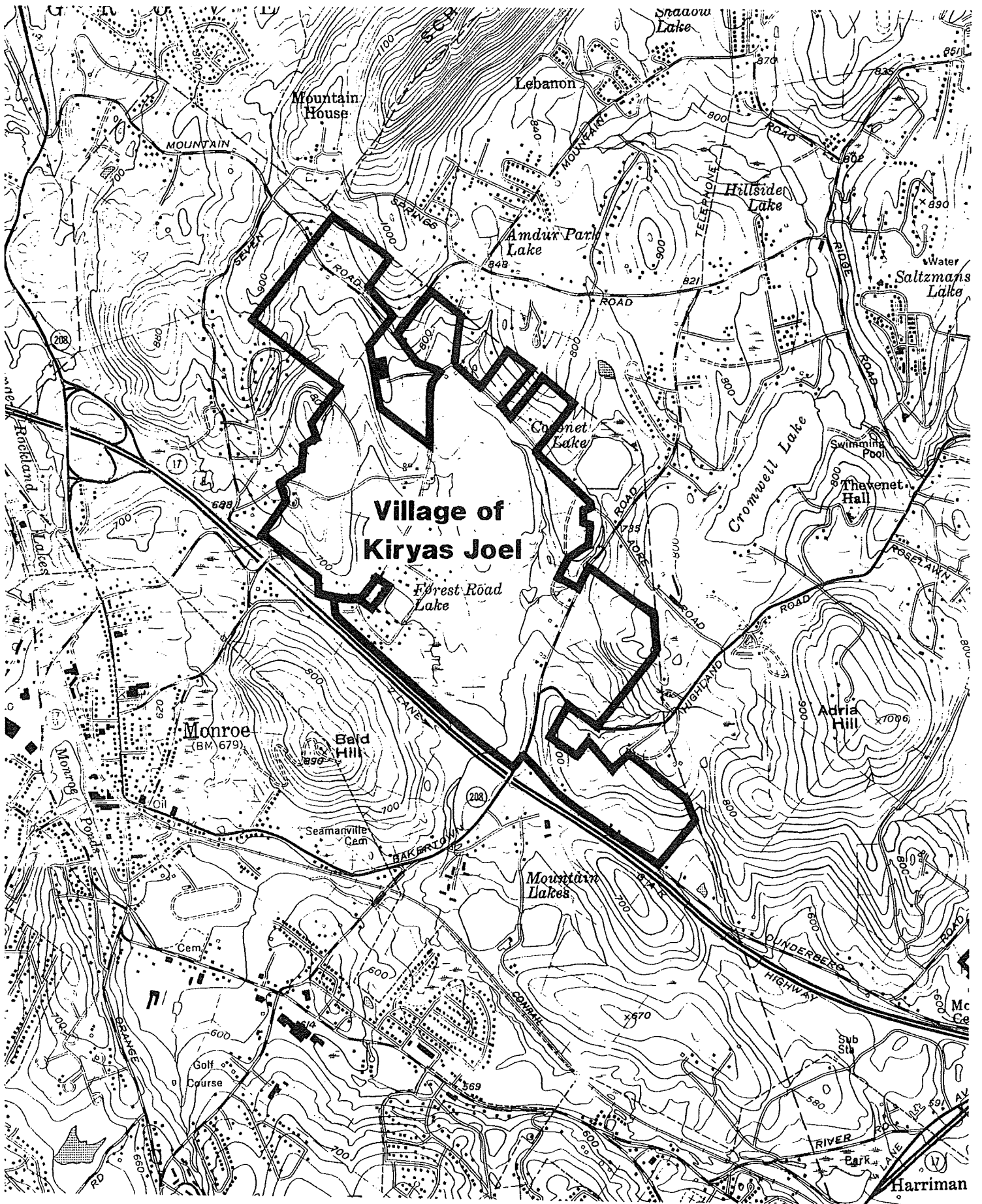
Capital Project Programming begins with the identification of potential public projects and assigning a priority to each project. In order to implement those recommendations that are the Village's responsibility, such as parks, roads, sidewalks, and utilities, it is essential that a program of priorities be established consistent with the Comprehensive Plan and Village's financial resources. Given the limited financial resources of the Village, the Capital Project Programming will be directly related to available State and Federal grants. As needs change or develop, priorities should be adjusted. A discussion of the Village's Capital Project needs is discussed in other chapters of the Comprehensive Plan. Currently the development of water resources, repair of deteriorating sidewalks, construction of new sidewalks, a Municipal Park and a Municipal Fire Station have the highest priority.

It is recommended that the Village adopt a long range Capital Improvement Budget, which should be subject to annual review as to resources and priorities.



Map 2

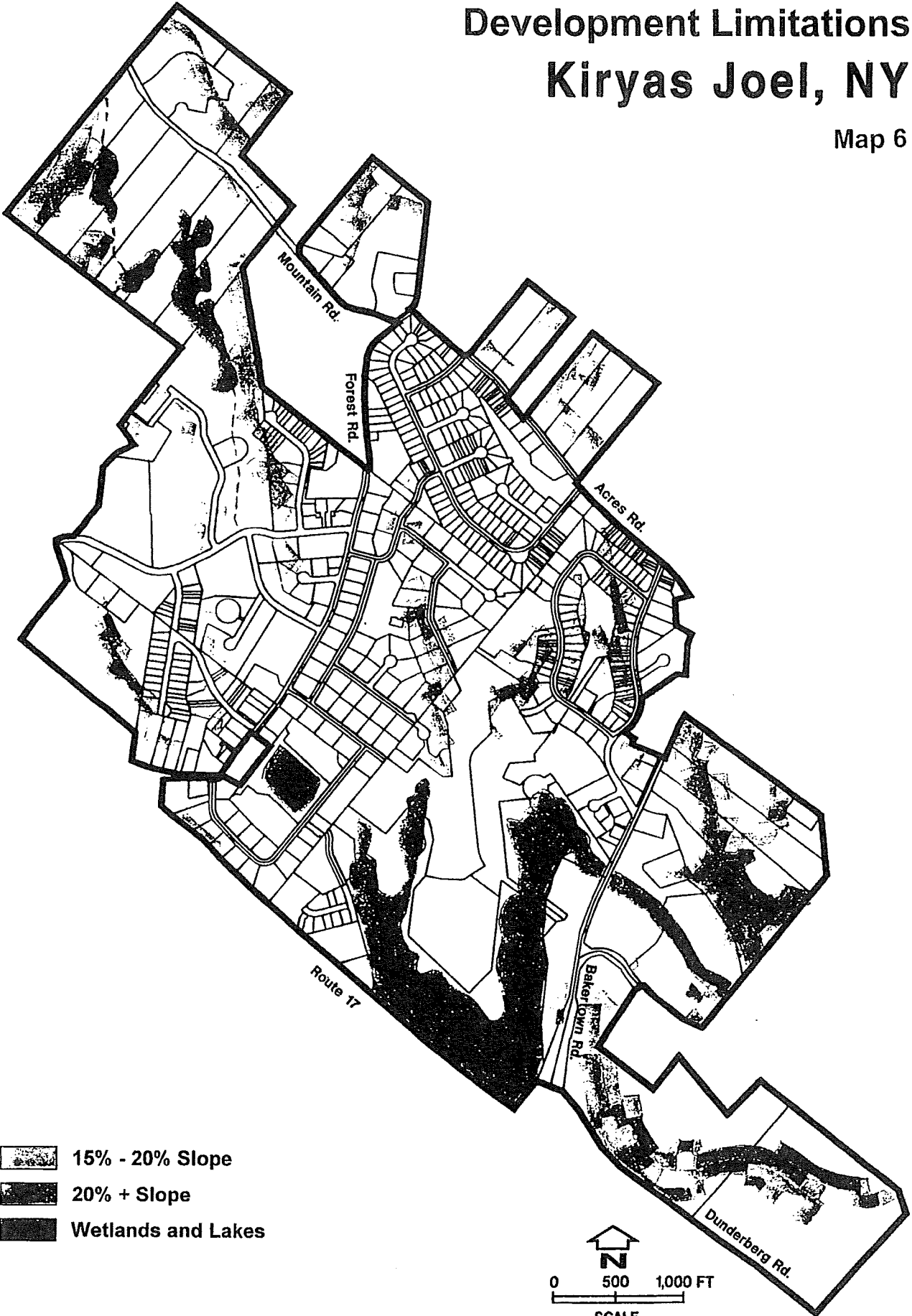
Location Map Kiryas Joel, NY



Map 3 VILLAGE OF KIRYAS JOEL, NY

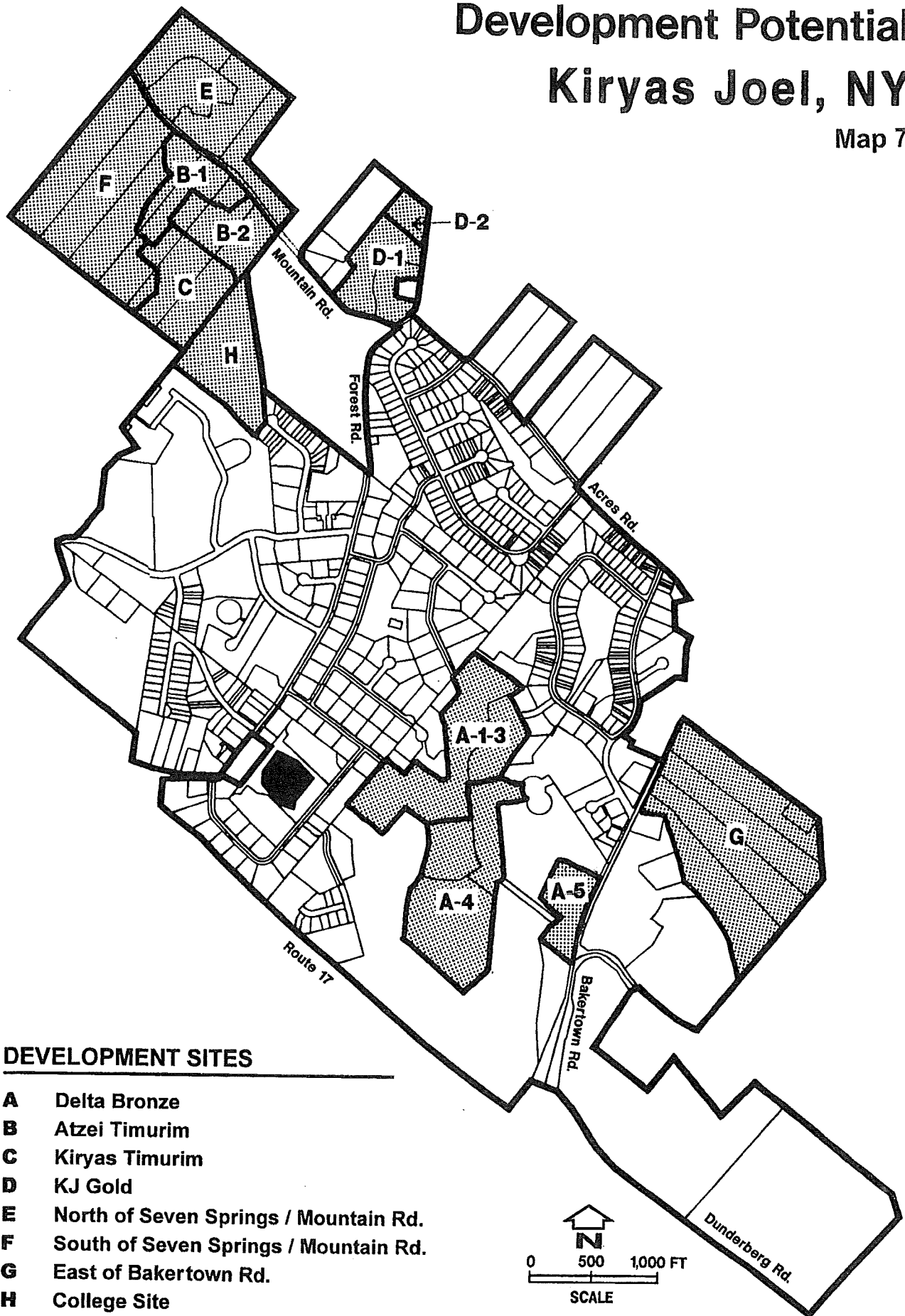
Development Limitations Kiryas Joel, NY

Map 6



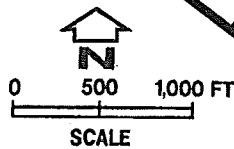
Development Potential Kiryas Joel, NY

Map 7



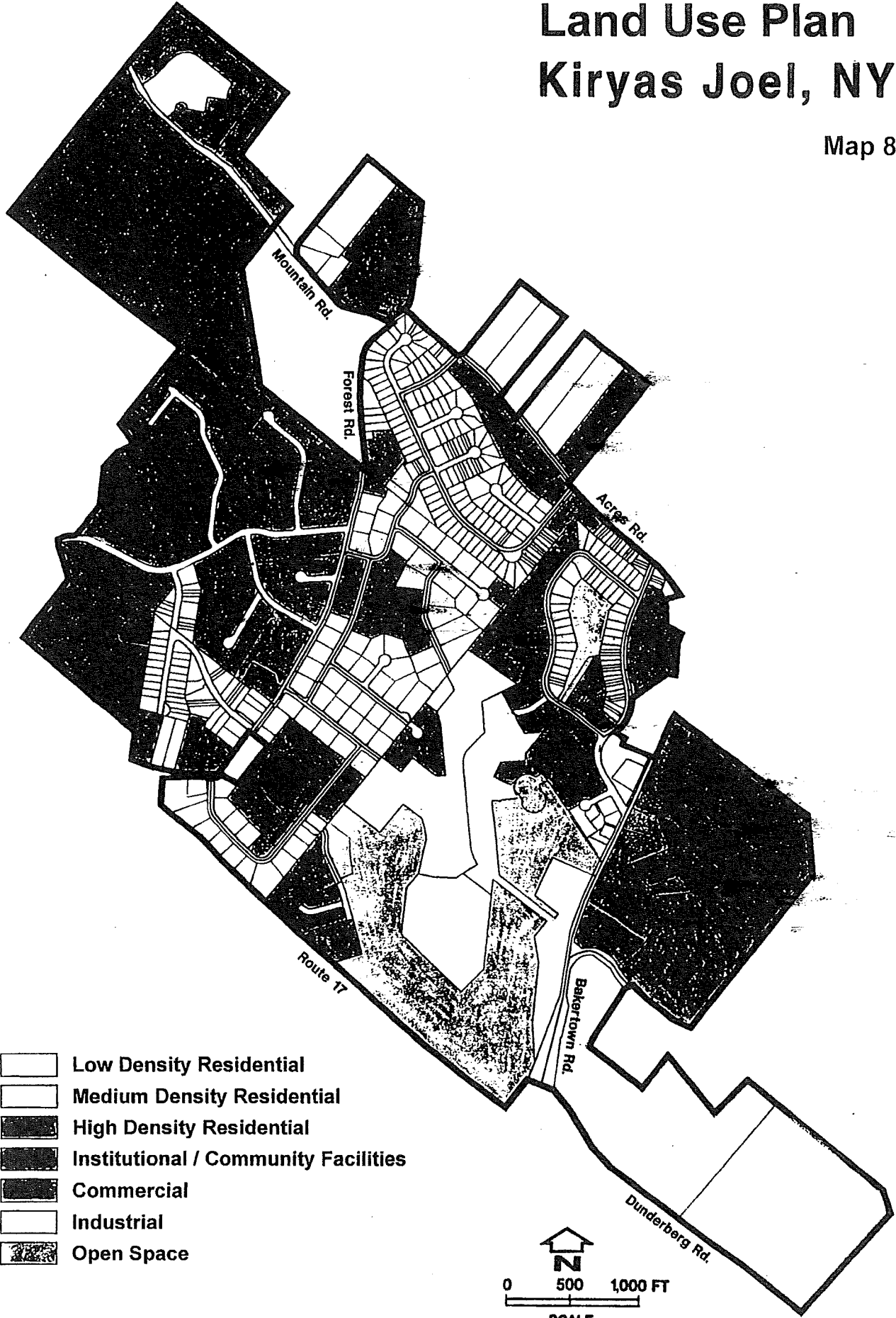
DEVELOPMENT SITES

- A** Delta Bronze
- B** Atzei Timurim
- C** Kiryas Timurim
- D** KJ Gold
- E** North of Seven Springs / Mountain Rd.
- F** South of Seven Springs / Mountain Rd.
- G** East of Bakertown Rd.
- H** College Site

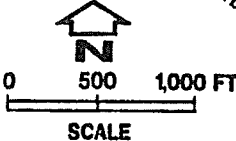


Land Use Plan Kiryas Joel, NY

Map 8

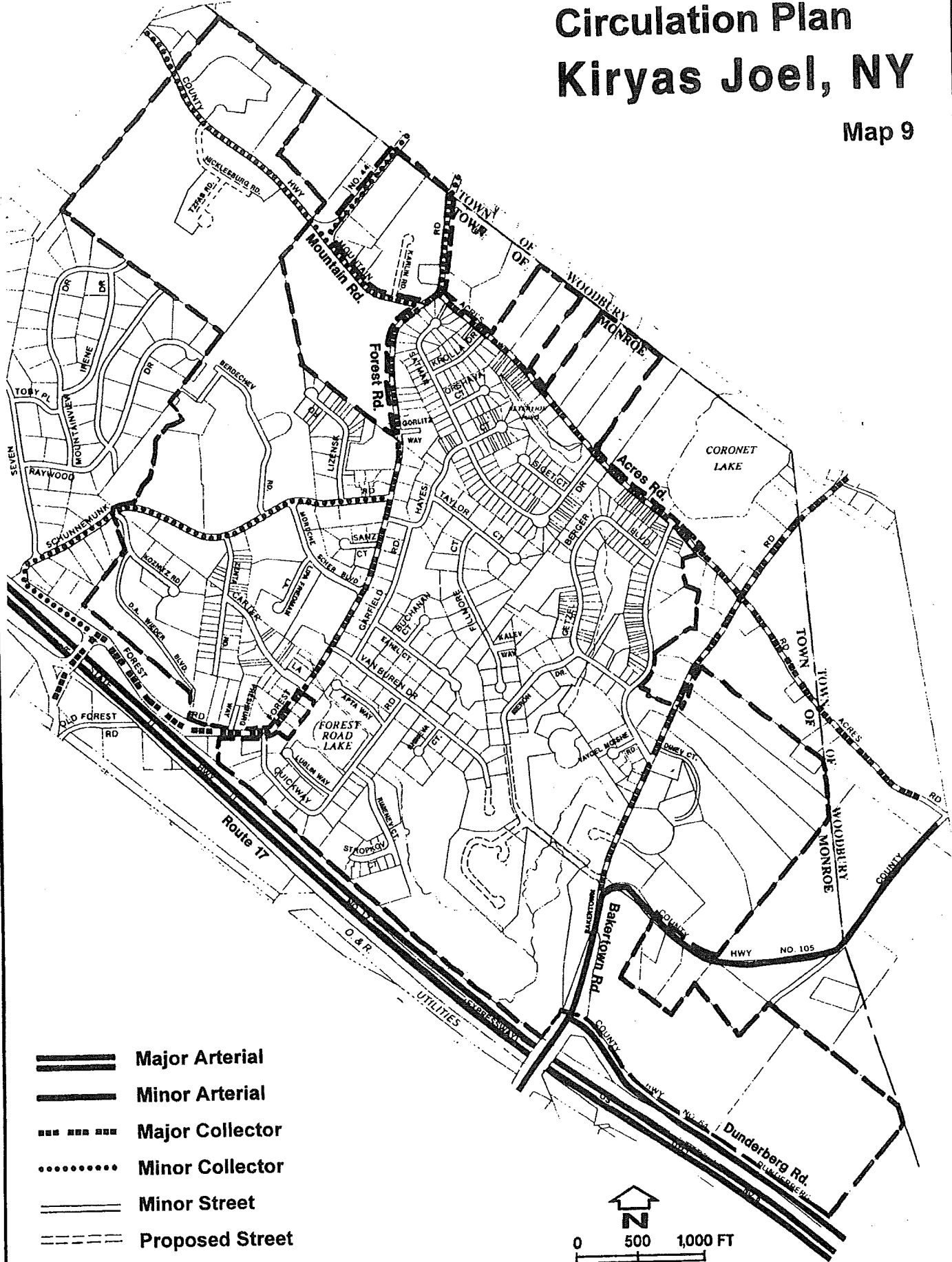






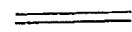
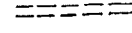
-  Low Density Residential
-  Medium Density Residential
-  High Density Residential
-  Institutional / Community Facilities
-  Commercial
-  Industrial
-  Open Space

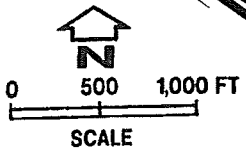


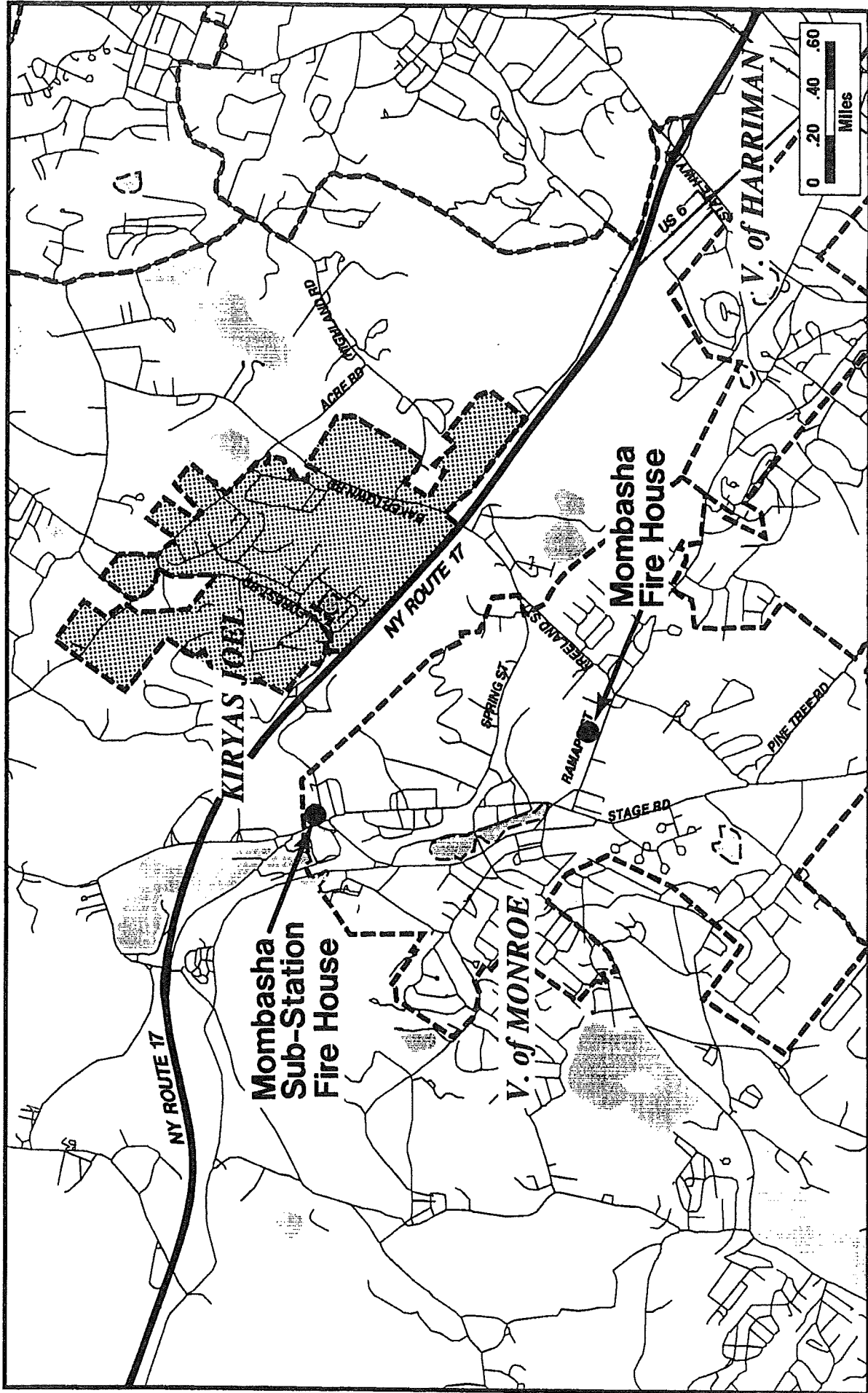
Circulation Plan Kiryas Joel, NY

Map 9



-  Major Arterial
-  Minor Arterial
-  Major Collector
-  Minor Collector
-  Minor Street
-  Proposed Street

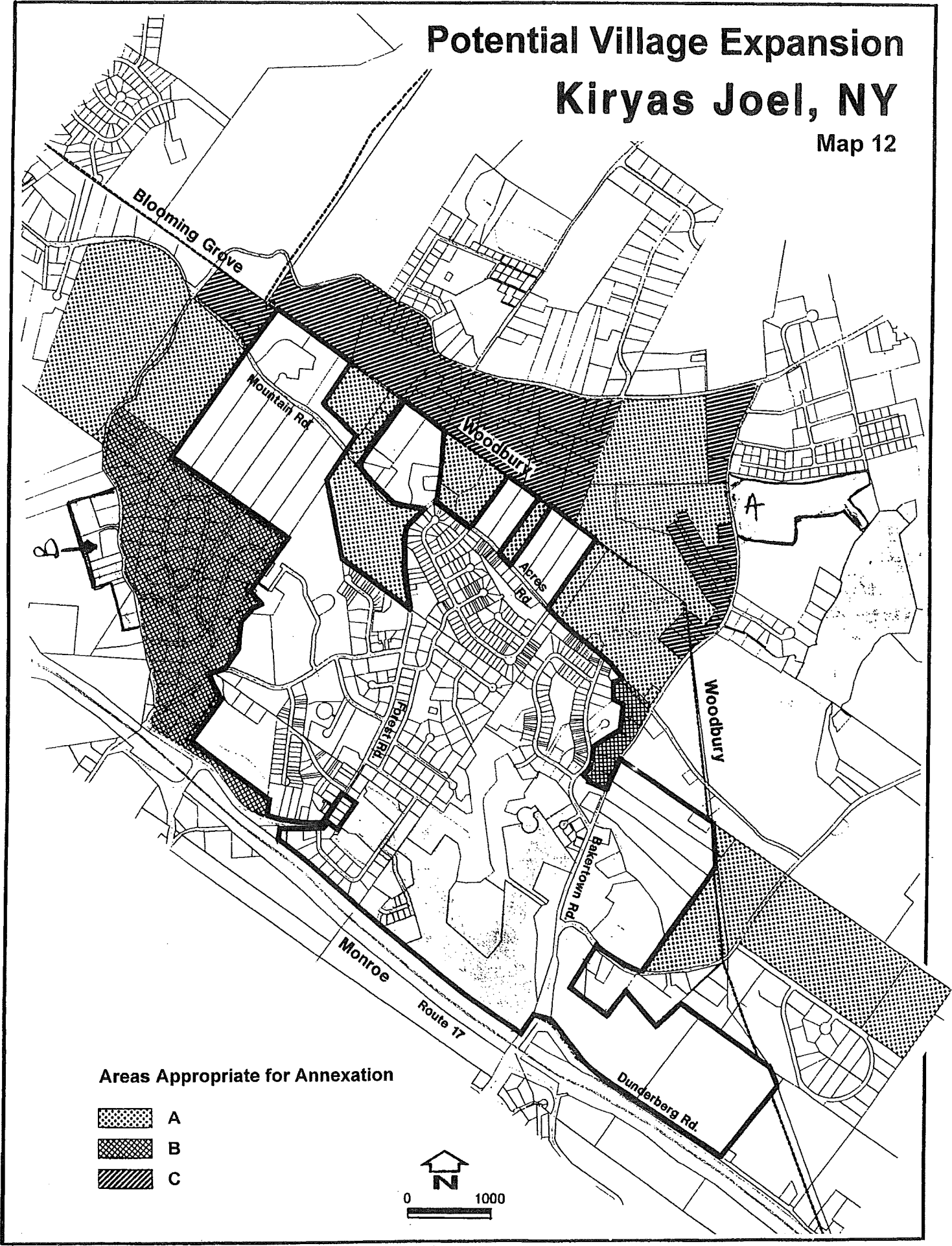




Location of Existing Fire Stations Serving Kiryas Joel

Potential Village Expansion Kiryas Joel, NY

Map 12



Kiryas Joel Boards

Abraham Wieder Mayor

Moses Goldstein Trustee

Jacob Freund Trustee

Sam Landau Trustee

Jacob Reisman Trustee

Gedalye Szegedin Administrator & Clerk

Gershon Neuman Planning Board Chair

Aron Fuchs Planning Board

Isaac Glanzer Planning Board

Jonas Hoffman Planning Board

Zev Farkas ZBA

Elya Spitzer ZBA

Herman Rosenfeld ZBA

Chaim Oberlander ZBA

Yoel Guteman ZBA

Village of Kiryas Joel, NY
Monday, September 29, 2014

PART I, ADMINISTRATIVE LEGISLATION

Chapter 1. GENERAL PROVISIONS

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel: Art. I, 4-28-1995 as L.L. No. 6-1995. Amendments noted where applicable.]

Article I. Adoption of Code

[Adopted 4-28-1995 as L.L. No. 6-1995]

§ 1-1. Legislative intent.

In accordance with Subdivision 3 of § 20 of the Municipal Home Rule Law, the local laws and certain resolutions of the Village of Kiryas Joel, as codified by General Code Publishers Corp., and consisting of Chapters 1 through 155, together with an Appendix, shall be known collectively as the "Code of the Village of Kiryas Joel," hereinafter termed the "Code." Wherever reference is made in any of the local laws and resolutions contained in the "Code of the Village of Kiryas Joel" to any other local law or resolution appearing in said Code, such reference shall be changed to the appropriate chapter title, chapter number, Article number or section number appearing in the Code as if such local law or resolution had been formally amended to so read.

§ 1-2. Continuation of existing provisions.

The provisions of the Code, insofar as they are substantively the same as those of local laws and resolutions in force immediately prior to the enactment of the Code by this local law, are intended as a continuation of such laws and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior local law or resolution. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the Board of Trustees of the Village of Kiryas Joel, and it is the intention of said Board that each such provision contained within the Code is hereby reaffirmed as it appears in said Code. Only such provisions of former local laws as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3 below.

§ 1-3. Repeal of enactments not included in Code.

All local laws of a general and permanent nature of the Village of Kiryas Joel in force on the date of the adoption of this local law and not contained in such Code or recognized and continued in force by reference therein are hereby repealed as of the effective date of this local law.

§ 1-4. Enactments saved from repeal; matters not affected.

The repeal of local laws provided for in § 1-3 of this local law shall not affect the following classes of local laws, rights and obligations, which are hereby expressly saved from repeal:

- A. Any right or liability established, accrued or incurred under any legislative provision of the Village of Kiryas Joel prior to the effective date of this local law or any action or proceeding brought for the enforcement of such right or liability.

- B. Any offense or act committed or done before the effective date of this local law in violation of any legislative provision of the Village of Kiryas Joel or any penalty, punishment or forfeiture which may result therefrom.
- C. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this local law, brought pursuant to any legislative provision of the Village of Kiryas Joel.
- D. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Village of Kiryas Joel.
- E. Any local law of the Village of Kiryas Joel providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place within the Village of Kiryas Joel or any portion thereof.
- F. Any local law of the Village of Kiryas Joel appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Village of Kiryas Joel or other instruments or evidence of the village's indebtedness.
- G. Local laws or resolutions authorizing the purchase, sale, lease or transfer of property, or any lawful contract or obligation.
- H. The levy or imposition of special assessments or charges.
- I. The annexation or dedication of property.
- J. Any legislation relating to salaries.
- K. Any local law amending the Zoning Map.
- L. Any legislation adopted subsequent to November 5, 1993.

§ 1-5. Severability.

If any clause, sentence, paragraph, section, Article, chapter or part of this local law or any local law or resolution included in this Code now or through supplementation shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, Article, chapter or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 1-6. Copy of Code on file.

A copy of the Code, in loose-leaf form, has been filed in the office of the Village Clerk of the Village of Kiryas Joel and shall remain there for use and examination by the public until final action is taken on this local law; and, if this local law shall be adopted, such copy shall be certified by the Village Clerk of the Village of Kiryas Joel by impressing thereon the Seal of the Village of Kiryas Joel, and such certified copy shall remain on file in the office of said Village Clerk to be made available to persons desiring to examine the same during all times while said Code is in effect. The enactment and notice of enactment of this local law, coupled with the availability of a copy of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

§ 1-7. Amendments to Code.

Any and all additions, deletions, amendments or supplements to any of the local laws and resolutions known collectively as the "Code of the Village of Kiryas Joel" or any new local laws or resolutions, when enacted or adopted in such form as to indicate the intention of the Board of Trustees to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code shall be enacted or adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing said Code as amendments and supplements thereto. Nothing contained in this local law shall

affect the status of any local law or resolution contained herein, and such local laws or resolutions may be amended, deleted or changed from time to time as the Board of Trustees deems desirable.

§ 1-8. Code book to be kept up-to-date.

It shall be the duty of the Village Clerk to keep up-to-date the certified copy of the book containing the Code of the Village of Kiryas Joel required to be filed in the office of the Village Clerk for use by the public. All changes in said Code and all local laws and resolutions adopted by the Board of Trustees subsequent to the enactment of this local law in such form as to indicate the intention of said Board to be a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes, local laws or resolutions until such changes, local laws or resolutions are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

§ 1-9. Sale of Code book; supplementation.

Copies of the Code may be purchased from the Village Clerk of the Village of Kiryas Joel upon the payment of a fee to be set by resolution of the Board of Trustees, which Board may also arrange by resolution for procedures for the periodic supplementation thereof.

§ 1-10. Penalties for tampering with Code.

Any person who, without authorization from the Village Clerk, changes or amends, by additions or deletions, any part or portion of the Code of the Village of Kiryas Joel or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the Village of Kiryas Joel to be misrepresented thereby or who violates any other provision of this local law shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than \$250 or imprisonment for a term of not more than 15 days, or both.

§ 1-11. Changes in previously adopted legislation; new provisions.

In compiling and preparing the local laws and resolutions for publication as the Code of the Village of Kiryas Joel, no changes in the meaning or intent of such local laws and resolutions have been made. In addition, certain grammatical changes and other minor nonsubstantive changes were made in one or more of said pieces of legislation. It is the intention of the Board of Trustees that all such changes be adopted as part of the Code as if the local laws and resolutions had been previously formally amended to read as such.

§ 1-12. Incorporation of provisions into Code.

The provisions of this local law are hereby made Article I of Chapter 1 of the Code of the Village of Kiryas Joel, such local law to be entitled "General Provisions, Article I, Adoption of Code," and the sections of this local law shall be numbered §§ 1-1 to 1-12, inclusive.

Chapter 2. ADMINISTRATOR

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 3-2-2004 by L.L. No. 4-2004. *Editor's Note: This chapter was adopted as Ch. 44, but was renumbered to fit into the organizational structure of the Code. Amendments noted where applicable.*]

GENERAL REFERENCES

Code of Ethics — See Ch. 25.

Officers and employees — See Ch. 37.

§ 2-1. Legislative intent.

It is the intent of this chapter to provide for the creation of the office of Village Administrator for the Village of Kiryas Joel. The Village is experiencing fast growth and has become a large municipality having many departments and long-term projects and operating on a large scale. The Village needs a full-time executive with an appropriate title and authority to carry out the Village's business and operations. The Village Administrator shall be empowered to conduct, direct, and administer the business and operations of the Village government, subject to the authority of the Mayor and Board of Trustees, The Village Administrator shall have such additional powers and duties as shall be authorized by the Mayor and/or Board of Trustees.

§ 2-2. Powers and duties.

The Village Administrator shall have all such power and authority reasonable and necessary to carry out the business, operations and affairs of the Village. However, such power and authority shall not include any power or authority which is vested by law in the Mayor and/or Board of Trustees. The Village Administrator may have power and authority delegated by the Mayor and/or Board of Trustees by proper act or enactment from time to time. The Village Administrator shall have executive powers second only to the office of the Mayor.

§ 2-3. Creation; appointment; term of office.

The office of Village Administrator is hereby created. The Village Administrator shall be appointed by the Mayor, subject to approval by the Board of Trustees. The Village Administrator will serve for a ten-year term and shall receive such compensation as shall be fixed by the Board of Trustees. The Village Administrator shall be a Village officer. The office of Village Administrator shall be in the exempt class of the civil service as provided for by law. The title of "Village Administrator" is determined to be compatible with other titles of the Village.

§ 2-4. Discipline; removal.

The Village Administrator may be disciplined or removed for just cause as provided by Civil Service Law § 75.

§ 2-5. Transfer of powers; abolition.

In the event the Village creates the office of Village Manager, the Village Administrator shall succeed to that office. The office of Village Manager may be created by local law subject to permissive referendum. Such local law shall be subject to mandatory referendum if the Village Manager is granted any power or authority now possessed by the Mayor and Board of Trustees. This chapter may be repealed or modified by local law subject to mandatory referendum. However, such local law will be subject to no referendum upon unanimous vote of the Board of Trustees.

Chapter 3. APPEARANCE TICKETS

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 8-14-1985 as L.L. No. 2-1985. Amendments noted where applicable.]

§ 3-1. Statutory authority.

This chapter is enacted pursuant to the authority of § 150.10 of the Criminal Procedure Law of the State of New York.

§ 3-2. Legislative intent.

The purpose of this chapter is to establish the position of Village Code Enforcement Officer and authorize the Code Enforcement Officer of the Village of Kiryas Joel to issue and serve appearance tickets in connection with the violation of state statutes, local laws or rules and regulations of the Village of Kiryas Joel.

§ 3-3. Persons authorized to issue appearance tickets.

The Code Enforcement Officer or any deputy, assistant or subordinate Code Enforcement Officer of the village is hereby authorized to issue and serve appearance tickets with respect to violations of state statutes of less than felony grade and all local laws, rules or regulations of the Village of Kiryas Joel.

§ 3-4. Service of tickets.

An appearance ticket issued pursuant to this chapter shall be served pursuant to § 150.40 of the Criminal Procedure Law of the State of New York.

§ 3-5. Filing of copy with Justice Court Clerk.

A copy of the appearance ticket accompanied by an affidavit of service shall be delivered to the Town Justice Court Clerk prior to the appearance date.

Chapter 6. ASSESSMENTS

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel as indicated in article histories. Amendments noted where applicable.]

Article I. Local Improvements

[Adopted 7-29-1993 by L.L. No. 8-1993; amended in its entirety 4-28-1995 by L.L. No. 4-1995]

§ 6-1. Legislative findings.

The Board of Trustees hereby finds and determines that the provision of certain municipal services benefit persons and properties in the village, including properties not subject to payment of real property taxes. Accordingly, the Board determines that the provision of such services may be financed in whole or in part by the assessment, on the ad valorem basis, of a charge against properties in the village. Such assessment may be levied on benefited property where this Board finds that the provision of a particular municipal service is a local improvement which enhances the value of property in the village, as provided for by Village Law § 22-2200.

§ 6-2. Fire protection services.

This Board hereby finds that the provision of fire protection services is a local improvement which enhances the value of property in the village and hereby authorizes the assessment of a charge on the ad valorem basis against properties in the village in order to fund in whole or in part the provision of fire protection services within the village, subject to compliance with the procedures set forth in Village Law § 22-2200.

§ 6-3. Ambulance services.

This Board hereby finds that the provision of ambulance services is a local improvement which enhances the value of property in the village and hereby authorizes the assessment of a charge on the ad valorem basis against properties in the village in order to fund in whole or in part the provision of ambulance services within the village, subject to compliance with the procedures set forth in Village Law § 22-2200.

§ 6-4. Garbage collection services.

This Board hereby finds that the provision of garbage collection services is a local improvement which enhances the value of property in the village and hereby authorizes the assessment of a charge on the ad valorem basis against properties in the village in order to fund in whole or in part the provision of garbage collection services within the village, subject to compliance with the procedures set forth in Village Law § 22-2200.

§ 6-5. Street repair and maintenance services.

This Board hereby finds that the provision of street repair and maintenance services is a local improvement which enhances the value of property in the village and hereby authorizes the assessment of a charge on the ad valorem basis against properties in the village in order to fund in whole or in part the provision of street repair and maintenance services within the village, subject to compliance with the procedures set forth in Village Law § 22-2200.

Article II. Removal of Obstructions and Moving and Resetting Poles and Wires

[Adopted 1-14-2003 by L.L. No. 1-2003]

§ 6-6. Legislative findings.

- A. The Board of Trustees hereby finds and determines that the maintenance of obstruction-free Village highways and rights-of-way is a matter of great importance to the health, safety and general welfare of the residents of the Village.
- B. The Board of Trustees further finds and determines that, when such an obstruction exists and the property owner, upon notice as provided herein, fails to remove such obstruction in a timely and responsible manner, it is in the interests of the health, safety and general welfare of the residents of the Village for the Village to cause or contract for such obstruction to be removed and/or for such poles to be moved and reset, and that all costs associated therewith, including the costs of compliance with the provisions of this article, are to be assessed against the owner of such property and collected in accordance with the provisions of this article.
- C. The Board of Trustees further finds and determines that wherever there shall exist an "obstruction," as that term is used and defined in New York Highway Law § 319(1), that the duties of each owner or occupant of land situate along the highway or right-of-way, along with all telephone, telegraph, electric railway, cable television, and other electrical companies, shall be consistent with the duties expressed in New York Highway Law § 319(2).

§ 6-7. Notice and procedures for removal of obstructions.

- A. "Obstructions," within the meaning of this article, shall have the same meaning and shall include the same obstructions as specified in New York Highway Law § 319(1).
- B. It shall be the duty of each owner or occupant of lands situate along the highway to remove all obstructions within the bounds of the highway, which have been placed there, either by themselves or by their consent. It shall be the duty of all telephone, telegraph, electric railway and other electrical companies to remove and reset telephone, telegraph, trolley and other poles and the wires connected therewith, when the same constitute obstructions to the use of the highway by the traveling public. If temporary obstructions such as trees, lumber, wood, logs, machinery, vehicles and similar obstructions are not removed within 48 hours after the service of notice, personally or by mail as provided herein, upon such owner or occupant, requesting the same to be done, the Village Clerk shall remove, or cause to be removed, such obstruction. And if permanent obstructions, including, among others, telegraph, telephone, trolley, electric and other poles and the wires connected therewith, are not moved and reset within 30 days, the Village Clerk shall move and reset, or cause to have moved and reset, such poles and wires. The expenses thereby incurred, including the costs of compliance with the provisions of this article, shall be paid for in the first instance out of moneys levied and collected and available therefor, and the amount thereof shall be charged against such owner, occupant or company, and levied and collected, as herein provided.

§ 6-8. Notice and procedure for assessment of removal expenses.

- A. In assessing the costs of obstruction removal pursuant to § 6-7, the Village Clerk, as provided for in New York Village Law § 22-2200, shall publish in the official newspaper and serve upon each land owner, personally or by mail, at least 10 days before the hearing, a notice of the assessment, and that at a specified time and place a hearing will be had to review and complete same, and that said assessment can be examined by any person interested therein at the office of the Village Clerk during usual business hours, prior to such hearing. At the time and place so specified, the Board of Trustees shall hear the parties interested, and shall thereupon complete the assessment, stating therein the name of each owner, occupant or company, and the amount assessed against him or it. Such Board of Trustees shall certify such assessment and shall cause the amount stated therein to be levied against such owner, occupant or company, and any uncollected tax shall be a lien upon the land affected. The amount so levied shall be collected as provided herein, and shall be applied in reimbursing the fund from which such cost was defrayed.
- B. The Village may make assessment pursuant to this article for any obstruction heretofore removed, but not assessed, provided the notice requirements of § 6-7 of this article have been substantially complied with by the village.

§ 6-9. Appeals.

Any owner, occupant or company deeming himself aggrieved as a result of an assessment made pursuant to this article may, within 15 days of the certification of such assessment by the Board of Trustees, apply to a court of record for an order of certiorari to review said assessment. The assessment shall be deemed final and conclusive unless such an application be made within such 15 days.

§ 6-10. Collection of assessments.

All assessment levied pursuant to this article shall be collected as provided in New York Village Law § 5-518.

§ 6-11. Authorization.

The assessment of costs for the removal of obstruction from Village highways and rights-of-way, subject to compliance with the provisions of this article, is hereby authorized pursuant to New York Municipal Home Rule Law § 10(1)(ii) (a) (6) and (11), and New York Village Law § 4-412.

Chapter 13. CONSTABLE

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 7-30-1981 as L.L. No. 1-1981. Amendments noted where applicable.]

GENERAL REFERENCES

Appearance tickets — See Ch. 3.

Officers and employees — See Ch. 37.

§ 13-1. Creation of office.

There is hereby created in the Village of Kiryas Joel the office of Village Constable.

§ 13-2. Appointment; organization.

The Mayor, with the consent of the Board of Trustees, may appoint as many Constables as he shall determine to be necessary and may designate one of such Constables to be the Chief Constable of the village. Such Constables may be organized as a Village Constable Force, as shall be determined by the Village Board of Trustees.

§ 13-3. Authority.

All Constables shall be peace officers as defined in the Criminal Procedure Law of New York and are authorized in addition to all other powers, rights, duties and responsibilities incumbent upon such office, to issue appearance tickets relating to enforcement of any statute, local law, ordinance, rule or regulation affecting the public health, safety and welfare.

§ 13-4. Rules, regulations and other policies.

The Mayor is authorized to make rules and regulations as may be required for the efficient administration of such Constable Force and shall also provide, within the limits of any appropriation, and subject to the approval of the Board of Trustees:

- A. A training program for Constables, which may or may not be in cooperation with any police agency or the Sheriff's Office.
- B. Liability insurance for such Constables which shall protect the Constable and village from acts of liability that may arise during the performance of duties as Constables.
- C. Workers' compensation, accidental injury insurance, disability insurance or life insurance as shall be agreed between the Constables and the village.
- D. For the payment of Constables for services rendered upon an hourly basis and provide for the assignment of Constables on duty.
- E. Uniforms and equipment for Constables as may be necessary or desirable to carry out the duties of the office.
- F. Authorization for the carrying of firearms only when trained in the use of such to the minimum standards required of police officers.
- G. An annual physical examination, the passing of which shall be successful prior to the appointment or reappointment.

§ 13-5. Contracts with outside services.

Notwithstanding anything in Article 8 of the Village Law to the contrary, the Mayor, upon authorization by the Board of Trustees, may enter into a contract with a duly licensed watchguard or patrol agency as that term is defined and referred to in Article 7 of the General Business Law, and for the protection of the property, safety, health, comfort and general welfare of the inhabitants of the Village of Kiryas Joel and the trades and businesses therein, such contract may contain a provision for the supplying of persons who may be lawfully employed by said agency as individuals who would otherwise qualify as Constables under this chapter, in which case such Constables shall serve without compensation and shall serve only so long as such a contract is in force and effect unless otherwise appointed or reappointed.

Chapter 25. ETHICS, CODE OF

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 11-5-1993. Amendments noted where applicable.]

GENERAL REFERENCES

Officers and employees — See Ch. 37.

§ 25-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

INTEREST

A pecuniary or material benefit accruing to a municipal officer or employee, unless the context otherwise requires.

MUNICIPAL OFFICER OR EMPLOYEE

An officer or employee of the Village of Kiryas Joel, whether paid or unpaid, including members of any administrative board, commission or other agency thereof. No person shall be deemed to be a "municipal officer or employee" solely by reason of being a volunteer fireman or civil defense volunteer, except a Chief Engineer or Assistant Chief Engineer.

§ 25-2. Standards of conduct.

Every officer or employee of the Village of Kiryas Joel, New York, shall be subject to and abide by the following standards of conduct:

- A. Conflict of interest. No officer or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature which is in conflict with proper discharge of his duties in the public interest.
- B. Gifts. No officer or employee shall, directly or indirectly, solicit any gift or accept or receive any gift having a value of \$75 or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.
- C. Confidential information. No officer or employee shall disclose confidential information acquired by him in the course of his official duties or use such information to further his or another's personal interest.
- D. Representation before one's own agency. No officer or employee shall receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any officer, member or employee.
- E. Representation before any agency for a contingent fee. No officer or employee shall receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of the village, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this subsection shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.
- F. Disclosure of interest in legislation. Any officer or employee who participates in the discussion or gives official opinion to the Board of Trustees on any legislation before the Board of Trustees shall publicly disclose on the official record the nature and extend of any direct or indirect financial or other private interest, if any, he has in such legislation.
- G. Investments in conflict with official duties. No officer or employee shall invest or hold any investment, directly or indirectly, in any financial, business, commercial or other private transaction which creates a conflict with his official duties.
- H. Private employment. No officer or employee shall engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his official duties.
- I. Future employment. No officer or employee shall, after the termination of service or employment with the village, appear before any board or agency of the village in relation to any case, proceeding or application in which he personally participated during the period of his service or employment or which was under his active consideration.

§ 25-3. Permitted filings.

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former village officer or employee of any claim, account, demand or suit against the Village of Kiryas Joel or any agency thereof on behalf of himself or any member of his family arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

§ 25-4. Distribution.

A copy of this Code of Ethics shall be distributed to every officer and employee of the village within 10 days after the adoption of this resolution. Each officer and employee elected or appointed thereafter shall be furnished a copy before commencing the duties of his office or employment. Further, a copy of this Code of Ethics shall be filed in the office of the Village Clerk.

§ 25-5. Penalties for offenses.

In addition to any penalty contained in any provision of law, any person who shall knowingly and intentionally violate any of the provisions of this Code of Ethics may be suspended or removed from office or employment, as the case may be, in the manner provided by law.

Chapter 33. MAYOR, DEPUTY

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 3-18-1991 as L.L. No. 1-1991. Amendments noted where applicable.]

§ 33-1. Appointment.

It shall be the responsibility of the Mayor to appoint an elector of the village, who need not be a Trustee, as Deputy Mayor.

§ 33-2. Powers and duties.

The Deputy Mayor shall, during the absence or inability of the Mayor, be vested with all the powers and may perform all the duties of the Mayor.

§ 33-3. Legislative intent.

This chapter is specifically intended to supersede Village Law § 4-400 (1)(h).

Chapter 37. OFFICERS AND EMPLOYEES

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel: Art. I, 11-11-1991 as L.L. No. 2-1991; Art. II, 4-28-1995 as L.L. No. 2-1995. Amendments noted where applicable.]

GENERAL REFERENCES

Constable — See Ch. 13.

Code of Ethics — See Ch. 25.

Deputy Mayor — See Ch. 33.

Article I. Terms of Office

[Adopted 11-11-1991 as L.L. No. 2-1991]

§ 37-1. Terms extended to four years.

The terms of office of the Mayor and all Trustees of the Village of Kiryas Joel are hereby extended to four years.

§ 37-2. Filling of affected offices.

Each affected office shall hereafter be filled for a term of four years, commencing at the beginning of the official year following the next general village election at which such office is to be filled.

Article II. Defense and Indemnification

[Adopted 4-28-1995 as L.L. No. 2-1995]

§ 37-3. Purpose and intent.

The purpose of this Article is to provide legal and financial protection for those individuals serving the Village of Kiryas Joel from losses which may result from legal actions which may be brought against them in their individual capacity for actions taken while in the performance of their official duties and responsibilities. In enacting this Article, the Board of Trustees finds that the State of New York has enacted similar provisions for the legal and financial security of its officers and employees and further finds that such security is also required for local personnel. By enactment of this Article, the Board of Trustees does not intend to limit or otherwise abrogate any existing right or responsibility of the village or its employees with regard to indemnification or legal defense. It is solely the intent of this Article to provide similar coverage for local employees as is presently provided for state employees, so as to continue to attract qualified individuals to local government service.

§ 37-4. Definitions.

As used in this Article, unless the context otherwise requires, the following terms shall have the meanings indicated:

EMPLOYEE

Any person holding a position by election, appointment or employment in the service of the Village of Kiryas Joel, whether or not compensated, or a volunteer expressly authorized to participate in a municipally sponsored volunteer program, but shall not include an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

§ 37-5. Duty of village to defend employees.

- A. Upon compliance by the employee with the provisions of § 37-7 of this Article, the village shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the Village of Kiryas Joel.
- B. Subject to the conditions set forth in Subsection A of this section, the employee shall be entitled to be represented by the Village Attorney; provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the Village Attorney determines, based upon his investigation and review of the facts and circumstances of the case, that representation by the Village Attorney would be inappropriate or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his choice. The Village Attorney shall notify the employee, in writing, of such determination that the employee is entitled to be represented by private counsel of his choice. The Village Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to

representation by private counsel under the provisions of this Article, the Village Attorney shall so certify to the Board of Trustees. Reasonable attorneys' fees and litigation expenses shall be paid by the village to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification that the employee is entitled to representation under the terms and conditions of this Article by the head of the department, commission, division, office or agency in which such employee is employed and upon the audit and warrant of the Village Treasurer. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

- C. Where the employee delivers process and a request for a defense to the Village Attorney as required by § 37-7 of this Article, the Attorney shall take the necessary steps, including the retention of private counsel under the terms and conditions provided in Subsection B of this section of this Article, on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

§ 37-6. Indemnification of employees; payment of settlement.

- A. The village shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment or duties. The duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee or where the employee was acting outside the scope of his public employment or duties.
- B. An employee represented by private counsel shall cause to be submitted to the Board of Trustees any proposed settlement which may be subject to indemnification by the village, and if not inconsistent with the provisions of this Article, the Mayor shall certify such settlement and submit such settlement and certification to the Village Attorney. The Attorney shall review such proposed settlement as to form and amount and shall give approval if, in his judgment, the settlement is in the best interest of the village. Nothing in this section shall be construed to authorize the village to indemnify or save harmless an employee with respect to a settlement not so reviewed and approved by the Village Attorney.
- C. Upon entry of a final judgment against the employee or upon the settlement of the claim, the employee shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail, within 30 days of the date of entry or settlement, upon the Mayor; and, if not inconsistent with the provisions of this Article, such judgment or settlement shall be certified for payment by such Mayor. If the village concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the Village Treasurer.

§ 37-7. Conditions.

The duty to defend or indemnify and save harmless provided by this Article shall be conditioned upon delivery to the Village Attorney, at his office, by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after being served with such document, and by the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the state based upon the same act or omission and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the village provide for a defense pursuant to this Article.

§ 37-8. Construal of provisions.

- A. Scope. The benefits of this Article shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party; nor shall any provision of this Article be construed to affect, alter or repeal any provision of the Workers' Compensation Law.
- B. Other insurance. The provisions of this Article shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

- C. Effect. The provisions of this Article shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted.
- D. Other laws. Except as otherwise specifically provided in this Article, the provisions of this Article shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the village or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with or by reason of any other provision of state or federal statutory or common law.

Chapter 39. PLANNING BOARD

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 7-29-1993 as L.L. No. 7-1993. Amendments noted where applicable.]

§ 39-1. Membership.

Notwithstanding any inconsistent provision of the Village Law, any member of the Board of Trustees, except the Mayor, shall be eligible for membership on the Planning Board of the Village of Kiryas Joel. Pursuant to the powers of the village granted pursuant to Municipal Home Rule Law § 10, Subdivision 1e(3), this chapter shall supersede the provisions of Village Law § 7-718, Subdivision 3.

Chapter 41. PROCUREMENT POLICY

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 1-7-1992. *Editor's Note: This resolution also provides as follows: "The Village of Kiryas Joel does hereby adopt the following procurement policy which is intended to apply to all goods and services which are not required by law to be publicly bid."* Amendments noted where applicable.]

§ 41-1. Initial review of purchase; documentation of decision.

- A. Every purchase to be made must be initially reviewed to determine whether it is a purchase contract or a public works contract. Once that determination is made, a good faith effort will be made to determine whether it is known or can reasonably be expected that the aggregate amount to be spent on the item of supply or service is not subject to competitive bidding, taking into account past purchases and the aggregate amount to be spent in a year. The following items are not subject to competitive bidding pursuant to § 103 of the General Municipal Law: purchase contracts under \$10,000 and public works contracts under \$20,000; emergency purchases; goods purchased from agencies for the blind or severely handicapped; goods purchased from correctional institutions; purchases under state and county contracts; and surplus and secondhand purchases from another governmental entity.
- B. The decision that a purchase is not subject to competitive bidding will be documented in writing by the individual making the purchase. This documentation may include written or verbal quotes from vendors, a memo from the purchaser indicating how the decision was arrived at, a copy of the contract indicating the source which makes the item or service exempt, a memo from the purchaser detailing the circumstances which lead to an emergency purchase or any other written documentation that is appropriate.

§ 41-2. Proposals or quotations to be obtained; exceptions.

All goods and services will be secured by use of written requests for proposals, written quotations, verbal quotations or any other method that assures that goods will be purchased at the lowest price and that favoritism will be avoided, except in the following circumstances: purchase contracts over \$10,000 and public works contracts over \$20,000; goods purchased from agencies for the blind or severely handicapped pursuant to § 175-b of the State Finance Law; goods purchased from correctional institutions pursuant to § 186 of the Correction Law; purchases under state contracts pursuant to § 104 of the General Municipal Law; purchases under county contracts pursuant to § 103, Subdivision 3, of the General Municipal Law; or purchases pursuant to § 41-6 of this policy.

§ 41-3. Method of purchase.

A. The following method of purchase will be used when required by this policy in order to achieve the highest savings:

Estimate Amount of Purchase	Method
Contract	
\$250 to \$2,999	2 verbal quotations
\$3,000 to \$9,999	3 written/fax quotations or written request for proposals
Estimate Amount for Public Works	
Contract	
\$250 to \$2,999	2 verbal quotations
\$3,000 to \$4,999	2 written/fax quotations
\$5,000 to \$19,000	3 written/fax quotations or written request for proposals

B. A good faith effort shall be made to obtain the required number of proposals or quotations. If the purchaser is unable to obtain the required number of proposals or quotations, the purchaser will document the attempt made at obtaining the proposals. In no event shall the failure to obtain the proposals be a bar to the procurement.

§ 41-4. Documentation of action taken.

Documentation is required of each action taken in connection with each procurement.

§ 41-5. Award of contract to other than the lowest offeror.

Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible offeror. This documentation will include an explanation of how the award will achieve savings or how the offeror was not responsible. A determination that the offeror is not responsible shall be made by the purchaser and may not be challenged under any circumstances.

§ 41-6. Exceptions.

Pursuant to General Municipal Law § 104-b, Subdivision 2f, the procurement policy may contain circumstances when, or types of procurements for which, in the sole discretion of the governing body, the solicitation of alternative proposals or quotations will not be in the best interest of the municipality. In the following circumstances it may not be in the best interest of the Village of Kiryas Joel to solicit quotations or document the basis for not accepting the lowest bid:

- A. Professional services or services requiring special or technical skill, training or expertise.
 - (1) The individual or company must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, integrity and moral worth. These qualifications are not necessarily found in the individual or company that offers the lowest price, and the nature of these services is such that they do not readily lend themselves to competitive procurement procedures.
 - (2) In determining whether a service fits into this category, the Board of Trustees shall take into consideration the following guidelines: whether the services are subject to state licensing or testing requirements; whether substantial formal education or training is a necessary prerequisite to the performance of the services; and whether the services require a personal relationship between the individual and municipal officials. Professional or technical services shall include but not be limited to the following: services of an attorney; services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant;

investment management services; printing services involving extensive writing, editing or art work; management of municipally owned property; and computer software or programming services for customized programs or services involved in substantial modification and customizing of prepackaged software.

- B. Emergency purchases pursuant to § 103, Subdivision 4, of the General Municipal Law. Due to the nature of this exception, these goods or services must be purchased immediately, and a delay in order to seek alternate proposals may threaten the life, health, safety and welfare of the residents. This section does not preclude alternate proposals if time permits.
- C. Purchases of surplus and secondhand goods from any source. If alternate proposals are required, the village is precluded from purchasing surplus and secondhand goods at auctions or through specific advertised sources where the best prices are usually obtained. It is also difficult to try to compare prices of used goods, and a lower price may indicate an older product.
- D. Goods or services under \$250. The time and documentation required to purchase through this policy may be more costly than the item itself and would therefore not be in the best interests of the taxpayer. In addition, it is not likely that such de minimis contracts would be awarded based on favoritism.

§ 41-7. Effective date.

This policy shall go into effect January 1, 1992, and will be reviewed annually.

Chapter 42. RECORD MANAGEMENT PROGRAM

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 1-6-2004 by L.L. No. 2-2004. *Editor's Note: This chapter was adopted as Ch. 43, but was renumbered to fit into the organizational structure of the Code. Amendments noted where applicable.*]

§ 42-1. Department, officer.

There shall be a records management program established under the aegis of the Records Management Officer. The Officer will be responsible for administering the noncurrent and archival public records and storage areas for the Village in accordance with local, state and federal laws and guidelines. The Records Management Officer of the Village of Kiryas Joel shall be the Village Clerk or his appointed designee.

§ 42-2. Powers and duties of Officer.

The Records Management Officer shall have all the necessary powers to carry out the efficient administration, determination of value, use, preservation, storage and disposition of the noncurrent and archival public records kept, filed or received by the officers and departments of the Village of Kiryas Joel. The Records Management Officer shall:

- A. Continually survey and examine public records to recommend their classification so as to determine the most suitable methods to be used for the maintaining, storing and servicing of archival material, such as:
 - (1) Obsolete and unnecessary records according to New York State Archives Records Retention and Disposition Schedules (MU-1) thereby subject to disposition;
 - (2) Information containing administrative, legal, fiscal, research, historical or educational value which warrant their permanent retention; or
 - (3) Records not subject to disposition according to state law.
- B. Establish guidelines for proper records management in any department or agency of Village government in accordance with local, state, and federal laws and guidelines.

- C. Report annually to the Board on the powers and duties herein mentioned, including, but not limited to, the cost-benefit ratio of programs effectuated by the program.
- D. Oversee all requests for records storage equipment, microfilm equipment, etc., and coordinate and participate in planning for the expansion of micrographics and automated data processing systems.
- E. Establish inactive records storage areas for the storage, processing and servicing of all noncurrent and archival records for all Village departments and agencies.
- F. Perform the following functions with respect to the Village:
 - (1) Advise and assist Village departments in reviewing and selecting records to be transferred to the inactive records storage area for storage and/or preservation.
 - (2) Continually survey and examine public records to determine the most suitable methods to be used for the creating, maintaining, storing, and servicing of archival materials.
 - (3) Establish and maintain an adequate repository for the proper storage, conservation, processing, and servicing of archival records.
 - (4) Promulgate rules governing public access to and use of records in the archives. subject to the approval of the Records Advisory Committee.
 - (5) Develop a confidentiality policy for archival records designated confidential, providing such policy does not conflict with any federal or state statutes.
 - (6) Provide information services to other Village offices.
 - (7) Develop a procedure whereby historically important records are to be identified at the point of generation.
 - (8) Collect archival materials which are not official Village records but which have associated value to the Village or a close relationship to the existing archival collection. Such collecting shall be subject to archive space, staff, and cost limitations, and to the potential endangerment of such materials if they are not collected by the Village archives.

§ 42-3. Records Advisory Committee.

There shall be a Records Advisory Committee designated to work closely with and provide advice to the Records Management Officer. This Committee shall consist of representatives appointed by the Mayor. The Records Advisory Committee shall meet periodically and have the following powers and duties:

- A. Provide advice to the Village Records Management Officer on the development of the records management program.
- B. Review the performance of the program on an ongoing basis and propose changes and improvements.
- C. Review retention periods not covered by the State Archives Schedule MU-1 or retention period changes recommended by department heads.
- D. Provide advice on the appraisal of records for archival value and be the final sign-off entity as to what is or is not archival.

§ 42-4. Custody.

The Records Management Officer shall maintain physical custody and official responsibility of all records in his/her possession. Department heads shall retain constructive control and authority over all department records, regardless of their physical location.

§ 42-5. Replevin.

The Village Attorney may take steps to recover local government records which have been alienated from proper custody, and may, when necessary, institute actions of replevin.

§ 42-6. Disposal of records.

No records shall be destroyed or otherwise disposed of by a department of the Village unless a records disposal form has been executed. Records will not be destroyed if they are required for any pending audit, litigation or other investigation.

§ 42-7. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ARCHIVES

Those official records which have been determined by the Records Management Officer and Advisory Committee to have sufficient historical or other value to warrant their continued preservation by the Village.

RECORDS

Any documents, books, papers, photographs, sound recordings, microfilm, or any other materials, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official Village business.

RECORD MANAGEMENT

The planning, controlling, directing, organizing, training, promotion and other managerial activities involved in records maintenance, use and disposition, including records preservation, disposal, records centers or other storage facilities.

RECORDS DISPOSITION

- A. The removal by the Village, in accordance with approved records control schedules, of records no longer necessary for the conduct of business by such agency through removal methods which may include:
 - (1) The disposal of temporary records by destruction or donation; or
 - (2) The transfer of records to the inactive records storage area for temporary storage of inactive records and permanent storage of records determined to have historical or other sufficient value warranting continued preservation; and
- B. The transfer of records from one Village department to any other Village department.

INACTIVE RECORDS STORAGE

An establishment maintained by the Village primarily for the storage, servicing, security and processing of records which must be preserved for varying periods of time and need not be retained in active office space and equipment.

SERVICING

Making information in records available to any Village department for official use or to the public.

§ 42-8. When effective.

This chapter shall take effect immediately upon adoption.

Chapter 43. RESIDENTS ASSISTANCE

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 4-28-1995 as L.L. No. 1-1995. Amendments noted where applicable.]

§ 43-1. Legislative intent.

The Board of Trustees finds that many of the families and other residents of the Village of Kiryas Joel are in need of and qualify for government and other assistance. The Board finds further that many such residents are unable to receive such needed government assistance to which they are entitled because they are unaware of the availability of such assistance and because of the difficulty of understanding the rules and regulations of government programs and in completing applications for assistance. Accordingly, this Board finds that the health, safety and welfare of the village and of the residents of the Village of Kiryas Joel will be promoted by the creation of a position and employment by the village of an individual who will help village residents concerning government assistance programs. Section 4-412, Subdivision 1, of the Village Law and § 10, Subdivision 1(ii)a(12), of the Municipal Home Rule Law provide that villages may adopt local laws relating to the safety, health, comfort, well-being and general welfare of residents, provided that such law is not inconsistent with the provisions of the Constitution or of a general state law.

§ 43-2. Provision of government assistant services.

The Board of Trustees of the Village of Kiryas Joel is hereby authorized to create by resolution a full-time position and employ an individual to fill that position who will render assistance to village residents concerning government aid programs. The individual holding this position shall be familiar with the rules and regulations of social services and other government programs, provide factual information to village residents concerning the availability of such programs, assist in the completion of applications for government assistance and follow up with government agencies on behalf of village residents.

PART II, GENERAL LEGISLATION

Chapter 47. AFFORDABLE HOUSING

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 9-4-2007 by L.L. No. 1-2007. Amendments noted where applicable.]

GENERAL REFERENCES

Building code administration — See Ch. 53.

Zoning — See Ch. 155.

§ 47-1. Findings.

- A. The Board of Trustees of the Village of Kiryas Joel hereby finds that the need for affordable housing in the Village is great and warrants the establishment of a system by which specific incentives or bonuses are granted for this purpose. The Board of Trustees further finds that several social benefits will inure to the community the need for affordable housing being an inherent element of the Village comprehensive plan. These benefits include the ability to accommodate the location, within the Village, of first-time homebuyers and households otherwise transitioning to homeownership, the strengthening of cultural and family values and the encouragement of property maintenance from the assuming of household ownership responsibilities.
- B. This Chapter 47, pursuant to the authority of § 7-703 of the New York State Village Law, offers adjustments in the permissible population density, area, height, open space, use, and other provisions of the Village of Kiryas Joel Zoning Law for the specific purpose of encouraging the long-term development of owner-occupied housing for persons of low or moderate income.
- C.

This chapter seeks to encourage and benefit first-time homebuyers as an aid to transitioning families to home-owning status so as to strengthen the community with the investment of growing families. As such, the law will require owner occupancy by middle- and lower-income families and does not allow profiteering by investors and speculators. Preference is given to families originating within the Village of Kiryas Joel.

- D. This Chapter 47 also supersedes § 7-703, Subdivision 2 and Subdivision 3, Paragraph a, of the Village Law so as to not only offer a system of bonuses and incentives for affordable housing, but also to mandate its use in the case of owner-occupied multifamily and duplex dwelling projects of 8,000 square feet or five dwelling units or more in total.
- E. All new multifamily dwelling and duplex residential projects of 8,000 square feet or five or more cumulative dwelling units in total on the same parcel of land or as part of a common scheme or plan of development shall provide for affordable housing as set forth herein.
- F. Any substantial improvement of existing residential projects of 8,000 square feet or five or more units on the same parcel of land shall also be subject to these requirements. A substantial improvement shall mean any reconstruction, rehabilitation, addition or other improvement of a building, the cost of which equals or exceeds 50% of the market value of the building before the start of construction of the improvement, or which adds 50% or more to the floor area or number of residential units involved.

§ 47-2. Definition.

Affordable housing shall consist of owner-occupied dwelling units marketed at a net affordable purchase price (NAPP) per square foot of individual unit floor area, including all fees. Floor area, for this purpose, shall not include decks and patios. Floor area shall also not include separate building storage areas, separate building mechanical space and common areas, all of which shall be considered common area and not considered in the purchase price. Initially, the NAPP shall be \$125 per square foot in 2007 dollars. However, the NAPP shall be reviewed and may be amended from time to time and at least annually by resolution of the Village of Kiryas Joel Board of Trustees. (NOTE: This value is based upon 80% of the highest construction cost for a mid-rise apartment project of 32,000 square feet, as estimated using the RSMeans Reed Construction Data Quick Cost Calculator, for Suffern, New York. This formula may or may not be used in calculating the actual number. The Board of Trustees may also substitute an equivalent base standard in the event such data is unavailable.) The current applicable NAPP shall be filed with the Village Clerk.

§ 47-3. Administration.

The Board of Trustees of the Village of Kiryas Joel shall administer the system of bonuses, incentives and requirements provided herein for affordable housing. It shall bear responsibility, also, for adjusting the definition of affordable housing as provided herein, establishing the income limits pertaining to this program, assuring compliance with these requirements, administering associated programs and otherwise promoting affordable housing in the Village of Kiryas Joel. The Village of Kiryas Joel Planning Board shall also apply these requirements in reviewing and approving subdivision and site plans for new housing projects subject to this Chapter 47.

§ 47-4. Standards.

- A. Minimum allocation.
 - (1) A minimum percentage allocation (MPA) of the square footage of the net individual unit floor area in all new or substantially improved nonrental multifamily dwelling and duplex residential projects of 8,000 square feet or five or more cumulative dwelling units in total on the same parcel of land, or part of a common scheme or plan of development, shall be dedicated to affordable housing units (see § 47-1 for definition of substantial improvement). Such units shall be marketed to eligible households, as defined in § 47-6 below, and at the NAPP set forth in § 47-2 above. Should the square footage so determined result in fractional number of units, the Village of Kiryas Joel Planning Board shall determine the number of units required under the circumstances, by either requiring the developer to devote additional square footage to affordable housing or by waiving requirements as may be necessary to yield the nearest number of whole units. The initial PA

shall be 20%. However, the Board of Trustees may, from time to time by resolution, adjust the MPA of affordable housing square footage as appropriate to reflect changing community needs. The current PA shall be filed with the Village Clerk.

- (2) Any rental units created subsequent to adoption of this chapter and thereafter offered for sale as individual units shall also be subject to this chapter. The Village Planning Board, in approving new rental projects, shall require the adoption of deed covenants so restricting any future sale of such rental units.
- B. Quality and size of units. Affordable housing dwelling units shall be of a comparable basic construction quality to other dwelling units in a given project that are not marketed as affordable housing. Notwithstanding this, affordable housing units may contain less floor area, provided that no affordable housing dwelling unit shall contain less than 1,300 square feet of floor area or more than 1,600 square feet of floor area. However, where 80% or more of the market rate units are less than 1,300 square feet, the affordable units may be reduced to the average unit size of the market rate units. All affordable housing units shall contain a minimum of three bedrooms, one dining room, one eat-in kitchen (EIK) area, one deck of not less than 100 square feet and adequate storage space in the building storage area. The storage and deck area, however, shall not factor into the calculation of price per square foot.
 - C. Basement units. The maximum amount of square footage to be allocated for affordable housing shall be 20% of the total living space in any basement. The allocation for affordable housing in any upper stories shall be at the developer's discretion, provided the total square footage requirement for the project as a whole is met. It is intended that affordable housing and market rate units be intermingled wherever practical.
 - D. Unit condition. Purchasers must accept units in a basic as-depicted and conforming to the plans physical condition, provided they meet New York State building standards, Village of Kiryas Joel Zoning Law requirements and the standards of this chapter. Purchasers shall be entitled to no modifications except as may be required by law for handicapped access. Moreover, developers of affordable housing shall not comply with purchaser requests for any extra options or upgrades to be financed by the developer, the purchasers of such units, or others. All affordable units shall be fully ready to occupy, except for appliances, prior to sale.
 - E. Review and approval. Prior to the issuance of a building permit, the Village of Kiryas Joel Planning Board shall review and approve the subdivision, site and building plans to ensure the project meets the requirements of this Chapter 47. Prior to issuance of any certificate of occupancy, all requirements of this chapter shall be met. Any certificate of occupancy issued without compliance with this chapter shall be null and void. The seller of any unit without a valid certificate of occupancy shall be liable in damages resulting from the lack of such certificate.

§ 47-5. Bonuses and incentives.

- A. Height and design. All housing structures that incorporate affordable housing as provided herein may extend to four stories in height above a nonhabitable cellar level (NOTE: The New York State Building Code permits four-story dwellings of wood construction up to sixty-foot maximum height. This is achieved by installing a sprinkler system and by providing an assembly rating of one hour on all structural members. This type of construction is defined as Type V-A. In addition to the NYS Code requirement, the Village may require a two-hour firewall between each section of the building.), provided all New York State Building Code standards with regard to construction are met. An elevator or reserved space for an elevator, depending upon state Building Code requirements, may be required by the Village of Kiryas Joel Planning Board. The Planning Board shall, to encourage the development of affordable housing, also be authorized to grant other design incentives related to site plan features, provided that all minimum building code and zoning requirements are met.
- B. Units under four stories. The minimum percentage allocation (MPA) of the square footage of the living space for affordable housing is a mandatory set-aside. This standard must be met regardless of the fact a building is comprised of less than four stories in height above a nonhabitable cellar level.
- C. Sewer connection fees. The Village of Kiryas Joel may postpone the sewer connection fee for any affordable housing unit, subject to the repayment provisions of § 47-6F(4) below.

§ 47-6. Offering of affordable housing units.

- A. Eligibility. Affordable housing units shall be marketed, for owner-occupied housing only (also see Subsection E below), to households approved for eligibility by the project owner or developers subject to provisions of this chapter and such additional guidelines as may be promulgated by the Village of Kiryas Joel Board of Trustees. Eligibility shall be limited to proposed owner households with combined earned and unearned income of less than the percentage of median income (PMI) for the Village of Kiryas Joel, or the target income (TI), each averaged for the three most recent years, whichever shall be greater. The PMI and TI shall be reviewed and may be adjusted, by resolution, at least annually by the Village of Kiryas Joel Board of Trustees based upon changes in the composite U.S. Consumer Price Index. Median income shall be as determined by the U.S. Department of Housing and Urban Development for the most three most recent years available. The initial PMI shall be 90%. The initial TI shall be \$50,000. The current PMI and TI shall be filed with the Village Clerk.
- B. Selection priorities. The Village of Kiryas Joel Board of Trustees may, based upon surveys of community housing needs, develop a system of owner-occupant selection priorities to be implemented and used by the project developer or owner in selecting owner-occupants.
- C. Verification. The Village of Kiryas Joel Board of Trustees may develop procedures and such implementing regulations as may be appropriate for this affordable housing program. The project owner or developer shall take applications, verify eligibility through documentation of income and otherwise assure compliance with the occupancies of affordable housing units provided under these regulations. Prior to the issuance of a certificate of occupancy for any affordable housing unit, the builder or developer shall provide the Village of Kiryas Joel Building Department with adequate evidence of sale to qualified households at the required price.
- D. Marketing of units. The project owner/developer shall determine whether a household is eligible for affordable housing provided hereunder and shall formally reply in writing to all applicants for such housing. Affordable housing unit availability shall be advertised in a newspaper of general circulation in the Village of Kiryas Joel at least 30 days prior to the units being offered for sale. Such newspaper shall include one designated or approved by the Board of Trustees. Notice of the same shall concurrently be given in writing to the Village of Kiryas Joel Board of Trustees and Village of Kiryas Joel Housing Authority.
- (1) Complaints. Any person aggrieved by the decision of an owner/developer in application of the eligibility and owner-occupant selection criteria or by the owner/developer's noncompliance with the standards of this chapter may file a written complaint with the Village of Kiryas Joel Housing Authority for a review of the owner/developer's conformance to the standards of this chapter, provided that such complaint is filed within 30 days of the owner/developer's action. The owner/developer shall be entitled to a copy of the complaint. The Authority shall make a finding with respect to any such complaint within 60 days of the receipt thereof. Such finding shall be deemed advisory and shall be issued to the party making the complaint, with a copy to the Village of Kiryas Joel Board of Trustees and to the owner/developer.
- (2) Remedies.
- (a) The Board of Trustees, upon receipt of a finding that the owner/developer did not conform to the standards of this chapter, may, in its sole discretion, pursue such administrative or other civil remedies as may be available to it by law, including but not limited to qualifying the applicant for future housing, requiring the owner/developer to make additional affordable units available or the filing of a lien for the value of the affordable housing not properly provided in accordance with this chapter.
- (b) The duty of the Housing Authority and of the Board of Trustees shall be a general duty. No one is authorized to create, imply, or infer a special duty for which the Village, its Boards, officers, employees, or agents are liable. Any action against the Village, its Boards, officers, employees, or agents alleging a special duty or requiring the allegation of a special duty shall be deemed frivolous. Any person aggrieved, having filed a complaint and received a finding, shall be free to pursue any available legal remedies against an owner/developer who is violating the provisions of this chapter.
- E.

Ownership of units. An affordable housing unit may be titled to another entity or person, provided the unit is occupied by an eligible applicant who transitions to 100% ownership over seven years, such that the applicant becomes the primary homeowner. A binding contract of sale must in such circumstance be provided documenting that the applicant has the irrevocable right to purchase the unit in fee simple at the original purchase price at the end of such seven-year term. At all times shall the applicant and ultimate owner be the occupant of the unit.

- F. Resales of units. The purchaser of any affordable housing unit shall, for a period of seven years following purchase, be obligated to resell such unit only to another household eligible, under these regulations, for affordable housing, except as provided in Subsection **F(1)** below for market-rate sales. Determinations of eligibility in such instance shall be made by the Village of Kiryas Joel Housing Authority. Notwithstanding this provision, an owner/developer may retain a right of first refusal with respect to such units, provided that they are subsequently resold only for affordable housing pursuant to this chapter. However, rentals of such units shall not be permitted under any circumstances, by either the developer/owner or affordable housing purchaser.
- (1) Market-rate sales. Any sales within the seven years shall be subject to a payment to the Village of Kiryas Joel Affordable Housing Fund (see § 46-7 hereof) in an amount equal to the sale price less the base (original sale) price divided by seven and multiplied by such number of years, to the nearest quarter, that occupancy fell short of the seven years required. The base price may include up to 5% for approved improvements made to the unit and an adjustment for inflation based upon the Consumer Price Index.
 - (2) Redevelopment fees. Sales that take place within seven years shall be subject, also, to a redevelopment fee of \$5,000 for each and every full year less than seven that the unit is owned by the original purchaser, up to maximum of \$25,000. Such redevelopment fee shall be paid to the Village of Kiryas Joel Affordable Housing Fund (see § 46-7 hereof) for use in making additional affordable housing available within the Village. The Village of Kiryas Joel Board of Trustees shall have authority to waive or reduce this redevelopment fee in instances of documented hardship due to sudden changes in family situations or for other good cause, but shall be under no obligation to do so.
 - (3) Repayment of waived fees. Should a sale take place more than seven years after purchase, the unit may be sold by the eligible applicant to any party, provided that a sum equal to the total of all fees initially waived by the Village of Kiryas Joel, together with an inflation adjustment based on the composite U.S. Consumer Price Index, be repaid to the Village out of the proceeds. In the event the original eligible applicant has not transitioned to full ownership during said period, the unit shall be offered to another eligible applicant pursuant to the procedures contained herein.
- G. Mixed-use projects. Should a project include a combination of units for lease and units for sale, all mandatory set-asides shall apply and the minimum percentage allocation (MPA) of the square footage shall be sold as affordable housing and the affordable housing restriction shall run until perpetuity. Should a developer elect to lease all of the units, a minimum percentage of the units equal to the MPA shall be rented as affordable housing rentals at rates commensurate with the sale prices provided for herein, as shall be determined by the Village of Kiryas Joel Board of Trustees. At any time thereafter, should the developer sell any of the units, the mandatory set-aside for the sale of the MPA of the entire square footage of the development for affordable housing shall apply.
- H. Down payments. No sales agreement for affordable housing unit subject to this chapter shall require a down payment of more than 10% of the purchase price from an eligible household.

§ 47-7. Affordable Housing Fund.

There is hereby created, pursuant to § 10 of the New York State Municipal Home Rule Law, a Village of Kiryas Joel Affordable Housing Fund for the purpose of providing affordable owner-occupied housing for income qualified households. Such fund shall be a segregated municipal fund controlled by the Village of Kiryas Joel Board of Trustees and used exclusively to provide for the acquisition, planning, construction, improvement, sale or resale, subsidy or other legal means of creating more owner-occupied affordable housing for income-qualified households within the Village of Kiryas Joel.

- A. Fund deposits. Deposits into the fund may include revenues of the Village from all authorized sources approved by the Board of Trustees and shall include, at a minimum, all revenues from payments and fees collected by the Village pursuant to the Affordable Housing chapter.
- B. Gifts. The fund shall also be authorized to accept gifts. Interest accrued by monies deposited in the fund shall be credited to the fund.
- C. Prohibition of fund transfers. In no event shall monies deposited in the fund be transferred to any other account unless determined to be in furtherance of the affordable housing goals of the Village.

§ 47-8. Previously approved projects.

This Chapter 47 shall not apply to site plans and subdivisions approved by the Village of Kiryas Joel prior to the enactment of this Chapter 47, provided that 50% of building permits have been obtained and substantial construction commenced with respect to such site plans and subdivisions within one year of the effective date of this Chapter 47.

§ 47-9. Payments in lieu of affordable housing.

- A. The Village of Kiryas Joel Board of Trustees may, in its sole discretion, agree to exempt a given project from affordable housing requirements where practical difficulties having to do with the physical nature of the site involved would make the provision of such additional units economically or physically impractical. The developer, in such instance, shall pay the Village a redevelopment fee in lieu of the minimum percentage allocation (MPA) of affordable housing units or such portion thereof as is not provided. Such fee shall be annually established by the Board of Trustees based upon the cost of replacing the affordable housing elsewhere plus any additional development costs associated with relocation. Fees in lieu of affordable housing shall be deposited into the Affordable Housing Fund (see § 46-7). The Board of Trustees shall review and may adjust this redevelopment fee on at least an annual basis.
- B. The Board of Trustees may also, in its sole discretion, agree to accept, as an alternative to such redevelopment fee, the provision, by the developer, of affordable housing units located elsewhere within the Village of Kiryas Joel. Such units shall otherwise meet all standards herein with respect to affordable housing, including but not limited to the quality of the units. Such units shall also require approval of the Village of Kiryas Joel Planning Board and be processed prior to or simultaneously with the review and approval of the market-rate units. Any approval of the market-rate units shall be conditioned upon the prior start of construction and imposition of affordable housing restrictive covenants with respect to the affordable housing units. The Board of Trustees may also require the posting of a financial guarantee to ensure the timely construction and offering of affordable housing units no later than the market-rate units.

§ 47-10. Enforcement.

All affordable housing sales agreements shall include restrictive covenants that ensure the enforceability of the above requirements. Such covenants shall survive the sales transactions, be inserted in deeds and include language setting forth that such restrictive covenants shall run until released by the Board of Trustees. No certificates of occupancy shall be issued until such deed restrictions are recorded. The Village shall be represented at all closings for these purposes. The Village of Kiryas Joel Board of Trustees is further authorized to place liens on affected properties as may be required to enforce the provisions of this Chapter 47 and collect any amounts due the Village as provided herein. Release of any such liens shall require Village approval. Compliance with this chapter shall be deemed a requirement to make an improvement, perform work and/or to do an act on the affected property, which if not performed, may be enforced by the Village and the cost to the Village of such enforcement may be assessed, levied, and collected in the same manner as Village taxes.

§ 47-11. Modifications and waivers.

The standards provided herein for affordable housing shall be reviewed at least annually and may be modified from time to time by resolution of the Board of Trustees to accommodate unique innovative projects that offer significantly greater value to households needing affordable housing, provided such households are not required to pay substantially greater prices for such housing and further provided that no such project shall provide substantially less than the minimum percentage allocation of affordable housing. The Board of Trustees may also waive specific requirements of this Chapter 47 where the imposition of such provisions would cause undue hardship as a result of unique circumstances or frustrate the ability to provide affordable housing as intended. The Board of Trustees shall, in all such circumstances, ensure any modifications or waivers serve to further the goal of providing affordable housing in the Village of Kiryas Joel.

§ 47-12. Penalties for offenses.

Any violation of this chapter is hereby declared to be an offense and shall render the violator or, if applicable, the owner of the land or the lessee or occupant, if his responsibility is fixed by contractual agreement, liable to a fine not to exceed \$350. Each and every day that any such violation continues after notification that such violation exists shall constitute a separate offense. Such notice shall be written by the Village Code Enforcement Officer and shall be served either by certified mail or by an appearance citation to the court of appropriate jurisdiction.

§ 47-13. Effect on other provisions.

Should the provisions of this chapter conflict with the provisions of any other local law or ordinance of the Village of Kiryas Joel, the provisions of this chapter shall apply. This chapter shall supersede all other local laws and ordinances and parts thereof inconsistent herewith.

Chapter 50. BONDS

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 12-5-2002 by L.L. No. 3-2002. Amendments noted where applicable.]

GENERAL REFERENCES

Planning, zoning and building fees — See Ch. 74, Art. I.

Streets — See Ch. 124.

Zoning — See Ch. 155.

Article I. Subdivision Performance and Maintenance Bonds

§ 50-1. Legislative intent.

- A. The Village Board of the Village of Kiryas Joel hereby finds and determines that the existing system of performance and maintenance bonds provided to the municipality as an alternative to the prior completion of public improvements in a subdivision, on a site plan or other land development is deficient in providing for and protecting the public health, safety and welfare. Inflation, inadequate estimates, incomplete and/or inadequate description of improvements in bonds, unmeritorious defenses to enforcement of bonds and the high cost of enforcing performance and maintenance bonds have resulted in failure to properly complete public improvements, hardship to purchasers of lots in the subdivisions or dwelling units and to the general public and unjust enrichment of owners, subdividers and developers.
- B. It is the intent of this article to provide clarity and definition to the established method of guaranteeing the proper completion of public improvements in subdivisions, to nullify the imposition of defenses and to eliminate the costs of enforcement of performance and maintenance bonds so as to protect purchasers of lots in subdivisions and the general public and to advance the intent of Village Law that public improvements in subdivision be completed at the expense of the owner, subdivider or developer.

§ 50-2. Definitions.

As used in the article, the following terms shall have the meanings indicated:

DEFAULT

A declaration by the Board of Trustees, at any time subsequent to the expiration of the term of a performance or maintenance bond, that the development of the subdivision has advanced to a stage where the public improvements shall be completed forthwith.

FULL COST OF COMPLETING PUBLIC IMPROVEMENTS

Includes, without limitation, the cost of preparation and review of plans, reports, specifications and documents, the cost of enforcement of performance or maintenance bonds and/or the obligation of owners to complete the public improvements and the cost of municipal compliance with prevailing wage and bidding requirements.

MAINTENANCE BOND

A bond, collateral to the principal obligation of the owner, to secure or guaranty the proper maintenance of public improvements in a subdivision, which bond remains in full force and effect for a period of time after completion of said improvements or until the bond is released by resolution of the Board of Trustees with the concurrence of the Planning Board.

OWNER

The person or entity which undertakes to subdivide land and whose responsibility it is to properly complete public improvements in subdivisions. The term "owner" shall include the terms "principal" and "subdivider" and "developer" and the term "coprincipal" as used in a performance or maintenance bond.

PERFORMANCE BOND

A bond, collateral to the principal obligation of the owner, to secure or guaranty the proper completion of public improvements in a subdivision, which bond remains in full force and effect until all public improvements are complete, the subdivision is abandoned without the sale of lots or the bond is released by resolution of the Board of Trustees with the concurrence of the Planning Board.

PUBLIC IMPROVEMENTS

Those improvements which are to be used in common by residents of the subdivision or by the public, whether or not such improvements are offered for dedication. Public improvements shall include, without limitation, improvements referenced in the Village Law, improvements depicted or referenced on the plat or site plan, improvements required by law, code, ordinance, rule or regulation and improvements agreed to by the owner.

TERM OF A PERFORMANCE OR MAINTENANCE BOND

The period during which a municipality may not declare a default. Notwithstanding this definition, the Board of Trustees may in proper cases declare a default with respect to erosion control and drainage in order to protect the public health, safety and welfare. Notice and due process protection may be modified in accordance with the severity of the deficiency being remedied.

§ 50-3. Performance bonds required.

Prior to the final approval of any subdivision plat, site plan, or other development plan proposing public improvements, the owner shall either complete all public improvements or post a performance bond in an amount sufficient to cover the full cost of completing the public improvements which are not completed. No building permits shall be issued in a subdivision prior to final approval of the subdivision plat.

§ 50-4. Maintenance bonds required.

Prior to the acceptance of any public improvement, the owner shall post a maintenance bond in an amount sufficient to cover the cost of maintaining, repairing or replacing public improvements which are improperly installed, defective in design or otherwise unsuitable for the purposes intended. The amount of the maintenance bond shall be determined

by the Planning Board or, if requested, by the Village Engineer, and shall be equal to not less than 10% of the original amount of the performance bond or original approved cost estimate for the public improvements.

§ 50-5. Form of bonds.

All performance and maintenance bonds posted subsequent to the effective date of this article shall be in a standard form approved by the Board of Trustees. The Board of Trustees, with the advice of the Attorney, shall from time to time adopt by resolution standard form bonds of the following types:

- A. Irrevocable letter of credit.
- B. Cash bond.
- C. Surety bond. No surety bond shall be accepted by the Village of Kiryas Joel unless said bond includes a provision guaranteeing payment of the Village's legal fees for enforcement of the bond in an amount not less than 10% of the bond amount or \$10,000, whichever is greater. Any bond submitted to the Village pursuant to Village Law § 278 or this chapter shall be deemed to include said provision in accordance herewith. Nothing herein shall preclude the court from awarding additional costs, fees or sanctions for frivolous litigation practice on the part of the principal or surety of the bond.

§ 50-6. Conditions for approval of bonds.

No performance or maintenance bond nor any increase or reduction thereof shall be deemed approved until the following are entered into the minutes of the Board of Trustees:

- A. Approval by the Planning Board of the bond amount or the increase or reduction of such amount.
- B. Approval by the Attorney of the form, sufficiency and execution of the bond or the increase or reduction thereof.
- C. Approval by the Board of Trustees of the security or surety. The Board of Trustees may, in particular cases, require a particular form of bond.
- D. Certification by the Village's engineer that the amount of the bond would be sufficient to fully compensate the municipality for the cost of constructing all required improvements, including the costs of competitive bidding and compliance with public works laws.
- E. Certificate by the surety of its experience in guaranteeing projects of this type. Information required to validate this certification shall include:
 - (1) Number of claims and amounts paid prior to settlement.
 - (2) Number of claims paid upon demand of the municipality prior to litigation.
 - (3) Number of claims paid after litigation.
 - (4) Number of subdivisions completed by surety after default of contractor.
 - (5) References from other municipalities.

§ 50-7. Estimates of bond amounts.

Estimates of performance and maintenance bond amounts shall be prepared by the Village Engineer and be based upon the full cost of properly completing the public improvements. Allowance shall be made for the cost of compliance with bidding and public works laws and for the expense of enforcement of the bond. Underestimation of the bond amount shall not estop the Village of Kiryas Joel in an action against the owner on the obligation to complete the improvements.

§ 50-8. Increase or reduction of amount of bond.

- A. Whenever warranted by changed circumstances and upon approval of the Board of Trustees, the Planning Board may, upon due notice and public hearing, modify the requirements for public improvements or increase or reduce the amount of the performance or maintenance bond.
- B. Whenever the amount of a performance or maintenance bond is increased and the owner fails, within a reasonable time thereafter, as determined by the Board of Trustees, to post such increased amount, the Board of Trustees may declare a default, whether or not the term of any existing bond has expired.
- C. No decrease or reduction in the amount or quality of public improvements in a subdivision shall be effective until an amendment to the plat is duly recorded in the County Clerk's office.

§ 50-9. Completion of improvements.

- A. The public improvements in a subdivision shall not be deemed complete unless the Municipal Engineer certifies that all the public improvements are complete and said certification has been accepted by resolution of the Board of Trustees; nor shall any portion of such public improvements be deemed complete unless the Village Engineer certifies that particularly specified improvements are complete and said certification has been accepted by resolution of the Board of Trustees. A certification by the Municipal Engineer which is incorrect shall be void.
- B. The Village Engineer shall issue the certification required by Subsection A above upon written demand by the owner or his authorized agent if, in fact, the public improvements are properly completed. If the Village Engineer refuses or neglects to issue such certification within 30 days, the owner may submit the certification of a competent engineer licensed in New York certifying to the Village of Kiryas Joel either that all or a specified portion of the public improvements are properly complete. Such certification shall bear the seal of the engineer.
- C. The public improvements in a subdivision shall not be deemed complete unless acceptance of the certification of such completion or partial completion as required by this section is made by resolution of the Board of Trustees, and said acceptance shall not be effective unless said resolution is recorded in the minutes of the Board of Trustees.

§ 50-10. Rights of surety; return of unexpended monies to surety.

- A. The right of the surety to perform the obligation of the owner shall be deemed waived if the surety either fails to assert such right by written instrument received by the Board of Trustees within 30 days of transmittal of notice of default or, following such assertion, fails to make satisfactory arrangements approved by resolution of the Board of Trustees within 60 days of transmittal of notice of default. Upon waiver by the surety of the right to perform the obligation, the performance or maintenance bond shall be deemed an instrument for the payment of money only as referenced in CPLR § 3213.
- B. In the event that the surety chooses to assert any legal defense, whether of the surety or the principal, within the thirty-day period required by Subsection A above, it shall be a condition precedent of maintaining such defense that the surety pay over the full amount of the bond demanded by the Village. In the event that the surety fails to comply with said condition precedent, the performance or maintenance bond shall be deemed an instrument for the payment of money only as referenced in Civil Practice Law and Rules § 3213. In the event that such defense is determined by a court of competent jurisdiction to be valid, the surety shall be entitled to interest on the judgment amount at the prevailing judgment rate from the date of payment of said moneys.
- C. If the full cost of completion of the public improvements by the Village of Kiryas Joel is less than the face or penal amount of the surety bond which shall be paid over to the Village of Kiryas Joel, the moneys not expended shall be returned to the surety.

§ 50-11. Enforcement of obligation; evidence of incomplete improvements.

- A. The obligation of the owner to complete all the public improvements is not limited by the posting of a performance and maintenance bond, and such obligation may be enforced independently of the obligation on the performance and maintenance bond.
- B. The absence from the minutes of the Board of Trustees wherein the certification of completion required above is to be entered shall be prima facie evidence that the public improvements are not complete.

§ 50-12. Applicability.

This article shall be applicable to all subdivisions, site plans, or development plans hereafter approved and to all subdivisions which have been heretofore approved but in which public improvements have not been completed pursuant to the terms of this article, except that provisions of this article which are determined to be inconsistent with Village Law § 7-730 shall be applicable to subdivisions heretofore approved three years after the effective date of this article.

§ 50-13. General duties.

The duties of the Village of Kiryas Joel, its officers, agents and employees pursuant to this article are general duties of the Village of Kiryas Joel to protect the public health, safety and welfare. No person is authorized to create or imply a special relationship pursuant to this article.

§ 50-14. Interpretation; Zoning Board of Appeals interpretation necessary prior to challenge.

- A. This article shall be interpreted so as to most fully implement the intent that public improvements in a subdivision are properly completed at the owner's expense. If any provision, sentence, word or phrase of this article is judicially determined to be invalid, illegal or unconstitutional, such invalidity, illegality or unconstitutionality shall be confined to the particular part which is so determined and shall not affect the validity of the remainder of this article, which shall be interpreted so as to most fully implement the intent of this article.
- B. No action or proceeding to challenge the consistency, validity, legality or constitutionality of any part of this article shall be commenced or prosecuted unless the Zoning Board of Appeals of the Village of Kiryas Joel has rendered an interpretation of such part of this article.

Chapter 53. BUILDING CODE ADMINISTRATION

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 5-21-1993 as L.L. No. 2-1993; *Editor's Note: This local law also provides that it shall supersede § 4-414 of the Village Law to the extent any provision of this law is adjudged inconsistent or in conflict therewith.* amended in its entirety 9-4-2007 as L.L. No. 8-2007. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Flood damage prevention — See Ch. 77.

Zoning — See Ch. 155.

Fees — See Ch. A168.

§ 53-1. Purpose.

This chapter provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in this Village. This chapter is adopted pursuant to § 10 of the Municipal Home Rule Law. Except as otherwise provided in the

Uniform Code, other state law, or other section of this chapter, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this chapter.

§ 53-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BUILDING INSPECTOR

The same meaning as Code Enforcement Officer.

BUILDING PERMIT

A permit issued pursuant to § 53-4 of this chapter. The term "building permit" shall also include a building permit which is renewed, amended or extended pursuant to any provision of this chapter.

CERTIFICATE OF OCCUPANCY and/or CERTIFICATE OF COMPLIANCE

A certificate issued pursuant to § 53-7B of this chapter.

CODE ENFORCEMENT OFFICER

The Code Enforcement Officer appointed pursuant to § 53-3B of this chapter.

CODE ENFORCEMENT PERSONNEL

The Code Enforcement Officer and all inspectors.

COMPLIANCE ORDER

An order issued by the Code Enforcement Officer pursuant to § 53-15A of this chapter.

ENERGY CODE

The State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

INSPECTOR

An inspector appointed pursuant to § 53-3D of this chapter.

OPERATING PERMIT

A permit issued pursuant to § 53-10 of this chapter. The term "operating permit" shall also include an operating permit which is renewed, amended or extended pursuant to any provision of this chapter.

PERMIT HOLDER

The person to whom a building permit has been issued.

PERSON

An individual, corporation, limited-liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

STOP-WORK ORDER

An order issued pursuant to § 53-6 of this chapter.

TEMPORARY CERTIFICATE

A certificate issued pursuant to § 53-7D of this chapter.

UNIFORM CODE

The New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

VILLAGE

The Village of Kiryas Joel.

§ 53-3. Code Enforcement Officer; inspectors.

- A. The office of Code Enforcement Officer is hereby created. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this chapter. The Code Enforcement Officer shall have the following powers and duties:
- (1) To receive, review, and approve or disapprove applications for building permits, certificates of occupancy, certificates of compliance, temporary certificates and operating permits, and the plans, specifications and construction documents submitted with such applications;
 - (2) Upon approval of such applications, to issue building permits, certificates of occupancy, certificates of compliance, temporary certificates and operating permits, and to include in building permits, certificates of occupancy, certificates of compliance, temporary certificates and operating permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate;
 - (3) To conduct construction inspections, inspections to be made prior to the issuance of certificates of occupancy, certificates of compliance, temporary certificates and operating permits, firesafety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this chapter;
 - (4) To issue stop-work orders;
 - (5) To review and investigate complaints;
 - (6) To issue orders pursuant to § 53-15A, Compliance orders, of this chapter;
 - (7) To maintain records;
 - (8) To collect fees as set by the Village Board of this Village;
 - (9) To pursue administrative enforcement actions and proceedings;
 - (10) In consultation with this Village's attorney and approval of the Village Board, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this chapter, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this chapter; and
 - (11) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this chapter.
- B. The Code Enforcement Officer shall be appointed by the Village Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.
- C. In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by the Village Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this chapter.
- D. One or more inspectors may be appointed by the Village Board 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 fulfillment of the duties conferred upon the Code Enforcement Officer by this chapter. Each inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.
- E. The compensation for the Code Enforcement Officer and inspectors shall be fixed from time to time by the Village Board of this Village.

§ 53-4. Building permits.

- A. Building permits required. Except as otherwise provided in Subsection **B** of this section, a building permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid-fuel-burning heating appliance, chimney or flue in any dwelling unit. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Code Enforcement Officer.
- B. Exemptions. No building permit shall be required for work in any of the following categories:
- (1) Construction or installation of one-story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 144 square feet (13.38 square meters);
 - (2) Installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
 - (3) Installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;
 - (4) Temporary structures not creating issues of public safety;
 - (5) Construction of retaining walls less than two feet high unless such walls support a surcharge or impound Class I, II or IIIA liquids;
 - (6) Construction of temporary structures not affecting public safety;
 - (7) Installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
 - (8) Installation of partitions or movable cases less than five feet nine inches in height;
 - (9) Painting, wallpapering, tiling, carpeting, or other similar finish work;
 - (10) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
 - (11) Replacement of any equipment, provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
 - (12) Repairs, provided that such repairs do not involve:
 - (a) The removal or cutting away of a load-bearing wall, partition, or portion thereof, or of any structural beam or load-bearing component;
 - (b) The removal or change of any required means of egress; or the rearrangement of parts of a structure in a manner which affects egress;
 - (c) The enlargement, alteration, replacement or relocation of any building system; or
 - (d) The removal from service of all or part of a fire protection system for any period of time.
- C. Exemption not deemed authorization to perform noncompliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in Subsection **B** of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.
- D. Applications for building permits. Applications for a building permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the

property where the work is to be performed or by an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:

- (1) A description of the proposed work;
 - (2) The Tax Map number and the street address of the premises where the work is to be performed;
 - (3) The occupancy classification of any affected building or structure;
 - (4) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
 - (5) At least two sets of construction documents (drawings and/or specifications) which:
 - (a) Define the scope of the proposed work;
 - (b) Are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law;
 - (c) Indicate with sufficient clarity and detail the nature and extent of the work proposed;
 - (d) Substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and
 - (e) Where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.
- E. Construction documents. Construction documents will not be accepted as part of an application for a building permit unless they satisfy the requirements set forth in Subsection **D(5)** of this section. Construction documents which are accepted as part of the application for a building permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the code enforcement personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a building permit will be issued. Work shall not be commenced until and unless a building permit is issued.
- F. Issuance of building permits. An application for a building permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer shall issue a building permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.
- G. Building permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- H. Work to be performed in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The building permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended building permit, such change shall not be made until and unless a new or amended building permit reflecting such change is issued.
- I. Time limits. Building permits shall become invalid unless the authorized work is commenced within six months following the date of issuance. Building permits shall expire 12 months after the date of issuance. A building permit which has become invalid or which has expired pursuant to this subsection may be renewed upon application by

the permit holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer.

- J. Revocation or suspension of building permits. If the Code Enforcement Officer determines that a building permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a building permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer shall revoke the building permit or suspend the building permit until such time as the permit holder demonstrates that all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.
- K. Fee. The fee specified in or determined in accordance with the provisions set forth in § 53-17, Fees, of this chapter must be paid at the time of submission of an application for a building permit, for an amended building permit, or for renewal of a building permit.

§ 53-5. Construction inspections.

- A. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an inspector authorized by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection B of this section is ready for inspection.
- B. Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
 - (1) Work site prior to the issuance of a building permit;
 - (2) Footing and foundation;
 - (3) Preparation for concrete slab;
 - (4) Framing;
 - (5) Building systems, including underground and rough-in;
 - (6) Fire-resistant construction;
 - (7) Fire-resistant penetrations;
 - (8) Solid-fuel-burning heating appliances, chimneys, flues or gas vents;
 - (9) Energy Code compliance; and
 - (10) A final inspection after all work authorized by the building permit has been completed.
- C. Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
- D. Fee. The fee specified in or determined in accordance with the provisions set forth in § 53-17, Fees, of this chapter must be paid prior to or at the time of each inspection performed pursuant to this section.

§ 53-6. Stop-work orders.

- A. Authority to issue. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:

- (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (3) Any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.
- B. Content of stop-work orders. Stop-work orders shall be in writing, be dated and signed by the Code Enforcement Officer, state the reason or reasons for issuance, and, if applicable, state the conditions which must be satisfied before work will be permitted to resume.
- C. Service of stop-work orders. The Code Enforcement Officer shall cause the stop-work order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the permit holder, on the permit holder) personally or by mail. The Code Enforcement Officer shall be permitted, but not required, to cause the stop-work order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop-work order, personally or by mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop-work order.
- D. Effect of stop-work order. Upon the issuance of a stop-work order, the owner of the affected property, the permit holder and any other person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the stop-work order. Where such stop-work order implicates issues regarding due process of law, an appeal may be made to the Village Board c/o the Village Supervisor.
- E. Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subsection A of this section, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under § 53-15, Enforcement; penalties for offenses, of this chapter or under any other applicable local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.

§ 53-7. Certificates of occupancy/certificates of compliance.

- A. Certificates of occupancy/certificates of compliance required. A certificate of occupancy/certificate of compliance shall be required for any work which is the subject of a building permit and for all structures, buildings, or portions thereof which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a building permit was previously issued shall be granted only by issuance of a certificate of occupancy/certificate of compliance.
- B. Issuance of certificates of occupancy/certificates of compliance. The Code Enforcement Officer shall issue a certificate of occupancy/certificate of compliance if the work which was the subject of the building permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a certificate of occupancy/certificate of compliance. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the certificate of occupancy/certificate of compliance, shall be provided to the Code Enforcement Officer prior to the issuance of the certificate of occupancy/certificate of compliance:

- (1) A written statement of structural observations and/or a final report of special inspections; and
 - (2) Flood hazard certifications.
- C. Contents of certificates of occupancy/certificates of compliance. A certificate of occupancy/certificate of compliance shall contain the following information:
- (1) The building permit number, if any;
 - (2) The date of issuance of the building permit, if any;
 - (3) The name, address and Tax Map number of the property;
 - (4) If the certificate of occupancy/certificate of compliance is not applicable to an entire structure, a description of that portion of the structure for which the certificate of occupancy/certificate of compliance is issued;
 - (5) The use and occupancy classification of the structure;
 - (6) The type of construction of the structure;
 - (7) The assembly occupant load of the structure, if any;
 - (8) If an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
 - (9) Any special conditions imposed in connection with the issuance of the building permit; and
 - (10) The signature of the Code Enforcement Officer issuing the certificate of occupancy/certificate of compliance and the date of issuance.
- D. Temporary certificate. The Code Enforcement Officer shall be permitted to issue a temporary certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a building permit. However, in no event shall the Code Enforcement Officer issue a temporary certificate unless the Code Enforcement Officer determines that the building or structure, or the portion thereof covered by the temporary certificate, may be occupied safely, that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and that all required means of egress from the building or structure have been provided. The Code Enforcement Officer may include in a temporary certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A temporary certificate shall be effective for a period of time, not to exceed six months, which shall be determined by the Code Enforcement Officer and specified in the temporary certificate. During the specified period of effectiveness of the temporary certificate, the permit holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.
- E. Revocation or suspension of certificates. If the Code Enforcement Officer determines that a certificate of occupancy/certificate of compliance or a temporary certificate was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.
- F. Fee. The fee specified in or determined in accordance with the provisions set forth in § 53-17, Fees, of this chapter must be paid at the time of submission of an application for a certificate of occupancy/certificate of compliance or for a temporary certificate.

§ 53-8. Notification regarding fire or explosion.

The chief of any fire department providing fire-fighting services for a property within this Village shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, fuel-burning appliance, chimney or gas vent.

§ 53-9. Unsafe buildings and structures.

Unsafe structures and equipment in this Village shall be identified and addressed in accordance with the procedures established by Board of Trustees, as now in effect or as hereafter amended from time to time.

§ 53-10. Operating permits.

- A. Operating permits required.
- (1) Operating permits shall be required for conducting the activities or using the categories of buildings listed below. All such activities and/or uses shall obtain site plan approval from the Village Planning Board prior to obtaining an operating permit:
 - (a) Manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Table 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled "Fire Code of New York State" and incorporated by reference in 19 NYCRR 1225.1;
 - (b) Hazardous processes and activities, including but not limited to commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling;
 - (c) Use of pyrotechnic devices in assembly occupancies;
 - (d) Buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
 - (e) Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Village Board of this Village.
 - (2) Any person who proposes to undertake any activity or to operate any type of building listed in this Subsection A shall be required to obtain an operating permit prior to commencing such activity or operation.
- B. Applications for operating permits. An application for an operating permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.
- C. Inspections. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an operating permit.
- D. Multiple activities. In any circumstance in which more than one activity listed in Subsection A of this section is to be conducted at a location, the Code Enforcement Officer may require a separate operating permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a single operating permit to apply to all such activities.
- E. Duration of operating permits. Operating permits shall be issued for such period of time, not to exceed one year in the case of any operating permit issued for an area of public assembly and not to exceed three years in any other case, as shall be determined by the Code Enforcement Officer to be consistent with local conditions. The effective period of each operating permit shall be specified in the operating permit. An operating permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.
- F. Revocation or suspension of operating permits. If the Code Enforcement Officer determines that any activity or building for which an operating permit was issued does not comply with any applicable provision of the Uniform Code, such operating permit shall be revoked or suspended.

- G. Fee. The fee specified in or determined in accordance with the provisions set forth in § 53-17, Fees, of this chapter must be paid at the time of submission of an application for an operating permit, for an amended operating permit, or for reissue or renewal of an operating permit.

§ 53-11. Firesafety and property maintenance inspections.

- A. Inspections required. Firesafety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an inspector designated by the Code Enforcement Officer at the following intervals:
- (1) Firesafety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every 12 months.
 - (2) Firesafety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every 12 months.
 - (3) Firesafety and property maintenance inspections of all multiple dwellings not included in Subsection A(1) or (2), and all nonresidential buildings, structures, uses and occupancies not included in Subsection A(1) or (2) shall be performed at least once every 36 months.
- B. Inspections permitted. In addition to the inspections required by Subsection A of this section, a firesafety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an inspector designated by the Code Enforcement Officer at any time upon: the request of the owner of the property to be inspected or an authorized agent of such owner; receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist; provided, however, that nothing in this subsection shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.
- C. OFPC inspections. Nothing in this section or in any other provision of this chapter shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control ("OFPC") and the New York State Fire Administrator under Executive Law § 156-e and Education Law § 807-b.
- D. Fee. The fee specified in or determined in accordance with the provisions set forth in § 53-17, Fees, of this chapter must be paid prior to or at the time each inspection is performed pursuant to this section. This subsection shall not apply to inspections performed by OFPC.

§ 53-12. Complaints.

The Code Enforcement Officer shall, as appropriate, endeavor to review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this chapter, or any other local law or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The review and investigation of complaints shall be a part of an overall enforcement strategy. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate:

- A. Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- B. If a violation is found to exist, providing the owner of the affected property and any other person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in § 53-15, Enforcement; penalties for offenses, of this chapter;
- C. If appropriate, issuing a stop-work order;

- D. If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

§ 53-13. Recordkeeping.

- A. The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all code enforcement personnel, including records of:
- (1) All applications received, reviewed and approved or denied;
 - (2) All plans, specifications and construction documents approved;
 - (3) All building permits, certificates of occupancy/certificates of compliance, temporary certificates, stop-work orders, and operating permits issued;
 - (4) All inspections and tests performed;
 - (5) All statements and reports issued;
 - (6) All complaints received;
 - (7) All investigations conducted;
 - (8) All other features and activities specified in or contemplated by §§ 53-4 through 53-12, inclusive, of this chapter; and
 - (9) All fees charged and collected.
- B. All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by state law and regulation.

§ 53-14. Program review and reporting.

- A. The Code Enforcement Officer shall regularly, as required, submit to the Village Board of this Village a written report and summary of all business conducted by the Code Enforcement Officer and the inspectors, including a report and summary of all transactions and activities described in § 53-13, Recordkeeping, of this chapter and a report and summary of all appeals or litigation pending or concluded.
- B. The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of this Village, on a form prescribed by the Secretary of State, a report of the activities of this Village relative to administration and enforcement of the Uniform Code.
- C. The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials this Village is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of this Village in connection with administration and enforcement of the Uniform Code.

§ 53-15. Enforcement; penalties for offenses.

- A. Compliance orders. 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. The compliance order shall be in writing; be dated and signed by the Code Enforcement Officer; specify the condition or activity that violates the Uniform Code, the Energy Code, or this chapter; 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; specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; direct that compliance be achieved within the specified period of time; and state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the compliance order, or a copy thereof, to be served on the owner of the affected property personally or by mail. The Code Enforcement Officer shall be permitted, but not required, to cause the compliance order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the compliance order.

- B. Appearance tickets. The Code Enforcement Officer and each inspector are authorized to issue appearance tickets for any violation of the Uniform Code.
- C. Civil penalties. In addition to those penalties prescribed by state law, any person who violates any provision of the Uniform Code, the Energy Code or this chapter, or any term or condition of any building permit, certificate of occupancy/certificate of compliance, temporary certificate, stop-work order, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter, shall be liable to a civil penalty of not more than \$500 for each day or part thereof during which such violation continues unless a higher penalty is provided elsewhere. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of this Village.
- D. Injunctive relief. An action or proceeding may be instituted in the name of this Village, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this chapter, or any term or condition of any building permit, certificate of occupancy/certificate of compliance, temporary certificate, stop-work order, operating permit, compliance order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this chapter, or any stop-work order, compliance order or other order obtained under the Uniform Code, the Energy Code or this chapter, an action or proceeding may be commenced in the name of this Village, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subsection shall be commenced without the appropriate authorization from the Village Board of this Village.
- E. Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in § 53-6, Stop-work orders, of this chapter, in any other section of this chapter, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in § 53-6, Stop-work orders, of this chapter, in any other section of this chapter, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in Subdivision (2) of § 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in Subdivision (2) of § 382 of the Executive Law.

§ 53-16. Correction of violation by Village.

- A. Compliance with this chapter is required in the interest of the public safety, health and welfare. Notwithstanding any other provision herein, if a property owner fails to correct a violation after notice of the same, the Village and its agents shall have the right to enter upon the property and perform the work necessary to correct the violation. The property owner shall be responsible and liable for all costs incurred by the Village in connection therewith. If not paid, said costs shall be a lien on the real property and shall be assessed against such property, together with

an administrative fee of 9% per annum, and shall be levied and collected in the same manner as real property taxes.

- B. The abatement, removal or repair of any nuisance, hazard or other such condition by the Village of Kiryas Joel or its agents shall not operate to excuse the owner, tenant or occupant from properly maintaining any premises as required by this chapter, and such owner, tenant or occupant shall, notwithstanding such action, be subject to any penalties provided for herein.

§ 53-17. Fees.

A fee schedule shall be established by resolution of the Village Board of Trustees of this Village. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of building permits, amended building permits, renewed building permits, certificates of occupancy/certificates of compliance, temporary certificates, operating permits, firesafety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this chapter.

§ 53-18. Intermunicipal agreements.

The Board of Trustees of this Village may, by resolution, authorize the Mayor or Administrator of this Village to enter into an agreement, in the name of this Village, with other governments to carry out the terms of this chapter, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

§ 53-19. No special duty or liability created.

All services and/or inspections provided and/or permits and certificates issues pursuant to this chapter are for Code enforcement purposes only, in accordance with the general duty of the Village to provide for the public health, safety and welfare. No person may rely upon any such services, inspections, permits, and/or certificates for purposes of assuring compliance with the law, rules, or regulations, or for determining the quality and/or safety of any building, structure, or use, or for any other purpose. No Village officer, employee or agent is authorized to create any special duty to any person for any purposes whatsoever. The Village, its officers, employees, and agents shall by no means be held liable in relation to any provision or enforcement of this chapter.

Chapter 56. BUSINESS REGULATION

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 7-29-1993 as L.L. No. 9-1993. *Editor's Note: This local law also provides that it shall supersede § 4-414 of the Village Law to the extent any provision of this law is adjudged inconsistent or in conflict therewith.* Amendments noted where applicable.]

GENERAL REFERENCES

Noise — See Ch. 92.

Property maintenance — See Ch. 104.

Zoning — See Ch. 155.

§ 56-1. Legislative intent.

The Board of Trustees recognizes that many residential properties in the village are used for business activities and purposes, notwithstanding the fact that the village's Zoning Law

Editor's Note: See Ch. 155, Zoning.

prohibits businesses other than home occupations in residential zoning districts. Certain such businesses may be lawful nonconforming uses, whereas others may be unlawful under the Zoning Law. The Board determines that such activities and purposes have an adverse effect on their residential neighbors, particularly with respect to traffic, parking congestion, visual appearance and noise. Accordingly, the Board of Trustees has determined that the village must

regulate business uses, activities and purposes in order to protect the general health, safety and welfare of the community. The Board determines that the provisions of this chapter are intended to supplement and not supplant the provisions of the State Uniform Fire Prevention and Building Code or of the village's zoning and other laws and that the village reserves all authority to regulate and enforce pursuant to said laws.

§ 56-2. Registration requirement.

No business use, purpose or activity, whether for profit or not for profit, may be conducted in the village, except in the main shopping center (located on Forest Road), unless the owner or operator registers with the village. Said registration must be made with the Village Clerk in accordance with the registration requirements set forth below and upon payment of a registration fee. Registration shall be valid for one year from the date thereof. The registration shall be renewed by the village on an annual basis upon submission of a renewal fee, provided that the registrant and the subject property are in compliance with all village laws, rules and regulations. The registration fee and renewal fee may be set and amended from time to time by resolution of the Board of Trustees.

§ 56-3. Registration deadline.

All businesses in operation on the effective date of this chapter must register within 30 days of said date. Any business not in operation on the effective date of this chapter shall register prior to commencing operation and shall not commence operation until a proof of registration certificate is issued.

§ 56-4. Registration certificate.

Every business which complies with the requirements of this chapter shall be issued a proof of registration certificate, which certificate must be prominently displayed on the premises.

§ 56-5. Business vehicles.

- A. No vehicle, including trailers or mobile homes which may otherwise serve as a residence, shall be used as a store or office. However, a vehicle lawfully used for such purpose on the effective date of this chapter may continue such use, provided that said business and vehicle are timely and properly registered with the Village Clerk.
- B. The owner or operator of any vehicle used for business purposes, whether or not the business is operated within the village, must register and obtain a proof of registration certificate and affix said certificate in a prominent location on the vehicle. Where the business is operated within the village, said vehicle registration must be made at the same time the owner or operator registers its business with the Village Clerk.
- C. No more than one business vehicle may be parked or stored on any property, except for the main shopping center property.

§ 56-6. Parking.

All businesses subject to this chapter must provide off-street parking on the premises. One parking space per 100 square feet of floor area available to patrons of the premises shall be provided.

§ 56-7. Garbage and litter.

All businesses shall comply with the Village of Kiryas Joel Property Maintenance Local Law.
Editor's Note: See Ch. 104, Property Maintenance.

§ 56-8. Noise.

All businesses shall comply with the Village of Kiryas Joel Noise Local Law.

Editor's Note: See Ch. 92, Noise.

§ 56-9. Signs.

All businesses subject to this chapter shall comply with the following sign requirements:

- A. One sign only is permitted.
- B. Signs may be attached to the building only. No freestanding signs are permitted.
- C. Signs shall not exceed a total area of six square feet. However, a sign which otherwise complies with this section and is lawfully in existence on the effective date of this chapter may remain in use.

§ 56-10. Registration requirements.

Each registrant shall provide the following information on forms provided by the village:

- A. Name and address of business owner. If the owner is a corporation, provide names and addresses of corporate officers.
- B. Name and address of property owner. If the owner is a corporation, provide names and addresses of corporate officers.
- C. Address and tax map number of subject property.
- D. Type and name of business.
- E. Number and names of employees.
- F. Make, year and license plate number of all vehicles used in the business and designation as to whether such vehicles are stored or parked on the premises.
- G. Floor area of building devoted to business use.
- H. If required by the enforcement officer, site plan showing property boundaries, location of building, location of off-street parking spaces and size and location of advertising sign.

§ 56-11. Administration and enforcement.

- A. Enforcement officer; notice of violation; appearance ticket. The Village Clerk and/or any other person authorized by the Board of Trustees are hereby designated as the officers charged with the enforcement of this chapter and are hereby authorized to issue notices of violation and appearance tickets to secure enforcement. Such appearance tickets shall be in the form prescribed by the Criminal Procedure Law.
- B. Enforcement procedure. Upon determination that a violation exists in, on or about any building, premises or property, the Code Enforcement Officer shall serve a written notice of violation which orders the remedying of the violation. Such order shall state the nature of the violation and the provision or term violated and shall set a date as may be reasonably necessary for achieving compliance before proceedings to compel compliance or assess penalties shall be instituted. Such order shall be served personally or by certified mail to the last known address of the property owner and/or occupant. If service is by certified mail, then a copy of the notice of violation shall be posted at the premises where the violation exists. Appearance tickets shall be served personally.

§ 56-12. Penalties for offenses; remedies.

- A. Any violation of any provision of this chapter or of any lawful order of an enforcement officer shall be deemed a violation of this chapter.

- B. Any person or entity who or which violates this chapter shall, upon conviction, be punishable as provided for violations of the State Penal Law.
- C. Alternatively or in addition to those penalties prescribed for violations under state law, any person, firm or corporation who or which violates this chapter shall be liable to the village for a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The owner of the premises, owner of the business and/or operator of the business shall be jointly and severally liable for any civil penalty. Said civil penalties shall be recoverable in an administrative proceeding held by and before the Board of Trustees pursuant to the following procedure:
- (1) Whenever a violation has not been remedied within the time specified in the notice of violation, an enforcement officer may issue an order to show cause before the Board of Trustees why such penalties should not be imposed.
 - (2) Service of order to show cause.
 - (a) Such order to show cause shall be served personally or by mailing a copy of such order by certified mail to the property owner and occupant, to their last known addresses as shown by the records of the village, and by posting a copy of such order on the premises.
 - (b) A copy of said order may be filed in the County Clerk's office, which order shall be filed in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules and shall have the same effect as a notice of pendency as therein provided. An order so filed shall be effective for a period of one year from the date of filing. It may be terminated upon an order of a Judge or Justice of a court of record or upon the written consent of the attorney for the village. The County Clerk shall mark the order to show cause and any record or docket thereof as canceled of record upon the presentation and filing of a certified copy of such judicial order of such consent.
 - (3) Content of order. Said order to show cause shall state the nature of the violation; the provision or term violated; and the date, time and place for a hearing before the Board of Trustees. The hearing shall be set for a date not less than seven days after the date of the order to show cause is mailed.
 - (4) Conduct of hearing.
 - (a) The Board of Trustees shall conduct a hearing at the date, time and place specified in the order to show cause. The hearing may be adjourned from time to time and shall continue until interested persons subject to the order to show cause are heard. No formal rules of evidence shall apply nor shall a stenographic transcript be required.
 - (b) After the hearing is closed, the Board of Trustees shall make findings and make a determination. Such determination shall indicate the basis and reason for the decision, shall state the dollar amount of any fine(s) imposed and shall be supported by substantial evidence.
 - (c) Any fines imposed plus, if any fine is imposed, the costs to the village of the proceeding, including but not limited to attorneys' fees and administrative costs, shall be immediately due and payable. Administrative costs shall be determined from time to time by resolution of the Board of Trustees.
 - (d) The determination of the Board of Trustees may be reviewed in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules, provided that such proceeding is commenced within 30 days of such determination. Judicial review shall not stay any stop-work order or stay payment of any fine and costs imposed.
 - (5) Assessment of fines and costs. All fines and all costs incurred by the village in connection with the administrative proceeding, if unpaid, shall be a lien on the real property and shall be assessed against such property, together with nine-percent interest per annum, and shall be levied and collected in the same manner as real property taxes.
- D.

Correction of violation by village. Compliance with this chapter is required in the interest of the public safety, health and welfare. Notwithstanding any other provision herein, if a property owner fails to correct a violation after notice of the same, the village and its agents shall have the right to enter upon the property and perform the work necessary to correct the violation. The property owner shall be responsible and liable for all costs incurred by the village in connection therewith. If not paid, said costs shall be a lien on the real property and shall be assessed against such property, together with nine-percent interest per annum, and shall be levied and collected in the same manner as real property taxes.

- E. Alternatively or in addition to the remedies provided by Subsections **B**, **C** and **D**, the Board of Trustees or Code Enforcement Officer may institute any appropriate action or proceeding to prevent, restrain, enjoin, correct or abate any violation or enforce any provision of this chapter.

§ 56-13. Severability.

If any phrase, sentence or provision of this chapter is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined to that phrase, sentence or provision affected by such judgment and shall not affect the validity of the remainder of this chapter.

Chapter 69. ENVIRONMENTAL QUALITY REVIEW

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 2-15-1979 as L.L. No. 2-1979. Amendments noted where applicable.]

§ 69-1. Purpose.

The purpose of this chapter is to implement for the Village SEQR and Part 617.

§ 69-2. Definitions.

- A. The terms and words used in this chapter shall have the same meaning as such terms and words are defined in Article 8 of the Environmental Conservation Law and Part 617, unless the context requires a different meaning.
- B. As used in this chapter, the following terms shall have the following meanings:

EAF

Environmental assessment form.

EIS

Environmental impact statement, Village of Kiryas Joel.

PART 617

The rules and regulations set forth in 6 NYCRR 617.

SEQR

The State Environmental Quality Review Act as set forth in Article 8 of the Environmental Conservation Law.

§ 69-3. Compliance required.

No action, other than an exempt, excluded or Type II action, shall be carried out, approved or funded by any agency, board, body or officer of the village, unless it has complied with SEQR and Part 617, to the extent applicable, and this chapter.

§ 69-4. Procedures for Type I and unlisted actions.

- A. An EAF shall be prepared by or on behalf of any agency, board, body or officer of the village in connection with any Type I action such agency, board, body or officer contemplates or proposes to carry out directly. For an unlisted action, an EAF in a short or long form may be prepared to facilitate a preliminary determination of environmental significance.
- B. An application for permit or funding of a Type I action shall be accompanied by an EAF, and for an unlisted action may be accompanied by a short- or long-form EAF as may be needed to assist the lead agency in making a preliminary determination of environmental significance. An applicant may prepare a draft EIS to accompany the application in place of the EAF. In lieu of an EAF, the Village Board or a lead agency having authority to adopt its own regulations may adopt different procedures for reviewing environmental significance of unlisted actions. The lead agency shall make a preliminary determination of environmental significance of the action on the basis of the EAF, draft EIS or, with respect to unlisted actions, in accordance with its own procedures, as the case may be, and such other information it requires. Such determination shall be made within 15 days of its designation as lead agency or within 15 days of its receipt of all information it requires, whichever is later. For Type I actions, a determination of nonsignificance shall be noticed and filed as provided in Part 617.10(b); for unlisted actions, a determination of nonsignificance shall be sent to the applicant and maintained in accordance with Part 617.7(e) and 617.10(f). After a determination of nonsignificance, the action, including one involving a permit or funding, shall be processed without further regard to SEQR, Part 617 or this chapter.
- C. The time for filing an application for approval or funding of an action shall commence to run from the date the preliminary determination of environmental nonsignificance is rendered, or if in lieu of an EAF, the applicant prepares a draft EIS, from the date the applicant files a draft EIS acceptable to the lead agency.

§ 69-5. Procedures when EIS required.

If the lead agency determines that an EIS is required, it shall proceed as provided in Part 617.8, 617.9 and 617.10. Commencing with the acceptance of the draft EIS, the time limitation for processing the EIS shall run concurrently with the time limitations applicable to processing the application for approval or funding of the action, and a public hearing on the draft EIS, if any, shall be held concurrently with any hearing to be held on such application. The draft EIS shall be prepared by the applicant. Failure by the applicant to prepare an EIS acceptable to the lead agency shall, at the option of the lead agency, be deemed an abandonment and discontinuance of the application.

§ 69-6. Designation of lead agency.

The lead agency shall be determined and designated as provided in Part 617.6 and 617.7, except that in the following Type I and unlisted actions, the lead agency shall be as provided herein:

- A. Adoption, amendment or change in zoning regulations not requiring a federal or state agency permit or approval: the Village Board.
- B. Construction or expansion of village buildings, structures and facilities within the village not requiring a federal or state agency permit or approval: the Village Board.
- C. Variances not requiring a federal or state agency permit or approval: Zoning Board of Appeals.
- D. Purchase, sale and lease of real property by the village, not requiring a federal or state agency permit or approval: Village Board.
- E. Planned unit development or cluster zoning not requiring a federal or state agency permit or approval: Village Planning Board.
- F. Site plan review and special use permit not requiring a federal or state agency permit or approval: Village Planning Board.
- G. Construction or expansion of nonresidential facility not requiring a federal or state agency permit or approval: Village Planning Board.

H. Parking lot not requiring a federal or state agency permit or approval: Village Planning Board.

§ 69-7. Clearinghouse for lead agency designation.

The Village Clerk shall act as the village clearinghouse for lead agency designation. Such clearinghouse shall assist agencies and applicants to identify other agencies, including federal and state, that may be involved in approving, funding or carrying out Type I and unlisted actions. The clearinghouse shall also make recommendations on the designation of a lead agency.

§ 69-8. Processing of environmental review of actions.

Environmental review of actions involving a federal agency shall be processed in accordance with Part 617.16.

§ 69-9. Fees.

The fees for review or preparation of an EIS involving an applicant for approval or funding of an action shall be fixed from time to time by a resolution of the Village Board.

§ 69-10. Designation of critical areas.

Critical areas of environmental concern may be designated by resolution of the Village Board in accordance with Part 617.4(j).

Chapter 74. FEES

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Bonds — See Ch. 50.

Streets — See Ch. 124.

Zoning — See Ch. 155.

Article I. Planning, Zoning and Building Fees

[Adopted 12-5-2002 by L.L. No. 4-2002 *Editor's Note: This local law was originally adopted as Ch. 94, but was renumbered to fit into the organizational structure of the Code.*]

§ 74-1. Schedule of application fees.

- A. A schedule of planning, zoning and building application fees shall be set by resolution of the Village Board from time to time. All application fees in effect at the time of adoption of this article shall remain in effect unless and until such application fees are modified by resolution of the Village Board.
- B. Except as otherwise provided in § 74-2, the application fees established pursuant to Subsection A above shall be deemed to be the minimum fees, and any additional costs and expenses actually incurred by the Village for professional consultants, inspections and other non-ministerial expenses shall be paid by the applicant in accordance with § 74-2 and other laws, provisions, regulations and codes of the Village.
- C. All reimbursement payments required by § 74-2 shall be in addition to any application, inspection or other fees as may be required by § 74-1 or by any other laws, provisions, regulations or codes of the Village and shall not be used to offset the Village's general expenses of engineering, legal and planning services for the several boards of the Village nor offset the Village's general administrative expenses.
- D.

Any fee established elsewhere in this Code which is not inconsistent with a fee established pursuant to this article shall remain effective.

- E. This article and the schedule of application and other fees shall be filed with the Village Clerk. The failure to file any fee amount with the Village Clerk shall not affect the validity of the fee or the obligation to pay such fee.

§ 74-2. Reimbursement of fees and expenses.

- A. Reimbursement required. The applicant for approval of any land use or land development shall reimburse the Village for all of the Village's reasonable and necessary engineering, legal and planning fees and expenses incurred by the Village in connection with the review and/or approval of the application. Said fees and expenses are deemed application fees. Reimbursement shall be made in accordance with Subsection C of this section. For the purposes of this article, the term "land use or development" shall include, but not be limited to, a subdivision, open development area, site plan, special permit, conditional use, variance, interpretation, appeal to the Zoning Board of Appeals, or zoning amendment; any modification or amendment of the foregoing; and compliance with the State Environmental Quality Review Act (SEQR).
- B. Exceptions. The following land use and development applications are excepted from the application of this article:
- (1) SEQR review fees shall be governed by § 617.13 of the state SEQR regulations.
- C. Payment of fees and expenses.
- (1) The Village's engineering, legal and/or planning consultant who render services pertaining to a land use or development application shall submit monthly itemized vouchers to the Village Board reasonably setting forth the services performed and amounts charged for such services.
 - (2) The Village Board shall review and audit all such vouchers and shall determine, in its discretion, the engineering, legal and planning fees which are reasonable in amount and necessarily incurred by the Village in connection with the review and/or approval of the land use or development application.
 - (a) A fee or expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys or planners within the region for services performed on behalf of applicants or reviewing boards in connection with applications for land use or development. The Village Board may also take into account any special conditions for considerations as the Village Board may deem relevant.
 - (b) A fee and expense or part thereof is necessarily incurred if it was charged by the engineer, attorney or planner for a service which was rendered in order to protect or promote the health, safety or welfare of the Village or its residents; to protect public or private property or the environment from potential damage which otherwise may be caused by the proposed land use or development; to assure or assist in compliance with laws, regulations, standards or codes which govern land use and development; to assure or assist in the orderly development and sound planning of a land use or development; to assure the proper and timely construction of public improvements, parks and other facilities which affect the public welfare; to protect the legal interests of the Village; to avoid claims against and liability of the Village; or to promote such other interests that the Village Board may specify as relevant.
 - (3) After review and audit of such voucher by the Village Board, the Board shall provide to the applicant an abstract of the voucher, as audited. The applicant shall pay the total fees and expenses determined reasonable and necessary by the Board within 30 days after mailing or other delivery of the voucher to the applicant. If the applicant fails to pay the full amount due within the time prescribed, the reviewing board or agency may refuse (i) to further review or consider an application; (ii) to hold a public hearing otherwise required or take any other action in furtherance of the application; (iii) to render a decision on the application and or refuse to issue a building permit or certificate of occupancy. All time frames for taking board or agency action, holding a public hearing or rendering any other determination related to the application, including time frames which may relate to a default approval, if any, shall be tolled until such time as the applicant pays the full amount due.

- (4) Notwithstanding the thirty-day time period prescribed herein, all reasonable and necessary fees and expenses incurred by the Village with respect to the application shall be paid to the Village either prior to the Board's decision or as a condition of approval. The determination as to the time of such full payment shall be made by the reviewing board. In any event, all fees must be paid prior to issuance of a final certificate of occupancy.
 - (5) The reviewing board or agency may require an initial sum of money for deposit with the Village, which monies shall be drawn down by the Village to reimburse the Village for the fees and expenses it incurs. The Village shall keep a record of the name of the applicant and project and of all such monies deposited and withdrawn. Monthly vouchers submitted by the Village's engineer, attorney, and/or planner shall be reviewed and audited by the Village Board and provided to the applicant, and the applicant may appeal said audited amount as provided herein. If at any time during the application review process it reasonably appears to the Village Mayor that the remaining monies on deposit will be insufficient to meet anticipated additional fees and expenses, the applicant shall deposit additional monies in the account to meet such anticipated fees and expenses.
 - (6) The fees and expenses due and payable under this article shall be a lien against the real property which was the subject of the review. If not promptly paid by the applicant, such fees and expenses shall be placed on a quarterly bill against such property, together with such other charges which may be payable. In the event such charges are not paid, the fees and expenses may be relieved on the real property tax bills payable with respect to such properties.
 - (7) To the extent any provision of this section may be inconsistent with § 74-1, the provisions of this section shall prevail.
- D. Appeals. An applicant may appeal in writing to the Village Board for a reduction in the required reimbursement amount. An appeal must be filed with the Village Board no later than 30 days after mailing or other delivery to the applicant of the contested voucher. Upon such appeal, the Village Board, in its discretion, may determine that an applicant is not required to reimburse the Village for that part of an engineering, legal or planning fee incurred by the Village for services performed in connection with an application matter for which the Village Board determines the applicant bears no responsibility and which was beyond the reasonable control of the applicant. The Village Board shall endeavor to make its decision no later than 45 days after receipt of the applicant's appeal. An appeal shall not affect the reviewing board's authority under Subsection C(3) above to refuse to take action due to nonpayment. An applicant may pay the full amount due without waiving its right to appeal.

Chapter 77. FLOOD DAMAGE PREVENTION

[HISTORY: Adopted by the Board of Trustees of the Village of Kiryas Joel 7-29-1993 as L.L. No. 10-1993. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 53.

Zoning — See Ch. 155.

Article I. Findings; Purpose; Objectives

§ 77-1. Findings.

The Board of Trustees of the Village of Kiryas Joel finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Village of Kiryas Joel and that such damages may include destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this chapter is adopted.

§ 77-2. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities.
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- C. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages.
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 77-3. Objectives.

The objectives of this chapter are to:

- A. Protect human life and health.
- B. Minimize expenditure of public money for costly flood-control projects.
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. Minimize prolonged business interruptions.
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
- G. Provide that developers are notified that property is in an area of special flood hazard.
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

Article II. Definitions

§ 77-4. Word usage; definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meanings they have in common usage and to give this chapter its most reasonable application.

APPEAL

A request for a review of the local administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING

A designated AO, AH or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an average annual depth of one to three feet where a clearly defined

channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD

The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE or V1-V30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain."

BASE FLOOD

The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT

That portion of a building having its floor subgrade (below ground level) on all sides.

BUILDING

See "structure."

CELLAR

The same meaning as "basement."

DEVELOPMENT

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING

A nonbasement building built, in the case of a building in Zone A1-A30, AE, A, A99, AO, AH, B, C, X or D, to have the top of the elevated floor or, in the case of a building in Zone V1-V30, VE or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zone A1-A30, AE, A, A99, AO, AH, B, C, X or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of Zone V1-V30, VE or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by the community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION

The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

FEDERAL EMERGENCY MANAGEMENT AGENCY

The federal agency that administers the National Flood Insurance Program.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM)

An official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The "FBFM" delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD ELEVATION STUDY

An examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of flood-related erosion hazards.

FLOOD OR FLOODING

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) The overflow of inland or tidal waters; or
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- B. "Flood or flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in "flooding" as defined in Subsection A(1) above.

FLOOD HAZARD BOUNDARY MAP (FHBM)

An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

FLOOD INSURANCE RATE MAP (FIRM)

An official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY

See "flood elevation study."

FLOODPLAIN OR FLOOD-PRONE AREA

Any land area susceptible to being inundated by water from any source (see definition of "flooding").

FLOODPROOFING

Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY

Has the same meaning as "regulatory floodway."

FUNCTIONALLY DEPENDENT USE

A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding and ship repair facilities. The term does not include long-term storage, manufacturing, sales or service facilities.

HIGHEST ADJACENT GRADE

The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE

Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

LOCAL ADMINISTRATOR

The person appointed by the community to administer and implement this chapter by granting or denying development permits in accordance with its provisions. This person is often the Code Enforcement Officer, Building Inspector or employee of an Engineering Department.

LOWEST FLOOR

The lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood-resistant enclosure usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's "lowest floor," provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME

A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a recreational vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL

For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME

Has the same meaning as "manufactured home."

NATIONAL GEODETIC VERTICAL DATUM (NGVD)

As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION

Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the community, and includes any subsequent improvements to such structure.

NEW MANUFACTURED HOME PARK OR SUBDIVISION

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

ONE-HUNDRED-YEAR FLOOD OR 100-YEAR FLOOD

Has the same meaning as "base flood."

PRINCIPALLY ABOVE GROUND

At least 51% of the actual cash value of the structure, excluding land value, is above ground.

RECREATIONAL VEHICLE

A vehicle which is:

- A. Built on a single chassis;
- B. Four hundred square feet or less when measured at the largest horizontal projections;
- C. Designed to be self-propelled or permanently towable by a light-duty truck; and
- D. Not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOODWAY

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 77-14B of this chapter.

START OF CONSTRUCTION

Includes substantial improvement and means the initiation, excluding planning and design, of any phase of a project or physical alteration of the property, and shall include land preparation, such as clearing, grading and filling; installation of streets and/or walkways; excavation for a basement, footings, piers or foundations; or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages and sheds), storage trailers and building materials. For manufactured homes, the "actual start" means affixing of the manufactured home to its permanent site.

STRUCTURE

A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT

Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. The term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VARIANCE

A grant of relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

Article III. General Provisions

§ 77-5. Applicability.

[Amended 6-4-2002 by L.L. No. 1-2002]

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Village of Kiryas Joel, Orange County, New York.

§ 77-6. Basis for establishing areas of special flood hazard.

[Amended 6-4-2002 by L.L. No. 1-2002]

- A. The areas of special flood hazard are identified and defined on the following documents prepared by the Federal Emergency Management Agency:
 - (1) Flood Insurance Rate Map (single panel) No. 361610 0001B, the effective date of which is April 15, 2002.
 - (2) A scientific and engineering report entitled "Flood Insurance Study, Village of Kiryas Joel, New York, Orange County," dated April 15, 2002.
- B. The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and/or maps are on file at the Office of the Building Inspector, Village Hall, Village of Kiryas Joel, 51 Forest Road, PO Box 566, Monroe, NY 10950.

§ 77-7. Interpretation; conflict with other laws.

[Amended 6-4-2002 by L.L. No. 1-2002]

- A. This chapter includes all revisions to the National Flood Insurance Program through November 1, 1989, and shall supersede all previous laws adopted for the purpose of flood damage prevention.
- B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

§ 77-8. Severability.

[Amended 6-4-2002 by L.L. No. 1-2002]

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

§ 77-9. Penalties for offenses.

No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Village of Kiryas Joel from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under Article VI will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 77-10. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Village of Kiryas Joel, any officer or employee thereof or the Federal Emergency Management