**JONATHAN J. BART, ESQ.**

T: 215.636.4466
F: 215.636.3999
jbart@wilentz.com

Two Penn Center Plaza
Suite 910
Philadelphia, PA 19102

December 19, 2025

***Via First Class Mail and Email:*** *supervisor@canaannewyork.org*
Brenda Adams
Supervisor
Town of Canaan
P.O. Box 459
Canaan, NY 12029

**Re: Concerns Regarding Planned Approval of Canaan Comprehensive Plan on December 23, 2025**

Dear Supervisor Adams:

I represent a task force of concerned Queechy Lake residents created to address the Comprehensive Plan's provisions concerning Queechy Lake in general and how the Plan could adversely affect the Lake in light of the potential sale of the Berkshire Farm (a/k/a Together for Youth) Property, which undeveloped portion forms almost 1/3 of the entire Queechy Lake shoreline. I am writing to the Board initially in confidence to ascertain if suggested changes that would alleviate our concerns could be made consensually before the town attempts to approve the Plan and we make our concerns public.

As you are aware, Town Law § 272-a is the basis for the drafting and adoption of a Comprehensive Plan and strict compliance with the requirements of the Town Law is required. The Town of Canaan, however, has not strictly followed the law in drafting and now attempting to approve the Comprehensive Plan.

The first section of this statute to note is Sec. 2(c), which defines a "special board" formed to prepare a Comprehensive Plan as a "board consisting of one or more members of the planning board and such other members who are appointed by the town board to prepare a comprehensive plan..." Here's the Planning Board of the Town of Canaan.

Board Members
Chairperson: Pierre Gontier
Deputy: Chad Lindberg
David Birch
Jens Braun
Jillian Kasow
Brian Lossow
Marlene Tuczinski

Here's the special board appointed to draft the Comprehensive Plan:

Committee Members:
Mary Keegan
Tom Platten
Paul Naamon
Carrie Whiteman
Kate Childs
Alternate: Ashley Garrett

There are no members of the Planning Board on the comprehensive plan committee. The composition of the Committee therefore violates the Town Law and would subject the Plan to nullification. The "failure to abide by the requirements of Town Law § 272–a further requires nullification of the comprehensive plan." *Troy Sand & Gravel Co., Inc. v. Town of Nassau*, 82 A.D. 2d , 1379 (Third Dept. 2011).

Next Section 5(b) of Town Law Sec. 272-a requires that the town board, prior to adoption, refer the proposed comprehensive plan to the county planning board for review and recommendation as required by Sec. 239-m of the General Municipal Law. That section requires the Town to submit to the county planning agency a "full statement of such proposed action" [the Comprehensive Plan, in this case]. A "full statement of such proposed action" is defined as "all materials required by and submitted to the referring body as an application on a proposed action, including a completed environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to [SEQRA]." The county planning agency then has 30 days after receipt of a full statement of such proposed action to report its recommendations to the referring body (the Town). Only after that period may the Town act on the Plan without the county determination. If the county disapproves, then a supermajority vote of the Town Board (4 of 5) is required to pass the Plan. The law is well settled that failure to comply with the referral requirements of section 239-m is a jurisdictional defect which renders the enactment invalid. (*See Matter of Ferrari v Town of Penfield Planning Bd.*, 181 AD2d 149, 152 (Fourth Dept. 1992); *Matter of Burchetta v Town Bd.*, 167 AD2d 339, 340-341(Second Dept. 1990); *Caruso v. Town of Oyster Bay*, 172 Misc. 2d 93, 97, 656 N.Y.S.2d 809 (Sup. Ct. 1997), aff'd as modified, 250 A.D.2d 639, 672 N.Y.S.2d 418 (Second Dept. 1998)). At the December 15 town meeting, the decision on approving the SEQRA review of the Comprehensive Plan—a prerequisite to presenting the Plan to the County, was postponed. The Plan therefore cannot be approved on December 23 as the County has not made its recommendations. Any attempt to do so would be jurisdictionally defective.

Finally, as pointed out in my prior letter to the Board, their interpretation of SEQRA requirements in the Comprehensive Plan was incorrect, and that a "hard look" at the environmental considerations of the Plan is required prior to passing the Plan. A Plan will be nullified if the " Town failed to give a reasoned elaboration for its negative declaration, as required to obviate need to issue an environmental impact statement (EIS), under the State Environmental Quality Review Act (SEQRA), in connection with its adoption of its comprehensive plan" *Troy Sand & Gravel Co. v. Town of Nassau, supra* 82 A.D.3d 1377, 918 N.Y.S.2d 667 (2011). It was clear from the answers at the meeting that the committee had not performed any environmental review nor had they any environmental expertise on the committee ---It was apparent that the interest was to just check the box for a negative declaration in the EAF. That will not pass muster under *Troy Sand*,

The task force is therefore ready to seek judicial nullification of any attempt to pass the Comprehensive Plan at the December 23 meeting. With that being said, we believe that many of the goals of the Town expressed in the Comprehensive Plan are laudatory and the Plan primarily is overbroad in terms of allowing new uses in the environmentally sensitive areas surrounding Queechy Lake. Indeed, the reference to Queechy Lake as the "heart of the community". . . which presents "management challenges" and "environmental vulnerabilities" (Comprehensive Plan at p. 18) is something at the heart of our concerns.[1] Our concerns would be greatly alleviated if the following amendments to the Comprehensive Plan be added to ensure that while the goal is to prevent development on that part of the Berkshire Farm property adjacent to Queechy Lake, the 5-acre/2-acre zoning will not be changed in that area. Specifically, we would ask for the following changes.

p. 18. At the heart of the community is Queechy Lake, Canaan's largest surface water body and one of its most cherished natural and recreational assets. The lake supports boating, fishing, and swimming, and serves as a critical habitat for aquatic and migratory species. However, its popularity also presents management challenges. The surrounding area is prone to vulnerabilities such as nutrient loading, shoreline development, and invasive species as key threats to long-term water quality. The Town's goal is to prevent further shoreline development, especially in the undeveloped area of Berkshire Farm.

p. 20. The zoning audit finds that some of the current law is outdated and not fully aligned with New York State Town law and the goals and direction now being set through this plan. Key issues include a lack of needed definitions, complex density provisions, limited housing options, and subdivision rules that allow too many lots to be created without adequate review or resource protection. The audit recommends modernizing the use table, strengthening protection of rural character and natural resources (including through conservation subdivisions, dark sky lighting, stream buffers, better parking and sign standards), clarifying district purposes, and adjusting subdivision thresholds so environmental review effectively occurs. …To guide this process, the Comprehensive Plan Committee was established by the Town Board, composed of residents and

[1] The very fact that these concerns are set forth in the Plan requires that an EIS be created to support the Plan rather than mechanically checking off the averment that the Plan has no adverse environmental consequences. Obviously, development which would be allowed under the Plan has potential consequences in terms of runoff, effects on plants and wildlife in the undeveloped forest, as well as access for stocking fish in the lake; among other potential negative effects.

local officials representing a range of interests and perspectives. The committee met monthly throughout 2025 to review data, discuss emerging issues, and shape the vision and goals of the plan. Overall, targeted updates are needed to make the zoning and subdivision more supportive of housing diversity, smart growth, and the rural character priorities identified in Canaan's new Vision and Goals while protecting Queechy Lake from environmental consequences of potential development of Berkshire Farm.

pp. 24-25. Strengths: Queechy Lake. Opportunities: • Protect Queechy Lake and Natural Resources

p. 27. Goals: 1. Promote Diverse and Affordable Housing Choices Expand the development of diverse housing types —including smaller homes, accessory dwelling units (ADUs), duplexes, and senior housing and encourage smaller lot size and adaptive reuse of vacant buildings where appropriate other than in the Queechy Lake drainage basin to help attract and retain young families, support aging residents, and address rising housing costs, while preserving the town's rural character and landscape.

3. Preserve Rural Character and Natural Resources to Promote Balanced Development Protect the town's rural character, its scenic landscapes, farmland, forests, wildlife habitats, water resources, and other environmentally sensitive areas. Allow for well-planned growth in appropriate locations other than in the Queechy Lake drainage basin that support the community's needs without compromising the environment or rural character. Advance climate resilience strategies such as water quality protections, renewable energy, and sustainable land use practices.

p. 30:a. Adopt conservation subdivision development standards other than in the Queechy Lake drainage basin. This is a site layout method that does not affect the number of lots or houses a parcel may be eligible for while preserving 50% of the parcel. These subdivisions are usually applied to major subdivisions (5 or greater lots). They allow for smaller lot sizes, offer opportunities for a mix of housing types, and conserve important open spaces on the parcel. It is recommended that all major subdivisions be required to be designed in this manner.

p. 33: 3. To protect the freshwater source and water quality of Queechy Lake, one of the cleanest lakes in New York State, consider use of a conservation overlay applied on all sides of Queechy Lake, as well as the town's forested slopes and ridgetops – all of which contribute to the rural character of Canaan. (See the NY Rural Water Association Canaan Source Water Protection Plan for the Town (2020) to see the watershed zones around Queechy Lake (Figure 16)) and prevent development to the best of the Town's ability on the current undeveloped eastern shores of Queechy Lake currently part of Berkshire Farm. A watershed protection overlay could be developed for the Queechy Lake area to protect water quality.

p. 35:j. With the exception of areas surrounding Queechy Lake, consider rethinking all the residential agricultural (RA) district zoning that currently allows for 2-acre minimum lot sizes extending to a depth of 450' from the centerline of a road, and then a 5-acre minimum lot size beyond that area. Over time, this pattern moves higher density to line all roads (*see* Map _____), while forcing flag lot development to the rear of lots. 'Strip style' type of development is more of a suburban pattern. This can also be inefficient because it creates interior lands that are fragmented or become inaccessible

for farming, forestry, or even effective conservation. Since most of Canaan's rural character comes from views from roads, over time, filling roadside areas with houses on 2-acre lots can obscure views of fields and hillsides. Other unintended impacts of this are that it creates roads with multiple driveways that make it harder to snowplow, can cause drainage issues, and impact rural character. Other tools to address residential development in rural areas include: 1. Consider using density instead of minimum lot sizes to control the number of new homes allowed. Evaluate the current 2-acre/5-acre split and consider removing the 2 acre/5 acre split and apply one density rule for all parcels in the residential districts ( RA-1, RA-2, and RA-3). This will avoid splitting parcels with two development requirements and avoid concentration of development along roads. This Plan offers density scenarios to consider showing the potential build out under current zoning, and others at 2-acre, 3.5 acre, and 5-acre density applied throughout the whole parcel. When density is used, updated zoning should add language that allows existing parcels that are less than the required density to be 'grandfathered' in and subdivided once provided well and septic regulations can be met. In this way, existing small lots are not penalized with a zoning change. See also Resource 4 for more information on density vs lot size. 2. Cluster new houses along interior roads or grouped in nodes to leave frontage open. 3. Use rural siting guidelines to help development fit better into the rural landscape, protect visual character. 4. Use density instead of a minimum lot size to allow for more flexibility and smaller lots at the same time

p.38: m. With the exception of areas surrounding Queechy Lake, couple the use of a density measurement (dwelling units per acre) with also allowing for averaging lot sizes. This zoning approach offers a flexible alternative to conventional "minimum lot size" zoning. Instead of requiring every lot in a subdivision to meet a fixed minimum size (e.g., 2 acres each), it requires that the average of all lots created meet the zoning standard. Benefits include increased flexibility, more opportunities for preservation of natural and scenic resources, better road layout, and creation of smaller lots that would be potentially more affordable. Average lot sizes work with the use of siting building envelopes when applied to small subdivisions, which would be useful along rural road corridors and in mixed-use areas.

p.44: 2. Update zoning to allow for more styles of housing in more locations with the exception of areas surrounding Queechy Lake. Current zoning does not allow two-family dwellings anywhere and allows multi-family dwellings only in the commercial districts. It is recommended that two-family homes, tiny homes (as defined by New York State), and co-housing/cottage housing (a type of residential community where people live in private homes but share common spaces, facilities, and responsibilities. It blends the privacy of individual households with the social and economic benefits of collective living and could be allowed as permitted housing types in all districts. Two-family and tiny homes can be defined and allowed without Planning Board approval, like single-family homes. Co-housing should be reviewed and approved with a site plan review.

p.46: . Given the existing structures and infrastructure at the Berkshire Farm campus other than the Berkshire Farm land west of NY-22, change the zoning district designation there from RA-2 to Hamlet. This area is envisioned as a mixeduse, higher-density hamlet center for a variety of residential and small business uses.

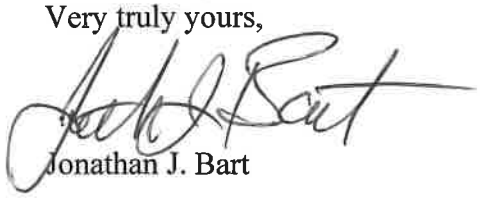
p. 52: 16. Maintain public non-motorized access to Queechy Lake. Explore options to secure access to the beach permanently, including acquiring the beach area, as it is vulnerable to loss if its current land ownership changes. When the opportunity arises, consider a new role for the Town in relation to Queechy Lake as long-term lessor or permanent owner of the land currently under the ownership of the Berkshire Farm.

p. 61 "priority actions": Amend zoning and subdivision laws. Phase these amendments with Phase 1 being oriented to compliance and consistency with NYS Town Law. Phase 2 should include consideration of the options outlined in #1, a – aa. Of critical importance for Phase 2 is consideration of the establishment of the proposed new Hamlet at the Berkshire Farms campus area other than the Berkshire Farm land west of NY-22, the use of conservation subdivisions, the use of conservation and agricultural overlays, address deforestation of land especially on steep grades and in floodzones, and updates to the Zoning code's Use Table and Dimensions Table to address housing needs....
Update zoning to address housing–oriented land use policies, including consideration to allow for more housing types, clarifying that manufactured houses should be treated the same as all single-family houses, and establish hamlet districts (including the Berkshire Farm Hamlet District other than the Berkshire Farm land west of NY-22) with hamlet-style mixed uses and smaller lots to promote housing opportunities....
Address public non-motorized access to Queechy Lake.

If we can come to an agreement on our proposed language to protect the lakefront from further development if possible and from increased density or cluster housing that might result in catastrophic overuse of the lake (such as the creation of a marina for 50 or more new homeowners), we would be willing to waive our objections to passage of the Comprehensive Plan.

I would appreciate the opportunity to discuss this with you further.

Very truly yours,



Jonathan J. Bart

JJB/jam
cc: Task Force Members: Craig Warn, Bridget Vasquez, Jonny Frank, Roger Long, John Renwick, Lisa Robinson Schoeller, Lauren Shaffer, Eileen Bott, Patricia McDonald