

**Town of Sand Lake  
Planning Board Minutes  
March 4, 2020**

The minutes, as follows, are intended to provide a general summary of the Agenda items and Public Hearings. Quotes presented are not verbatim, nor is all discussion which occurred presented herein. This document should not be relied upon as a transcript of the actual proceedings. The transcript of this meeting has been recorded and is available at the Town Hall.

**CALL TO ORDER:** Arthur Herman, Chairman, called the meeting to order at 7:30 PM

**MEMBERS PRESENT:** Ralph LaMontagna, Michael Groff, Mary Ellen Trumbull, Jonathan Bernstein, William Glasser, Craig Crist

**MEMBER ABSENT:** Rick Giolito

**OTHERS PRESENT:** Brian Banks, Ken Bailey, Jack Schreiner, Laura Schreiner, Roger Sutton, Wendy Powell, Kevin Brocks, Cindy Brocks, Joseph Winnicki, Regina Winnicki, Adam Middleton, April Middleton, Suzanne Gaylord, Kevin McGrath, James Lister, John P. Behrle, Winston Hagborg, Deborah Dewey, Darryl Welch, Mike Essenter

**RECORDING CLERK:** Laura Fedoreshenko, Clerk for the Planning Board and ZBA

**Special Use Permit/Site Plan Review Application and Public Hearing**

Ken Bailey  
204 Barnes Road  
West Sand Lake, NY 12196  
AR – Agriculture/Residential Zoning District

**Tax Map #157.-3-34.1**

Lot Size: 64.66 acres

A Special Use Permit/Site Plan Review Application to construct a 48' x 72' event barn on residential/agriculture property to be used for a seasonal event venue.

The applicant was asked to summarize his project which was previously discussed at two prior Planning Board meetings. Ken Bailey presented and explained that they had held their daughter's wedding on his land a few years ago which lead him to the idea of constructing an elaborate post and beam Dutch type barn for similar events. He added that it would not be a bar or restaurant. He stated that he would be looking to have a total of 24-30 events, just on the weekends, in the summer time during the months of June thru October. He then shared a site map and sample of proposed structure for review during the Public Hearing. He added that the hours of operation would be noon until 10 p.m. and during the winter, the barn would be used for storage of equipment.

Arthur Herman (AH) explained the Public Hearing process and asked Mr. Bailey to discuss the changes made to the site plan. Mr. Bailey stated that parking spaces were added per Town code; the number of events to be held was lowered to a total of 24-30 from his initial application. AH asked if the events would all take place in the barn for which Mr. Bailey replied yes. Mary Ellen Trumbull (MET) pointed out that the approval for June Farms was for a total of 12 events per calendar year and changes would be on a year to year basis with the submission of a new application for events beyond 12. William Glasser (WG) added that the approval for 12 events at June Farms was for large events and also included a limit on the number of attendees. WG then

asked Mr. Bailey how many attendees was being proposed. Mr. Bailey replied that his application listed 150-175 people and there would be no more than 200. Jonathan Bernstein (JB) then pointed out that June Farms differed from Mr. Bailey's proposed in that they were open daily and included a bar and restaurant. AH then read the letter of support from June Farms 9 (attached). Ralph LaMontagna (RL) asked if there would be any signage. Mr. Bailey replied there would only be the Windy Hill Farm sign which already existed. With no further questions from the Planning Board (PB) members, RL then proceeded to read the Public Hearing notice.

AH opened the Public Hearing at 7:59 p.m.; seconded by MET and all approved.

Cindy Brocks stepped forward and stated that they resided on Barnes Road adjacent to Mr. Bailey's property. Ms. Brocks stated that they were in strong opposition to the party barn to host 175 people for 40 events as originally proposed. She further stated that the project was strictly commercial and had nothing to do with agricultural and that it was incompatible with the neighborhood. She added that even on a smaller scale, the project had nothing to do with residential or agricultural. She explained that Barnes Road was a quiet secondary Town road and their stretch of it consisted of active beef cattle operations, active horse farms, pastures and hay fields. Ms. Brocks also stated that in addition to the families with their children; farm animals existed and the loudest noise outside of the animals was either plowing, harvesting or haying. She added that in addition to bicyclists and walkers, horses were ridden on the road along with equestrian lessons given. She explained that Barnes Road was curvy and hilly and dark at night. She stated that in short, it was exactly what an agricultural/residential district was supposed to be and what the zoning code was set up to protect. She explained that on their property they had an active horse farm and active beef cattle operation and she owned alpacas. She further explained that they had spent a substantial amount of money and time to maintain agricultural sustainability of their land. Ms. Brocks added that they had received grants from the USDA and worked with them on environmental protection programs. She then stated that according to the application, the use as a party barn or catering hall for 175 people with 40 events was not a permitted use under the ordinance. She then stated there were four reasons that the proposed project was wrong for the neighborhood: 1) Traffic, as Barnes Road was a secondary Town road, additional traffic would make it unsafe for residents who drove on the road as well as for those who walked, biked or rode horses; 2) Noise, which would be created by the additional traffic as well as the sound of loud music. She added that her alpacas were very skittish and easily frightened. 3) Extra light, as a result of the cars and events which was not addressed in the application; and 4) Water, as all residents were on a well, she was unsure how much of it would be utilized for events and how that would impact the aquifer and nearby wells. She stated that the application did not cover such things as fireworks, possibility of some attendees camping overnight and the use of alcohol and driving. She concluded by stating that while the party barn will be built to look like a barn, under the zoning code for an agricultural district, there would not be anything compatible between an agricultural district and a party venue. She added that this type of project belongs in a commercial location in the hamlet zone or the Route 43 corridor and not in a protected agricultural zone.

Shari Mantini stepped forward and stated she resided directly across from the Bailey residence and added that the Bailey's were good neighbors. She explained that while she hesitated to bring forth her concerns, she felt obligated to do so for her family's sake. She explained her disappointment about being informed by a letter from the Town that the project was being proposed versus the applicant personally speaking to her considering their close proximity. She explained that she moved to this location 25 years ago for the serenity and quiet atmosphere with hardly any traffic along with the other benefits that come with living on an agricultural road. She stated that many folks who reside on the road have animals that sometimes escape and/or are located close to the road and expressed her concern for the animals due to an increase of traffic, use of alcohol then driving, and the speed limit which is currently not obeyed by those who don't reside on the road. Ms. Mantini stated another concern would be the noise that 40 (or less events) of 175 people would bring as the noise

currently travels as a result of the terrain. She explained that she is able to hear her from her house, the neighbors talking on their porch or the horse trainer giving lessons approximately ¼ mile away. She then stated that light pollution would be another concern seeing as the event barn would need to ensure the safety of the attendees. Ms. Mantini then expressed her concern for road washout and stated that the road is not capable of handling any additional traffic as there already existed areas of washout, blocked drainage along with no shoulders. She stated that the issues that exist already make it unsafe for the residents to travel and walk. She added that the area is agricultural with many farms, including the Baileys, and that many residents travel the road with their large farm equipment. She closed by stating that the proposed project was not unique as a similar business existed approximately 1½ miles down the road; therefore, she did not see the need for two such type venues so close together.

Jim Lister stepped forward and stated that he resided at 72 Barnes Road and had been there 36+ years. He stated that the reasons for his move to that area was for the peace, quietness and low level of traffic -- the proposed project would take away from all of those things. He added that the fact that a Special Use Permit was needed, reflected that the prescribed use was not permitted and does not believe any other operation on Barnes Road ever needed such a Permit as they are strictly agricultural and residential. He added that farm tractors are on the road year-round as the storage of hay would be transported to other areas to feed cattle. Mr. Lister also had concerns for the additional traffic, noise, use of alcohol along with the twist and turn of the road with blind driveways and reiterated that it was no more than a secondary country road. He stated that while it may be a licensed business who serves the alcohol at events, he asked who would ultimately be responsible for the conduct of the attendees. Mr. Lister stated that the proposed project would destroy the type of neighborhood that existed and felt it could be better done at another location. He mentioned that the earlier read letter of support from the owner of June Farms indicated that he would like to increase his number of large events if Mr. Bailey's proposed project were to be approved. Mr. Lister added that the area was a special agricultural district. He explained that he had been recently solicited by the County asking what uses he had on his property as the County was reassessing the nature of the area to ensure it met up with the ag district requirements. He concluded by stating to the PB members that the proposed project not be approved in order that Barnes Road may continue as a quiet residential/agricultural area.

Winston Hagborg and Deborah Dewey stepped forward and stated that they live at 18 Barnes Road. Mr. Hagborg stated that Mr. Bailey was a wonderful neighbor whom he often would run into while out for a morning walk. He added that he was surprised at the project being proposed as it was inconsistent with the area and not wanted by the residents. Deborah Dewey stated that as they lived in that location for 30 years, they were disappointed in that they had not been provided the courtesy of being personally informed by Mr. Bailey regarding the proposed project nor had they received a letter from the Town. Monica Ryan asked Ms. Dewey if they were within 100' of the Bailey property and she replied no. Ms. Ryan then explained that letters were sent to those neighbors within 100' of the Bailey property. MET pointed out that the Public Hearing notices were posted in the Advertiser and Troy Record so surrounding neighbors may see it and have the opportunity to comment. Ms. Dewey explained that she had a background in land use planning and did not see the proposed project as being consistent with the zoning. She added that as Mr. Bailey was a teacher, she felt he had no background or experience as an event planner; thus, no guarantee of how the events would be controlled. AH replied that Mr. Bailey had come before the PB with the proposed project as an idea and wondered if it would be a possibility. Ms. Dewey stated she understood that considering the success of June Farms and other similar venues. AH added that it would be a permitted use, with a Special Use Permit, in the ag district as per the Town Code when owning property with over 5 acres. Ms. Dewey explained that they resided just over the hill and have had many close encounters, while backing out of their driveway, with vehicles flying over the hill down the road.

Jack and Laura Schreiner stepped forward and stated they have resided at 143 Barnes Road for 40+ years. Mr. Schreiner explained that their house is most likely the closest to the road. He added that his wife did horseback riding as well as being a trainer who provided lessons and utilized Barnes Road to access the trails. He stated that he was in agreement with many of the previous speakers regarding traffic and speed. He added that during the summer when kids are riding horses, they have to put out cones to help slow down the traffic. He stated it was for that reason they opposed the project as Barnes Road cannot sustain any more traffic coupled with the serving of alcohol and driving. Laura Schreiner stated she has lived there all her life and that her family had lived there since 1965. She explained that there had always been problems on that road due to the valley, curves and hills. She explained that they resided in a valley with hills on both sides and she had obtained permission from the State Police to do what is needed to slow down the traffic. Ms. Schreiner stated that Barnes Road is currently not safe and they have placed multiple calls into the police for being run off the road with their horses. She added that during the summer, she ran an educational program which required crossing the road and they have tried all sorts of methods to slow down the traffic for the safety of the children and horses. Ms. Schreiner then relayed a concern from her 86-year-old mother who wanted to share that the road, as is, is not a safe place for her to walk. She closed by stating they were very much opposed to the project.

Roger Sutton stepped forward and stated he has resided at 172 Barnes Road since 1975 and he opposed the project.

Adam Middleton stepped forward and stated he resided at 235 Barnes Road which is directly adjacent to Mr. Bailey. Mr. Middleton stated he raised 30 head of beef cows and felt this location was not the place for such a venue. He added that they had four young children and did not want the noise, traffic or alcohol. He explained that in regards to June Farms, there had already been issues in the summer when moving large equipment as the road is blocked by cars so they can collect money for parking. April Middleton restated that they have four children and their house was only a tad further from the road than Laura Schreiner's. She then stated that her daughter had nearly been hit earlier in the evening trying to retrieve the mail. She added that their barn is located across the street and in order to complete chores, they are constantly back and forth crossing the road; thus, the additional traffic coupled with the serving of alcohol is not wanted. She closed by asking that these factors being taken into consideration for the small community.

Suzanne Gaylord stepped forward and stated that she resided at 256 Barnes Road and was able to see Mr. Bailey's home from her house as well as could hear existing noises. Ms. Gaylord stated that she has lived there since 1975. She explained that April Middleton was her daughter and the grandchildren have to travel through the field to visit her as the Barnes Road is not safe for them to travel under current conditions. She added that this type of venue with its noise, traffic, alcohol and lighting was not wanted in their area. Ms. Gaylord stated that the events for the proposed project would take place all summer long on weekends, which was the time that the neighbors would like to enjoy the peace and quiet of their property. She closed by stating she strongly objected to the proposed project.

Darryl Welch stepped forward and stated he did not live on Barnes Road however lived on Millers Corners and his property abutted Mr. Bailey's. Mr. Welch expressed his concern was that the proposed project was inappropriate for the agricultural area as well as the road. He explained that he had lived there 50 years and walked on a continuous basis; thus, opposed the project for many of the same reasons previously stated such as noise level and hours of operations. He added that it has been difficult and untimely to try and have the police come when a situation needed to be calmed down and quieted. He closed by stating there are plenty of other places for this type of venue, such as an isolated or commercial area and believed the project was a bad idea for a bucolic area.

Joseph and Regina Winnicki stepped forward and stated they resided at 3811 NY Route 150 and the back of their property abutted Mr. Baileys. Mr. Winnicki stated their biggest concern would be noise pollution as they lived downhill of Mr. Bailey and noise currently drifted down. He added that Susan Gaylord is his wife's sister and April Middleton was their niece; thus, the additional traffic on Barnes Road was not needed for the safety of their family and friends. Ms. Winnicki closed by stating they were totally against the proposed project.

John Behrle stepped forward and stated he resided at 105 Barnes Road. He explained that they had recently moved into the Sand Lake area and had two small children that attended the local elementary school. Mr. Behrle explained that after having lived in the area for three years and enjoying the residential/agricultural district, he found it difficult and concerning for the proposed project to move forward in the ag district.

Carl Ublacker stepped forward and stated he resided on Beverly Drive who was also a recent import from North Greenbush and had done so as it was a quiet area. He explained that he had three small children and was a former Planning Board member for the Town of Kinderhook and had a background in environmental planning. Mr. Ublacker stated that the proposal, even though revised, was seen as a commercial endeavor which did not fit in an agricultural zone. He stated that from his property he can clearly see Mr. Bailey's property and was also concerned over the noise from the proposed weekend events. He closed by stating he was also very much against the proposed project.

Tom Besch stepped forward and stated that he resided in the Barnes Road area for 60 years. Mr. Besch added that while he is supportive of capitalism, however Barnes Road was traveled by more pass-throughs than those who lived on it. He reiterated that it was a dangerous road and some residents have a house on one side and the barn and/or mailbox was across Barnes Road. He added that additional traffic would make it more unsafe.

Nick Hotz stepped forward and stated that he lived on 11 Beverly Drive and had two young children. Mr. Hotz stated that the reason they moved in was for the peace and quiet and reiterated a concern for the noise issues during the summer. He closed by stating that he was opposed to the proposed project.

Kevin Brocks stepped forward and stated that he was Cindy's husband and did not wish to speak but rather presented copies of a letter from the Law Office of Philip H. Dixon, who had been retained as their attorney (letter attached).

With no further public comment, AH closed the Public Hearing at 8:24; seconded by MET and all approved. Ken Bailey stepped forward and stated he understood as there were legitimate concerns however did not believe the proposed project to be as bad as portrayed. RL stated that it is difficult as Mr. Bailey did have a right to file his application; thus, thought a site visit may be needed. MET asked PB attorney Craig Crist (CC) if a determination was needed that night. CC replied absolutely not and that SEQR would need to be done prior to any decision. AH stated to Mr. Bailey that it seemed like the number of proposed events would certainly be a problem. RL reiterated the suggestion of a site visit in order to get a feel and see how the site may be adapted to possibly mitigate some of the concerns. He added that a site visit had been done for June Farms. AH agreed that a site visit could be done for PB members who were not familiar with Barnes Road or the surrounding area. Mr. Brocks invited PB members to his also view his property for the site visit to gain a better picture of the area. PB members decided to do the site visit in waves the following Monday afternoon. The public commented that PB members would not gain a good depiction of the area during the summer if the site visit was performed in March. PB members agreed that the public cannot determine when a site visit was to take place and it would be a decision made by the applicant if he wished to wait until June. CC clarified for all present that the PB was bound by law to render a decision within 60 days from the close of the public hearing. AH asked Mr. Bailey when he had planned to begin the project. Mr. Bailey replied in the summer. AH stated

that the site visit would take place the following Monday afternoon. The public commented and stated that it was important to see the layout of Barnes Road for the blind driveways and houses close to the road.

**Recommendation to ZBA for Area Variance Application**

Dennis Tremont (Applicant)  
D. Wallace Bryce (Property Owner)  
202-204 Eastern Union Turnpike  
Averill Park, NY 12018  
R – Residential Zoning District

**Tax Map #159.4-1-11**

Lot Size: 1.6 acres

An Area Variance Application for insufficient road frontage and insufficient lot size as a result of a proposed Minor Subdivision Application for a two-lot subdivision.

WG recused himself as he had performed work previously for the property owner. Dennis Tremont and surveyor Kevin McGrath stepped forward. Mr. McGrath presented and stated that the proposed Minor Subdivision Application had been to the PB previously and the Area Variance application had been presented to the Zoning Board Appeals (ZBA). He added that the ZBA did not indicate a positive or negative; however, had scheduled it for a Public Hearing as well as sent it onto the PB for a Recommendation as it was for a Minor Subdivision. Mr. McGrath explained that there had been three houses on the property and one had been removed as it has been deemed unsafe by the Town's Building Inspector. He stated that Mr. Tremont was looking to purchase the proposed Lot 1 which would consist of a 1-acre parcel that currently had a house and small accessory structure for which Mr. Tremont wished to renovate the house. He further explained that proposed Lot 2 is vacant and Mr. Bryce and his family wished to retain it and had no current plans to build on it. AH asked PB members if they had done a site visit per the first PB meeting on the Site Plan Review Application. Michael Groff (MG) and MET replied that they had gone to the site. Mr. Tremont advised that the accessory building had been measured and it totaled 576 square foot. AH asked if DEC had been contacted regarding the wetlands. Mr. Tremont replied that he had contacted someone about it; however, was informed they could not delineate due to the frozen ground. He added that they had stopped at that point as that area would remain with Mr. Bryce who had no plans to build at this time. AH reviewed the site plan map and noted that the road frontage was close at 143' however the lot size was more of an issue. PB members then discussed the possibility of driveways should the property be subdivided. MET asked if the sale was contingent upon the property being divided and Mr. Tremont replied yes. AH noted that the property was on a sewer. RL asked if there was a rush on the purchase of the property. Mr. Tremont replied yes in order secure financing for the upcoming building season. AH asked if all setbacks could be met on the proposed 1-acre. Mr. McGrath replied it could with the size of the existing house and that it was known that any future project within 100' of the lake would require a Scenic Preservation Application. A discussion ensued regarding the buildability and the effect of wetlands on the proposed .6-acre lot. Mr. McGrath pointed out that if subdivided, the owner of the .6-acre lot should have the right to make application for an Area Variance provided they wished to build in the future. MET asked if a right of way could be granted. Mr. Tremont replied that it would be too much of a liability. It was then discussed that the proposed .6-acre lot could be marked "for lake access only" on the site plan map and should the plan change, the owner could then go through the necessary processes. AH motioned for a positive recommendation to the ZBA on the Area Variances; seconded by MET and all approved.

**Special Use Permit and Public Hearing**

Brian Banks  
39 Holloway Lane  
Averill Park, NY 12018

**Tax Map #147.-2-10.11**

Lot Size: 2.9 acres

RR – Rural Residential Zoning District

A Special Use Permit Application to construct a 500-600 sq. ft. accessory dwelling unit on the property.

The applicant was asked to summarize his project which was previously discussed at the prior Planning Board meeting. Brian Banks stepped forward and stated the accessory dwelling was essentially for his mother to reside in. Mr. Banks explained that it would be an efficiency style dwelling with one bedroom and a ¾ bath. RL stated that the revised site plan layout more clearly identified the project layout/location versus documentation received at the first PB meeting. AH noted that the application reflected there were no plans to rent it and Mr. Banks agreed. Mr. Banks added that the colors would match the existing house. RL asked if there would be lighting. Mr. Banks replied there would be a coach light. MET asked if the well would be tied into the existing structure for which AH replied yes. RL read the Public Hearing notice. AH opened the Public Hearing at 9:06 p.m. Robert Stegmann stepped forward and stated he resided at 37 Holloway Lane. He explained that they shared a keyhole driveway and his house was the first one and the Banks' house was the last. He stated that Mr. Banks had approached him on the proposed project and added that he and his neighbors, Joseph & Karen Tessitore had done a site visit for the proposed location. Mr. Stegmann then stated that overall, there were no concerns with the proposed project and the earth-tone colors of the proposed dwelling would help to blend it in as some of the trees between properties would need to be removed. He asked if anything could be added to the permit to help stipulate that the dwelling would not be rented in the future so as not to change the character of the neighborhood or add more traffic to the driveway which was co-owned by both parties. Mr. Stegmann also agreed to the downward lighting versus anything that would be glaring. With no further comments, AH closed the public hearing at 9:08 p.m. AH then motioned to classify the Special Use Permit as a Type 2 action and declared the Town of Sand Lake Planning Board as Lead Agency; seconded by MET and all approved. AH then motioned to approve the Special Use Permit Application as presented with the following conditions: 1) the accessory dwelling unit would not become a rental unit; 2) the façade be muted, natural colors. This motion was seconded by MET and all approved.

**Site Plan Review Application and Public Hearing**

Dunkin Donuts/Ivo Garcia

3696 NY 43

West Sand Lake, NY 12196

HC – Hamlet Commercial Zoning District

**Tax Map #146.2-5-36**

Lot Size: .465 +/- acres

A Site Plan Review Application for the development of a new commercial building and other site amenities.

Ivo Garcia and engineer John Hitchcock stepped forward. JB recused himself due to being involved in prior work. The applicant was asked to summarize the project which had been on previous planning board agendas. Mr. Hitchcock shared a revised site plan layout and stated that Mr. Garcia wished to build a 22,000 sq. ft. Donkin Donuts with a drive-thru window at the intersection of Routes 43 and 150. He explained on the site plan layout how the site would be revised to accommodate the new structure and drive-thru window and went over the proposed landscaping. Mr. Hitchcock informed the PB that the Public Hearing for the needed Area Variances on front setbacks, side parking and stacking for the drive-thru had been scheduled for March 19, 2020. He explained that water would be accessed from the laundry mat next door and sanitary sewer would be tied in on Route 150. He then showed the flow of traffic through the site for entering and exiting. WG asked that the stacking lane be clarified for back-up into the parking area. Mr. Hitchcock replied that based on analysis of other DD's owned by Mr. Garcia, it was not foreseen that the parking area would be blocked. WG then asked if DOH had an issue with the water being gained from the laundry mat. Mr. Garcia replied that there had been positive lab results and would need to continue to meet all Health Department requirements

and that there would be filtering and monitoring inside the structure. RL noted that the colors of the building had not been decided/seen and as well as monument signs. Mr. Hitchcock replied the monument signs would be same as Walgreens. Mr. Hitchcock showed some samples of other DD buildings for the color and, along with Mr. Garcia, stated the colors could be whatever the PB Board felt comfortable with.

AH opened the Public Hearing at 9:27 p.m.; seconded by MET and all approved. RL read the Public Hearing notice. Wendy Powell stepped forward and stated she was the adjacent property owner. She stated that the drive-thru speaker would be directly next to her house and was concerned about the noise early in the morning or late at night. Mr. Garcia stated that they recently had a similar situation at a DD in Delmar and were able to control and adjust the volume in order that it would not spill over onto the neighbor. Ms. Powell stated she was not opposed however also had a concern on the ingress and egress of traffic. Mr. Garcia replied that the two curb cuts were to be removed and the layout and directional within the site should slow down the traffic. Ms. Powell then asked if the lighting would turn off automatically at a certain time. Mr. Garcia replied yes, at closing time of 10 p.m. and the lighting would be LED, low and directional to the parking lot. Scott Schriener stepped forward and stated that he owned the laundry mat next to the proposed project. He stated that he was excited about the project. He added that the project would affect his business and Ms. Powell the most. Mr. Schriener stated that Mr. Garcia had indicated that he will work with everyone to bring in such a great business. With no further comments, AH closed the Public Hearing at 9:38 p.m.; seconded by RL and all approved. AH indicated that DD would now need the Area Variances approved by the ZBA before returning to the PB for next actions on the Site Plan Review Application. Ms. Ryan stated that SEQR would need to be completed and; thus far, no other involved/interested agencies had responded however, they had until March 6, 2020.

**OTHER BUSINESS** – AH made a motion to reschedule E. W. Birch Builders and Construction, Inc. – Major Subdivision Preliminary Plat Application and Public Hearing from February 19, 2020 to March 18, 2020; seconded by MET and all approved.

**DRAFT RESOLUTION APPROVALS:**

Scenic Preservation Application for William & Janice Kullman

AH motioned to waive the full reading of the draft Resolution; seconded by MET and all approved.

AH motioned to approve the Resolution in its entirety; seconded by MET and all approved.

Minor Subdivision Application for Roland LeBarron

AH motioned to waive the full reading of the draft Resolution; seconded by MG and all approved.

AH motioned to approve the Resolution in its entirety; seconded by MET and all approved.

**MINUTES** –

MET motioned to approve the December 4, 2019 minutes as submitted; seconded by AH and all approved.

MET motioned to approve the December 18, 2019 minutes as submitted; seconded by AH and all approved.

**ADJOURNMENT** – AH motioned to adjourn the meeting at 9:46 pm; seconded by MG and all approved.





February 26, 2020

Town of Sand Lake Planning Board  
Sand Lake, NY 12153

June Farms  
275 Parker Road  
West Sand Lake, NY 12196

To the Town of Sand Lake Planning Board & ZBA,

In my absence at the upcoming March 4th Planning Board hearing, I would like to enter this letter of support for Ken Bailey's Special Use Permit application.

Our experience with Ken Bailey and his family has been nothing short of exceptional in regards to their kindness, professionalism and guidance. They run one of the cleanest and most organized farms we have ever seen, and his willingness to help us in times of need is second to no one.

We believe that Ken will operate a wonderful establishment and will be respectful of his neighbors, as he has proven to be to us at June Farms.

Additionally, we are hoping that if Mr. Bailey and his farm are given permission to hold more than 12 large events per year, that June Farms will also be given the same permissions for large events. We have so many bills to pay!! :)

Thank you for your time and consideration,

Matt Baumgartner  
June Farms, owner  
(518) 281-5519

# Law Office of Philip H. Dixon

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March 4, 2020

**VIA MAIL AND EMAIL: [kosullivan@sand-lake.us](mailto:kosullivan@sand-lake.us)**

Town of Sand Lake Planning Board  
c/o Karol O'Sullivan, Clerk for Planning Board and ZBA  
P.O. Box 273  
Sand Lake, NY 12153

Re: **Bailey Application for a Special Use Permit**

Dear Planning Board:

This pre-hearing letter is submitted on behalf of Kevin and Cindy Brocks in opposition to the application of Ken Bailey for a Special Use Permit ("SP") to construct and operate a "Party Barn" on a 65-acre parcel in the Agricultural Residential ("AR") Zoning District. According to the cover letter accompanying the application, the Applicant expects to hold up to 40 events a year, from June to October, of up to 175 people each. The proposed use therefore is nothing less than a very large-scale commercial operation, and is incompatible both with the AR Zone, the specific neighborhood of Barnes Road and the nature of the State agriculture district within which it is located.

The Brocks own approximately 70 acres extending from Barnes Road to Best Road. Part of their property directly abuts the property at issue. They have an active horse farm and beef cattle operation on their property, along with alpacas. They have invested substantial time and money improving the agricultural suitability of the land and have received grants from the U.S. Department of Agriculture ("USDA") and work with the USDA on environmental protection programs. They have dug ponds, improved drainage, protected wetlands, developed a modern clean water source for the animals, and are now working on manure management under USDA guidelines. They have made this investment in reliance on the existing zoning and the agricultural district that they are in.

**I. The Proposed Use is Not Permitted in an AR Zone.**

The operation of a catering hall is not permitted under the Usage Table, ATT 1, Chapter 250 of the Town of Sand Lake Code. A full-service restaurant is permitted with an SP. A tavern is

prohibited. The short-form environmental assessment form ("EAF") incorrectly states that the Party Barn is a permitted use.

## **II. The Proposed Use is Incompatible With the AR Zone.**

The Town Zoning Ordinance provides "Agricultural/Residential. The purpose of this district is to encourage agriculture and compatible open space uses while maintaining low and medium-density residential areas."<sup>1</sup> In order to qualify for an SP, the applicant must prove that the proposed use is "compatible" with the existing environment.

The Board will receive statements at the hearing describing the neighborhood as quiet, low-trafficked, and heavily used for agriculture. The neighbors of the proposed use are staunchly opposed to this project. Public comments will show that Barnes Road itself is a popular route for horse rides, organized group as well as solo bicycle rides, and walkers. The record will also reflect the investment that residents have made in their properties to further agricultural business, and those who specifically moved to this zone because of its AR and agricultural district designations. The proposed Party Barn use is incompatible because of the tremendous increase in traffic that it will bring to a secondary rural town road; the noise that nearly 200 partying people will bring to the neighborhood on nearly every weekend from June to October; and the impact of the lights on both the Party Barn and the parking lot, as well as the cars streaming out *en masse* after every event. The impact of the Party Barn is a direct threat to the health, safety, and welfare, of the residents of the existing neighborhood. They are entitled, as the ordinance provides, to have the Town "protect their property...". Town Code, § 250-3.

A useful measure of the notion of compatibility may be gleaned from the provisions of the ordinance regarding "home-based businesses". (Sect. 250-47). A home-based business will only be permitted if it is compatible with the area, maintains the character of the neighborhood, ensures the peace, privacy, quiet, and dignity of the area; and avoids excessive noise, traffic, and nuisance. (*Id.*)

The proposed Party Barn will have a permanent, irrevocable adverse effect on the neighborhood. It bears no nexus to the AR district or to a residential district. Its only and irrelevant nod to the AR district is that the catering hall will be built to resemble a barn. But it is not the barn that threatens the neighborhood. It is the large-scale commercial catering operation and the atmosphere that it will impose on the neighborhood that is incompatible. Of course, SPs "run with the land". They are not personal. This decision will impose a Party Barn in perpetuity regardless of who owns that property.

## **III. The Proposed Use is Inconsistent With the Town's Master Plan.**

The zoning ordinance and decisions thereunder must be in conformity with a Master Plan. The Town adopted such a plan only a few months ago. The Master Plan encourages preservation of the AR zone promotion of agriculture and open space preservation, and states that development should be channeled into the hamlet of West Sand Lake and along the Route 43 corridor. The

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<sup>1</sup> The ordinance also defines residential districts.: Residential. The purpose of this zone is to maintain traditional residential character and allow for new traditional and clustered residential subdivisions and compatible uses."

applicant incorrectly states in the EAF that the project is consistent with the master plan. Clearly, this is not true.

#### **IV. The Application is Subject to SEQRA.**

The Planning Board's consideration of the application is subject to the provisions of the State Environmental Quality Review Act ("SEQRA"). SEQRA requires that reviewing agencies take a "hard look" at relevant areas of environmental concern and make a "reasoned elaboration" of the basis for its determination. H.O.M.E.S. v. N.Y.S. Urban Dev. Corp., 69 A.D.2d 222, 232 (4th Dep't, 1979). To avoid lengthy and costly litigation, an environmental impact statement should be required where an action may fairly be said to have any potentially significant adverse environmental impact. *Id.*

The New York State Court of Appeals has interpreted SEQRA's statutory definition of "environment" broadly. Chinese Staff and Workers Ass'n. v. City of New York, 68 N.Y.2d 359, 365-366 (1986). The definition as codified in the law includes physical conditions including "existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character." N.Y. ECL § 8-0105(6). Additionally, SEQRA's regulations expressly provide for various indicators of significant adverse impacts on the environment particularly salient here:

(i) a substantive adverse change in . . . traffic or noise levels; . . . (iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted; . . . (v) the impairment of the character or quality . . . of existing community or neighborhood character; . . . [and] (xi) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who come to such place absent the action

Considering this definition, courts will reject agency determinations that fail to take a "hard look" at adverse potential impacts such as traffic, parking, and noise level. *See e.g., H.O.M.E.S.* at 232. For example, in Adirondack Historical Association v. Village of Lake Placid, 161 A.D.3d 1256, 1258 (3rd Dep't, 2018), the court held that the record failed to establish that the village board took the requisite "hard look" at potential traffic implications of the construction of a parking garage and failed to reasonably elaborate the basis for why it would not result in substantial increase in traffic. In considering traffic, the village board made only one conclusory statement that there would be no impact on traffic. *Id.* at 1259. The Court found that there was no indication "of any meaningful investigation into this area of environmental concern," and vacated the board's determination. *Id.* at 1259-1260.

SEQRA establishes different types of proposed actions (Type I, Type II and Unlisted), depending on their potential for significant environmental impacts requiring an environmental impact statement ("EIS"). A Type I action is defined by DEC's regulations as "those actions and projects that are more likely to require preparation of an EIS . . ." 6 NYCRR § 617.4(a). DEC's SEQRA regulations provide that "the fact that an action or project has been listed as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS." 6 NYCRR § 617.4(a)(1).

The granting of an SP to the Party Barn is clearly a Type I SEQRA action. In addition to the serious potential impacts described above, DEC's regulations provide that an action is a Type I action if it "includes a nonagricultural use occurring wholly or partially within an agricultural district . . . and exceeds 25 percent of any threshold in this section." 6 NYCRR § 617.4(b)(8). Also among those criteria potentially applicable to the Party Barn proposal are "the adoption of changes in the allowable uses within any zoning district affecting 25 or more acres [reduced to 6.25 acres] of the District." 6 NYCRR § 617.4(b)(2).

**V. The EAF is Inadequate.**

DEC's SEQRA regulations provide that [a] properly completed EAF must contain enough information to describe the proposed action, its location, its purpose and its potential impacts on the environment." 6 NYCRR § 617.2(m). As was previously discussed, the applicant's EAF makes a number of important errors, such as the consistency with zoning and the master plan and the use of Barnes Road by bicyclists. In addition, the applicant's EAF totally ignores other important impacts. The EAF contains absolutely no discussion of traffic and noise, and its discussion of lights is limited to lights along its driveway. Finally, the use of the short-form EAF was inappropriate because the project is a Type I action. DEC's regulations state that "[f]or Type I actions, a full EAF . . . must be used to determine the significance of such actions." 6 NYCRR § 617.6(b)(2). It is submitted that the Planning Board should, at the very least, reject the application as incomplete and require the submission of a correctly completed long-form full EAF.


**VI. The Project is Within an Agricultural District.**

In addition, the Party Barn action is located within an agricultural district, which is subject to the requirements of the Department of Agriculture and Markets. That Department requires preparation of an "agricultural data statement" for an application for, *inter alia*, a special use permit that would occur on property within an agricultural district. Agriculture and Markets Law, § 305-b. This statute mandates the identification of impacts on agriculture and in effect requires a justification for such impacts. The Planning Board, accordingly, is required to review and consider the statement, which must contain specified information and is subject to public notice provisions. *Id.*

**CONCLUSION**

For the reasons set forth in this letter and in the public comments of other affected neighbors, the Planning Board should deny the application for an SP.

Respectfully,

  
Philip H. Dixon  
Attorney for the Brocks

cc: Kevin and Cindy Brocks