

Town of Highland Planning Board
Meeting Minutes July 26, 2023

Chairman calls the meeting to order at 6:00 PM regarding all Short-Term Rental Applications, Eve Fisher Public Hearing, and all new Short Term Rental Applications.

Chairman states the minutes are being recorded

Application #14-2023 SPSTR 1 LLC Short Term Rental

The public hearing on this applicant was closed on June 28, 2023. The applicant needed to pass his fire inspection, and the board needs to complete part (2) SEQR. As per the code officer the applicant has passed and completed his fire inspection.

Motion to make the Town of Highland Planning Board lead agency for SEQR:

Motion: JT Vogt Second: Tim McKenna All in favor

SEQR Part (2) read by Michael Davidoff and completed by the board.

Motion for SEQR part (2) will not result in any significant adverse environmental impacts:

Motion: Jeff Spitz Second: Steve Bott All in favor

Motion to approve application #14-2023 SPSTR 1 LLC Short Term Rental with quiet hours to be observed 10PM to 7AM:

Motion: Steve Bott Second: Tim McKenna All in favor

Application #21-2023 John Oliva Short Term Rental

The public hearing on this applicant was closed on June 28, 2023. The applicant needed to pass his fire inspection, and the board needs to complete part (2) SEQR. As per the code officer the applicant has passed and completed his fire inspection.

Motion to make the Town of Highland Planning Board lead agency for SEQR:

Motion: JT Vogt Second: Tim McKenna All in favor

SEQR Part (2) read by Michael Davidoff and completed by the board.

Motion for SEQR part (2) will not result in any significant adverse environmental impacts:

Motion: Tim McKenna Second: Jeff Spitz All in favor

Motion to approve application #21-2023 John Oliva Short Term Rental with quiet hours to be observed 10PM to 7AM and provide proof of garbage removal by a professional company or by the management company:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Application #16-2023 Earl Cokley Short Term Residential Application Public Hearing:

Mr. Cokley was unable to attend the meeting, so Ryan Jones stood in for him.

Mr. Cokley owns a home on 117 Airport Road. The home is mainly for personal use and is rented out a few times a year for extra income.

Motion to open the public hearing on application #16-2023:

Motion: Tim McKenna Second: Steve Bott All in favor

Secretary reads the public notice posted in the local newspapers.

There were (18) letters mailed to the surrounding neighbors and (14) returned.

Correspondence: None

Public Comment: None

Motion to close the public hearing on application #16-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Motion to make the Town of Highland Planning Board lead agency for SEQR:

Motion: JT Vogt Second: Tim McKenna All in favor

SEQR Part (2) read by Michael Davidoff and completed by the board.

Motion for SEQR part (2) will not result in any significant adverse environmental impacts:

Motion: Tim McKenna Second: Steve Bott All in favor

Mr. Cokley is working with the code officer to complete his fire inspection.

Resolution on this application will be added to the August 23, 2023 agenda.

Application #22-2023 Gary Gutekunst Short Term Residential Application Public Hearing:

Mr. Gutekunst owns a home on 23 Summer Lake Dr. The home is (4) bedrooms and (4) baths and is run as an Airbnb.

Motion to open the public hearing on application #22-2023:

Motion: Tim McKenna Second: Steve Bott All in favor

Secretary reads the public notice posted in the local newspapers.

There were (20) letters mailed to the surrounding neighbors and (12) returned.

Correspondence: None

Public Comment: None

Motion to close the public hearing on application #22-2023:

Motion: Tim McKenna Second: JT Vogt All in favor

Motion to make the Town of Highland Planning Board lead agency for SEQR:

Motion: Jeff Spitz Second: Steve Bott All in favor

SEQR Part (2) read by Michael Davidoff and completed by the board.

Motion for SEQR part (2) will not result in any significant adverse environmental impacts:

Motion: JT Vogt Second: Steve Bott All in favor

Mr. Gutekunst is working with the code officer to complete his fire inspection.

Resolution on this application will be added to the August 23, 2023 agenda.

Application #23-2023 Rodrigo Marques Short Term Residential Application:

Mr. Marques owns a home on 3 Perry Road. He has owned the home since 2001 and uses it as a rental.

Motion to open the public hearing on application #23-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Secretary reads the public notice posted in the local newspapers.

There were (14) letters mailed to the surrounding neighbors and (12) returned.

Correspondence: Two letters read into record.

Lee Browning Jr. - Not in favor

Barbara Austel - In favor but requests that Mr. Marques makes his tenants aware of no trespassing and no loud music.

Dean LaMarca - in favor but requests that Mr. Marques supply a rental agreement stating that York Lake Estates is privately owned, and this includes Beach Road.

Public Comment:

Don Schmalzle of 16 Perry Road had questions regarding the number of bedrooms and how his tenants get to the lake. He will contact Mr. Rodrigo by phone to discuss.

Deb Simon is not against short-term rentals. Her concerns are regarding security and dogs and how Mr. Rodrigo handles these concerns.

Mr. Rodrigo states that he has lived on the property for 21 years and that the landscape and access to his property has changed in those years with no communication from the surrounding neighbors. Mr. Rodrigo's deed shows he is not a member of the HOA.

Motion to close the public hearing on application #22-2023:

Motion: Tim McKenna Second: Steve Bott All in favor

Motion to make the Town of Highland Planning Board lead agency for SEQR:

Motion: JT Vogt Second: Jeff Spitz All in favor

SEQR Part (2) read by Michael Davidoff and completed by the board.

Motion for SEQR part (2) will not result in any significant adverse environmental impacts:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Mr. Rodrigo's scheduled fire inspection could not be completed due to the difficulty in locating the residence. He has rescheduled his fire inspection.

Resolution on this application will be added to the August 23, 2023 agenda.

Application #24-2023 Edun Sela Short Term Residential Application Public Hearing:

Motion to open the public hearing on application #24-2023:

Motion: Tim McKenna Second: JT Vogt All in favor

Secretary reads the public notice posted in the local newspapers.

There were (17) letters mailed to the surrounding neighbors and (13) returned.

Correspondence: None

Public Comment: None

Motion to close the public hearing on application #24-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Motion to make the Town of Highland Planning Board lead agency for SEQR:

Motion: Steve Bott Second: JT Vogt All in favor

SEQR Part (2) read by Michael Davidoff and completed by the board.

Motion for SEQR part (2) will not result in any significant adverse environmental impacts:

Motion: Steve Bott Second: Tim McKenna All in favor

Edun Sela is working with the code officer to complete his fire inspection.

Resolution on this application will be added to the August 23, 2023 agenda.

Application #25-2023 Jason Perkal Short Term Residential Application Public Hearing:

Motion to open the public hearing on application #25-2023:

Motion: Tim McKenna Second: JT Vogt All in favor

Secretary reads the public notice posted in the local newspapers.

There were (17) letters mailed to the surrounding neighbors and (11) returned.

Correspondence: None

Public Comment: None

Motion to close the public hearing on application #25-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Motion to make the Town of Highland Planning Board lead agency for SEQR:

Motion: Steve Bott Second: JT Vogt All in favor

SEQR Part (2) read by Michael Davidoff and completed by the board.

Motion for SEQR part (2) will not result in any significant adverse environmental impacts:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Mr. Perkal has completed and passed his fire inspection.

Motion to approve application #25-2023 Jason Perkal Short Term Rental with quiet hours to be observed 10PM to 7AM:

Motion: Tim McKenna Second: Jeff Spitz All in favor

Application #12-2023 Eve Fisher Site Plan Review Tabled Public Hearing

Ms. Fisher's public hearing was tabled from June 28, 2028 pending the National Park Service reply and giving Michael Packer , Ms. Fishers representative and the Laberge Group, the Town of Highlands Consultant to discuss all the findings.

Susan Roth of LaBerge Group requested that if Ms. Fisher could show that the property has been used in the past two years, then she would not have to apply to the ZBA for an area variance.

Application # 30-2023 Rebekah Wagley Short Term Rental

Ms. Wagley owns a three-bedroom located at 69 Hartung Road Highland Lake NY.

Ms. Wagley has scheduled and passed her fire inspection.

The board requests that she supply more insurance information before the public hearing.

Motion to schedule a public hearing on Application #30-2023 to be held on August 23, 2023 at 6PM:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Chairman opens the regular meeting at 7PM

Pledge to the Flag

Chairman states the minutes are being recorded

Secretary takes attendance.

Attendance:	Norm Sutherland	Present
	JT Vogt (co-chairman)	Present
	Jeffrey Spitz	Present
	Steve Bott	Present
	Tim McKenna	Present
	Laura Burrell	Present
Board Secretary	Monica McGill	Present
Town Attorney	Michael Davidoff	Present
Code Enforcement	BJ Gettel	Present

Also, in attendance - Scott Reed (alternate)

Motion to approve the June 28, 2023 meeting minutes:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Application #26-2023 Alex Wise Special Use Permit

Mr. Wise owns a vacant piece of property on DeVenoge Drive Section (7) Block (1) Lot (34.19). Mr. Wise would like to build a garage for personal use to house some of his larger equipment. There will be no electric or plumbing. Mr. Wise states that maybe sometime in the future he may want to add electric, when at that time he will need to come back to the board.

The board requests that Mr. Wise obtain a survey of the property to show the setbacks.

Motion to schedule a public hearing on application #26-2023 to be held on August 23, 2023 at 6PM:

Motion: Steve Bott

Second: Tim McKenna All in favor

Application #7-2023 Catskill Resort 211 Mail Road Site Plan Review

The applicant was not present.

Application #5-2022 Camp Fimfo - Catskills (Kittatiny) Site Plan Review

The board and the applicant have received the NPS (National Park Service) report.
Chairman Norm Sutherland

Please see attached.

The National Park Service was invited to attend the 072623 meeting, but declined.
Daniel Rubin attorney for Camp Fimfo addressed the NPS report. (See attached)
Also present at the meeting Kerry Englehardt of the UDC (Upper Delaware Council)
Mr. Rubin urged the board to move forward with the SEQR and making a decision.
The board declined and will re-read the NPS report to have a better understanding.
The application will be added to the August 23, 2023 agenda.

Application #9-2023 Courtney Crangi & Shane Pearson Special Use Permit Cannabis

Christen Motel of Cuddy & Feder Law Firm addresses the board in reference to this application. The application has been amended to no longer run a retail cannabis business. The applicants now want to run a small micro-growing/cultivation/and processing business. (Please see attached)

The board also sent the application to the town's consulting firm for review. (Please see attached)

The board had concerns on the size of the building and the odors it may emit.
Rubin Lindo appearing on behalf of the applicant states that the grow harvest /cycle would most likely be under 100 pounds per year and only a small portion of the harvest would leave oil on the floor, and there is going to be an air filtration system installed.

Christen Motel requested that the public hearing be waved, and the board denied.
Motion to schedule a public hearing to be held on August 23, 2023 at 6PM on application #9-2023:

Motion: Tim McKenna Second: Steve Bott All in favor

The secretary will submit the application to the County 239M and to the UDC for review.

Application #2-2023 River Holding Company Site Plan Review

The applicants had appeared before the planning board and have resubmitted the application on 071323. Michael Packer of Packer Associates is the engineer working with the applicant.

The business known as Barryville Oasis is a gas station/convenient store, a Taco eatery, and a cider tasting room (located in the garage portion of the building) The cider tasting room as per the applicant holds 42 patrons.

The boards concerns are parking, and the septic. When it was a gas station/repair shop the bathroom was not an issue. Now with the number of patrons they feel the septic will be inadequate.

The application was sent to Al Fusco Engineering in June of this year, and the attorney, code officer BJ Gettel, and Al Fusco met on the July 24, 2023 to go over the report. (Please see attached)

The application was also sent to the towns consulting firm LaBerge. (Please see attached memorandum.

The board will schedule a public hearing for the applicant pending a report to locate the septic and leech field and the remittance of an escrow check in the amount of \$5000.00 dollars. No public hearing will be held if the above is not received by the 14th day of August 2023.

Motion to schedule a public hearing to be held on August 23, 2023 (pending receiving all paperwork required) on Application #2-2023:

Motion: JT Vogt Second: Jeff Spitz All in favor

The secretary will send the application to the County 239M and the UDC pending all paperwork is received.

Application #19-2023 Mark Rossi Special Use Permit Animal Husbandry Public Hearing

Mr. Rossi has come before the board to ask for a special use permit to allow him to have more animals on his property than what the zoning allows.

Motion to open the public hearing on Application #19-2023:

Motion: JT Vogt Second: Steve Bott All in favor

Secretary reads the public notice posted in the local newspapers.

There were (9) letters mailed to the surrounding neighbors and (9) returned Correspondence: (2) letters received from Linda & Fred Oresto, and Leana Molnar, both against the application.

Public Comment:

Fred Bosch has known the applicant a long time and states that he is a good farmer, and in the past has allowed Mr. Rossi to use a portion of his property to house his animals. Due to an increase in liability, he can no longer continue letting Mr. Rossi use his property.

Nora Olsen of 75 Park Town Road was distressed at looking at the animals and feels that Mr. Rossi does not own enough land to maintain the animals.

Board Comment: None

Motion to close the public hearing on application #19-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

The board did some research on the above request and spoke with Cochection Mills. They learned that a calf 18 months old to 2 years old is considered a Heffer. The other concern is that Mr. Rossi owns two acres, but how much of the acreage is taken up by the home, the septic, well etc.

JT Vogt states that the code 190-22 states that there can not be any offensive odor within 100 feet of the property, but as stated in the letter read into record from Leana Molnar that the odor is a problem.

Michael Davidoff states that the board must comply with the zoning code.

Motion to deny application #19-2023 and to uphold the guidelines of the code:

Motion: Tim McKenna Second: Steve Bott All in favor

Motion to close the meeting:

Motion: JT Vogt Second: Jeff Spitz Meeting adjourned



BROWN | WEINRAUB

August 16, 2023

Chair Norman Sutherland
Town of Highland Planning Board
4 Proctor Road
Eldred, NY 12732

*RE: Northgate / Sun Communities
Camp FIMO Catskills
Job # 2220488*

Dear Chair Sutherland,

We write, as counsel to the Applicant and at your request, to summarize the Applicant's response to the National Park Services' ("NPS") determination of July 17, 2023, that the Camp FIMFO application (the "Project") does not conform to the River Management Plan ("RMP") or the Land and Water Use Guidelines ("LWUG") (the "Determination").

EXECUTIVE SUMMARY

As noted at the Town Planning Board's (the "Board") July 2023 public meeting, the decision before you is a weighty one: is the Town of Highland (the "Town") an independently governed entity responsible for the interpretation and enforcement of its own laws, or a National Park whose planning decisions should be unilaterally decided by NPS officials in Philadelphia?

The Determination's conclusion that the Project does not "substantially conform" to the RMP or the LWUG is as historic as it is troubling. The Determination marks the first time in the Upper Delaware Council's ("UDC") nearly 50-year history that NPS has reversed the UDC's own finding that a project substantially conformed to the RMP/LWUG. It was made without any regard for the history, spirit or procedure laid out in the RMP. By its own admission, NPS went well beyond its allotted 45-day review period, it then refused to meet publicly with the Board, the UDC or the Applicant to collaborate on the Project. Most distressingly of all, however, the Determination is based on purely ideologic principles; it has nothing to do with the engineering behind the Project and is essentially a decision by NPS officials in Philadelphia about how the Town should look and feel. The rationale provided by NPS for its determination completely ignores the Town's Code ("Code"), which NPS previously found to substantially conform to the RMP and LWUG, and intentionally applies definitions and principles from the LWUG which expressly do not apply to the recreational segment of the River where the Project is proposed.

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Finally, the Determination is also historic, in that it will, with certainty, have the opposite effect intended by the RMP. In addition to preventing, rather than encouraging responsible economic development for the Town, the Determination ensures that Camp Kittatinny will continue to operate at its current capacity, which has an 18% higher occupancy rate than the proposed Project. It will ensure that this more intense use will continue with the camps existing aging septic and utility infrastructure which was installed piecemeal over the camp's 80-year history without regard to modern environmental standards or green technology. The Determination also ensures the current facility will continue to operate without the type of comprehensive and modern storm water management plan called for in the Project. Essentially, the Determination will render a vital economic engine in the region all but worthless – except to the NPS itself (which is NPS' likely goal) or a religious camp largely exempted from regulation by the Religious Land Use And Institutionalized Persons Act (“RLUPA”).

For the reasons that follow, we ask that the Town exercise its prerogative to proceed with the application. The question for the Town is whether the Project conforms to the Town's Code.

HISTORY OF THE RMP

Before discussing the arbitrary and capricious nature of the NPS' determination in greater detail, it is critical to understand the history of the RMP and the concerns surrounding the RMP that have existed since its creation. As noted in the Executive Summary of the RMP, the local governments and landowners who populated the Delaware River prior to its designation by the Federal Government as a Wild and Scenic River rejected two prior versions of the RMP that were drafted by the NPS. The “**major concerns**” that caused these local stakeholders to reject NPS' two prior drafts were “**over-regulation, the use of the power of eminent domain, and loss of local control.**” RMP at p. ii. The version of the RMP which exists today – which had the benefit of input from local stakeholders – includes extensive safeguards specifically designed to prevent the loss of local control, federal over-regulation of private lands, and the indiscriminate use of eminent domain.

First, the RMP created the UDC to ensure that primary oversight of the River was through local stakeholders. Indeed, the stated “**intent of the [Upper Delaware] Council is to retain local control . . . and protect the river through the cooperative efforts of local individuals, governments, and state and federal agencies.**” Second, the RMP prevents over regulation by “using only existing local, state and federal laws to protect the river” – it specifically rejects the application of Part 36 of the Code of Federal Regulations (which governs the NPS' activities on National Park Land) to private lands within the Corridor. And third, the RMP “**provide[s] the towns with alternatives and flexibility allowing them to meet the guidelines in their own way.**” RMP at pp. iii-iv.

With respect to the third point, the RMP makes clear that decisions about land use and planning are local decisions and that NPS' role is advisory. For example, the RMP states that “**responsibility for land management is unchanged by this plan: it remains in the hands of private landowners and local governments.**” RMP at p. vi. Indeed, the stated “Planning Goals” of the RMP are, among other things, to “conserve the resources of the Upper Delaware **primarily through the use of existing local and state land use controls,**” “**provide for planned growth**

consistent with local ordinances,” and “foster a public recognition of the Upper Delaware River Valley as a place with its own identity, continuing history and a destiny to be shaped by its residents.” RMP at p. 13. The RMP and LWUG contained therein are “not intended to require any local government to take actions which might be inconsistent or contrary to its own laws.” RMP. at 41. Critically, the RMP recognizes that the LWUG were intended to “establish a program designed to permit each unit of local government to meet the overlying principles and objectives in its own way.” RMP at p. 48.

In stark contrast, the RMP limits the NPS’ “role primarily to that of recreation manager, minor landowner, and **assistant to local governments** in resource protection.” RMP at p. 9. As noted in the RMP, “the federal role is to manage the recreational use of the river, to represent the federal interest in the protection of the area, and to assist local and state governments in meeting the objectives of the River Management Plan and the Land and Water Use Guidelines; **it is not to supersede the role of state or local governments or to impose regulations on them. Rather the federal role is a cooperative one, working with local governments.**” RMP at p. 41. Notably, “leaving land use decisions in the hands of local governments is the most important step in building a cooperative working arrangement among all levels of government.” RMP. at p. 40. The only bolded language in the RMP unequivocally states that “**the Upper Delaware Scenic and Recreational River is not a national park.**” RMP at p. 15 (emphasis in original).

Yet, it is clear that NPS has turned this paradigm on its head by admittedly failing to follow the procedure set out in the RMP for reaching its Determination, by subsequently excluding the Board, the UDC, the Applicant and the public from the process and instead imposing its own will about the Town’s “destiny.”

NPS FAILED TO PARTICIPATE IN THE COLLABORATIVE PROCESS REQUIRED UNDER THE RMP

The NPS had 45 days from September 1, 2022, the date the UDC recommended a finding of substantial conformance, to review the project and issue its Determination. Instead, NPS took 319 days to review the project. During that period, NPS did not meaningfully collaborate with the Board, the Applicant or the UDC. In fact, NPS refused to sit down with the UDC to discuss possible amendments to the project and has flatly ignored multiple requests from the Board to attend meetings related to the Project.

On June 13, 2023, at a meeting between the NPS and UDC where the NPS revealed its “preliminary” findings to the UDC for the first time, the UDC’s Kerry Englehardt opened the meeting by outlining the UDC’s exhaustive review of the project – a process that took nearly 15 minutes. The takeaway was clear: the UDC – as the “primary” body responsible for overseeing development along the river – exhaustively reviewed every technical and design aspect of the project and it determined the project substantially conformed to the RMP and LWUG. At that same meeting, after learning of NPS’ intention to reject the UDC’s determination on substantial conformance, multiple members of the UDC requested that the NPS wait to issue its final determination until after it had an opportunity to sit down and discuss the project with the Board, the UDC and/or the Applicant to find a solution to NPS’ concerns. NPS’ representative, Lindsay Kurnath rejected those requests on the basis that NPS’ lawyers believed it was already too far

beyond the 45-day review process to engage in such collaborative efforts. Nothing in the RMP prevents the NPS from engaging in such discussions and the NPS' sudden concern for abiding by the 45-day review requirement 274 days after its deadline passed was transparently disingenuous.

UDC Board Member Fred Peckham, from Hancock, New York, summarized NPS' behavior perfectly when he stated at the July 13, 2023, meeting that he was **“just surprised that it took this long for the park service to show its colors, I've anticipated this for years. Basically, they are cutting the UDC out of it.”**

In addition to disregarding its central obligation under the RMP – to collaborate with local stakeholders – the NPS has completely shirked its other responsibility with respect to this project: to provide technical assistance, in the form of expert engineering review of the project, to the Town. As explained below, NPS' objections to the project have nothing to do with the engineering of the project – they are purely based on NPS' ideology of how the Town should look and feel.

THE NPS' DETERMINATION COMPLETELY IGNORES THE TOWN'S CODE AND IS BASED ON MULTIPLE MISREPRESENTATIONS OF THE LWUG

As noted above, the RMP makes clear the Board is not required to take any action contrary to the Town's laws. And yet, the NPS' Determination is completely at odds with the Town's own Code. The NPS ignored the Town's Code – mentioning only a single inapplicable section of the Code in its Determination – because the Town's Code clearly provides for and allows all of the uses contemplated by the Project. Given that NPS previously reviewed the Town's Code and determined that the Code substantially conforms with the RMP/LWUG, the NPS' Determination to the contrary is wholly arbitrary and capricious.

The chief objection from NPS to the Project is the proposal to utilize Park Model RVs. According to NPS, these “structures” are not RVs at all, but instead permanent dwelling structures prohibited by the RMP. This aspect of the Determination is clearly at odds with the Town's Code which specifically defines Park Model RVs as “RVs” and permits their use at campgrounds and even in the floodplain. Pursuant to Section 190-7 of the Town's Code, the term “recreational vehicle” is defined as:

A vehicular unit, 400 square feet or less at its largest horizontal projection and primarily designed as temporary living quarters for seasonal, recreational camping, or travel use, and which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are travel trailer, camping trailer, truck camper and motor home. A recreational vehicle shall not be designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use and shall not be inhabited in excess of 180 days per year.¹

¹ The Applicant has already confirmed that the Park Model RVs shall not be inhabited more than 180 days per year.

The Project calls exclusively for the use of Park Model Recreational Vehicles that are designed and built in accordance with ANSI 119.5 standards. The definition of RV found within the Town's code quite literally mimics the definition of Park Model RVs contained in ANSI A119.5. The Town's Code, therefore, clearly permits the use of Park Model RVs and defines them as RVs rather than permanent structures. The Town's Code also provides that RV's may be located in the floodplain if they meet certain criteria, including that they are licensed and ready for highway use, like the Park Model RVs at issue here. The fact that the Town's Code permits the use of Park Model RVs in the floodplain is also clear from the fact that the Board has already issued permits for the placement of Park Model RVs at the existing Kittatinny Campground, and these units have been in place, including within the floodplain, since as early as 2018.

Further, pursuant to Section 190-25 of the Town's Code, "cabins and other units" used for sleeping quarters in a campground are considered Recreational Vehicles.

In contrast, a "habitable structure" is defined by the Code as:

Any building or structure used, or intended for use, on a day-to-day basis by people for residential purposes and includes a minimum of 500 square feet of space defined herein as habitable.

Rather than consult the Town's Code at all on this matter, at its June 13, 2023 meeting with the UDC, the NPS acknowledged that its Determination that these units are permanent structures rather than RVs was based on a definition it took from the dictionary.

NPS' pattern of ignoring or distorting of relevant definitions is not limited to those in the Town's Code. NPS' Determination also relies on the application of definitions from the RMP/LWUG which are wholly inapplicable to the Project and is based on a complete mischaracterization of existing conditions.

Indeed, NPS' objection to the use of individual hookups for water and sewer for Park Model RVs is also at odds with the Town's Zoning and the RMP/LWUG. That these type of hookups are permitted under the Town's code is established by the fact that these hookups already exist throughout the facility (and are therefore a grandfathered use). Further, the RMP/LWUG does not prohibit these types of hookups either - NPS' Determination in this regard is based on their disingenuous conclusion that individual hookups connected to centralized septic systems and wells are the same as placing individual wells and septic systems at each and every campsite. The Applicant is not placing individual septic systems and wells at each RV campsite, which is what the RMP prohibits.

Additionally, in concluding that the proposed use is too intensive for the Town, the Determination applies "Principle C" of the LWUG which limits so called "intensive use recreational facilities" in "scenic segments" of the River. Yet, the Project does not fall within a "scenic segment" of the River, it is located in a "recreational segment" where, even by NPS' definition of the Project as an "intensive use recreational facility," since the use is specifically permitted by the LWUG. **Principle C does not apply to uses in recreational segments of the River.**

In further support of its illogical density related objections, NPS contends that “in comparison to a seasonal tent campground, the proposal significantly develops the site,” which will change the land use intensity at nearly every campsite. This is categorically false. Camp Kittatinny has been operating as an RV park for decades. It is not a “seasonal tent campground” and even if the Project is not approved, it will continue to operate as an RV Campground. Furthermore, and as has been extensively documented by the Applicant, if approved, the Project will actually reduce the number of campsites and lower the total maximum occupancy of the facility by more than 18% - **resulting in an overall reduction of density.**²

Further, the NPS’ current contention that the alleged commercial character of the proposal would negatively impact the character of the river corridor, or that the RMP only permits camping at facilities which are primitive in nature, is also belied by their own Foundational Document detailing the essential character and resources that made the Upper Delaware Scenic River worthy of protection in the first place. A copy of this document is available at: https://www.nps.gov/upde/learn/management/upload/UPDE_FD_2014_508.pdf (last viewed August 16, 2023).

As noted in the Foundation Document, “every unit of the national park system is to have a foundation document that will provide basic guidance for planning and management decisions. The core components of a foundation document include a brief description of the NPS unit as well as the unit’s purpose, significance, fundamental resources and values, and integrative themes.” FD at p. 2. The Foundation Document goes on to note that “**Fundamental Resources and Values (FRVs) are those features, systems, process, experiences, stories, scenes, sounds, smells or other attributes determined to warrant primary consideration during planning and management processes because they are essential to achieving the purpose or the unit and maintaining its significance.**” FD at p. 8. One of the FRVs identified in the NPS’ Foundation Document for the Upper Delaware Scenic River is “**camping at primitive and developed commercial campgrounds,**” which, it notes, is a popular recreational activity along the river. FD at pp. 9, 33 & 69.

The simple fact is that commercially developed campgrounds exist up and down the Delaware River. Indeed, by NPS’ own admission they are a “fundamental resource and value” which makes the Delaware River special. NPS’ current contention that such development would adversely affect the character of the river is nonsense. This is particularly true given that the viewshed studies done for this project at NPS’ request, copies of which were provided to the Town, show that the project cannot be seen from the river itself.

² Even if the existing use of the camp as an RV park did not conform to the RMP, the RMP makes clear that the Town not only has the right to exempt the camp from the requirements of the RMP, it has the right to permit reasonable expansion of such an existing use. Indeed, according to the RMP:

Uses which do not meet current standards are usually identified as “non-conforming uses” and it is appropriate to not only exempt or “grandfather” them from meeting current standards but also permit reasonable expansion and replacement of such uses and in some cases, allow the conversion of one nonconforming use to another which is less non-conforming

See RMP at p. 116.

**AS SUMMARIZED BY THE APPLICANT'S ENGINEERS, NPS'
DETERMINATION IGNORES THE EXISTING CONDITION OF THE CAMP AND
THAT THE PROJECT WOULD SIGNIFICANTLY IMPROVE ENVIRONMENTAL
CONDITIONS**

The Applicant also incorporates by reference the attached comments from its Engineers, Labella and Associates, which provide additional evidence of the arbitrary and capricious nature of NPS' Determination. Specifically, in addition to verifying the issues raised above, these comments show that NPS' Determination ignores and/or distorts the existing conditions at the facility, fails to provide any scientific basis for its various conclusions and ignores the fact that the Project, as proposed, would modernize the existing facility's aging septic systems and implement a modern storm water management plan that will both improve river water quality.

CONCLUSION

One possible explanation for the NPS' total disregard for existing conditions, the environmental improvements called for by the Project, the Town's own Code, its obligations under the RMP and/or its failure to meaningfully collaborate with the Board, the UDC or the Applicant during this process is that NPS is acting in bad faith. Since the inception of the RMP local landowners have harbored serious concerns that NPS would attempt to turn this area into a national park. At the time the RMP was created, local landowners feared the NPS would accomplish this goal through the exercise of eminent domain. Eminent domain is not, however, the only way to accomplish this goal. Another way to turn the Town and those like it into national park land is to devalue private land through over-regulation and the forestalling of commercial development, effectively starving local economies. If this Project fails, the only people that Camp Kittatinny will have value to is the NPS itself or religious camp communities, whose land use is largely protected under RLUPA.

Respectfully, the decision before the Board is whether the application conforms to the Town's Code, which the NPS has already reviewed and determined to be in substantial compliance with the RMP.

Thank you for your kind attention to this matter.

Very truly yours,

Alexander Betke

Alexander Betke, Esq.



445 Hamilton Avenue, 14th Floor
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T 914 761 1300
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Kristen Motel
kmotel@cuddyfeder.com

July 13, 2023

**BY HAND DELIVERY
AND E-MAIL**

Chairman Norman Sutherland
And Members of the Planning Board
Town of Highland
Town Hall
4 Proctor Road
Eldred, NY 12732

Re: The Loosey Kit LLC
Planning Board Application # 9-2023
Cannabis Microbusiness
Premises: 3465 New York State Route 97, Highland, NY (S-B-L: 27.-9-14)

Dear Chairman Sutherland and Members of the Planning Board:

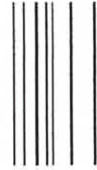
This letter and enclosed materials are submitted on behalf of our clients, Courtney Crangi and Shane Pearson, authorized members of The Loosey Kit LLC (the "Applicant"), in connection with the proposed adult-use cannabis Microbusiness (the "Project") at the captioned Premises. Since the Applicant's last appearance before this Board on April 26, 2023, the plans for the proposed Microbusiness have been amended to exclude a retail dispensary component at the Premises, as further detailed below.

New York State Cannabis Regulations

As the Board is aware, under the 2021 Marihuana Regulation and Taxation Act (the "MRTA"), New York established an adult-use cannabis market¹ with a variety of license types including cultivation, processing, distribution, delivery, retail sales and onsite consumption facilities. While the State essentially prohibited vertical integration of the market by limiting a business to either cultivating, processing or selling cannabis, it did create a Microbusiness category that can perform all of these functions on a small and very limited scale.² While the MRTA authorizes municipalities to adopt time, place and manner restrictions for retail cannabis stores, such local

¹ This market that "is expected to eventually generate \$350 million in yearly tax revenue and billions of dollars in annual sales." New York Legalizes Recreational Marijuana, Tying Move to Racial Equity, N.Y. Times, Luis Ferré-Sadurní, March 31, 2023, available at: <https://www.nytimes.com/2021/03/31/nyregion/cuomo-ny-legal-weed.html#:~:text=The%20recreational%20market%20is%20expected,and%20sale%20of%20the%20drugg>.

² MRTA § 73.



7/13/2023
Page 2

restrictions cannot be applicable to other businesses such as cultivation, processing, or distribution operations.³

The recently released third draft of the adult-use cannabis regulations (“the Draft Regulations”) set forth the size, scope, and eligibility criteria for Microbusinesses.⁴ Among other things, the Draft Regulations would require a Microbusiness to engage in cultivation and at least one additional regulated activity, including processing, distribution and/or retail sale.⁵ A retail store is not a required component of a Microbusiness. If a retail store is included in the Microbusiness, the retail premises must comply with the local zoning and operational requirements for retail dispensaries,⁶ provided that any local time, place and manner restrictions are not unreasonably impracticable.⁷ Further, the retail location for a Microbusiness may be separate from the premises where cultivating and processing occurs.⁸

The Regulations also limit the scale of a Microbusiness. The cultivation operation, for instance, is limited to 3,500 square feet of indoor canopy, with additional restrictions on mixed light or outdoor cultivation canopies.⁹

The Applicant’s Proposed Cannabis Microbusiness: The Loosey Kit

The Applicant proposes to operate a cannabis Microbusiness called The Loosey Kit on the Premises, which is classified within the Hamlet-Commercial (“H-C”) zoning district. The Loosey Kit’s operations will include the cultivation and processing of cannabis plants through a variety of agricultural practices, which is a permitted use on the Premises. Specifically, the Loosey Kit will utilize sustainable methods to grow and produce high-quality artisanal cannabis. **See Exhibit C – Executive Summary** prepared by Gridiron Consulting. It is worth noting that, in response to the feedback provided by this Board and its Consultants, the Applicant is no longer proposing a retail component on the Premises. **See Exhibit A – Revised Planning Board Application Form & Exhibit B – Revised Short Environmental Assessment Form.**

Consistent with the Applicant’s prior submissions, the Project involves the adaptive re-use of the Premises’ existing improvements, which include a two (2)-story building and attached garage, as well as a small, detached structure with canopy overhang. There are no existing residential units on the Premises and no residential uses are proposed. There are no exterior renovations proposed

³ MRTA § 131(2) & 3d Draft of the NY Adult-Use Regulations § 119.1(b) (hereinafter “Draft Regulations”).

⁴ The third revised draft adult-use cannabis Regulations were released on June 14, 2023 and are currently the subject of a 45-day comment period.

⁵ Draft Regulations § 123.11(a).

⁶ MRTA § 3(34); Draft Regulations § 123.12(a)(9)(i).

⁷ MRTA § 131; Draft Regulations § 119.2(a). It is worth noting that the retail location for a Microbusiness may be separate from the premises where cultivating and processing occurs. Draft Regulations § 123.12(a)(9).

⁸ Draft Regulations § 123.12(a)(9).

⁹ Draft Regulations § 120.3(c)(1).



GRIDIRON

ENTERPRISE MGMT.

PO Box 516
Saugerties, New York 12477

Executive Summary: The Loosey Kit

Introduction:

The Loosey Kit is a cannabis microbusiness located in Sullivan County, NY, along the Delaware River Valley, near the picturesque Catskill Mountains. We are dedicated to producing high-quality craft cannabis through sustainable cultivation practices. Our mission is to provide exceptional products and experiences for cannabis enthusiasts seeking artisanal, locally sourced cannabis.

Business Description:

The Loosey Kit operates as a microbusiness, encompassing cultivation, processing, and distribution operations. Our focus is on crafting premium cannabis strains while maintaining a commitment to environmental sustainability and community engagement. With a unique location in the Sullivan County region, we benefit from the rich soil, favorable climate, and natural beauty that the Catskills offer.

- Limited Cultivation size
- Small scale processing and distribution
- Off site retail location allowed (can be separate from cultivation parcel)

Market Opportunity:

The cannabis market in New York State has experienced significant growth following the legalization of recreational cannabis. However, there is a demand for high-quality craft cannabis products that cater to discerning consumers who appreciate unique flavors, aromas, and effects. The Loosey Kit aims to capture this niche market by focusing on small-batch cultivation and artisanal processing techniques.

Competitive Advantage:

The Loosey Kit differentiates itself from large-scale cannabis producers by emphasizing craft cultivation practices. Our small-batch approach allows us to maintain strict quality control and deliver a diverse range of strains, each with its own distinctive characteristics. Furthermore, our commitment to sustainable cultivation methods aligns with the growing consumer preference for environmentally friendly products.



PO Box 516
Saugerties, New York 12477

Operations:

Our cultivation facility encompasses indoor and outdoor growing areas, allowing us to cultivate premium cannabis strains year-round. We employ advanced cultivation techniques, including organic fertilizers, integrated pest management, and state-of-the-art climate control systems. Our dedicated team of experienced growers ensures the plants receive the utmost care and attention.

Marketing and Sales:

The Loosey Kit employs a multi-faceted marketing strategy to engage with target customers. We leverage social media platforms, online advertising, and partnerships with local businesses to raise awareness about our brand and products. Additionally, we offer an immersive experience, showcasing our strains and providing educational resources for customers to make informed choices.

Financial Projections:

Based on market research and projected sales volumes, we anticipate a strong financial performance for The Loosey Kit. Our revenue streams include sales of cannabis flower, pre-rolls, extracts, and branded merchandise. With careful financial planning and cost control measures, we project steady growth and profitability over the next five years.

Conclusion:

The Loosey Kit is poised to become a leading provider of Micro craft cannabis in the Sullivan County region, catering to consumers seeking premium, locally sourced products. Our commitment to sustainable cultivation, combined with our focus on artisanal techniques and exceptional customer experiences, positions us favorably in the emerging cannabis market. We are excited to embark on this journey and contribute to the growth and development of the cannabis industry in New York State.

MEMORANDUM

TO: Michael Davidoff, Esq., Drew, Davidoff & Edwards – Attorney to the Town of Highland
Julie Brennan, Legal Assistant, Drew, Davidoff & Edwards
Norm Sutherland, Planning Board Chair and Planning Board

CC: Jeffery Haas – Supervisor, Town of Highland
Monica McGil, Planning Board Secretary
Nicole Allen, AICP – Director of Planning & Community Development, Laberge Group

FROM: Susan Roth – Senior Planner, Laberge Group

DATE: July 24, 2023

RE: **Town of Highland Planning Board Application of Shane Pearson & Courtney Crangi
App # 9-2023**

As requested, please find additional information regarding the Special Use Review for the Loosey Kit LLC Cannabis in the Town of Highland. This information is in addition to the Laberge Group memo dated April 21, 2023 and June 27, 2023.

Applicant: Shane Pearson & Courtney Crangi
Address: 3465 State Route 97, Barryville, NY 12719
SBL: 27.-9-14
Zoning: Hamlet-Commercial
Request: Site Plan approval for Cannabis Microbusiness.

Application Discussion:

The applicant seeks a Special Use Permit Review for the conversion of a mixed-use property into a Cannabis Microbusiness.

Assessment of Request:

The NYS Marihuana Regulation and Taxation Act (MRTA) does enable a variety of license types including cultivation, processing, distribution, delivery, retail sales and onsite consumption facilities. However, NYS enabled local municipalities to set forth size, scope and eligibility criteria within its local regulations. The Town of Highland does restrict the retail component of an Adult-Use Cannabis Business. Final adoptions of the State Regulations have not occurred; however it appears that the most recent revisions being considered by New York State would not allow the production of cannabis to be subject to a special use permit, or other excessive regulations.

“Cannabis Microbusiness” is not specifically listed in Chapter 190 Schedule 2: Schedule of Use Regulations. In accordance with §190-12(B) – “Any use not listed specifically within the District Schedule of Use Regulations shall be considered a prohibited use in all districts under this chapter. Where permitted or special uses are identified by generic words or descriptions, the Planning Board shall determine whether a specific use shall be construed to be part of such generic class. In making such determination, the Planning Board shall consider to what extent the proposed uses are similar to the class of use indicated in the District

Schedule of Use Regulations. If a use is specifically listed elsewhere in the District Schedule of Use Regulations, it is excluded from a generic classification.” Therefore, the generic classification of a Cannabis Microbusiness would be agricultural use in nature, since plants would be grown, cultivated, and harvested for the intention of selling cannabis products.

The Town of Highland Zoning Law regulates a retail store for the sale of cannabis, called an “adult-use cannabis retail dispensary” as defined by the Town of Highland Zoning Law. The applicant has indicated that the retail portion of the business has been eliminated, and the applicant intends to grow, cultivate, and distribute cannabis at this property inside the buildings on site, and would be limited by the State Law in terms of allowable production of product in a single year. If no retail is provided, the Zoning Law provisions would not apply, and the use would be classified as an agricultural use.

Laws for a “Cannabis Microbusiness” have not been finalized at this date, and the draft that has been approved is still under review by the Public. The third revised draft adult-use cannabis Regulations were released on June 14, 2023 and are currently the subject of a 45-day comment period according to the memo prepared by Cuddy and Feder.

A “Cannabis Microbusiness” is currently proposed to be defined by New York State as “a licensee that may act as a cannabis producer for the cultivation of cannabis, a cannabis processor, and a cannabis distributor and a cannabis retailer under this article; provided such licensee complies with all requirements imposed by this article on licensed producers, processors, and distributors and retailers to the current extent the licensee engages in such activities.” (The reference to “this article” in the sentence above refers to the applicable State law).

Furthermore, “distribution” is defined by New York State in two ways: the first is a wholesale distribution transaction to another State licensed retail shop, or licensed wholesale distributor. The Microbusiness, separate retail shop and distributor cannot be financially connected. However, “distribution” under a microbusiness can mean direct delivery to clients of the microbusiness under a separate delivery permit.

Conclusion

Under current provisions of the draft NYS law, the purpose of the microbusiness is to allow small scale production of cannabis and products, with the option of selling to distributors, clients, or another licensed retail use. Products produced and sold are required to be inventoried and recorded. Other distributors and retail stores are prohibited from have any financial interest in the microbusiness. In addition, a microbusiness cannot allow consumption of its products on the premises. However, it does allow a microbusiness to sell wholesale to other licensed retail dispensaries with appropriate licenses, and obtain a delivery license to deliver products to individual clients, with the scope and applicability of the individual delivery licenses are proposed to be determined by the regulatory board. Delivery licenses are envisioned to serve a small number of local customers.

According to the Town of Highland Zoning Law, the following Town regulations would apply to a “Cannabis Microbusiness” in the Town of Highland:

1. The production of cannabis as part of a “Cannabis Microbusiness” would be permitted as an agricultural use under the Town of Highland Zoning Code.
2. The proposed project location for an Adult-Use Cannabis Business (Microbusiness) with a Retail Dispensary is directly adjacent to a single-family residential property and an apartment complex. Based on a complete review of the Town of Highland Chapter 190-74 “Adult-Use Cannabis Retail Dispensary”, the proposed site for this proposed use is in violation of the 100-foot residential separation requirement. Therefore, the proposed use for retail at this location is not permitted.
3. While not currently defined by Highland, the proposed project location for “growing, preparation of finished products and distribution” would be limited to draft NYS requirements as follows:
 - a. The size of the business would be limited to 3,500 square feet of canopy for indoor use.

- b. The applicant cannot sell anything that is not made from the cannabis that he/she grows.
- c. The applicant can sell to licensed wholesale distribution businesses, but the distribution business cannot be financially connected in any way to the microbusiness.
- d. Although delivery permits are permitted to microbusiness holders to deliver to individuals at a retail cost, the microbusiness has to apply for the delivery permit separately. However, the proposed site is not permitted to be used for retail sale and may not be used as a pick-up location for retail sale at the site.
- e. The microbusiness is required to keep a record of all sales in accordance with State Law.

The Town should request copies of the licenses for the microbusiness to be on file at the Town Hall, to ensure compliance with the state laws regulating the microbusiness.

FUSCO

ENGINEERING &
LAND SURVEYING, D.P.C.



233 East Main Street
Middletown, NY 10940

Phone: (845)344-5863
Fax: (845)956-5865

Consulting Engineers

Alfred A. Fusco, Jr.
P.E. Principal

Alfred A. Fusco, III
General Manager

July 24, 2023

Norman Sutherland, Chairman
Planning Board
Town of Highland
4 Proctor Road
Eldred, New York 12732

Re: **River Holding**
Town of Highland
SBL 28-5-6
Our file # HL-006

Dear Chairman Sutherland,

We have reviewed the material submitted and offer the following:

Project: River Holding Gas Station, Cidery Testing Room, Branch Office with Travel Shop
SBL: 28-5-6
Acreage: 0.36 Acres and NYSDOT Lease 0.139 Acres
Material Reviewed: Application, SEAF, Plan by Packer Associates dated 7/12/23

Comments:

1. Provide SHPO sign off.
2. Provide engineer's statement regarding impact on wetland consistent with NYSDEC requirements..
3. Provide engineer's statement regarding endangered species consistent with NYSDEC requirements.
4. Engineer's certification that septic system supports the proposed 42 person occupancy.
5. Building to have sanitary facilities for the 42 patrons and help.
6. Certified test for water bacteria and coliform only.
7. NYSDOH to be approached if a public water supply permit is required, based on occupancy. Need a letter from them.
8. Plan to have bulk table for the zoning (H-C) required and provided only.
9. Provide for that cidery has a permit previously stated.
10. Provide NYS Liquor Authority permit if liquor is to be served other than cider.
11. Stamp by licensed professional for plan and stamp the survey by a licensed surveyor.

233 East Main Street
Middletown, NY 10940
(845)344-5863



12. Board comments.

Possible Action: SEQRA Intent to be Lead Agency.

Please contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alfred A. Fusco, Jr.", written in a cursive style.

Alfred A. Fusco, Jr., P.E.
FUSCO ENGINEERING &
LAND SURVEYING, D.P.C.

Cc: Mike Davidson, Esq.
Planning Board Members
BJ Gettel
Todd Maurizzio
Alfred A. Fusco, Jr., P.E.
Applicant – River Holding