

Application # 33-2023 Katherine Mango Short Term Rental Public Hearing

Motion to open the public hearing on Application #33-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Secretary reads the public notice posted in the local newspapers.

There were (13) letters mailed to the surrounding neighbors and (10) returned.

Correspondence: None

No public Comment

Motion to close the public hearing on application #33-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

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

Motion: Tim McKenna 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: Tim McKenna Second: Jeff Spitz All in favor

The American Legion is back logged on issuing 911 #'s and as per BJ Gettel Ms. Mango's is on back order.

Motion to approve Application #33-2023 with the following condition:

- Ms. Mango must have her 911 # posted within two months, or operating permit will be revoked.

Motion: Jeff Spitz Second: JT Vogt All in favor

Application # 34-2023 Tom Kim & Jane Lee Short Term Rental Public Hearing

Motion to open the public hearing on Application #34-2023:

Motion: Tim McKenna Second: JT Vogt All in favor

Secretary reads the public notice posted in the local newspapers.

There were (5) letters mailed to the surrounding neighbors and (5) returned.

Correspondence: None

No public Comment

Motion to close the public hearing on application #34-2023:

Motion: JT Vogt Second: Jeff Spitz All in favor

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

Motion: Tim McKenna 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: Steve Bott Second: Tim McKenna All in favor

Motion to approve Application #34-2023 with the following condition:

- The proper insurance papers will need to be provided with in two weeks in order to obtain an operating permit.

Motion: Jeff Spitz Second: Tim McKenna All in favor

Application #26-2023 Alex Wise Special Use Permit Recessed Public Hearing

Motion to open the public hearing on Application #26-2023:

Motion: JT Vogt Second: Tim McKenna All in favor

Tammy Hunsberger was in attendance for Mr. Wise.

Public Comment: Nancy Gilmour states again that she has concerns of the process in regards to the Home Owners Assoc.

Board Comment: The board does not have to follow the HOA guidelines; they make their decision on the zoning laws. The applicant must take care of the HOA approval permit.

Mr. Wise needed to submit new plans to show that he will place the garage following the town setbacks, he has done so tonight.

Motion to close the public hearing on application #26-2023:

Motion: JT Vogt Second: Tim McKenna 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: Tim McKenna Second: JT Vogt All in favor

Motion to approve application #26-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

The secretary will prepare the resolution for application #26-2023.

Application #35-2023 Nina Disi Short Term Rental Residential Application:

Ms. Disi owns a home at 57 Washington Lake Rd. that is 3 bedrooms that allows for six adults. The property allows 1-3 cars for parking. Ms. Disi has supplied all documents needed with the exception of her insurance policy that she will email to the secretary. The board inquired if her property was part of an HOA, to which Ms. Disi replied that she was unsure and look into it.

Motion to schedule a public hearing on application #35-2023 to be held on October 25, 2023 at 6PM:

Motion: Jeff Spitz Second: Tim Mckenna All in favor

Application #36-2023 Micah Burgess Short Term Rental Residential Application:

Mr. Burgess owns a home at 120 Eldred Yulan Road. The home is two bedrooms and one bath.

Mr. Burgess has requested from the board that they schedule his public hearing for November because he is not available in October.

Motion to schedule a public hearing on application #36-2023 to be held on November 29, 2023 at 6PM:

Motion: JT Vogt 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 (alternate) | Present |
| Board Secretary | Monica McGill | Present |
| Town Attorney | Michael Davidoff | Present |
| Code Enforcement | BJ Gettel | Present |

Motion to approve the August 23, 2023 meeting minutes:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Chairman Norm Sutherland wants to thank Scott Reed for his dedicated service to the Planning Board. Mr. Reed is now a full-time resident in Florida and has handed in his resignation.

Laura Burrell has also completed the Water Infrastructure Grant Readiness Workshop.

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

To date the application has been sent to the UDC and the County 239M for review. Both the UDC and County 239M have responded. (Please see attached)

Chairman Norm Sutherland reads the UDC report and the 239M report. The UDC sent the application to the NPS for review on September 8th, 2023. The NPS now has 45 days to review the application and submit a response.

Chairman Norm Sutherland reads the DOT report (Please see attached).

Chairman Norm Sutherland reads the conclusion paragraph from The LaBerge Group. (Please see attached)

The board will make no decision on this application until they receive the report from the NPS.

Shane Pearson will consult with their legal counsel, and asked the board if there was any way the board can supply documentation that states the application is in front of them, so they can submit to the state as to obtain or at least get their name on the list for licensing.

At this time the board cannot give such documentation.

The application will be put on the October 25, 2023 Agenda for continued review.

Application #5-2022 Camp Fimfo-Catskill Site Plan Review

Attending for Camp Fimfo are:

Daniel Rubin & Alex Bedke (applicants attorneys)

Rocco Baldasari (Manager)

Scott Campbell (General Manager)

Caren Labruzzo (Engineer)

Also in attendance was Hayden Carnell of Keystone Assoc. Engineer for the town.

Attachments to these minutes are:

Email from the DEC

Shepstone Management Company Inc. (Sent to Laurie Ramie Executive Director of the UDC.

Norm Sutherland reads the Shepstone report.

This has been one of the longest applications presented to the planning board.

The application was sent to the UDC, County 239M, DEC, DOT and the NPS. The NPS took over 200 days to respond.

Mr. Daniel Rubin states that the Shepstone Management Report outlined all that they have submitted. He also wanted the board to know that this past summer welcomed over 20,000 campers and 40,000 river guests.

Norm Sutherland asks each board member for their opinion in regards to part (3) of SEQR:

- Tim McKenna - feels that there has been ample information submitted
- Jeff Spitz - plenty of information provided from all parties involved and the board can move forward.
- JT Vogt - the applicant has done everything asked of them, and I have taken a hard look at all reports and feel we can move forward.

- Steve Bott - There have been ample studies presented and we should move forward.
- Norm Sutherland - This project began in February 2022 and I believe it has been the longest application in the county. I would like to have a full environmental study done.

Michael Davidoff reads a sample of a resolution that the board can take into consideration.

The board votes on having a full environmental study done for application #2-2022:

| | |
|-----------------|-----|
| Steve Bott | No |
| JT Vogt | No |
| Jeff Spitz | Yes |
| Tim McKenna | Yes |
| Norm Sutherland | Yes |

Keystone Associates (Engineer for the Town of Highland) will do a full environmental study for the board.

Application #2-2022 will be added to the October 25, 2023 agenda.

Motion to close the meeting:

Motion: Jeff Spitz Second: Tim McKenna Meeting adjourned

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: September 19, 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, June 27, 2023 and July 24, 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. However, this use also requires State Approval of the use under the proposed Marihuana Regulation and Taxation Act (MRTA) law, which has been contested by other parties, causing the State approval process to stall temporarily We will expand on this point more fully below.

Assessment of Request:

The Town has two requests for information:

1. At this date, is there a way to opt-out of allowing cannabis retail dispensaries within the municipality?
2. The Town would like to know how the new proposed MRTA law affect the Town's current regulations, especially in reference to proposed Microbusiness uses.

Laberge Group Response

For Question 1:

According to New York State Law, once a municipality agrees to participate in this process, the municipality is not permitted to opt-out. Per the Official Opt-Out list, last updated 7/10/2023, the Town opted out of on-site consumption, but not retail dispensaries.

For Question 2:

This summarizes the current and proposed MRTA law, and discusses a possible next step in the process.

Current Proposed State Standards for Local Regulation, as compared with the Current Town Zoning Code.

Under the yet to be adopted proposed regulations, New York State will continue to limit ways that municipalities can regulate adult use retail dispensaries and cannabis growing/cultivation. Under its web page 'Local Control & Preemption' (), the NYS Office of Cannabis Control notes that:

"Municipalities are preempted from adopting any law, rule, ordinance, regulation, or prohibition pertaining to the operation or licensure of adult-use, medical or cannabinoid hemp licenses. However, towns, cities and villages are permitted to pass local laws and regulations governing the time, place and manner of adult-use retail dispensaries provided the local law and regulations do not make the operation of the license unreasonably impracticable as determined by the Cannabis Control Board. For example, towns are permitted to pass laws and regulations pertaining to local zoning and the location of licensees, hours of operations, and adherence to local building codes."

New proposed regulations will also include "Microbusinesses," defined as small operations that are grow cannabis and process products under certain limiting conditions (such as scale and ownership), and intended to be mostly operated as a small business. Therefore, we believe it could be feasibly be regulated as any other business within the Town's hamlet zone, subject to certain conditions, but would also be subject to new regulations under the revised MRTA act.

The Laberge Group reviewed the State's "Proposed & Revised Rulemaking and Regulatory History" regarding cannabis found on the following webpage: (

. Our research indicated that the proposed law was subject to a comment period for 60 days from the date of publication in the State Register, prior to consideration for final adoption. This public comment period ended on July 31, 2023. However, prior to its formal adoption into law, a lawsuit filed by military veterans, claiming that the new law unfairly gave preference to people who were previously convicted of crimes related to marijuana prior to its legalization. The applicants were granted a preliminary injunction, restricting new licenses from being issued while this case is settled.³

The Laberge Group recently emailed the Office of Cannabis Management (OCM) to confirm the 344-page revised Adult-Use Cannabis Regulations are not yet in effect and to ascertain when these rules may be complete. The OCM confirmed the regulations are still not effective, and could not give a target date for adoption because of the pending litigation.

¹ Accessed on September 1, 2023

² Accessed on September 1, 2023

³

A review of the Draft Revised Adult-Use Cannabis Regulations confirms that per proposed §119.2 'Authorizations for Municipality Rulemaking', item (a) paraphrased: *Municipalities are authorized to adopt local laws and regulations governing the time, place, and manner; provided however, that such local laws and regulations shall not be unreasonably impracticable.* The text of the law also identifies the permissible time, place, and manner restrictions that may be imposed by a municipality regarding any portion of a cannabis retail business.

Proposed State Microbusiness Regulations

The proposed MRTA defines "Microbusiness" to mean a business whose operator is licensed to grow, process, distribute and sell either as a distributor or retailer; provided such licensee complies with all requirements imposed by the law, which includes a limit on the size of the business. As currently proposed, a microbusiness would be limited to 3500 s.f. canopy of indoor production. Per the proposed State regulations, §123.11 "Microbusiness Ownership, Interests, Business Authorizations and Prohibitions", the licensee has to be involved in the business, since it is intended to be for sole proprietors. In addition, our research indicated that the business could apply for delivery permits and sell to retail customers listed on the permit.

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 retail delivery permit. Under this permit, clients would be unable to pick up products at their site.

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. 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. However, according to 119.1 of the proposed law, a "Microbusiness" may be subject to the same restrictions in the MTRA as a retail business. This section states:

119.1. Preemption and Prohibitions on Municipality Rulemaking.

(a) No municipality may adopt a local law which would allow an adult-use retail dispensary, microbusiness, ROD [Retail Only Dispensary] or on-side consumption license to be:

- (1) on the same road and within 200 feet of the entrance of a building occupied exclusively as a house of worship;*
- (2) on the same road and within 200 feet of the entrance of a building occupied exclusively as a school, or*
- (3) on the same road and within 500 feet of a structure or its grounds occupied exclusively as a public youth facility, if the municipality has enacted a local law pursuant to section 119.2 of this Part.*

In Section 119.1 (b) that prohibits a municipality from adopting special regulations for Odor Control that only applied to the proposed cannabis business. The law would have to be written to include other Odor causing businesses, such as a one that allows "*smoking or vaping of tobacco products.*" Currently the Town of Highland's code covers odors and noise under the general provisions of the site plan regulations.

Because of the timing of the regulations adopted by the Town and the revised MRTA, “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.

The Town Zoning code also states in Section 190-12. B. that:

“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 is 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 could be determined by the Planning Board to be an agricultural use in nature, since plants would be grown, cultivated, and harvested for the intention of selling cannabis products.

Conclusions & Recommendations

At this point, final regulations from OCM are not released and the timeframe for publishing is uncertain, with challenges underway in State courts that are not yet even at the Court of Appeals. In addition, a state Court-initiated stay on granting new conditional adult-use recreational dispensary licenses, or processing most existing ones while a legal challenge plays out. Therefore, it is reasonable to consider establishing a moratorium on permitting cannabis business uses (production or retail at any scale) within the Town until such time as officials can review and assimilate new State Regulations into the code.

Since it will take time to review final published regulations, it could be prudent to set a moratorium timeframe of six or eight months. This could generate sufficient time to review of cannabis determinations, drafting new local standards, and conduct a local legislative process of adoption of the revised zoning law, including SERQA review. Crafting of moratorium legislation could be provided by the Laberge Group, based on guidance from the Board and Attorney on how it wants to proceed.



Upper Delaware Council

P.O. Box 192, 211 Bridge Street, Narrowsburg, New York 12764-0192 • (Tel.) 845-252-3022 • (Fax) 845-252-3359
www.upperdelawarecouncil.org

September 8, 2023

Lindsey Kurnath, Superintendent
Upper Delaware Scenic and Recreational River
National Park Service
274 River Road
Beach Lake, PA 18405
(sent via email)

RE: UDC2023-10 / The Loosey Kit LLC. Town of Highland

Dear Superintendent Kurnath:

On August 1, 2023, materials regarding a site plan review for The Loosey Kit LLC were submitted to the Upper Delaware Council (UDC) for substantial conformance review.

The UDC's Project Review Committee met on August 22, 2023 and I prepared a report for their review (enclosed). The Committee found that the proposed Class II Site Plan Review substantially adhered to the principles and objectives of the Land and Water Use Guidelines and voted for an initial recommendation of **substantial conformance** to be made by the full Council.

On September 7, 2023 the full Council met and reviewed the Project Review Committee's recommendation. A motion was made and carried to approve the substantial conformance recommendation to the National Park Service. (Please note that at the time of my review, the Town of Highland had indicated to me that the application before the Planning Board was for a site plan review and special use permit, and my report reflects that; however at the August 23, 2023 Town of Highland Planning Board meeting, it was clarified that the application was for a site plan review only. I do not feel that this would change the substance of my review, and the full UDC council was made aware of this fact before their vote.)

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

Kerry Engelhardt, P.E.
Resources and Land Use Specialist

cc: Larry Richardson, Project Review Committee Chairperson
Andy Boyar, Town of Highland UDC Rep
Monica McGill, Town of Highland Planning Board Secretary
enc: The Loosey Kit LLC -Site Plan Review: Substantial Conformance Review dated August 22, 2023

Working together to conserve the Upper Delaware Scenic and Recreational River

*Town of Hancock • Town of Fremont • Town of Delaware • Town of Cohecton • Town of Tusten • Town of Highland • Town of Lumberland
Town of Deerpark • Damascus Township • Berlin Township • Lackawaxen Township • Shohola Township • Westfall Township
State of New York • Commonwealth of Pennsylvania • Delaware River Basin Commission • In partnership with the National Park Service*

HEATHER BROWN
COMMISSIONER



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WEBSITE: WWW.SULLIVANNY.US

SULLIVAN COUNTY
DIVISION OF PLANNING, COMMUNITY DEVELOPMENT & ENVIRONMENTAL MANAGEMENT
SULLIVAN COUNTY GOVERNMENT CENTER
100 NORTH STREET, PO BOX 5012
MONTICELLO, NY 12701

September 25, 2023

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

RE: **HIG23-03: The Loosey Kit LLC (SBL: 27.-9-14)**
GML-239 County Review

Dear Mr. Sutherland,

The following review has been conducted in accordance with GML §239-l, -m & -n.:

- I. **Project description:** Microbusiness involving cultivation, processing and distribution of cannabis.
- II. **Applicant:** Courtney Crangi
- III. **Geographic qualification:** State Road 97 & County Road, River Rd.
- IV. **Agency referrals:** SC DPW: No Comments; NYS DOT: Comments Attached
- V. **Anticipated Municipal and/or Countywide impacts:** None
- VI. **Recommendation:** LOCAL DETERMINATION
- VII. **Technical Comments:** Odor control measures for the cultivation & processing operations are not specifically mentioned. Applicant does state that operations will have no noticeable impact on the surrounding neighborhood, but the Town should ensure that appropriate odor control measures are in place.

Sincerely,

Heather Brown
Commissioner
HEB/cg/jr

cc: Nadia Rajs, Legislator
attachment: 1. Report of Final Local Action

Please be advised that the Board is required by Sections 239-l,m and n of the General Municipal Law to provide a report of its final action within thirty days of such action to the Sullivan County Division of Planning, Community Development & Environmental Management with regard to this application. To facilitate this process, a form to report such action is enclosed.



Department of
Transportation

KATHY HOCHUL
Governor

MARIE THERESE DOMINGUEZ
Commissioner

JAMES P. RUSAK, P.E.
Regional Director

September 12, 2023

Ms. Cheryl Grande, Confidential Secretary
Sullivan County Division of Planning, Community Development & Environmental
Management
100 North Street
P.O. Box 5012
Monticello, New York 12701

Dear Ms. Grande:

RE: **SPECIAL USE PERMIT REVIEW – THE LOOSEY KIT LLC
3465 NYS ROUTE 97,
TOWN OF HIGHLAND, SULLIVAN COUNTY
NYSDOT CASE #23-147**

NYSDOT has reviewed the materials for the above-referenced proposal. Please note the following comments:

- Nothing may be placed within the State right-of-way, including signage, production facilities, or parking. Additionally, deliveries to or from the site may not be conducted within the State right-of-way.
- If any work is to be conducted within the State right-of-way, including for upgrades to the site's access to NYS Route 97, the applicant will require a Highway Work Permit from NYSDOT prior to the commencement of this work.

If you have any questions, or need further assistance, please contact the NYSDOT Sullivan Residency at 845-794-7450.

Sincerely,
**Original signed by
Sean Murphy for**

Tony Signorelli, P.E.
Regional Traffic Engineer

Planning Board and Zoning

From: Benedetto, Frank J (DEC) <Frank.Benedetto@dec.ny.gov>
Sent: Wednesday, September 20, 2023 2:04 PM
To: Scott Campbell
Cc: LoBrutto, Caren; Allen, Jody; Planning Board and Zoning; Petronella, John W (DEC); david.kovach@drbc.gov; Crist, Rebecca S (DEC)
Subject: 3-4834-00154/00003 (P3G) NOIA

Sun NG Kittatinny RV LLC,

The Department of Environmental Conservation (DEC or Department) has received the application for Camp FIMFO project, DEC ID# 3-4834-00154/00003 (P3G).

The application is incomplete. Technical review has been completed and a Draft SPDES Permit has been prepared by DEC. However, the application cannot be deemed complete until we receive a Negative Declaration issued by the Lead Agency or a Draft Environmental Impact Statement (DEIS) accepted by the Lead Agency for public review.

The application will remain incomplete until this requested information is received. Upon receiving the requested material, the application will be deemed complete and the required minimum 30-day public comment period will begin.

Thank you,

Frank J. Benedetto

Environmental Analyst 1, Division of Environmental Permits

New York State Department of Environmental Conservation
21 S. Putt Corners Rd, New Paltz, NY 12561
(845) 256-0208 frank.benedetto@dec.ny.gov

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www.shepstone.net

Thomas J. Shepstone

September 18, 2023

Laurie Ramie, Executive Director
Upper Delaware Council, Inc.
P.O. Box 192, 211 Bridge St.
Narrowsburg, NY 12764

Re: UDC2022-03 / Camp FIMFO Special Use Permit, Town of Highland

Dear Laurie,

You have requested my analysis, as a planning and zoning consultant, of two substantial conformance reviews of the above referenced project. I do so as one of the original authors of the "River Management Plan" and the principal author of the "Land and Water Use Guidelines" contained therein. I have examined the Upper Delaware Council's review, the National Park Service's review, the NPS summary letter and Aaron Robinson's analysis of relevant statutory provisions pertaining to the FIMFO project. I have concluded the UDC was correct in determining the project does substantially conform to the RMP and the Guidelines, although it must be acknowledged the two major reviews largely agreed on the bulk of particulars.

Before explaining my reasons, though, I must disclose I have previously consulted with both Northgate, the current owner of the facility, as well as the previous owner. I have no relationships with either party for over two years. And, the work I did for both had to do with the prospective sale and the subsequent obtaining of some grant funding. I did no project planning. I have, too, previously done work for the Town of Highland, but none recently.

There are, to start, some background factors that play into my conclusion.

One of these is the fact the Town is obligated to follow the requirements of the New York State Town Law and case law as to the content and application of its zoning regulations. It cannot implement the Guidelines without also meeting the demands of state law. Among these is the general rule of statutory construction which is articulated in multiple cases as follows (emphasis added):

Since zoning regulations are in derogation of the common law, they must be strictly construed against the municipality which has enacted and seeks to enforce them. (Thomson Ind. v Incorporated Vil. of Port Washington North, 27 N.Y.2d 537, 539; Matter of 440 East 102nd St. Corp. v Murdock, 285 N.Y. 298, 304.) Any ambiguity in the language used in such regulations must be resolved in favor of the property owner.

This means the Town of Highland doesn't have the luxury of interpreting undefined terms or vague provisions in its own favor or that of the NPS, especially when the very title of the rules is "Guidelines."

Highland is also constrained by the definitions it does have, which is precisely why zoning laws and ordinances themselves are subject to substantial conformance review. Those reviews constitute the very foundation for project reviews, in fact, and the alternatives specified in the Guidelines are options for municipalities in the way of regulation, rather than options for projects. Highland's zoning law, for example, includes the following terms:

CAMPGROUND

A tract of land providing 10 or more sites for temporary dwelling in recreational vehicles (RVs), travel trailers, or by the erection of a tent or other portable sleeping accommodations.

DWELLINGS, TEMPORARY

A dwelling unit or units, which may include a recreational vehicle, tent, or the like, in which individuals inhabit for seasonal or recreational purposes, and for 180 days or less within a year.

RECREATIONAL VEHICLE

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.

Likewise, the definitions found in the Guidelines must be understood in the context of land uses that were common at the time of their drafting. Specifically, the definition of "Recreational Vehicle Parks Intended for Non-Transient Use," reads as follows:

Recreational Vehicle Parks Intended for Non-transient Use – A site or facility operated in the manner of a campground, where the individual lots, tracts, parcels or other divisions of land are permanently conveyed, leased on a long-term basis or the recreational vehicles are otherwise permitted to remain permanently or semi-permanently affixed to an individual site for extensive periods of time whether used or not.

This definition is integral to the NPS review of the FIMFO application in the Town of Highland. The NPS review, in fact, disagrees with the UDC in significant part in only three areas and, in all three instances, it relies upon an expansive and, therefore, faulty interpretation of this definition.

The definition is one of several similar variations I personally developed for several communities in the region. They were drafted for the purpose of addressing projects such as Lake Adventure and Trails End, in Dingman and Shohola Townships, respectively, in Pike County, Pennsylvania. These are communities where the campsites were sold as lots and what were proposed as campsites have often evolved into permanent residences of families, with RVs effectively serving

as unremovable mobile homes, being made so via physically constructed additions and complemented by accessory buildings and the like. The phrase “non-transient” is designed to distinguish such communities from transient campgrounds where users come and go as frequently as daily.

Given the above background, these are the reasons why I believe the NPS, although it clearly attempted to be reasonable in its review, erred:

1. A recreational vehicle is still a vehicle, a fact essentially acknowledged by the NPS and also documented in Aaron Robinson’s research. It only becomes something else when it is “affixed” to a site via something that prevents it from being moved. There is no definition of affixed in the Guidelines or the Highland’s zoning law. Therefore, ordinary language applies and the common meaning of “affixed” is something firmly and physically attached. The NPS explanation as to why it believes the RVs are affixed comes down to a connection to the water and sewer system. Those are not permanent connections, though, in the case of FIMFO. The units will remain removable and the situation is akin to a vehicle being filled with gasoline (or receiving a battery recharge). The vehicle and the gas pumps are connected, but not permanently, which is the entire point of the transient/non-transient distinction.
2. There are no lots involved with the FIMFO application, and there is no permanent housing being constructed, which the NPS itself acknowledges on page 9 by noting occupancy is limited to 180 days. Therefore, there is absolutely no basis for the NPS conclusion that Principle F, Objective 1a is not met. There is, as a matter of information, no actual breakdown of Objective 1 into “1a” and “1b” under the Guidelines and 1b is arguably non-applicable. This is due to the fact the proposed use qualifies as a campground as defined in Highland’s zoning law and under the Guidelines. The use also includes its own set of minimum standards that the FIMFO project matches.

It is also worth noting other alternatives can be offered by the Town or, in this case, the applicant, and the NPS review fails to list them. These include clustering being effectively being used in this instance and a combination of minimum lot sizes. Interestingly, Highland sets a minimum of three acres in the R-2 District and one-acre in the H-C, averaging out to a two-acre minimum lot size in the river corridor area that the FIMFO project exceeds in equivalent dwelling terms (see below).

They could also involve reasonable mitigation with landscaping and the like to reduce any negative impacts on the existing character of the area. Significantly, the existing character is one of camping and recreation. The NPS position, in other words, is simply not sustainable as the FIMFO project clusters activity and achieves a suitable equivalent density.

3. The NPS offers no density calculation to support its contention that Principle F, Objective 1b is met, but the UDC does provide one. It explains the average density is substantially below the 8 units per acre suggested as the appropriate town density standard for campgrounds and RV parks under the Guidelines. Even converting the estimated sewage flows to equivalent dwelling units ([29,080 gpd divided by 330 gpd per 3 bedroom home under NYS-DEC Design Standards](#)) yields 88 homes or one dwelling unit per 2.53 acres, which is well below the density of one unit per two acres suggested as a town standard by the Guidelines. Once again, there is no basis whatsoever for the NPS determination that this Objective is not met.

Moreover, the NPS letter fails to explain that the measures listed to meet the Objective are simply alternatives and measure B is clearly met.

4. Principle F, Objective 2 is to “Reinforce existing patterns of land use and private ownership by providing for similar allowed uses” and the alternatives for towns to do so are the same as those for Objective 1. The FIMFO project employs certain of those alternatives and meets the standards suggested, as described above. There is, yet again, no factual basis for a conclusion that Objective 2 is not met. Indeed, the FIMFO project does exactly what the Guidelines suggest in providing for similar uses. The property was a campground and remains a campground with certain amenities. And, the project is not just a similar use, but largely the same use, only improved.

The NPS utilizes language from Principle C, Objective 1 relating to Scenic Segments to justify its Principle F, Objective 2 conclusion regarding the FIMFO project in Hamlet and Recreational Segments. The quoted provision suggests RV parks are more intensive than tent camping, but this is not relevant as Intensive Use Recreational Facilities, which include recreational vehicle campgrounds, are suggested as permitted special uses under the Guidelines. Citing the language from another Principle where the intent is to protect Scenic segments not only fails to make a case against substantial conformance but, in reality, illustrates why RV parks *should* be located in Recreational segments and Hamlets; because they are inappropriate in Scenic segments. That is the entire focus of Principle C, in fact.

The NPS review regarding Principle F, Objective 2 also relies upon two other faulty assumptions. One is the declaration that park model recreational vehicles constitute “permanent structures” despite the fact they are treated as vehicles in every other ordinary context and the NPS itself acknowledges the vehicles can be moved. Presumably, they’ll all be replaced at some point, for instance, like all other types of equipment. They are not permanent structures and the point of all this, anyway, is to prevent permanent occupancy of such vehicles as the domiciles of households who might wish to make them their residences.

The other incorrect assumption also refers back to Principle C and, specifically Objective 2b, which states as follows:

Independent onsite sewage disposal or water supply systems should not be permitted for individual recreational vehicle campsites.

This language is clearly intended to prevent the establishment of independent septic systems and individual water wells on individual campsites or lots such that occupants could live year-round in a RV and make it their residence. A dependence on community septic systems or wells that are controlled by the operator of a campground would not permit this because the operator could shut down the system at any time. The FIMFO proposal is to maintain such control, giving it the ability to ensure no permanent occupancy as residences. That’s the whole idea.

The NPS apparently assumes connecting to such central/community systems is what is prohibited when, in fact, it is precisely the opposite; they must be connected so the whole operation can be shut down during winter months and no one can live there. The NPS comment about “connecting independent sewer and water lines” makes no sense and reflects

what seems to be a misunderstanding of both purposes and operations in this case.

The NPS also, in its final paragraph regarding Principle F, Objective 2, speculates about various negative effects from upgrading an existing campground operation. Such speculation cannot be the basis of project specific substantial conformance reviews because towns must observe statutory construction rules protecting landowner rights under common law.

5. Following its review of the project against Principle F, the NPS goes back to Principle C and, in the case of Objective 2a, repeats the same errors describe above; (1) misunderstanding the difference between permanent occupancy as residences and permanent structures, and (2) confusing independent sewer and water systems with connections to community/central systems that are controlled by the operator to ensure no permanent occupancy. Connection lines, in other words, mean dependent, not independent.

The NPS also states, with respect to this Objective, that "all criteria must be met." While it is true the measures listed are not presented as alternatives, the Guidelines describe them as "appropriate general guidelines," not as musts. Moreover, there is a referral to "additional optional measures" in Appendix 1. Therein, one finds suggestions that campgrounds be located on at least collector status highways and that parking be created for each campsite, for instance, yet the NPS ignores these and, instead, suggests parking spaces are part of the problem, not the solution.

6. The NPS, in this case, although it clearly attempted to be helpful to the Town of Highland in suggesting some mitigation possibilities, went too far in speculating as to harms and treating the Guidelines as rules rather than guides. The Guidelines definition of substantial conformance refers to the "substance of each of the principles and objectives," which means the intent, not necessarily the particulars.

Also, unstated anywhere in either review is the fact the site has, in the past, had far more total camping on-site than the FIMFO operation will involve. This is because the operation, during peak visitation periods, used every available space, designated or not, to accommodate visitors for tent camping. The FIMFO proposal is much more formal in nature and may well not substantially increase visitation at all. Rather, it is likely intended to attract more spending for higher-quality experiences. Finally, it's important not to lose sight of the fact RV camping was not only anticipated, but encouraged, in Recreational segments to take the pressure off Scenic segments. This is the substance the NPS does not effectively address in its review.

7. Part 3 of the NPS review, although it does not relate directly to Guidelines Principles and Objectives, repeats many of the same assertions already discussed plus the following additional items:
 - a. Nearly everything the NPS asserts goes back to the same erroneous interpretation of what "Non-Transient" means and the difference between permanent occupancy and permanent structures. It also stretches terms such as "park model," "permanent infrastructure" and "temporary dwelling" to imply year-round residency, which is anything but the case.
 - b. The NPS indication that the FIMFO project is "likely to have adverse impacts on both the

visual character and traditional land use patterns of the corridor” doesn’t match with the fact the location and adjacent land is already characterized by camping (including RVs) and is part of a Recreational segment where such activity is specifically intended to go. If RV camping meeting the definition in the Guidelines is not appropriate in a Recreational segment where Intensive Use Recreational Facilities are specifically permitted and already exist, then the Guidelines mean nothing, as they apparently can be changed at will by the NPS.

- c. The NPS repeatedly states that RV camping is more impactful than tent camping, but tent camping was very intensive on-site in the past and also relied upon septic systems put in place years ago that almost certainly weren’t designed to the standards the new systems will employ. Hence, wastewater design flows for new systems are likely to overstate increases in activity.
- d. The NPS offers no data to support its assertion as to the increase in activity and simply speculates as to the amount of visitation, foot traffic, erosion and other possible impacts, while repeatedly insisting the character of this existing camping and intensive use recreational facility will change unacceptably. This offers nothing to support a Town of Highland land use decision as there are only arguments offered and no hard evidence of the sort that would be necessary for the Town to legally sustain a denial of the Special Use permit.

Overall, the UDC review was superior in identifying potential issues in the context of the Guidelines and their intent. The NPS review was helpful in pointing out certain possible mitigations that could be made conditions of a Special Use permit, but went too far in concluding an intensive use recreational facility was not appropriate in a Recreational segment, stretching interpretations of terms to take advantage of ambiguities when zoning law requires precisely the opposite.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Shepstone". The signature is fluid and cursive, with a prominent loop at the end of the last name.

THOMAS J. SHEPSTONE