



LAND USE PERMIT

State of Vermont
Natural Resources Board
District 2 Environmental Commission
100 Mineral St., Ste. 305
Springfield, VT 05156
<https://nrb.vermont.gov/>

CASE NO: 2W1346

Black Barn Arts L3C
1250 Weatherhead Hollow Road
Guilford, VT 05301
And
Daniel Kornguth
1250 Weatherhead Hollow Road
Guilford, VT 05301

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 2 Environmental Commission hereby issues Land Use Permit 2W1346, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit applies to the lands identified in Book 144, Page 494, of the land records of the Town of Guilford, Vermont, as the subject of a deed to Daniel Kornguth.

This permit specifically authorizes the construction and operation of an artist's facility, event space, and three residential buildings.

The project is located on Weatherhead Hollow Road in Guilford, Vermont.

Jurisdiction attaches because the Project constitutes the construction of improvements for a commercial purpose on more than one acre of property pursuant to 10 V.S.A. §6001(3)(A)(ii).

The Permittees, and assigns and successors in interest, is obligated by this permit to complete, operate and maintain the project as approved by the District 2 Environmental Commission (the "Commission") in accordance with the following conditions.

1. The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law 2W1346, and (c) the permit application, plans, and exhibits on file with the Commission and other material representations. In the event of any conflict, the terms and conditions of this

- permit and the conclusions in the findings shall supersede the approved plans and exhibits.
2. The Permittees shall comply with all of the conditions of the following Agency of Natural Resources Permits:
 - a. Wastewater System and Potable Water Supply Permit WW-2-4790-2R issued on September 8, 2020 by the ANR Drinking Water and Groundwater Protection Division;
 - b. Individual Wetland Permit 2016-545 issued on July 13, 2020 by the ANR Watershed Management Division;
 3. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
 4. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
 5. A copy of this permit and plans shall be on the site at all times throughout the construction process.
 6. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
 7. No further subdivision, alteration, or development on the tracts of land approved herein shall be permitted without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
 8. Pursuant to 10 V.S.A. § 8005(c), the Commission or the Natural Resources Board may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
 9. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittees and their successors and assigns.
 10. The Permittee shall be limited to 12 events per year with a maximum of 200 people. There is no limit on the number of events per year with a maximum of 76 people.
 11. Event hours shall be limited to Sunday through Thursday until 9pm; Friday and Saturday until 10pm; and a maximum of six days per year until midnight on a Friday or Saturday.
 12. The Permittees shall soundproof the events space as described on Exhibit 084.

13. Amplified music shall be limited to the indoor event space where windows and doors shall not be open for temperature control.
14. The Permittees shall limit noise to no greater than 55 dBA Lmax at residences and 70 dBA Lmax at property lines.
15. No floor drains shall be installed without first obtaining a permit or submitting other necessary documentation, as required by the Vermont Department of Environmental Conservation.
16. The Permittees and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
17. There are 2.81 acres of primary agricultural soils onsite, 0.64 acres of primary agricultural soils will be impacted. If future construction of improvements occur on the property, the Agency of Agricultural, Food & Markets will review any permit application with respect to the reduction of the remaining primary agricultural soils and may include the 0.64 impact from this project.
18. The Permittees shall be obligated to implement the Construction Site Waste Reduction Plan approved by the Agency of Natural Resources Solid Waste Management Program and included as Exhibit #054.
19. At a minimum, the Permittee shall comply with the Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020).
20. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittee from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
21. The Permittees shall maintain an undisturbed, naturally vegetated Class II wetland and 50-foot wetland buffer zone on the Project Tracts as depicted on Exhibits 052 and 087. The term "undisturbed" means that there shall be no activities that may cause or contribute to ground or vegetation disturbance or soil compaction, including but not limited to construction, earth-moving activities, storage of materials, tree trimming or canopy removal, tree, shrub or groundcover removal; plowing or disposal of snow, grazing or mowing.
22. Permittees shall adhere to "Revised Fairgrounds Parking," Exhibits 087 and 088, and mark the limits of the parking with wooden stakes and flagging before using the

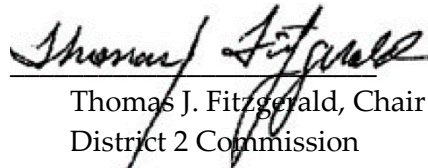
- fairgrounds for event parking so vehicles do not encroach into the wetlands and 50' wetlands buffer.
23. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated. Exhibit 064 is an approved light fixture. Existing light fixtures shall be replaced or retrofitted to conceal the light source by **October 15, 2022**.
 24. The Permittee shall not erect additional exterior signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs; temporary Grand Opening signs; and temporary event signs.
 25. Pursuant to 30 V.S.A. Section 51(e), the Permittees and/or subsequent lot owner, at a minimum, shall construct the single family home, two family home, multi-family home three stories or less, or residential addition 500 square feet or greater in accordance with Vermont's Residential Building Energy Standards (RBES) Stretch Code effective at the time of construction.
 26. Pursuant to 30 V.S.A. § 53, the energy design and construction shall comply with Vermont's Commercial Building Energy Standards (CBES) in accordance with the NRB Criterion 9(F) Procedure effective at the time of construction. (More information on this subject can be found at http://publicservice.vermont.gov/energy_efficiency/cbes and https://nrb.vermont.gov/documents/9f-procedure_2020-09-01.)
 27. The installation and/or use of electric resistance space heat is specifically prohibited unless (i) it is approved in writing by the District Commission and/or (ii) it specifically qualifies as an exception to the prohibition of electric-resistance building heating, pursuant to Section R404.2 of the 2020 Vermont Residential Building Energy Standards OR Section C403.2.3 of the 2020 Vermont Commercial Building Energy Standards.
 28. The Permittees shall ensure that all outside trash, recyclable, and compost storage is bear-proofed and that birdseed is unavailable to bears from April 1 to November 30 or in accordance with current State of Vermont Fish and Wildlife Department recommendations.
 29. The Permittee shall comply with Act 148 regarding the collection and appropriate disposal of recyclables, trash, and food scraps in accordance with 10 V.S.A. §6621a(a)(9) and (11).
 30. The Permittees shall reference the requirements and conditions imposed by Land Use Permit 2W1346 in all deeds of conveyance and leases.

31. Pursuant to 10 V.S.A. § 6090(b)(1), this permit is hereby issued for an indefinite term, as long as there is compliance with the conditions herein.
32. All site work and construction shall be completed in accordance with the approved plans by **October 15, 2024**, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.
33. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.

Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated this 12th day of January 2022.

By


Thomas J. Fitzgerald, Chair
District 2 Commission

Members participating in this decision: Abbie Corse and Cheryl Cox

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

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Land Use Permit 2W1346

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

E-Notification CERTIFICATE OF SERVICE # 2W1346

I hereby certify that I, the undersigned, sent a copy of the foregoing Findings of Fact and Conclusions of Law and Order and Land Use Permit #2W1346 on January 12, 2022 by U.S. Mail, postage prepaid, to the individuals without email addresses, and by electronic mail to the following with email addresses. All email replies should be sent to NRB.Act250Springfield@vermont.gov. **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the NRB District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify the District Office of any email address changes.**

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By: 
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

State of Vermont
Natural Resources Board
District 2 Environmental Commission
100 Mineral St., Ste. 305
Springfield, VT 05156
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CASE NO: 2W1346

Black Barn Arts L3C
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LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

I. INTRODUCTION

Black Barn Arts L3C and Daniel Kornguth filed an application for an Act 250 permit for a project generally described as an artist's facility, event space, and three residential buildings. The tracts of land consist of 3.1 acres. The Applicant's legal interest is ownership in fee simple described in a deed recorded on February 21, 2017 in the land records of Guilford, Vermont.

The application, first submitted on September 26, 2017, was determined to be incomplete under Act 250 Rule 10(D) for reasons stated in a letter from the District Coordinator to the Applicant dated October 26, 2017. The application was deemed complete on July 28, 2021.

The Commission held a hearing on this application on September 30, 2021. The Commission conducted a site visit and prehearing conference on September 16, 2021. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on December 20, 2021, after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations. The Applicant requested that the decision not be issued before January 3, 2022.

As set forth below, the Commission finds that the Project complies with 10 V.S.A § 6086(a) (Act 250).

II. JURISDICTION

As determined in a project review sheet issued on October 24, 2013, jurisdiction attaches because the Project constitutes the construction of improvements for a commercial purpose on more than one acre of property pursuant to 10 V.S.A. §6001(3)(A)(ii).

III. PARTY STATUS

A. Parties by Right

Parties by right to this application pursuant to 10 V.S.A § 6085(c)(1)(A)-(D) are:

The Applicant

The landowner

The municipality of Guilford

The Guilford Planning Commission

The Windham Regional Planning Commission

The State of Vermont Agency of Natural Resources (ANR)

The Division for Historic Preservation (VDHP)

B. Interested Parties

Any person who has a particularized interest protected by Act 250 that may be affected by an act or decision of the Commission is also entitled to party status. 10 V.S.A § 6085(c)(1)(E). There were no requests for party status.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicants have met the burden of proving compliance with the following criteria through submittal of the application:

1 - Air Pollution

1 - Water Pollution

1(A) - Headwaters

1(B) - Waste Disposal

1(C) - Water Conservation

1(D) - Floodways

1(E) - Streams

1(F) - Shorelines

2 - Water Supply

3 - Impact on Existing Water Supplies

4 - Soil Erosion

5(B) – Transportation Demand
Management

6 - Educational Services

7 - Municipal Services

8 – Natural Areas

8(A) - Wildlife Habitat & Endangered
Species

9(A) - Impact of Growth

9(B) – Primary Agricultural Soils

- | | |
|--------------------------------------|---------------------------------------|
| 9(C) - Productive Forest Soils | 9(H) - Costs of Scattered Development |
| 9(D) - Earth Resources | 9(J) - Public Utility Services |
| 9(E) - Extraction of Earth Resources | 9(K) - Effects on Public Investments |
| 9(F) - Energy Conservation | 9(L) - Settlement Patterns |
| 9(G) - Private Utility Services | 10 - Local and Regional Plans |

Therefore, the application shall serve as the Findings of Fact on these criteria.

The findings of fact are based on the application, Exhibits 001 - 089, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear, and may apply to other sections of the decision. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A § 6086(a)(1)-(10). Before granting a permit, the District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant, and the burden is on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

Criterion 1(G) - Wetlands:

Findings of Fact

1. On July 13, 2020, the ANR Department of Environmental Conservation issued Wetland Permit 2016-545, authorizing 1,100 square feet of buffer zone associated with construction of a single-family residence and sewer line connection. Exhibit 074.
2. The wetlands at the Guilford Fairgrounds are Class II and were assigned the wetland project number 2021-812. Exhibit 085.
3. The wetlands at the Guilford fairgrounds near the proposed parking for events, were delineated on October 11, 2021 by Ward Smith. State wetlands ecologist Rebecca Chalmers visited the site on October 13, 2021 to review the delineation. Exhibit 087.
4. "Revised Fairgrounds Parking" identifies the event parking spaces that are out of the wetlands and wetlands buffer. The limits of the parking spaces will be easily identified by the Applicants referencing distances from the existing roadways and split rail fence, prior to using this area for parking. The Applicants will mark the limits of the parking with wooden stakes and flagging to ensure vehicles do not encroach into the wetland nor 50' wetland buffer. Exhibit 088.

Conclusions of Law

Individual Wetland Permit 2016-545, issued by ANR, creates a presumption pursuant to Act 250 Rule 19 that the Project will not violate the Vermont Wetland Rules relating to significant wetlands for the previously constructed single-family residence and sewer line connection. The Commission concludes that the proposed parking at the Guilford Fairgrounds will also not violate the Vermont Wetland Rules based on the aforementioned facts. Therefore, the Project complies with Criterion 1(G).

Criterion 5 - Transportation:

Findings of Fact

5. Type 1 events, with up to 76 people, will require 28 parking spaces. This number was calculated using the Town of Brattleboro's Zoning Bylaw requirements for Public Assembly spaces. Type 2 events, with up to 200 people, will require 139 parking spaces using the same calculation. Exhibit 082.
6. There are 21 parking spaces including the entire 3.1-acre property. 15 parking spaces are at the barn, two of these are ADA compliant. Exhibit 082.
7. There is an agreement between the Guilford Fair Association and the Applicants which allows the Applicants to park up to 125 vehicles at the fairgrounds during large events. Exhibit 030/062.
8. The Applicants propose parking up to 60 vehicles at the fairgrounds outside of the 50' wetland buffer as shown on Exhibit 088.
9. The Applicant will mark the fairground parking spaces with wooden stakes and flagging. Exhibits 087 and 088.
10. The distance from the fairground parking to the event barn is between 200 and 600 feet. Exhibit 082.
11. There is overflow parking available onsite in the field behind the primary residence. It has capacity for 70 to 80 cars but will be used selectively based on the time of year. Exhibit 082.

Conclusions of Law

Criterion 5(A) requires that the Project "will not cause unreasonable congestion or unsafe conditions with respect to use of the highways." See 10 V.S.A § 6086(a)(5)(A). Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the

reasons set forth under Criterion 5. See 10 V.S.A § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens. *Id.*

The Commission concludes that the Project will not cause unreasonable congestion or unsafe conditions with respect to use of roads and complies with Criterion 5.

Criterion 8 – Aesthetics and Historic Sites:

Findings of Fact: Aesthetics

12. Events will be held in the Barn. The Barn will be temperature controlled with air conditioning/heat so windows and doors will not be open. Testimony.
13. Amplified music is limited to inside the barn. Testimony.
14. The Permittees will install ½" thick sound deadening panels made of homasote on all exterior walls of the barn. Exhibit 084.
15. The Applicants had a noise test conducted by David Snyder, Owner/Engineer of Guilford Sound on April 17, 2021. Sound was generated inside the event space of the barn with windows open and without insulation or sound proofing material installed. Results of the test indicate that the decibel levels fall below 55 dBA at adjacent residences and 70 dBA at property lines. Exhibit 084.
16. There are two types of events. Type 1 events will have a maximum of 76 people. Type 2 events will have a maximum of 200 people. Exhibit 084.
17. Type 2 events will be limited to 12 single days per year. Testimony and Exhibit 084.
18. Event hours: Sunday to Thursday will be until 9pm; Friday and Saturday will be until 10pm; and six days per year until midnight. Testimony and Exhibit 084.
19. Exterior lighting shown in Exhibit 064 is downcast with the light source shielded. Exhibit 079, however, shows exterior lighting fixtures installed that are not downcast and shielded.
20. The sign is described as 1.5' x 6' and will be located on the north side of the barn facing the private drive. It is described to have an exterior sconce. This lighting fixture is not shown in the application. Exhibits 047, 052, and 053.

Findings of Fact: Historic Sites

21. The proposed project consists of an artist residency program facility with event space in an existing and upgraded barn located at 1218 Weatherhead Hollow Road; three

residences located at 1247 and 1250 Weatherhead Hollow Road that are not part of the artist residency facility; related infrastructure including upgraded drives, parking, wastewater and stormwater management systems, and landscaping. Exhibit 086.

22. In May 2019, the Applicants and the Natural Resources Board agreed to an Assurance of Discontinuance (AOD) filed with the Vermont Superior Court Environmental Division. In lieu of reversing inappropriate structural alterations and in mitigation of irreversible adverse impact to archaeological resources, the Applicants paid into the VDHP Historic Barn Preservation Grants Fund for a Supplemental Environmental Project (SEP) to be used to stabilize and restore historic barns in Windham County. Exhibit 086.
23. Because of the AOD and SEP, VDHP agreed to recommend that structures located on the property not be considered a Historic Site in conjunction with this Land Use Permit application. Exhibit 086.
24. The AOD also required that the Applicants complete a Phase I archaeological survey for all areas where additional ground disturbing activities are proposed. VDHP received the June 16, 2020 Phase I End-of-Field Letter Report prepared by the Hartgen Archeological Associates, Inc. (HAA). HAA recommended no further archaeological investigation in the project area. VDHP concurred with HAA's report on February 24, 2021. Exhibits 075 and 086.
25. VDHP concludes that this project will have no effect on any historic sites that are listed in or eligible for inclusion in the State Register of Historic Places given the above listed facts. Exhibit 086.

CONCLUSIONS OF LAW

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." 10 V.S.A § 6086(a)(8). This Project involves concerns under Criterion 8 related to aesthetics and historic sites.

Conclusions of Law: Aesthetics and Scenic or Natural Beauty

The Commission uses a two-part test to determine whether a project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc., No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Envtl. Ct. May 17, 2010)* (citations omitted); see also, *Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Envtl. Bd. Nov. 4, 1985); In re Halnon, 174 Vt. 514 (mem.)* (applying Quechee test in Section 248 context).

The burden of proof under Criterion 8 is on any party opposing the project, 10 V.S.A § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative findings. *In re Rinkers*, No. 302-12-08 Vtec, *Decision and Order at 10-11 (Vt. Env'tl. Ct. May 17, 2010)* (citing *Re: Susan Dollenmaier*, #3W0125-5-EB, *Findings, Conclusions and Order at 8 (Vt Env'tl. Bd. Feb. 7, 2005)*; *In re Eastview at Middlebury, Inc.*, No. 256-11-06 Vtec, *slip op. at 5 (Vt. Env'tl. Ct. Feb. 15, 2008)*, *aff'd*, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of the parties or witnesses . . ." *In re McShinsky*, 153 Vt. 586, 589 (1990) (quoting *In re Quechee Lakes Corp.*, 154 Vt. 543, 553-54 (1990)).

1. Adverse Effect

To determine whether the Project will have an adverse aesthetic effect, the Commission looks to whether the Project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including the following: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *Quechee Lakes Corp et al.* #3W0411-EB and #3W0439-EB *Findings of Fact, Conclusions of Law and Order at 18 (Vt. Env'tl. Bd., Nov. 4, 1985)* (cited in *Rinkers*, No. 302-12-08 Vtec, *Decision and Order at 12-13*).

The Project is in a rural residential area across from the Guilford fairgrounds. The project will introduce noise into the area from the numerous events proposed. This will have an adverse aesthetic impact. Accordingly, we must determine whether that impact is undue.

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings. *In re Rinkers*, 302-12-08 Vtec, *Decision and Order at 15 (May 22, 2010)* (citing *In re: Times & Seasons, LLC*, 2008 VT 7, ¶ 8; *In re McShinsky*, 153 Vt. at 592).

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. *Hannaford Brothers Co. and Southland Enterprises, Inc.*, #4C0238-5-EB, *Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd. 4/9/02)*. A clear, written community standard must be intended to preserve the aesthetics or scenic beauty of the area where the project is

located. *Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action, #2WO694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Envtl. Bd. 12/21/00).*

The proposed Project does not violate a clear community standard.

(b) Offensive or Shocking Character

Criterion 8 "was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from their property will remain the same forever." *Re: Okemo Mountain, Inc. #2S0351-S-EB Findings of Fact, Conclusions of Law, and Order (Dec. 18, 1986).*

Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. *Rinkers, No. 302-12-08 Vtec, Decision and Order at 11-12; Horizon Development Corp., #4C0841-EB, Findings of Fact, Conclusions of Law, and Order (Vt. Envtl. Bd. Aug. 21, 1992).*

The proposed project will not be offensive or shocking in character because the amplified music will be limited to an indoor space where the windows and doors will remain closed due to temperature control measures and soundproofing will be implemented.

Given these considerations and conditions, we find that the Project is not offensive or shocking.

(c) Generally Available Mitigating Steps

The question under this factor of the aesthetics analysis is whether the Applicants have "failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings." *In re Times & Seasons, 2008 VT 7, ¶ 8.* If a project does have an adverse aesthetic effect, the applicant must "take generally available mitigating steps to reduce the negative aesthetic impact of a particular project," otherwise, "[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse." *In re Stokes Communications Corp., 164 Vt. 30, 39 (1995)* (quoted in *In re Rinkers, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010)*). A generally available mitigating step "is one that is reasonably feasible and does not frustrate [either] the project's purpose or Act 250's goals."

To mitigate the aesthetic impacts of the Project, the Applicants have proposed to limit amplified music to the indoors; soundproofed the indoor barn event space; proposed heat/air conditioning so that windows and doors do not have to be opened for temperature control; undertaken a noise study to demonstrate that the noise limits of 55 dBA/70 dBA at nearby residences/property lines will be met; and limited event hours so that they are predictable for the neighbors. The application does not provide evidence of the lighting proposed for the sign.

The application does show exterior lighting fixtures that are not shielded. The permit will be conditioned so that all lighting will be downcast and shielded.

Given all of these considerations, we find that the Applicants have taken the available mitigating steps to minimize the adverse impacts of the proposed Project on the scenic or natural beauty of the area.

(d) Conclusion

Based on the above, the Commission concludes that the Project will not have an undue adverse effect on the aesthetics or natural and scenic beauty of the area.

Conclusions of Law: Historic Sites

The Commission concludes that there is not a historic site and therefore the project complies with Criterion 8 Historic Sites.

Criterion 9(F) - Energy Conservation:

Findings of Fact

26. The Applicants will construct the project according to the energy code in effect at the time of construction.

Conclusions of Law

Criterion 9(F) requires the Applicant “provide evidence that the subdivision or development complies with the applicable building energy standards under 30 V.S.A. §51 (e)(RBES Stretch Code) or 53 (CBES).”

Therefore, the Project complies with Criterion 9(F).

V. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit 2W1346, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

VI. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit 2W1346 is hereby issued.

DATED this 12th day of January, 2022.

By



Thomas J. Fitzgerald, Chair
District 2 Environmental Commission

Commissioners participating in this decision: Abbie Corse and Cheryl Cox

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.