

November 30, 2018

From: Dan Proctor, Marbletown Planning Board/Planning and Zoning Committee (PZC) Special Events Venue Legislation Sub-Committee Chair

To: Marbletown PZC and Town Board

Subj: Letter to Town Board re. Special Events Legislation Review and Recommendations

Introduction: in May 2018 the Marbletown, NY Town Board appointed a subcommittee of the Planning and Zoning Committee (PZC) to review a draft amendment to the Marbletown Zoning Law, generated to regulate Special Event Venues within select town zoning districts. The subcommittee members, chair and deputy chair were local citizens selected by the Supervisor and approved by the Town Board. The subcommittee was referred to as the Special Events Venue (SEV) Subcommittee, and it met several times during the summer. The following provides a summary of the events and background which led to the decision to charter this group, as well as the results of their deliberations.

Regional Growth of Special Event Venues: Over the past several years there has been an increasing demand for special event permits to allow local citizens to hold recurring for-profit events on their land in Ulster County. Many local communities have created regulations to control this use, as existing legislation fails to provide clear guidance on how community quality of life will be protected if they are allowed.

Special Event Venues in Marbletown:

History of use. SEVs have been allowed in the Marbletown with the issuance of a Special Use Permit (SUP) by the Zoning Board of Appeals (ZBA) since 1969, and the ZBA has within the past several years approved SEV permits for 2234 Lucas Ave, 3805 Main St, and 2585 State Route 209; however, the community has never had legislation specific to the regulation of SEVs. Consequently, when a local landowner attempted to obtain permission for a for-profit wedding venue on his property on Mill Dam Road, a neighbor filed an Appeal of the Code Enforcement Officer's classification of the use as a Limited Service Eating Establishment. The Zoning Board of Appeals upheld the Appeal thereby creating a situation where there was no legal use in the Schedule of Use Regulations that allowed an application to be processed. As a result, legal counsel for Marbletown recommended the development of legislation to define the use and requirements for SEV. This recommendation as well as the decision by several landowners to hold SEVs on their land without attempting to obtain permits (due to their concern over the difficulty of obtaining such), and the increasing public comment about the challenges of SEV in residential districts, led to an increased demand to understand community concerns and carefully regulate the use under a new section of Chapter 200-8, Schedule of Uses of the zoning code entitled: Arts, Entertainment and Recreation.

Public Concerns About SEVs. Marbletown citizens have expressed trepidation about establishing SEV regulations in the community through letters to the editors, full-page ads in the local papers and letters to the community Supervisor, Zoning Board of Appeals (ZBA) Planning and Town Boards. The anxiety of the proposed legislation is focused on the potential impact SEVs would have on the quality of life and economic strength of the Marbletown. Specifically, opponents of the regulation believe that allowing SEVs in the community will burden adjacent landowners with unwanted lights, noise and traffic; make local roads dangerous, and impact sleep patterns, view sheds and the general quality of life for our citizens. These negative attributes would, in turn, reduce the community's attractiveness to buyers in the second home market – especially those seeking residences in rural localities to escape the noise and hubbub of their urban environment. Those potential buyers would go elsewhere, thus reducing the value of Marbletown residential properties and associated tax base. These concerns were specifically true for districts identified in the zoning code as “residential.”

The public's trepidation was reflected in the Subcommittee on SEV even for large tracks of land residential or other. This comment from a sub-committee member summarizes the issue: “...the desire to save rural spaces by allowing property owners to obtain income from vacant land other than farming was good in concept, but the act itself of opening these large parcels to events during the spring and summer months cannot help but change the "rural" of the 25+ acre parcels and surrounding the parcels and lives around where these events are permitted to take place. [allowing SEVs] ...could not only be viewed as antagonistic to that basic "rural preservation" premise, but as a supplement to large landowners at the expense of adjacent properties and town residents we are chartered to protect. There will be noise spillovers. In most conversations I have heard in committee meetings, we acknowledge that and in fact, and plan on it. Traffic will increase dramatically 10 or 12 weekends a year. Town enforcement of rules will have to take place at a cost to someone. Lives and attitudes, and certainly that our much treasured "rural" character will be somewhat lost by our turning these parcels into what is in effect, commercial properties. We must weigh this balance, and it's cost and lasting effects on our town in all respects, very carefully....” (Comments from Gary Johnson).

Special Event Venue Legislation Planning: In 2017 the Marbletown Planning and Zoning Committee hired Dan Shuster, an experience professional planner to generate a draft of legislation to regulate special event venues. Mr. Shuster proposes to define Special Event Venues as: “The limited use of a parcel or part of a parcel of land, for celebratory, cultural or educational activities such as concerts, conferences, banquets, festivals, weddings, or other similar activities, subject to the standards and criteria set forth in §200-46 D. (18). Permitted activities at such venues shall not include retail sale of new or used merchandise.”

Mr. Shuster provided the following as rationale to consider for including SEV use in the local zoning code:

Preservation of farmland and open space are important goals of the Town of Marbletown as expressed in the Town's Comprehensive Plan and Agricultural and Farmland Protection Plan. A related goal is promotion of a tourism economy based on the Town's natural, historical, cultural and agricultural resources. It has been determined that, if designed, located and operated under

appropriate conditions, special events venues can be an effective tool to protect and preserve such resources.

The Town of Marbletown should enact legislation which permits special events for celebratory, cultural or educational activities such as concerts, conferences, banquets, festivals, weddings and similar activities. Such activities shall only take place on sites in areas which contain the resources to be protected in a manner which preserves the quality of nearby residential areas as well as the natural environment. Such areas shall be limited to designated agricultural districts and business zoning districts.

The zoning regulations to implement the above policy should include specific standards to control effects of the special venue events that can affect the residential character and natural environment of surrounding area. These potential effects include traffic, noise, frequency and duration of events, lighting and number of attendees.

Establishing an Advisory Board on SEVs. The town of Marbletown decided in the spring of 2018 to establish an advisory board to review the challenges associated with SEVs and obtain input from the community. On May 30, 2018 the Marbletown Town Board established a Special Events Venue Legislation Subcommittee of the Marbletown Planning and Zoning Committee for the following purpose: “Review the April 24, 2018 draft of Local Law Amending Chapter 200 of the Town Code, Zoning drafted by Shuster Associates, and in doing so gather and document the following information:

- Regulatory and governmental guidance for proposed legislation
- Marbletown Strategic Planning guidance related to draft local law
- Lessons learned from experience of other NYS communities that have enacted similar legislation
- Local concerns voiced by the community regarding the proposed legislation

[from this research] the SEV Subcommittee was required to generate a list of recommendations regarding the draft legislation and submit the recommendations to the Planning and Zoning Committee and Town Board for consideration.”

Dates of Meetings. The Special Event Venue (SEV) Subcommittee had 6 meetings on the following dates all held in the Rondout Municipal Center: May 31, June 7, June 21, July 19, August 2 and August 16, 2018 and were appropriately noticed in accordance with the Committee on Open Government’s guidelines.

Public Participation. While the SEV Subcommittee was not required to have public participation (because it was a subcommittee and not a full committee) on its deliberations, the public was invited. The public was given advanced notice of the meetings through local media and each meeting was well-attended by the community. However, most community members attending were there to demonstrate against the consideration of SEVs anywhere in the community and especially in “residential areas” and not to participate in the development of the details of the legislation that could mitigate the negative aspects of SEVs (e.g., noise, traffic, safety, etc.).

Accordingly, Subcommittee progress was severely hindered until it was decided to create “working groups” comprised of board members and have them work in other areas of the building with press participation but without public participation.

Committee Members. There were 13 members on the SEV Sub Committee. These individuals represented a broad sampling of community opinions on the need for Special Event legislation in Marbletown. Members are as shown:

- Dan Proctor (Planning Board and PZC Sub Committee Chair)
- Will Husta (PZC & ZBA Chair)
- Stacy Sindt (PZC member)
- Harry Hansen (PZC Member and Historical Committee Chair)
- Daisy Foote
- Dan Giessinger
- John Cirone
- Nancy Gagliardi
- Gary Johnson
- David Hodes
- Sally Dolan
- Michael Wilcox (resigned during 3rd meeting and was replaced by Dr. Steve Smith)
- Tracey Dewart
- Steve Smith

Subcommittee challenges:

The central challenge to the activities of the Subcommittee was the public perception that the group’s charter included the requirement to determine if the community should consider creating a use in the zoning code for SEVs. While the charter allowed time to examine the guidance available that supported the SEV use, the goal of the group was not to determine if the local zoning code should include a SEV use, but to review and improve existing SEV draft legislation. This created charter creep which was understandable given the opinion of the public present during the meetings. Public opinion was clear: Marbletown should not have a SEV use within the zoning code regardless of the location and circumstances of the request. In addition, the public present at the meetings strongly believed that Marbletown should first consider the economic benefits of allowing SEV’s into the community before the details of the regulations could be developed. Discussion on this topic became so significant that the Chairman and Vice Chairman requested the Town Board to reiterate the Subcommittee’s obligations during the fourth meeting of the group. The Town Board provided the following comments to help the Subcommittee proceed:

1. “The [Sub]- committee should concentrate on reviewing and improving the draft legislation on Marbletown Special Events with the goal of ensuring that all concerns identified by the public are mitigated...”
2. “The [Sub]-committee should not invest time in determining the economic impact to Marbletown of allowing Special Event Venues in our community, nor should it attempt to conduct a survey of opinions of resident on the subject...”

Once the Town Board provided the reiterated guidance, members Tracy Dewart, Nancy Gagliardi, and Daisy Foote terminated their participation and the public attending the meeting expressed their significant displeasure over the guidance of the Town Board.

Methodology Used to Accomplish Charter:

1. The committee reviewed relevant NYS references and several local and regional documents to understand if there was any guidance that supported the use of property in Marbletown for special events. These documents included:
 - a. Marbletown Zoning Code
 - b. Marbletown: Future of Our Community Survey Reports
 - c. Marbletown Town Plan 2004
 - d. Town of Marbletown Hamlet Strategic Plan
 - e. 1997 [Marbletown] Town Wide Survey and review of the Zoning Law
 - f. 2010 Farmland Protection Plan re. use of property for (SEV)
 - g. Audit of the Marbletown Zoning Law prepared by Katherine Daniels of the NY Planning Federation (which is contained as an appendix of the Federation Plan).
2. Review NYS Department of Tourism data to determine value of tourism for Ulster county
3. Determine if there are there are lessons learned from communities that have passed similar legislation. Communities reviewed: Hyde Park, Rochester, Union Vale, South Paul.
4. Determine challenges to the community as a result of allowing SEVs
5. Determine if mitigation strategies exist for the challenges generated by SEV. As part of this requirement several other Towns SEV ordinances were reviewed, and the Chair and another member of the Subcommittee visited Rhinebeck and discussed the challenges and successes of SEV related legislation for that town.
6. Recommend mitigation strategies to improve draft SEV legislation
7. Write and forward a final report with recommendations to the Town Board and PZC.

Governmental Planning Guidance:

A review of the Marbletown Zoning Law in regard to SEV uses led to the following guidance: Our Zoning Law was created to “ protect and promote public health, safety, morals, comfort, convenience, economy, town aesthetics, and the general welfare, and for the following additional purposes: (Note, the following was selected from the code based on value as guidance for SEV discussion):

- To encourage the most appropriate use of land in the community to conserve and enhance the value of property;
- To protect and enhance existing wooded areas, scenic areas, and waterways and to preserve, where appropriate, the essentially rural character of the Town;
- To assure privacy for residences and freedom from nuisances and things harmful to the senses, including air pollution;
- To protect the community against unsightly, obtrusive, and noisome land uses and operations.

A detailed review of Marbletown planning documents suggested that embracing some form of SEV legislation could contribute to the following community planning goals:

- Conserve open space
- Preserve our farmland
- Encourage small business, services and four- season tourism
- Preserve rural character
- Prevent commercial sprawl and promote hamlet-centered [commerce]

- Increase enthusiasm for local food
- Attract home-based occupations and businesses

Reviewing NYS Agricultural Land Use Directives the committee learned that the state supports select SEVs to conserve farm lands with appropriate local controls.

Discussions with the NYS Department of Tourism and the Ulster County Tourism Department indicated that the state encourages activities to promote tourism – especially agritourism, which SEVs are defined as. Ulster County Department of Tourism attributes Tourism in the Catskills as a \$1.2 billion industry, supporting 17,822 jobs. Ulster County represents 45% of the region’s tourism sales with \$554 million in traveler spending. In short, well-controlled and regulated SEVs would encourage tourism and provide positive economic return.

Findings:

While most of the committee believed that allowing well-regulated Special Events to be held in Marbletown would help the community meet some comprehensive planning and economic goals, a sizable minority of the committee (and a very vocal majority of the public at the meetings) did not. They felt that allowing the use would burden community infrastructure, create traffic congestion, noise, light pollution, reduce property values and degrade local view sheds – thus reducing the community’s ability to draw new residents (tax dollars) to Marbletown. This perspective remained even after the committee reviewed the ramifications of not allowing SEV on undeveloped land, but instead allowing developers to create subdivisions on the property zoned for such.

The predominate opinion of the SEV Subcommittee by the conclusion of the meetings was that Special Events could be valuable to Marbletown but only if they are well regulated and allowed only in agricultural or business districts. The committee felt that the community needed in addition to regulations a means to ensure enforcement of the SEV legislation – before, during, and after the events – and a means to promulgate detailed up-to-date information about the events to the public well in advance of the date of the events and through the event duration.

Lessons learned from regional communities that have SEV regulations:

- Require permits with an application fee that cover the administrative and enforcement costs of the event
- Ensure adequate parking (require parking plan), ingress, egress, traffic control and sanitary facilities
- Ensure local sound ordinances are maintained and enforced
- Enforcement is critical – event must have a single point of contact with authority and tools needed to maintain control
- Maintain a detailed site plan
- Advertise event one month in advance
- Close event at 10 PM with one hour clean up

Challenges to Community from SEV (Ranked by Level of Concern—Most Concern First) and Strategies to Reduce or Mitigate Those Concerns:

Concern	Mitigations
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<p>Noise.</p> <p>SEVs will create noise that will interfere with the quality of life in the surrounding neighborhood and will reduce property values.</p>	<ul style="list-style-type: none"> • Set noise standards and method of enforcement. • Ensure sound is measured from several predetermined locations and monitored during the event. • Use professional sound surveyor • Have applicant pay for cost of survey and enforcement • Involve adjacent property owners • Generate noise ordinance for community • Check and enforce standards • Include neighbors in required sound test during SUP
<p>Location of SEVs.</p> <p>SEV's create safety concerns for the community, create unwanted noise and light pollution, are a burden on MT infrastructure,</p>	<ul style="list-style-type: none"> • SEVs should not be allowed in residential districts • Parcel size should be 25 acres; however, the event location should be reviewed using a formula which considers the parcel size and configuration, location of neighbors, vegetation, applicant's plan for traffic and pedestrian safety, sound and light control, quality of roads for event access, and fire/safety codes • Event must not restrict business • SEVs should be allowed in business districts; however, use regulations should be tailored to the district and SEV location. SEVs should be enclosed in permanent buildings in business districts
<p>Operations.</p> <p>SEV operations reduce neighborhood quality of life, create traffic and other hazards and can't be controlled</p>	<ul style="list-style-type: none"> • SEV must have a plan that meets MT requirements • All events must have the owner on site or an event manager that has authority to act to counter concerns identified • Accurately dimensioned site plan with all physical elements of the event identified • No hotels, camping, RV's allowed without SUP • No pre or post event dinners • Limit operations from 10 AM to 10 PM with 1 hour for clean up • Max attendance determined by parcel size and configuration; roads and ingress and egress concerns • Event frequency regulated. Limit to 12/year, 2 per month with a minimum of 5 days in between events
<p>Enforcement.</p> <p>SEVs once permitted will ignore requirements. There is no mechanism of enforcement</p>	<ul style="list-style-type: none"> • Create an enforceable contract with applicant • Set up fines associated with infractions • 3 infractions in one event SUP not renewed • Applicant/owner should be at event • Create "event description form" and review 10 days before with applicant. • Hire constable or event enforcement person. Use SUP fee to pay for constable. He or she should be on call 24/7 and the primary governmental POC for all complaints. His or her # should be available on the web

	<p>and posted on a sign at the event. The constable must be trained and deputized</p> <ul style="list-style-type: none"> • Require single point of contact from applicant for the event. • Have failures to correct problems recorded and influence future applications by applicant
<p>Public Information. There is no mechanism to alert the public of future events or the details on approved events.</p>	<ul style="list-style-type: none"> • Set up SEV website and populate with event details and town requirements. Send letter to all neighbors.

Committee Member’s Recommendations and Areas for Future Study:

- Generate legislative language that supports the mitigations detailed above
- Limit the SEV legislation to only business and agricultural districts
- Obtain lessons learned by enacting legislation for business and agricultural districts and reassess the application of the legislation to other zoning districts in Marbletown
- Create a sound ordinance for Marbletown
- Create a means to inform the public on SEV actions
- Generate a means of enforcement for SEV that is viable and sufficiently punitive to prevent applicants from ignoring the legislation. Understand the full ramifications that come along with having a "constable" - who engages him/her, how his/her decisions impact the town's liability, how does he/she interact with the Police - all that needs to be fleshed or spelled out with input from the attorney and maybe a venue/event operator.
- identifying fees and penalties. For example, the town should charge fees for providing services directly related to the event or event venue. We should list a budget or capital items, like the sound meter, and make sure the general permit fees cover those items.
- Regarding the number of events that an operator can hold over the period of a year - how will the town handle those prime weekends in May and June when there might be many more than one event being held in town. If you total the number of potential venues (under/over the 25 acres threshold), that's your minimum number of events that could be scheduled on those prime weekends. Even if each of those events pays its fees, how many "competent" constables and traffic directors will be on duty and where will they come from? I don't know if there are now only 1 or 2 possible locations (which might be manageable) that will be impacted but we must consider the possibility we may have 5+ events on the same night in the future.
- Determine what the overall financial benefit SEVs provide the town
- Determine what constitutes a private and commercial event
- Determine real facts about the impact SEVs have on property values
- Bring existing illegal SEVs into compliance or shut them down
- Determine if there is a way to use SEVs to help preserve historic buildings
- Make the rules specific and understood
- Set up monitoring committee to track SEVs in town (monitoring and correcting problems for and against in current rules)
- Establish rules specific to the districts
- Establish different number of events allowed based on event type (yoga retreat vs rock concert)

- Determine security requirements for SEVs. On site enforcement based on number of participants at event (over 100 must have private security)
- Discussions to date have focused too much focus on weddings; what about tractor pulls and church suppers?
- Determine what events are exempt from EVS rules? (Church Suppers)
- Determine Insurance amounts and what types (compensation and liability on file with town)

Recommended Next Steps:

The findings of the Subcommittee are provided to the Planning and Zoning Committee to facilitate their deliberations on the SEV regulations. We recommend that the PZC consider these findings and use them to assist in the development of future regulations on Marbletown Special Event Venues.

Respectfully,

Dan Proctor