



MEMORANDUM

To: Agency Members and Designees

From: James T. Townsend, Counsel

Re: Appeal in the Matter of Sunset Farms, Ltd
(Agency Project File #2011-095)

Date: October 2, 2013

Please find attached for your consideration pursuant to 9 NYCRR § 572.22 an appeal filed by the project sponsor, Sunset Farms, Ltd in relation to Agency Project File #2011-095. The record of the appeal consists of:

1. The Project Sponsor's Notice of Appeal, dated September 6, 2013, accompanied by an Affidavit in Support of Appeal with Legal Points and Arguments, dated September 5, 2013, and a Certification of Record on Appeal, dated September 5, 2013.
2. Agency Staff's Response to Appeal, dated October 2, 2013, accompanied by an Affidavit of Mitch Goroski, Esq., dated October 2, 2013.
3. Letter from Michael Hill, Esq., on behalf of Braidlea Farms, L.P., dated October 2, 2013.

This appeal will be considered as the first item on the Regulatory Programs Committee agenda on Thursday, October 10, 2013. No oral argument from the parties is contemplated. The Committee will make a recommendation to the Agency on action to be taken with respect to the appeal. At the conclusion of the Regulatory Programs Committee meeting on Thursday, the Agency will take action on the appeal based on the Committee's recommendation.

I will be advising the Committee and the Agency with respect to the appeal.

Cc: Terry Martino, Executive Director

Attachments

NEW YORK STATE ADIRONDACK PARK AGENCY

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In Re: Agency Project Number P2011-95 and the
Appeal of Actions of Richard E. Weber, III, Deputy
Director of Regulatory Programs in the Course of
Review of Project Pursuant to 9 N.Y.C.R.R. §572.22;

NOTICE OF APPEAL

Project Sponsor: Daniel Arbour, President of
Sunset Farm, Ltd.
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PLEASE TAKE NOTICE that upon the Record on Appeal, Certification of Record on Appeal, dated September 5, 2013, and Affidavit in Support of Appeal with Legal Arguments and Points of Matthew D. Norfolk, sworn to on September 5, 2013, Project Sponsor, Daniel Arbour, President of Sunset Farm, Ltd., by and through his attorney and authorized representative, Matthew D. Norfolk, Esq., a partner at the law firm of Briggs Norfolk LLP, hereby appeals the actions of Richard E. Weber, III, Deputy Director-Regulatory Programs as set forth in said Deputy Director's letters of August 9, 2013 and August 29, 2013, true and accurate copies of which are attached hereto, pursuant to 9 N.Y.C.R.R. §572.22(1)(a)(1)(v) for said Deputy Director's (1) failure to issue the Project Sponsor a written certification that the project application bearing Agency No. P2011-95 is deemed approved and a permit deemed granted pursuant to Adirondack Park Agency Act §809(6)(a), and (2) unlawful scheduling, and notice of the Agency's intention to have, an adjudicatory hearing after the time period for the Agency to do so long expired (see Adirondack Park Agency Act §809(6)(d)).

The appeal is from each and every part of said Deputy Director's decision, as set forth in his letters of August 9, 2013 and August 29, 2013, not to issue the Project Sponsor a written certification that the project application bearing Agency No. P2011-95 is deemed approved and a permit deemed granted pursuant to Adirondack Park Agency Act

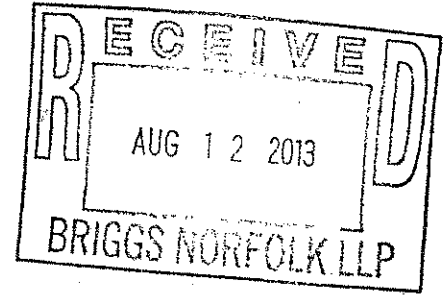
§809(6)(a) when the Project Sponsor provided notice of the Agency's failure to mail a decision on the project application within the time periods specified in Adirondack Park Agency Act §809(3)(b) and (c), and his decision to schedule, and provide notice of the Agency's intention to have, an adjudicatory hearing after the time limit for the Agency to do so long expired (see Adirondack Park Agency Act §809(6)(d).

Dated: Lake Placid, New York
September 5, 2013

Briggs Norfolk LLP

By: 

Matthew D. Norfolk, Esq.
Attorneys for Project Sponsor/Appellant
Sunset Farm, Ltd.
2296 Saranac Avenue
Lake Placid, New York 12946
518.523.5555



August 9, 2013

Matthew Norfolk, Esq.
2296 Saranac Avenue
Lake Placid, NY 12946

Re: P2011-95 Daniel Arbour, Sunset Farm

Dear Mr. Norfolk:

Thank you for your letter of August 1, 2013, and the accompanying materials with its explanation of the status of your client's efforts to provide the information requested by my "Request for Additional Information" dated April 3, 2012, and my letter of May 30, 2012.

Pursuant to 9 NYCRR § 574.6, the Agency cannot approve a project which is a prohibited use. As you know, former Agency Counsel John Banta opined that the proposed airport is a prohibited use in the Town of Willsboro (letter dated April 16, 2011). This opinion remains staff's position absent a more formal legal opinion on the issue or a use variance from the Town of Willsboro. In my May 30, 2012 letter, I advised you that Agency staff would complete the project upon receipt of such a legal opinion or variance. Your August 1, 2013 letter did not provide either, although you did explain your client's efforts to satisfy staff's request and his position on the issue.

In addition, of the four items noted in my April 3, 2012 "Request for Additional Information", only one (item 3) was partially satisfied by your August 1, 2013 transmittal of the May 13, 2013 NYS Department of Transportation letter. Staff still believe that the information requested for the remaining three items is needed in order to address issues related to the potential impacts of your client's project.

To move this process forward, Agency staff have decided to deem your client's application complete without the missing information that staff have requested "for purposes of commencing review of the application" pursuant to 9 NYCRR § 572.8. The Notice of Completion is attached to this letter.

Matthew Norfolk, Esq.

August 9, 2013

Page 2 of 2

However, because of the essential information that remains outstanding, staff are prepared to make a recommendation to the Agency at its September 12-13th meeting for an adjudicatory hearing on this application. The purpose of the hearing would be to obtain the missing information and to potentially deny the proposed project. Specifically, staff's recommendation would be for the hearing to focus on the issue of whether the airport is a prohibited use in the Town of Willsboro, and potentially on other issues related to the information not provided in response to my April 3, 2012 "Request for Additional Information."

Staff ask that your client make further efforts to seek a more definitive legal position from the Town of Willsboro. We would be willing to participate in discussions with the Town in that regard. Staff also encourage your client to fully respond to my April 3, 2012 "Request for Additional Information". While we would prefer to obtain this information before seeking a hearing on the project, absent your client's willingness to suspend the statutory 60-day time clock, staff must bring the project to the September meeting in order to comply with Executive Law § 809(3)(d).

If you have any questions, please feel free to contact me or Suzanne McSherry, the assigned Environmental Program Specialist.

Sincerely,



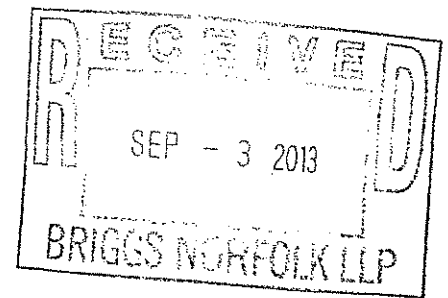
Richard E. Weber, III
Deputy Director, Regulatory Programs

REW:MJG:SBM:mlr

cc: Daniel Arbour



NEW YORK STATE
Adirondack
parkagency



Via Facsimile and Regular Mail

August 29, 2013

Matthew Norfolk, Esq.
2296 Saranac Avenue
Lake Placid, NY 12946

Re: P2011-95 Daniel Arbour, Sunset Farm

Dear Mr. Norfolk:

This is to respond to your letter of August 23, 2013, and to explain why staff respectfully disagree with your position.

As you indicate in your letter, a Notice of Completion was issued for this project on February 14, 2012, triggering the statutory time periods for an Agency decision imposed by Executive Law Section 809(3)(b) and (c). However, by your letter of April 30, 2012, you consented to an extension of the time period for an Agency decision on the project until July 15, 2012. Such extensions are authorized by Executive Law Section 809(6)(b).

In your April 30, 2012 letter, you also specifically requested that the project not be referred to the Agency for a decision at its May 2012 meeting. You stated that your client would be providing additional information requested by staff "to enable the Agency to render a determination" on your client's application. (See Staff's April 3 and 16, 2012 communications).

Within the extended time period you consented to, I advised you by letter of May 30, 2012 that staff had issued the February 14, 2012 Notice of Completion in error, and would issue a new project completion notice upon receipt of "either a use variance from the Town of Willsboro or a legal determination from the Town counsel stating that the project would be lawful under Town laws." Your client did not appeal my May 30, 2012 determination to the Agency pursuant to 9 NYCRR Section 572.22(a), and the

time for doing so expired. As a result, your client's application remained incomplete until issuance of my August 9, 2013 Notice of Completion discussed below.

After my May 30, 2012 letter, we did not hear anything responsive from you or your client for over a year until we received your August 1, 2013 letter. That letter failed to provide the information that my May 30, 2012 letter had said was needed in order for staff to determine the application complete. Instead, it demanded a decision on the project pursuant to Executive Law Section 809(6)(a). Since the project has remained incomplete since May 30, 2012, there is no basis for your demand for an Agency decision.

I responded to your August 1, 2013 letter on August 9th, determining your client's application complete pursuant to Executive Law Section 809(2)(b) despite staff's belief that requested information critical to a decision has still not been provided. The August 9, 2013 Notice of Completion once again triggered the statutory time periods for an Agency decision imposed by Executive Law Section 809(3).

As stated in my letter of August 9, 2013 accompanying the Notice of Completion, staff will bring this matter to the Agency for action at its September 12-13, 2013 regular monthly meeting. The dates of that meeting are well within the applicable statutory time periods for an Agency decision on this project set forth in Executive Law Section 809(3).

Please do not hesitate to contact me if you have any questions prior to the Agency's meeting.

Sincerely,



Richard E. Weber, III
Deputy Director, Regulatory Programs

REW:PVC:mlr

NEW YORK STATE ADIRONDACK PARK AGENCY

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In Re: Agency Project Number P2011-95 and the
Appeal of Actions of Richard E. Weber, III, Deputy
Director - Regulatory Programs, in the Course of
Review of Project Pursuant to 9 N.Y.C.R.R. §572.22;

Project Sponsor: Daniel Arbour, President of
Sunset Farm, Ltd.

-----X
**AFFIDAVIT IN SUPPORT OF APPEAL
WITH LEGAL ARGUMENTS AND POINTS**

I, Matthew D. Norfolk, Esq., a partner at the law firm of Briggs Norfolk LLP, being
duly sworn, deposes and states as follows:

1. I am the authorized representative and attorney for the Daniel Arbour, Project
Sponsor and President of Sunset Farm, Ltd., (see Record on Appeal ("R."), Exhibit ("Ex.")
N) and as such I am fully and personally familiar with the facts and circumstances set forth
in this affidavit.

2. I am an attorney duly admitted to practice law in the State of New York and
I am a partner at the law firm of Briggs Norfolk LLP.

3. This affidavit is being submitted to New York State Adirondack Park Agency
(hereinafter referred to as the "Agency") in support of the Project Sponsor's appeal of the
actions of Richard E. Weber, III, Deputy Director-Regulatory Programs of the Agency, as
contained and set forth in Deputy Director Weber's letters of August 9, 2013 and August
29, 2013, wherein said Deputy Director: (1) failed to issue the Project Sponsor a written
certification that the project application bearing Agency No. P2011-95 is deemed approved
and a permit deemed granted pursuant to Adirondack Park Agency Act (hereinafter
referred to as the "APA Act") §809(6)(a); and, (2) unlawfully scheduled, and provided notice

of the Agency's intention to have, an adjudicatory hearing after the time period for the Agency to do so long expired (see APA Act §809(6)(d)).

4. True and accurate copies of Deputy Director Weber's letters, dated August 9, 2013 and August 29, 2013, are annexed to the Project Sponsor's Notice of Appeal, dated September 5, 2013, and are included in the Record on Appeal being submitted herewith, as Exhibits P and S, respectively.

5. This appeal is being brought pursuant to 9 N.Y.C.R.R. §572.22(1)(a)(v).

6. The Project Sponsor's project application, as revised on January 25, 2012, seeks Agency approval for a private, 1,450-foot long, 50-foot wide grass airstrip. The runway would be no less than 1,400 feet westerly of Route 22 in the Town of Willsboro and would have a north-south orientation. No runway lighting or structures are proposed. A seven-foot tall pole with an orange nylon windsock would be installed adjacent to the runway. Use of the airstrip would be limited to daylight hours. A maximum of 150 take-offs and landings annually are proposed. No aircraft maintenance or refueling would occur on-site. The airstrip would be utilized by single-engine planes only, without horsepower limits.

7. The Project Sponsor has obtained the necessary approval to establish the proposed airstrip from the Federal Aviation Agency (see R., Ex. O (attachment)) and New York State Department of Transportation (see R., Ex. O (attachment)). In order to apply for approval of the airstrip by New York State Department of Transportation, the Project Sponsor successfully petitioned the Town of Willsboro Town Board to have a Town Board resolution passed that made a formal request to New York State Department of Transportation to review the proposed airstrip pursuant to New York General Business §249. See R., Ex. O (attachment).

8. In addition, the Project Sponsor received a formal, written determination from the Town of Willsboro Zoning Officer, James A. Kinley, dated May 9, 2011, that the proposed airstrip is not prohibited by Town of Willsboro local laws and ordinances and that a permit from the Town of Willsboro Zoning Officer or review by the Planning Board was not required to establish the proposed airstrip. See R., Ex. A (Attachment F) and Ex. O (attachment); see also R., Ex. A (Attachment E) (Town of Willsboro Zoning Officer also completed and executed the Local Government Notice Form, which also proclaims that the proposed airstrip is not prohibited by the local laws or ordinances of the Town of Willsboro).

History of Project Permit Application to the Agency

9. On June 6, 2011, the Project Sponsor filed with the Agency his application for a permit to establish a grass airstrip on property owned by the Project Sponsor located in the Town of Willsboro, Essex County, at 3061 Essex Road (Route 22), and bearing tax map identification No. 40.1.2.22.002 (hereinafter referred to as the "Premises"). See R., Ex. A. The proposed project was assigned an Agency File number, to wit, P2011-0095.

10. On October 27, 2011, the Agency issued a *Major Project Public Notice, Application Completed*. See R., Ex. C.

11. By a written agreement executed by Daniel Arbour, as the Project Sponsor, on November 11, 2011, and executed by Suzanne B. McSherry, an Agency Environmental Program Specialist, on November 9, 2011, and pursuant to APA Act §809(6)(b), both the Agency and Project Sponsor consented and agreed to extend the Agency's 60-day time-frame to provide notice of its determination to have an adjudicatory hearing on the

application to February 20, 2013, and the Agency's 90-day time frame to issue a determination on the application to March 21, 2012. See R., Ex D.

12. On December 6, 2012, the Agency issued a Notice of Informal Information Hearing on Proposed Project 2011-95. See R., Ex E. The information hearing was conducted on January 10, 2012, at the Willsboro Visitor's Center.

13. On January 25, 2012, the Project Sponsor amended the permit application, in the main, to seek approval to utilize the proposed airstrip with single-engine planes only, without horsepower limits, a maximum of 150 take-offs and landings annually.

14. Also, on January 25, 2012, pursuant to APA Act §809(6)(b), the Agency and Project Sponsor entered into a written agreement executed by Daniel Arbour, as the Project Sponsor, and executed by Suzanne B. McSherry, an Agency Environmental Program Specialist, to extend the Agency's 60-day time-frame to provide notice of its intent to have an adjudicatory hearing on the application to **Friday, May 18, 2012** (see APA Act §809(3)(d)), and the Agency's 90-day time-frame to issue a determination on the application to **Monday, June 18, 2012** (see id.). See R., Ex F.

15. On February 14, 2012, the Agency issued a *Major Project Public Notice, Revised Application Completed*. See R., Ex. H and I. This notice was sent to the Project Sponsor pursuant to APA Act §809(1)(b) and Adirondack Park Agency Rules and Regulations §572.8. The purpose of this written notice was to inform the Project Sponsor and any interested third-parties that the amended application of January 25, 2012, was complete and under formal review for Agency action.

16. The aforementioned *Major Project Public Notice, Revised Application Completed* was issued contemporaneously with a written request, dated February 14, 2012, by the Agency (Suzanne B. McSherry) to the Town of Willsboro Planning Board for advisory comments on the proposed project pursuant to Adirondack Park Agency Rules and Regulations §§ 572.8(b) and 572.13(c). See R., Ex H. The Planning Board did not respond to the Agency's request for advisory comments and to date has not made any objection to, or voiced any concerns about, the proposed project.

17. Notably, in its February 14, 2012, letter to the Planning Board, the Agency acknowledged that there was a question or concern raised by the attorneys for Braidlea Farms as to whether the Town of Willsboro Zoning Ordinance prohibits the proposed airstrip. Nonetheless, the Agency simultaneously issued its *Major Project Public Notice, Revised Application Completed*, dated February 14, 2012.

18. By a written *Request for Additional Information*, dated April 3, 2012, issued to the Project Sponsor, Deputy Director Weber confirmed that the application is under review by the Agency. See R., Ex. J. The request for additional information after issuance of a notice of completed application is permissible under APA Act §809(6)(c). However, this statutory provision expressly states that a request for additional information does not extend the time periods for Agency action set forth in APA Act §809. Accordingly, the Agency's 60-day deadline to provide notice of its decision to have an adjudicatory hearing on the application remained **Friday, May 18, 2012**, and the Agency's 90-day deadline to issue final decision on the application remained **Monday, June 18, 2012**.

19. Then, approximately two months after issuance of the notice of a completed revised application, with no new facts, and without a change of circumstances, by letter, dated April 16, 2012, former Agency legal counsel, John S. Banta, Esq., sent the Town of Willsboro Planning Board, Zoning Officer and Town Board a letter wherein he opined that the proposed airstrip was not permitted by the Town of Willsboro Zoning Ordinance. See R., Ex K.

20. Attorney Banta sent his unsolicited opinion-letter despite the fact that the Agency had long before received the determination by Town of Willsboro Zoning Officer James Kinley that the proposed airstrip was **not** prohibited by local law. In addition, long before Attorney Banta's opinion-letter, the Agency had also received, on August 8, 2011, a copy of a letter from Associate Counsel of the Office of the State Comptroller, addressed to Zoning Officer James Kinley, and dated July 28, 2011, with a written opinion from the Office of the State Comptroller which concludes that if a town's local land use law or ordinance does not contain a provision prohibiting a particular use, then the use is not barred or prohibited under the local land use law or ordinance. See R., Ex. B. Finally, as mentioned above, prior to Attorney Banta's April 16 letter, the Agency also had already requested an opinion from the Town of Willsboro Planning Board as to whether the proposed airstrip was lawful under local law. See R., Ex. H. Again, the Planning Board never provided a response to the Agency's inquiry objecting to the proposed airstrip or advising that the proposed airstrip was prohibited. Notwithstanding the foregoing, all that Attorney Banta's April 16 letter amounts to is simply one attorney's legal opinion - it was not an action of the Agency as provided for in APA Act §809.

21. In an effort to provide the Agency with the additional information requested in Deputy Director Weber's April 3, 2012, *Request for Additional Information*, by letter, dated April 30, 2012, your deponent made a written request, pursuant to APA Act §809(6)(b), to extend the Agency's time period to make a decision on the project application to July 15, 2012. (Notably, my letter did not include a request to extend the Agency's time period to notify the Project Sponsor of its determination to hold a public hearing.) However, as discussed in detail below, my request to extend the Agency's time to render a decision made on behalf of the Project Sponsor was not granted, or agreed or consented to, in writing (or otherwise) by the Agency in accordance with APA Act §809(6)(b). In other words, there was no written agreement entered into by the Agency and the Project Sponsor to extend the Agency's time period to make a determination on the application, and the Agency did not consent in writing to the extension of the Agency deadline to make a decision on the project application. Accordingly, the **June 18, 2012** deadline, as agreed upon in writing earlier by the Agency and Project Sponsor, remained in effect.

22. The **May 18, 2012** agreed upon deadline for the Agency to notify the Project Sponsor of its intention to hold a public hearing on the project application came and went. The Agency did not notify the Project Sponsor of its determination to hold a public hearing on the application for a permit by May 18, 2012, as mandated by APA Act §809(d). Accordingly, the Agency was and is prohibited from having a hearing on the application, and, as a matter of statutory law, the application cannot be denied. See APA Act §809(3)(d) ("No project may be disapproved without a public hearing first being held

thereon."); see also R., Ex. G (email, dated January 26, 2012, from Suzanne McSherry to Daniel Arbour, wherein she acknowledges and admits that the Agency cannot deny a permit application if there is no public hearing).

23. Then, thirty days after your deponent faxed my April 30, 2012, letter and twelve days after the deadline for the Agency to notify the Project Sponsor of its decision to hold a public hearing, Deputy Director Weber finally responded to my April 20 letter with a letter of his own, dated May 30, 2012. See R., Ex. M. (Notably, the Deputy Director's May 30, 2012, letter was not mailed via certified mail.)

24. In his May 30 letter, Deputy Director Weber entirely ignored my request for an extension of time for the Agency to make a determination on the application for a project permit, and made no representation that the Agency would agree or consent to such an extension of time. See *id.* Rather, Deputy Director Weber asked for written confirmation from the Project Sponsor that I was his authorized representative and attorney, and advised that the permit application cannot be approved without either a use variance from the Town of Willsboro or a legal opinion from counsel for the Town of Willsboro stating that the proposed airstrip is lawful under the Town of Willsboro's Zoning Ordinance. See R., Ex. M. Nonetheless, the Deputy Director also confirmed that the Town of Willsboro provided the Agency with an advisory opinion or "guidance" that the Town of Willsboro considers the proposed airstrip to be permissible under its local zoning ordinance. Finally, Deputy Director Weber indicated that the Agency's February 14, 2012, *Major Project Public Notice, Revised Application Completed* was issued in error. However, the Deputy Director did not rescind or attempt to rescind the February 14, 2012, notice of

completion of the application - likely because the APA Act does not provide the Deputy Director (or the Agency) with the power to rescind such a notice of application completed.

25. On or about June 11, 2013, as Deputy Director Weber requested, the Project Sponsor submitted to the Agency written authorization that Matthew D. Norfolk, Esq. is the authorized representative and attorney for the Project Sponsor. See R., Ex. N.

26. Seven days later, on **June 18, 2012**, the agreed upon extended deadline for the Agency to mail a final decision on the Project Sponsor's application for a permit to establish the proposed airstrip came and went. The Agency did not make and/or mail a decision on the application for a permit on or before the **June 18, 2012** deadline.

27. On August 1, 2013, on behalf of the Project Sponsor, and pursuant to APA Act §809(6)(a), your deponent mailed to the Agency, via certified mail - return receipt requested, written notice of the Agency's failure to mail a decision on the application for a permit within the time limit (as extended by written agreement), as provided for in APA Act §809(3)(b). See R., Ex. O. In addition, on behalf of the Project Sponsor, I demanded that the Agency rendered a final decision on the application for a permit pursuant to the APA Act §809(6)(a).¹

28. The Agency failed to mail within five working days after receipt of my August 1, 2013, letter a decision on the application as required by APA Act §809(6)(a). The Agency received my August 1, 2013 letter via certified mail - return receipt requested on August 2, 2013. Thus, the Agency was to mail a decision on the application by September

¹In my letter of August 1, 2013, I misstated the deadline dates for the Agency to notify the Project Sponsor of its intention to hold a public hearing on the project application and for the Agency to make a decision on the application. I had the deadlines being April 16, 2012 and May 14, 2012, respectively. But, as set forth herein and demonstrated in the written agreements extending these deadlines contained in the Record on Appeal, the correct dates are **May 18, 2012** and **June 18, 2012**, respectively.

9, 2013. Rather than mail a decision, Deputy Director Weber mailed (via certified mail) to your deponent a letter, dated August, 2013 (see R., Ex. P), wherein he advises that Agency staff deems the application complete, together with a *Major Project Public Notice, Revised Application Completed*, dated August 9, 2013 (see R., Ex. Q).

29. Having not received a final decision on the Project Sponsor's application for a permit, by letter, dated August 23, 2013, and sent via certified mail - return receipt requested, your deponent demanded in writing that within five days the Agency provide me as the authorized representative of the Project Sponsor written certification that the application has been approved and a permit granted as mandated by APA Act §809(6)(a). Such demand was made because the Agency failed to mail a decision on the application within five working days after receipt of my August 1 letter. Pursuant to APA Act §809(6)(a), when the Agency fails to mail a decision within five working days after receiving notice of its failure to issue a decision within the time limits provided for in APA Act §803(b) and (c) the application "shall be deemed approved and a permit deemed granted subject to any standard terms and conditions applicable to such a permit and the agency shall provide the project sponsor with a written certification to this effect."

30. In response to my August 23, 2013, I received a letter from Deputy Director Weber, dated August 29, 2013, wherein he argues that I unilaterally extended the time-limit for the Agency to render a decision to July 15, 2013, and, therefore, it was permissible for him to conclude that the application was not complete in his May 30, 2013 letter. In making this argument the Deputy Director utterly ignores the clear and unambiguous requirement set forth in APA Act §809(6)(a) that an extension of time for the Agency to render a decision must be agreed or consented to in writing by both the Agency and

Project Sponsor. Notably, the Deputy Director made no attempt to explain how he could schedule an adjudicatory hearing after the agreed May 18, 2012, deadline to do so long passed.

31. For the reasons herein, the Project Sponsor appeals: (1) Deputy Director Weber's failure to issue the Project Sponsor written certification that the project application bearing Agency No. P2011-95 is deemed approved and a permit deemed granted pursuant to APA Act §809(6)(a); and, (2) said Deputy Director's unlawful scheduling, and notice of the Agency's intention to have, an adjudicatory hearing after the time period for the Agency to do so long expired (see APA Act §809(3)(d)).

LEGAL ARGUMENTS AND POINTS

The APA Act Does Not Authorize the Agency to Rescind or Void an Earlier issued Notice of Application Completed.

32. Section 809(2)(b) of the APA Act requires the Agency to determine whether or not a Class A regional project permit application is complete within 15 days of receipt of such application and notify the project sponsor **by certified mail** whether or not the application is complete. The APA Act does not authorize the Agency to rescind or nullify such notice.

33. Here, on or about February 14, 2012, the Agency issued by certified mail to the Project Sponsor notice that the revised application for a grass, airstrip was completed.² (See R., Ex. I.) With issuance of notice of application completed, the Agency could not

²Considering the Project Sponsor's revised application was received by the Agency on January 25, 2012, the February 14, 2012, notice of application completed was after the 15-day time period for the Agency to provide notice of a complete or incomplete application and, therefore, the revised application was and is, and should have been, automatically deemed complete pursuant to APA Act §809(2)(b).

thereafter rescind or nullify its notice of application completed. The APA Act simply does not authorize the Agency to do this.

Assuming *Arguendo* that the Agency Has the Power to Rescind or Deem Null and Void a Notice of Application Completed, There Was No New Facts or Change of Circumstances to Justify Such Rescission and the Agency Failed to Provide the Project Sponsor Notice of an Incomplete Application in Accordance With, and as Mandated by, §809(2)(b) of the APA Act.

34. For the sake of argument, if the Agency were to have inherent power to reconsider its earlier determination of whether an application is complete or not, it only has such power upon a showing of new facts. See *Matter of Reed v. Board of Standards & Appeals of City of N.Y.*, 255 N.Y. 126, 133-134; *Matter of Hoerner v. Tormey*, 24 A.D.2d 597; *Ellsworth Realty Co. v. Kramer*, 268 A.D. 824.

35. Here, it appears that the Deputy Director is taking the position that his May 30, 2012, letter to your deponent constitutes notice that the application was incomplete; although, to date, the Deputy Director has not expressly rescinded or withdrawn the February 14, 2012, notice of application completed. The apparent basis for Deputy Director Weber's position that the application is incomplete is that there is a question as to whether the proposed airstrip is prohibited by the Town of Willsboro Zoning Ordinance and, therefore, the Project Sponsor needs either a use variance or opinion letter from an attorney for the Town stating that the airstrip is lawful. However, this position is flawed because the issue of whether or not the airstrip was lawful under the town ordinance was not a new issue or fact that occurred after the notice of application completed was issued on February 14, 2012. Rather, this legal issue was presented to the Agency, and the Agency was put on notice of it, as early as August 8, 2011, when the Agency received an

opinion from the Office of the State Comptroller that if the local zoning law is silent on a use, the use is not prohibited. Additional proof that the Agency had knowledge of this issue before and when it issued the February 14, 2012, notice of application completed is Suzanne McSherry's letter of February 14, 2012 (see R., Ex. H.) to the Town of Willsboro Planning Board wherein she indicates that the Agency and attorneys for a particular, interested party are questioning whether the proposed airstrip is prohibited or permissible under the Town of Willsboro Zoning Ordinance. Accordingly, based upon the foregoing, the Agency cannot rescind or deem null and void its February 14, 2012, notice of application completed; the attempted rescission, if that is what the Agency considers it, was premised on a set of facts or circumstances that were fully presented, known and acknowledged by the Agency when it first issued the February 14, 2012, notice of application completed. In other words, there were no new facts or a change of circumstances justifying the Agency to change its determination that the application was complete.

36. Notwithstanding the foregoing, the Agency did not and has not issued a notice of an incomplete application pursuant to §809(2)(b) of the APA Act. Deputy Director Weber's May 30, 2012, letter to me was not sent **via certified mail** as required by APA Act §809(2)(b) and it certainly did not contain any statement that the Project Sponsor's application was incomplete - it does not even state that the February 14, 2012 notice of application completed is being rescinded or deemed a null and void. Had the Deputy Director followed the required procedure, and served a public notice of an incomplete application via certified mail, the Project Sponsor would have been given proper notice of such action to then appeal same.

37. Lastly, the fact that Deputy Director Weber sent his May 30, 2012 letter before the June 18, 2012, deadline for the Agency to make a final decision on the application is of no consequence as the Deputy Director baldly argued in his August 29, 2013 letter. The timing of the letter does not somehow make it a valid withdrawal of the Agency's February 14, 2012, notice of application completed.

The Agency and Project Sponsor Agreed in Writing That the Agency's 60-Day Deadline to Provide Notice of Decision to Have a Hearing and 90-Day Deadline to Make a Decision on the Application Was May 18, 2012, and June 18, 2012, Respectively.

38. Pursuant to the Act §809(6)(b), "Any time period specified in this section may be waived and extended for good cause by written request of the project sponsor and consent of the agency, or by written request of the agency and consent of the project sponsor." Without a written agreement entered into by both the Agency and project sponsor or written consent and a written request, as the case may be, by both the Agency and the project sponsor extending these deadlines, the Act does not allow the deadlines to be extended.

39. Here, it is irrefutable that the Agency and Project Sponsor entered into a written agreement to have said 60-day deadline be **May 18, 2012** and said 90-day deadline be **June 18, 2012**. My letter requesting an extension of time for the Agency to make a decision on the application for a permit until July 15, 2012, was neither consented nor agreed to by the Agency. My letter also made no mention of extending the May 18, 2012, deadline. Therefore, the agreed upon **May 18, 2012** and **June 18, 2012** deadlines remained in effect and govern here.

The Agency Failed to Meet the Agreed upon Deadline of May 18, 2012 to Provide Notice of its Intent to Hold a Public Hearing on the Application and Therefore The Agency Cannot Hold Such a Public Hearing.

40. As discussed above, the Agency and Project Sponsor agreed in writing that the Agency deadline for it to provide notice of its intent to hold a public hearing on the instant application was May 18, 2012. It is undeniable that the Agency failed to mail via certified mail (or otherwise) notification to the Project Sponsor of its determination to hold a public hearing on the application by May 18, 2012. Accordingly, the Agency was not and is not entitled or authorized to hold such a public hearing.

As Matter of Statutory Law, the Agency Cannot Deny the Project Sponsor's Application as There Was No and Will Be No Public Hearing.

41. Pursuant to the Act §809(3)(d), "No project may be disapproved without a public hearing being first held thereon." Considering the Agency has waived its right, ability and/or power to hold a public hearing as a consequence of its failure to timely notify the Project Sponsor of its determination to have such a hearing, the instant application can not be denied. See also R., Ex. G (email from Suzanne McSherry to Daniel Arbour, dated January 26, 2012, explaining that an application cannot be denied without a public hearing.) Accordingly, Deputy Director Weber cannot schedule or provide notice of the Agency's intention to hold such a public hearing.

Pursuant to the APA Act §809(6)(a), the Proposed Airstrip Permit Application Is "Deemed Approved and a Permit Deemed Granted."

42. Pursuant to APA Act §809(6)(a), in my letter of August 1, 2013, I provided the Agency notice of its failure to mail a decision on the Project Sponsor's revised application within the 90-day time limit as required by APA Act §809(3)(b), and as extended

by the Agency and Project Sponsor in writing to **June 18, 2012**. In addition, on behalf of the Project Sponsor, in my letter of August 1, I demanded that the Agency render a decision on the instant application for a permit in accordance with APA Act §809(6)(a). My August 1 letter was sent to the Agency at its headquarters in Ray Brook, New York, via certified mail, return receipt requested, as required by statute.

43. The Agency failed to mail a decision on said permit application within five working days after receipt of my August 1 letter. Accordingly, pursuant to APA Act §809(6)(a), the application "shall be deemed approved and a permit deemed granted subject to any standard terms and conditions applicable to such a permit and the agency shall provide the project sponsor with a written certification to this effect." To date, however, neither the Project Sponsor nor I have received from the Agency a written certification confirming that the application was deemed approved and a permit deemed granted. The Project Sponsor is entitled to written certification that its application for a permit to establish the grass airstrip has been approved. See APA Act §809(6)(a).

The Proposed Airstrip Has Been Deemed Lawful by the Town of Willsboro Zoning Officer and Is Not Prohibited by the Town of Willsboro Zoning Ordinance.

44. The Town of Willsboro Zoning Ordinance ("Definitions, p. 8) defines the Zoning Officer as "the administrative officer charged with the duty of enforcing provisions of the Ordinance." By a written determination, dated May 9, 2011, James A. Kinley, the duly appointed Zoning Officer for the Town of Willsboro, concluded that the Project Sponsor's proposed grass airstrip is not prohibited by the Town of Willsboro Zoning Ordinance and that the proposed use is not of the type to be referred to the Town's Planning Board or Zoning Board. See R., Ex. A (Attachment F). This binding

determination was not appealed or challenged by any interested party, including the Agency. In addition, Mr. Kinley has not amended, rescinded or modified his May 9, 2011, determination. The Town of Willsboro Planning Board was put on notice of the Project Sponsor's application to the Town of Willsboro Zoning Officer for approval of the airstrip and of Mr. Kinley's determination, dated May 9, 2011, as Mr. Kinley and the Agency gave the board notice of same. Nonetheless, the Planning Board did not overrule, modify, reverse or nullify Mr. Kinley's May 9, 2011 determination, nor did the Planning Board elect to assert independent jurisdiction over the proposed project pursuant to Section 11.53 of the Zoning Ordinance. Rather, the Planning Board made no objection to the proposed airstrip or attempt to overrule Mr. Kinley's determination. The same can be said for the Town of Willsboro Zoning Board of Appeals.

The Proposed Airstrip Is Not Prohibited by the Town of Willsboro Zoning Ordinance

45. Zoning ordinances are properly within the exercise of the police power by a town when they are reasonable and promote the public welfare; however, they do curtail and limit the common law rights of landowners to use their property as they wish. Consequently, since zoning ordinances are in derogation of common law property rights, they must be strictly construed so as not to place any greater interference on the free use of land than is absolutely necessary. *See Matter of Atkinson v. Wilt*, 94 A.D.3d 1218 (3rd Dept. 2012). A zoning restriction must therefore be read narrowly; any ambiguity in language must be resolved against the municipality which is seeking to enforce the restriction that it has enacted. *Id.* In other words, any doubt or ambiguity that exists as to the application of a zoning regulation must be resolved in favor of the owner of the affected property.

46. With respect to the Town of Willsboro Zoning Ordinance, in interpreting and applying the ordinance, as set forth in Section 3.20 thereof, "the requirements contained [therein] are declared to be the minimum requirements for the protection and promotion of the public health, safety, morals, comfort, convenience, and general welfare and to prevent the unrestricted use of signs."

47. The Town of Willsboro Zoning Ordinance neither expressly prohibits or expressly permits airstrips to be established or used in the Town's Residential-Rural zoning district where the Project Sponsor's property is located - or any other district within the Town for that matter. Nonetheless, when drafting the ordinance the Town of Willsboro anticipated that a property owner may elect or want to use his or her property for landing and takeoffs of aircraft. In the "Definition" section of the ordinance, the term "Airport/Heliport" is defined as "a place where aircraft can land and takeoff." Yet, the ordinance does not expressly prohibit an "Airport/Heliport" in any district. Where a proposed use is neither expressly prohibited or expressly permitted, the Courts of New York interpret the zoning ordinance to permit such a use. *See Matter of Atkinson*, 94 A.D.3d at 1220-21; *see also Matter of Subdivisions, Inc. v. Town of Sullivan*, 92 A.D.3d 1184 (3rd Dept. 2012) (Court rejected town's argument that a particular use not expressly permitted in a district means that is prohibited; noting that the use is not expressly permitted in any zoning district.)

WHEREFORE, based upon the foregoing, the Project Sponsor respectfully requests that the Agency reverse Deputy Director Weber's actions complained of hereinabove and issue a written certification that the Project Sponsor's application for the grass airstrip is deemed approved and a permit deemed granted pursuant to the Act §809(6)(a), together

such other and further relief as is just and fair.

Dated: Lake Placid, New York
September 5, 2013

Briggs Norfolk LLP

By: 

Matthew D. Norfolk, Esq.
2296 Saranac Avenue
Lake Placid, New York 12946
518.523.5555
Attorneys for Project Sponsor

NEW YORK STATE ADIRONDACK PARK AGENCY

-----X
In Re: Agency Project Number P2011-95 and the
Appeal of Actions of Richard E. Weber, III, Deputy
Director - Regulatory Programs, in the Course of

**Certification of Record on
Appeal**

Review of Project Pursuant to 9 N.Y.C.R.R. §572.22;

Project Sponsor: Sunset Farm, Ltd.
-----X

I, Matthew D. Norfolk, Esq., a partner at the law firm of Briggs Norfolk LLP, certify pursuant to Sec. 2105 of the C.P.L.R. and under penalties of perjury that the following exhibits itemized below and submitted herewith as part of the annexed Record on Appeal are true and accurate copies of the originals:

1. **Exhibit A** - Project Sponsor's Application for Major Projects, dated May 11, 2011, with the following attachments:
 - Attachment A - Current Recorded Deeds for the Project Site (Book 1215, Page 330 and Book 1264, Page 315)
 - Attachment B - Adjoining Properties' Landowners Information and Tax Map References
 - Attachment C - Recorded Deeds dating back through May 22, 1973 (Book 1264, Page 315, Book 1215, Page 330, Book 332, Page 489)
 - Attachment D - Full Scale Copy of Survey Map/Current Real Property Tax Map for Project Site
 - Attachment E - Local Government Notice Form
 - Attachment F - Municipal Approval Documents:
 - Town of Willsboro Zoning Officer James A. Kinley's written determination addressed to Daniel Arbour, dated May 9, 2011, stating that the proposed airstrip is not prohibited under local law, with enclosure
 - Attachment G - Copies of Permits, Approvals and Determinations:
 - U.S. Department of Transportation's employee Sharon Perry's letter, dated May 19, 2011
 - Federal Aviation Administration's determination
 - Attachment H - Deed Restrictions or Easements associated with the Project site
 - Attachment I - Project Sponsor Legal Interest Determination:

- NYS Department of State filing receipt
 - Certificate of Amendment of the Certificate of Incorporation of Sunset Farms, Ltd.
2. **Exhibit B** - NYS Office of the State Comptroller's Associate Counsel Mitchell S. Morris' letter, dated July 28, 2011, with attachment:
 - Opinion No. 65-639
 3. **Exhibit C** - Adirondack Park Agency (hereinafter "Agency") Public Notice Application Completed (Project No. 2011-95), dated October 27, 2011, with attachments:
 - Project Sponsor, Location and Description
 - Xavier Arbour's letter, dated June 29, 2011
 4. **Exhibit D** - Agency employee Suzanne B. McSherry's letter, dated November 9, 2011, with attachment:
 - Agreement to Extend Project Time Clocks
 5. **Exhibit E** - Agency Notice of Informal Informational Hearing on Proposed Project 2011-95, dated December 6, 2011
 6. **Exhibit F** - Agency employee Suzanne B. McSherry's letter, dated January 25, 2012, with attachment:
 - Agreement to Extend Project Time Clocks
 7. **Exhibit G** - Email, dated January 26, 2012, from Agency employee Suzanne McSherry to Daniel Arbour
 8. **Exhibit H** - Agency employee Suzanne B. McSherry's letter, dated February 14, 2012, with attachment to Town of Willsboro Planning Board:
 - Major Project Public Notice Revised Application Completed (Project No. 2011-95), with project sponsor location and description annexed, dated February 14, 2012
 9. **Exhibit I** - Agency's Major Project Public Notice Revised Application Completed (Project No. 2011-95), with project sponsor location and description annexed, dated February 14, 2012
 10. **Exhibit J** - Agency's Request for Additional Information, dated April 2, 2012

11. **Exhibit K** - Agency counsel John S. Banta's letter, dated April 16, 2012, to Town of Willsboro Planning Board, Zoning Officer and Town of Willsboro Town Board
12. **Exhibit L** - Attorney Matthew Norfolk's letter, dated April 30, 2012, to Agency attorney Mitchell Goroski, with facsimile transmittal confirmation
13. **Exhibit M** - Agency employee Richard E. Weber's letter, dated May 30, 2012, to Attorney Matthew Norfolk
14. **Exhibit N** - Daniel Arbour's letter, dated June 11, 2012, to Agency employee Richard E. Weber, III, confirming Attorney Matthew Norfolk is the attorney and authorized representative of the Project Sponsor
15. **Exhibit O** - Attorney Matthew Norfolk's letter, dated August 1, 2013, to Agency employee Richard E. Weber, III, with attachments:
 - Verified Petition to the Town Board of the Town of Willsboro Requesting Review of Proposed Airstrip Pursuant to General Business Law §249, with exhibits:
 - Exhibit A - Warranty Deed, recorded in the Essex County Clerk's Office in Book 1264, Page 315
 - Exhibit B - Sketch map of proposed airstrip
 - Exhibit C - U.S. Department of Transportation, Federal Aviation Administration letter, dated May 19, 2011, to Xavier Arbour approving proposed airstrip
 - Exhibit D - Code Enforcement Officer Kinley's determination, with attachments:
 - APA Application Attachment E - Local Government Notice Form for Project/Variance Application to the Adirondack Park Agency
 - Code Enforcement Officer James A. Kinley's letter, dated May 9, 2011, to Xavier Arbour
 - New York Zoning Law and Practice Section E. Airports ordinance
 - Town of Willsboro Town Board Resolution, dated February 13, 2013
 - NYS DOT Aviation Bureau employee Edmund Buckley's letter, dated May 12, 2013 to Nancy Huestis, Town Clerk, Town of Willsboro, providing notice of DOT approval of proposed airstrip
 - Federal Aviation Administration employee Sharon Perry's letter, dated May 19, 2011, to Xavier Arbour
 - Federal Aviation Administration memo, dated November 13, 2012 (Time Extension)
 - Certified Mail Receipt No. 7010 0780000025219529

16. **Exhibit P** – APA Deputy Director Richard E. Weber, III's letter, dated August 9, 2013, to Matthew Norfolk, with attachment
17. **Exhibit Q** - Major Project Public Notice Revised Application Completed, APA Project No. 2011-96, dated August 9, 2013, with project sponsor, location and description attached
18. **Exhibit R** - Attorney Matthew Norfolk's letter, dated August 23, 2013, to Agency employee Richard E. Weber, III, with certified mail receipt and return receipt, providing notice of the Agency's failure to timely render a decision on the application
19. **Exhibit S** - Agency employee Richard E. Weber, III's letter, dated August 29, 2013, to Attorney Matthew Norfolk

Dated: September 5, 2013


Matthew D. Norfolk

NEW YORK STATE ADIRONDACK PARK AGENCY

-----X
In Re: Agency Project Number P2011-95 and the
Appeal of Actions of Richard E. Weber, III, Deputy
Director - Regulatory Programs, in the Course of
Review of Project Pursuant to 9 N.Y.C.R.R. §572.22;

Project Sponsor: Sunset Farm, Ltd.
-----X

RECORD ON APPEAL

Matthew D. Norfolk, Esq.
Briggs Norfolk LLP
2296 Saranac Avenue
Lake Placid, New York 12946



NEW YORK STATE
Adirondack
parkagency

P.O. Box 99 • Ray Brook, New York 12977 •
(518) 891-4050

Division of Regulatory Programs

APPLICATION FOR MAJOR
PROJECTS
GENERAL INFORMATION
REQUEST

To be submitted with all permit
applications except minor projects and
variances

Instructions: Please answer all of the questions in each numbered section and provide all applicable Attachments. In addition to submitting the General Information Request, a Supplemental Information Request related to the specific type of project being proposed is needed to comprise a permit application. The Agency may also request pertinent additional information based on the information contained in the application.

Type or print clearly in ink. If you need assistance answering the questions, please call the Agency at the above telephone number. Mail three (3) copies of your application and the required attachments to the Agency at the above address. A site visit by Agency staff will be required.

Your application will be deemed incomplete if all of the information required by the General Information Request and the appropriate Special Information Request is not provided. The Adirondack Park Agency Act provides that the time period for the review of this project will not begin to run until the Agency determines that the application is complete. If the application is not complete, a request for additional information will be issued within 15 days of receipt of the application indicating which information is still required for a complete application. The proposed project may not be undertaken until an Agency permit has been issued.

1.	<u>Project Sponsor(s)*:</u>	<u>Current Property Owner</u> (if different than Project Sponsor):
	Name(s): DANIEL ARBOUR	SUNSET FARM LTD. (DANIEL ARBOUR, PRESIDENT AND OWNER)
	Address: 306 ESSEX ROAD, P.O. BOX 281 WILLSBORD, NY 12996	3061 ESSEX ROAD P.O. BOX 281 WILLSBORD, NY 12996
	Telephone: 1-518-963-4579	1-518-963-4579
	Fax: 1-518-963-4640	1-518-963-4640

* A project sponsor is a person having legal interest in property who makes application to the Agency for the review of a project proposed on such property. Documentation demonstrating such legal interest must be provided such as a current deed or purchase contract.

SEE ATTACHMENT I FOR
LEGAL INTEREST DETERMINATION

9/1/2009

2. Project Sponsor's Authorized Representative:

By filling in the name and address below and signing this application, the project sponsor is authorizing the person named below to act as his/her agent in all matters relating to this permit application before the Adirondack Park Agency. The project sponsor acknowledges that all contact regarding the application will be through his/her Authorized Representative. The project sponsor is, however, ultimately responsible for the accuracy of the information contained in this application and for compliance with all terms and conditions of any permit issued to him/her by the Agency.

Name: XAVIER ARBOUR

Address: 3061 ESSEX ROAD P.O. BOX 281
WILLSBORO, NY 12996

Telephone: 1-514-927-5801

Fax: 1-514-935-0487

3. Project Site Location/Identification (a project site is generally considered to be all adjoining properties owned by the current landowner(s) including properties separated by a public road):

Road/Highway: ESSEX ROAD / ROUTE 22

Nearby Waterbody: LAKE CHAMPLAIN

Town: WILLSBORO County ESSEX

Size: 285.61 acres

Tax Map Designation: (from the tax bill for the property) TAX MAP ID: 40.1-2-22.002

Section: _____ Block: _____ Parcel: _____

Section: _____ Block: _____ Parcel: _____

Section: _____ Block: _____ Parcel: _____

4. Project Sponsor's Legal Interest in Project Site (check the one that applies):

owner _____ signed purchase agreement holder
 lessee _____ option holder _____ other: (Identify: _____)

5. Deed(s)

Provide, as Attachment A, a complete copy of the current recorded deed(s) for the project site containing the recording information. Copies are available from the County Clerk's Office. Also, if the project sponsor has an executed contract or agreement to purchase or lease the project site, please provide a copy of it in order to establish the sponsor's legal interest in the project site. (The purchase price and other confidential information may be blackened out.)

6. Project Description:

Provide a brief description of the proposed project:

ESTABLISHMENT OF PRIVATE GRASS AIRSTRIP (1500') ON PROJECT
SPONSOR'S PROPERTY. PROJECT ONLY INVOLVES MOWING THE
GRASS TO PRACTICABLE HEIGHT, NO GRADING OR DISTURBING THE
SOIL.

Indicate the project type(s) from the following types of new land use and development? (Check all that apply and attach the appropriate completed Special Information Request)

- | | |
|-------------------------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Single Family Dwelling | <input type="checkbox"/> Marina, Boat Yard, and Boat |
| <input type="checkbox"/> Individual Mobile Home | <input type="checkbox"/> Launching Site |
| <input type="checkbox"/> Subdivision | <input type="checkbox"/> Golf Course |
| <input type="checkbox"/> Commercial Use | <input type="checkbox"/> Industrial Use |
| <input type="checkbox"/> Open Space Recreational Use | <input type="checkbox"/> Campground |
| <input type="checkbox"/> Commercial Sand and Gravel Extraction | <input type="checkbox"/> Mineral Extraction |
| <input type="checkbox"/> Mineral Extraction Structure | <input type="checkbox"/> Major Public Utility Use |
| <input type="checkbox"/> Multiple Family Dwellings | <input type="checkbox"/> Public or Semi-Public Building |
| <input type="checkbox"/> Agricultural Use or Structure | <input type="checkbox"/> Group Camp |
| <input type="checkbox"/> Forestry Use | <input type="checkbox"/> Forestry Use Structure |
| <input checked="" type="checkbox"/> Commercial or Private Airport | <input type="checkbox"/> Hunting and Fishing Cabin |
| <input type="checkbox"/> Sawmill, Chipping Mill, Pallet Mill | <input type="checkbox"/> or other Private Club Structure |
| <input type="checkbox"/> or similar Wood Using Facility | <input type="checkbox"/> Watershed Management or |
| <input type="checkbox"/> Sewage Treatment Plant | <input type="checkbox"/> Flood Control Project |
| <input type="checkbox"/> Waste Disposal Area | <input type="checkbox"/> Junkyard. |
| <input type="checkbox"/> Municipal Road | |
| <input type="checkbox"/> Other: _____ | |

7. Prior Agency Contact:

a) Has there been any previous contact or discussions with Agency staff regarding this project or project site, or has Agency staff visited the project site?

No

Yes Staff person's name: _____
Date of Contact: _____

b) Has the project been the subject of a past Agency action (e.g., permit, variance, jurisdictional inquiry, enforcement case or wetland flagging)?

No

Yes If yes, provide the following number and date:

Past Permit or Variance Number: _____ date: _____
Jurisdictional Inquiry Number: _____ date: _____
Enforcement Case Number: _____ date: _____
Wetland Boundary Flagging: _____ date: _____

9/1/2009

8. **Adjacent Properties:**

Provide, as **Attachment B**, a complete and current list of the names and addresses of all landowners whose property adjoins the project site with the tax map references (tax map section, block, and parcel numbers) based on the latest completed tax assessment roll. This list must include landowners whose property would otherwise adjoin the project site but is located across a public road or right-of-way from the site. Attached is a sheet which should be used to provide the required list of adjoining landowners. (This information is typically available from the Real Property Tax Services at County Offices or from the Town/Village assessors.)

9. **Project Site History**

As part of its review of the project, Agency staff must understand the history of the project site. If the project site was part of a larger parcel on May 22, 1973 (the enactment date of the Adirondack Park Agency Land Use and Development Plan), the exact property boundaries of the larger parcel and the size of all buildings on that date must be established.

a) State the current acreage of all connected lands owned by the current landowner, even if the parcels have different deeds and/or tax map numbers and even if larger than the project site:

286.61 acres

b) As of May 22, 1973, did the owner at that time own any adjoining property, including properties on the opposite sides of public roads?

No

Yes If yes, provide the Tax Map References of these adjoining properties:

Section: _____ Block: _____ Parcel: _____

Section: _____ Block: _____ Parcel: _____

Section: _____ Block: _____ Parcel: _____

Section: _____ Block: _____ Parcel: _____

c) Has any portion of the total as it existed on May 22, 1973 been conveyed, sold, given away or otherwise subdivided since that date?

No

Yes If yes, provide the following information for those lots or parcels (Use a separate 8-1/2"x11" paper if necessary):

Lot Number (from current tax map)	Date of Conveyance	Lot Size (sq. ft. or acres)	Was Conveyance by Gift or Sale?

Provide, as Attachment C, complete copy of all recorded deeds (not just abstracts) for the above conveyances back through May 22, 1973.

Provide, as Attachment D, a full scale copy of a survey map or the current real property tax map clearly showing the property boundaries of the project site and any tax parcel or lot that the project site was part of on May 22, 1973.

d) Are there buildings on the total contiguous landholding now owned by the present landowner?

No

Yes If yes, provide the following information (attach additional sheets if necessary):

<u>Number</u>	<u>Date of Construction</u>	<u>Size</u> (square feet)	<u>Height</u> (feet)	<u>Type/Use</u> (e.g. single family dwelling, store, garage)
1.	<u>2003</u>	<u>4500</u>	<u>25</u>	<u>BARN</u>
2.	<u>2003</u>	<u>4500</u>	<u>25</u>	<u>BARN</u>
3.	<u>2003</u>	<u>3500</u>	<u>20</u>	<u>GARAGE</u>
4.	<u>2008</u>	<u>3500</u>	<u>35</u>	<u>STABLE</u>
5.	<u>1940</u>	<u>1044</u>	<u>30</u>	<u>SINGLE FAMILY DWELLING</u>

Describe any other structures which existed on the property as of August 1, 1973 which have since been removed or destroyed and its use (e.g., residential; commercial). Include the date that the structure was removed or destroyed:

Check if no buildings or structures removed or destroyed since August 1, 1973

10. Historic Resources

Does the project site have any buildings that are more than 50 years old, or does the project site or surrounding area contain any structures or districts which are listed or deemed eligible to be listed on the State or National Register of Historic Places or does the project site involve any known archeological resources?

No

Yes If yes, provide a location map, project description, site plan map, and recent photographs keyed to the location map which the Agency will then submit to the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) as part of consultation required by the State Historic Preservation Act. Please be advised that the Agency cannot deem an application as complete until a determination and/or recommendations for historic resource impact mitigation have been provided to the Agency by the OPRHP.

11. Shoreline:

Shoreline means that line at which land adjoins waters of lakes or ponds or navigable (by boat or canoe) rivers and streams. There are minimum shoreline vegetation cutting restrictions, lot width, structure setbacks, sewage disposal system setback and shoreline access requirements under the Adirondack Park Agency Act and regulations implementing the NYS Wild, Scenic and Recreational Rivers Act. These shoreline protection standards are measured from the mean high water mark (MHW - the average of the annual high water levels). Please contact Agency staff for requirements. If the project site has shoreline and you propose construction of any kind within 100 feet of the shoreline (150 feet for Recreational Rivers, 250 feet for Scenic Rivers), the MHW will have to be established and shown on a site plan map in order to have a complete application. At the project sponsor's request, Agency staff will determine the MHW at the project site or you can have the determination made by a NYS licensed land surveyor. If you are unsure of navigability, please contact Agency staff.

a) Does the project site contain any navigable water?

No (If no, go to Section 12-Wetlands)

Yes Name of water body: _____
Length of shoreline on the project site (as it winds and turns): _____ feet

b) Is any portion of the shoreline currently being used or proposed for use by others for deeded or contractual access to the water body?

No

Yes If yes, identify and describe all shoreline access parcels, the number of lots having access to each parcel and the dates access was granted. Also provide a complete copy of all deeds for all properties which has been granted to the water body via a shoreline access parcel:

c) Will any vegetation be cut or removed within 35 feet of a lake or pond or navigable river or stream or within 100 feet of a designated NYS Wild, Scenic or Recreational River? (If you are uncertain whether the shoreline is along a designated river, check on the Adirondack Park Land Use and Development Plan Map, or the APA Regulations Appendix Q-6, or contact Agency staff.)

No

Yes If yes describe type, amount and location of vegetation to be removed:

12. Wetlands:

Are there any wetlands on the project site?

No (If no, go to Section 13-Other Regulatory Permits and Approvals)

Yes If yes, answer the following questions (Please note that wetland boundaries as delineated and confirmed by Agency staff must be shown and labeled on the Site Plan Map):

a) Will any of the activities listed below be proposed and occur within the boundaries of a freshwater wetland?

No

Yes Check all that apply:

- Draining; dredging; excavation; removing soil, peat, muck, sand, shells or gravel
- Dumping or filling with soil, stone, sand, gravel, mud, or fill of any kind
- Erecting structures, building roads or driveways, driving pilings, or placing any other obstructions
- Clearcutting of more than three acres: state number of acres _____
- Applying pesticides or fertilizers
- Constructing a wastewater treatment system or discharging a sewer outfall

If yes to any of the above, provide a detailed written description of the measures taken to avoid or minimize wetland impacts:

b) Will the project result in the temporary or permanent loss of any wetland acreage by filling or draining?

No

Yes If yes: Amount of acreage to be lost: _____ square feet.

c) Will any of the activities listed below occur within the 100 feet of a wetland?

No

Yes Check all that apply:

- Constructing a wastewater treatment leaching or absorption facility
- Applying pesticides
- Conducting other activities that could impair the functions or benefits derived from wetlands, including any diversion of water or change in hydrology, or substantially increases erosion or sedimentation

If Yes was checked for any of the above questions, a compensatory wetland mitigation plan prepared in accordance with the "New York State Adirondack Park Agency Compensatory Mitigation Guidelines" may be required. A copy of these guidelines is available on the Agency's website: (www.apa.state.ny.us) or upon request.

9/1/2009

13. Other Regulatory Permits and Approvals

The Agency cannot approve a project which has been denied a permit or which is a prohibited use under local zoning requirements and other local laws or ordinances. The Agency will also recognize community goals expressed in a formally adopted land use plan. The project should be designed to the regulatory requirements of other involved agencies.

a) Local Government Notice Form:

Provide as Attachment E, a completed copy of the Local Government Notice form (last page of this application) to the municipality in which your project is located. Have it filled out and signed by an appropriate official (e.g., Zoning Administrator, Planning Board Chairman or Supervisor, if no Zoning Administrator or Planning Board Chairman) and return it with the project application. Please read the form for instructions.

b) Municipal Approval Documents:

If local approval has been obtained for the proposed project, then provide as Attachment F, documentation (e.g., permit, site plan approval or final subdivision plat) to the Agency which confirms that the project has been approved pursuant to all applicable town and county laws including any necessary approvals from the planning and zoning boards. Also, please provide a copy of the relevant minutes of all local meetings at which the project has been discussed. (This last request is continuous; the information should be provided to the Agency as it becomes available.)

c) State and Federal Agency Contacts:

Complete the following and indicate whether any of the following agencies or departments have been contacted. Your APA application may remain incomplete until all state agency applications are complete to allow a coordinated review.

AGENCY	NO	YES	DATE	CONTACT PERSON & PHONE NUMBER
NYS Department of Health N/A	X			
NYS Department of Transportation		X	03/23/ 2011	ED BUCKLEY 518-457-8440
NYS Department of Environmental Conservation N/A	X			
NYS Office of Parks, Rec. & Historic Preservation N/A	X			
U.S. Army Corps of Engineers N/A	X			
Lake George Park Commission N/A	X			
Other FAA		X	03/24/ 2011	SHANON PERRY 1-718-553-3341

- d) State and Federal Permits, Approvals and Determinations
Provide as Attachment G, copies of all permits, approvals and determinations received from the above agencies.

14. Deed Restrictions and Easements

Describe and provide as ATTACHMENT G any current deed restrictions or easements associated with the project site.


Attach as ATTACHMENT H, any proposed deed language that will restrict further subdivision or development on the project site and any other proposed deed restrictions or easements.

15. Required Signatures

I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED IN THIS APPLICATION, INCLUDING ALL ATTACHMENTS. I BELIEVE THIS INFORMATION TO BE TRUE, ACCURATE AND COMPLETE. IN ADDITION, IN THE CASE OF ANY PROJECT SPONSOR CORPORATION, LIMITED LIABILITY CORPORATION, PARTNERSHIP OR OTHER LEGAL ENTITY, I ALSO AFFIRM THAT I AM AUTHORIZED TO SUBMIT THIS APPLICATION ON BEHALF OF THAT ENTITY.

I HEREBY AUTHORIZE THE ADIRONDACK PARK AGENCY AND MEMBERS OF ITS STAFF TO ENTER ON THE PROPERTY DESCRIBED HEREIN FOR THE PURPOSES OF CONDUCTING SUCH INVESTIGATIONS, EXAMINATIONS, TESTS AND SITE EVALUATIONS AS IT DEEMS NECESSARY, AT REASONABLE TIMES AND WITH ADVANCE NOTICE WHERE POSSIBLE, TO VERIFY INFORMATION CONTAINED IN OR RELATED TO THIS APPLICATION FOR A PROJECT PERMIT.

Signature of all Project Sponsors: (if not the landowners)
(Required for all applications)

 DANIEL ARBOUR 05/11/2011

Signature

Print Name/Title

Date

Signature(s) of all Landowner(s) from current deed:
(Required for all applications)


 DANIEL ARBOUR 05/11/2011
PRESIDENT, SUNSET FARM LTD.

Signature

Print Name

Date

Signature of Authorized Representative:
(Required if designated in Section 3 of this application)

 XAVIER ARBOUR 05/11/2011

Signature

Print Name

Date

ATTACHMENT A

Current Recorded Deed for the Project Site

ESSEX COUNTY CLERK



Instrument Number

003919

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Recording Stamp

RECORDED July 9, 1999

TIME 11:32 AM

BOOK 1215 Deeds

PAGE 330

J. J. [Signature]
ESSEX COUNTY CLERK

Type of document Deed

Party(ies): Grantor/Mortgagor/Assignor

REGINALD CARVER

Town of Willaboro

Party(ies): Grantee/Mortgagee/Assignee

DANIEL ARBOUR, INC.

Consideration 95,000

Transfer Tax Stamp

RECEIVED
1999 JUL 9

REAL ESTATE
JUL - 9 1999

TRANSFER TAX
ESSEX
COUNTY

112282

Mortgage Tax Stamp

Time Stamp

Record & Return to:

Manning & Scaglione

P.O. Box 309

Willaboro, NY 12996

IN
AS
MI
RE

Recorded by: _____

This sheet constitutes the Clerk endorsement required by section 316 A (5) for the Real Property Law of the State of New York.

RETURNED

JUL 16 1999

BOOK 1215 PAGE 331

N.Y. DEED-WARRANTY with Lien Covenant

THIS INDENTURE

Made the 8th day of July

Nineteen Hundred and Ninety-Nine

Between REGINALD CARVER, residing in 295 West Road, Willsboro, New York, 12996

hereinafter referred to as the "Grantor", and

DANIEL ARBOUR, INC., a business corporation organized and existing under the law of the State of New York, having its office and principle place of business at Post Office Box 281, Willsboro, New York, 12996

hereinafter referred to as the "Grantee",

(the words "Grantor" and "Grantee" shall be interpreted in the singular or plural, as the case may be)

Witnesseth that the Grantor, in consideration of ONE HUNDRED NINETY FIVE THOUSAND DOLLARS (\$195,000.00) lawful money of the United States, and other good and valuable consideration, paid by the Grantee, does hereby grant and release unto the Grantee, Grantee's heirs and assigns forever,

"ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York and being part of the Thomas Carver and Catherine Carver farm and which said property herein conveyed is located on the westerly side of the State highway leading from Willsboro to Essex upon which there is now constructed a dwelling house, and being the same property conveyed to William Donald Carver by Thomas E. Carver and Catherine Carver, by deed dated December 9, 1955 and recorded in the Essex County Clerk's Office on the 21st day of March, 1956 in Book 332 of Deeds at Page 489, and described as follows:

BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex in the division line between the property herein conveyed and the property of George Shanks; running thence in a general westerly direction a distance of 165 feet to a second iron stake driven in the ground; running thence in a general northerly direction a distance of 285 feet to a third iron stake driven in the ground; running thence in a general easterly direction a distance of 165 feet to a fourth iron stake driven in the ground along the westerly side of said highway and continuing thence to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 285 feet to a point opposite the first iron stake or place of beginning; running thence in a general westerly direction to the said first iron stake or the point of beginning.

EXCEPTING, HOWEVER, from the above-described premises all that portion thereof which lies within the limits of the State Highway leading from Willsboro to Essex.

Subject to the same covenants, conditions and restrictions and being the same premises as described in the Deed from Paul Ancil and Elizabeth Ancil to Vedder A. Gates dated September 9, 1968 and duly recorded in the Essex County Clerk's

BOOK 1215 PAGE 332

Office on the 19th day of September, 1968 in Liber 469 of Deeds at page 419. The said Vedder A. Gates died on the 10th day of July, 1971, a resident of the Town of Rotterdam, and his Last will and Testament was admitted to probate by the Schenectady County Surrogate's Court on the 15th day of July, 1971, and the said Mohawk National Bank of Schenectady, New York, was duly appointed Executor on said date."

BEING the same premises conveyed to Manuel Prado by Clarence R. McCormick and Catherine R. McCormick by deed dated May 22, 1975 and recorded May 22, 1975 in the Essex County Clerk's Office in Book 590 of Deeds at Page 48, and

PARCEL I

ALL THAT TRACT OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex and State of New York, bounded and described as follows:

BEGINNING on the west side of the highway running from Essex to Willsboro at the southeast corner of a farm formerly owned by Jeremiah A. Williams and by Thomas Carver; running thence westerly on said Carver south line about 71 chains and 25 links to the east line of lands formerly owned by M.S. Baker and Nellie Calkins; thence southerly along the east line of said Calkins land and also on the east line of lands formerly owned by Abram Eggleston and by John Benway to the north line of lands formally owned by Joseph Stafford and by E.W. Stafford; thence easterly along said Stafford's north line 6 chains 45 links to the northeast corner of said Stafford's lot; thence southerly 3 chains and 61 links to the north line of the lot formerly owned by Archibald Fortune and by Nellie Baldwin; thence easterly along the north line of said Baldwin land 67 chains 67 links to the center of said highway; thence northerly along said highway to the place of beginning, containing 99 acres of land, be the same more or less.

EXCEPTING AND RESERVING therefrom, the following described property:

ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York, consisting of a lot of land 250 feet on the highway and 230 feet in depth upon which there is now constructed a dwelling house and is briefly described as follows:

BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex and running thence in a general westerly direction a distance of 230 feet to a second iron stake driven in the ground for a corner; running thence in a general northerly direction a distance of 250 feet to a third iron stake driven in the ground for a corner; running thence in a general easterly direction a distance of 230 feet to a fourth iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex and continuing thence in the same course to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 250 feet to a point opposite the place of beginning; running thence in a general westerly direction to the first iron stake or the point or place of beginning.

PARCEL II

ALL THAT TRACT, PIECE OR PARCEL OF LAND, situate in the Town of Willsboro, County of Essex and State of New York, described and bounded as follows, to wit:

BEGINNING at the southeast corner of the farm formerly owned by Melancthon Baker; thence south along the west bounds of lands of Thomas Carver 9 chains and 37 links to the north bounds of lands formerly of E.W. Stafford; thence along said north bounds west 29 chains and 84 links to a stake and stones; thence north parallel to the aforementioned west line of the Thomas Carver farm 6

Carver, Reg-Arthur

BOOK 1215 PAGE 333

chains and 87 links to a stake and stones; thence west parallel with the south line of the said Baker farm and 2 chains and 50 links from same, 8 chains and 16 links to the west side of the road leading to Willsboro Village; thence north along the west side of said road 2 chains and 50 links to the south line of the aforesaid Baker farm; thence along the south line east 38 chains to the place of beginning, containing thirty (30) acres of land be the same more or less.

EXCEPTING AND RESERVING therefrom two (2) acres, more or less as conveyed by Thomas Carver and Catherine Carver, his wife, to Horatio W. Thomas and M. Isabel Thomas, his wife, by deed dated April 7, 1927, and recorded at the Essex County Clerk's Office on June 6th, 1927 in Volume 186 of Deeds at Page 539.

PARCEL III

THAT CERTAIN PARCEL OF FARM LAND with all buildings thereon, situate in the Town of Willsboro, in the County of Essex and State of New York and described as follows:

BEGINNING in the northerly line of Richard Eddy farm, so-called, at the point where said Eddy line crosses the westerly line of the highway; thence running westerly to the lands formerly of Edward Stafford; thence northerly ten chains (10) and twelve (12) links along said Stafford's easterly line to the lands of Thomas Carver; thence easterly in said Carver's land to the highway; thence southerly along said highway to the place of beginning, meaning to convey the westerly portion of lands with buildings thereon conveyed to Edward J. and Nellie L. Baldwin, by deed dated September 22, 1905 and of record in Volume 132 at Page 45 of the Lands Records of Essex County.

The land herein conveyed is bounded as follows: On the north by lands of Thomas Carver; on the east by the highway; on the south by lands of Richard Eddy and on the west by lands of Edward Stafford.

EXCEPTING AND RESERVING therefrom, the following:

1. ALL THAT TRACT OR PARCEL OF LAND lying in the Town of Willsboro, Essex County, New York, described and bounded as follows, to wit:

BEGINNING in the center of State Highway at northeast corner of land of Richard T. Eddy; thence northerly along center of State Road 215 feet; thence nearly at right angles westerly 265 feet; thence nearly at right angles southerly 180 feet to line of lands of said Eddy's; thence along line of lands of said Eddy easterly 295 feet to place of beginning.

BEING the same premises conveyed by Thomas Carver and Katherine Carver, his wife, to Hamilton A. Higby and Carrie W. Higby, his wife, by deed dated May 18th, 1928 and recorded at Essex County Clerk's Office on October 18th, 1934 in Volume 209 of Deeds at Page 282.

2. ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Willsboro, County of Essex and State of New York, described and bounded as follows to wit;

BEGINNING at the northwest corner of lands owned by H.A. Higby and occupied by John D. Clarke; running thence in a southerly direction 180 feet to lands owned by Richard Eddy; thence westerly along said Eddy's north line 50 feet; thence northerly parallel with east line and 50 feet therefrom 177 feet; thence in an easterly direction to place of beginning, containing about 8900 square feet of land, be the same more or less.

BEING the same premises conveyed by Thomas Carver and Cathryn Carver to John D. Clark and Ellen V. Clark by deed dated October 11th, 1930 and recorded at

Carver, Reg-Arthur

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Essex County Clerk's Office on October 24th, 1930 in Volume 198 of Deeds at Page 237.

3. ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York and being part of the Thomas Carver and Catherine Carver farm and which said property herein conveyed is located on the westerly side of the State Highway leading from Willsboro to Essex upon which there is now constructed a dwelling house. The property herein conveyed is briefly described as follows: BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex in the division line between the property herein conveyed and the property of George Shanks; running thence in a general westerly direction a distance of 165 feet to a second iron stake driven in the ground; running thence in a general northerly direction a distance of 285 feet to a third iron stake driven in the ground; running thence in a general easterly direction a distance of 165 feet to a fourth iron stake driven in the ground along the westerly side of said highway and continuing thence to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 285 feet to a point opposite the first iron stake or place of beginning; running thence in a general westerly direction to the said first iron stake or the point or place of beginning.

BEING the same premises conveyed by Thomas E. Carver and Catherine Carver, his wife, to William Donald Carver by deed dated December 9th, 1955 and recorded in the Essex County Clerk's Office on February 10th, 1956.

PARCEL IV

The following described real estate situated in Willsboro, in the County of Essex and State of New York: BEGINNING at the southeast corner of a piece of land heretofore owned by Richard Stafford; running thence south 88-1/4 degrees west 36 chains and 40 links to the east side of the road; thence southerly along said road to the north line of the 40 acre lot heretofore willed to Jobe Stafford; thence north 88-1/4 degrees east 44 chains and 12 links to a stake being the southeast corner of the home lot of Joseph Stafford; thence north 1-3/4 degrees west 19 chains and 40 links; thence south 89 degrees west 6 chains 47 links to a stake and stones; thence south 1-3/4 degrees east 1 chain 75 links to the place of beginning, containing 78 acres and 27 rods of land, be the same more or less.

BEING the same premises heretofore willed to Ransom Stafford.

EXCEPTING a section of land described as follows:

Starting at the southwest corner of that portion of the former Louis Carter farm and running due east on the south line of said farm for 235 feet; thence north 90 degrees for 314 feet; thence 90 degrees east for 235 feet; thence 90 degrees north for 400 feet; thence east 90 degrees for 84 feet; thence north 90 degrees for 441 feet; thence west 90 degrees for 387 feet; along the north boundary of that part of the Louis Carter farm to the northwest corner; thence along the road southerly to the point of beginning, containing 9 acres, more or less, of land.

BEING substantially the same premises conveyed by Thomas E. Carver and Catherine Carver, his wife, to Thomas E. Carver, Catherine Carver and William Donald Carver, as Joint Tenants by deed dated December 12th, 1955 and recorded in the Essex County Clerk's Office on February 15th, 1956 in Volume 332 of Deeds at Page 137.

BEING the same premises described in the deed made and given by Thomas E. Carver, Catherine Carver, William Donald Carver and Dorothy Carver to Art Jacques, Inc., dated March 29, 1965 recorded in the Essex County Clerk's Office on March 31, 1965 in Liber 430 of Deeds at Page 294.

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BEING the same premises described in the deed made and given by Art Jacques, Inc. to Charles Vosburgh, dated February 5, 1968, recorded in the Essex County Clerk's Office on February 9, 1968 in Liber 462 of Deeds at Page 356.

SUBJECT to easements of record and more specifically an easement given by Thomas E. Carver and Catherine Carver, his wife, to Carl Garvey and Arthur Jacques for water rights by instrument dated April 26, 1963, recorded in the Essex County Clerk's Office on May 10, 1963 in Liber 409 of Deeds at Page 250.

BEING, the same premises described in the deed from Clarence R. McCormick and Catherine McCormick to Manuel Prado, d/b/a Grouse Farms dated May 22, 1975 and recorded in the Essex County Clerk's Office May 22, 1975 in Book 590 of Deeds at Page 51."

ALL OF THE ABOVE LANDS are the same premises described in deed made and given by William E. Russell, Esq. as Referee to Reginald Carver dated July 6, 1983 recorded in the Essex County Clerk's office on November 4, 1983 in Liber 798 of Deeds at Page 266.

EXCEPTING from the above described lands, the lands described in the deed made and given by Reginald Carver to Kenneth A. Schneider and Margaret A. Schneider, his wife, dated July 6, 1983, recorded in the Essex County Clerk's Office on March 22, 1985 in Liber 829 of Deeds at Page 118.

PARCEL V

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND situate, lying and being in the Town of Willsboro, County of Essex and State of New York,

"Starting at the southwest corner of that portion of the former Louis Carter farm and running due east on the south line of said farm for 235 feet; thence north 90 degrees for 314 feet; thence 90 degrees east for 235 feet; thence 90 degrees north for 400 feet; thence 90 degrees east for 84 feet; thence north 90 degrees for 441 feet; thence west 90 degrees for 187 feet along the north boundary of that part of the Louis Carter farm to the northwest corner; thence along the road southerly to the point of the beginning. Containing 9 acres, more or less.

BEING part of the same premises conveyed to The Federal Land Bank of Springfield by Referee's Deed dated February 8, 1937, recorded February 13, 1937 in the Essex County Clerk's Office in Liber 215 of Deeds at Page 272.

EXCEPTING a quit-claim deed limited to an easement in favor of the Town of Willsboro to enter upon the lands referred to therein for the purpose of installing, repairing and maintaining the existing water line.

BEING the same premises conveyed by Charles H. Raymond and Harriet M. Raymond, his wife, to Theodore M. Ruzow and Renee R. Ruzow, his wife, on June 15, 1966 and recorded in the County Clerk's Office in Elizabethtown, New York on July 16, 1966 in Book 445 of Deeds at Page 33. "

BEING the same premises conveyed by Theodore M. Ruzow and Renee R. Ruzow, his wife, to Reginald A. Carver, by deed dated January 11, 1990, recorded in the Essex County Clerk's Office on January 26, 1990 in Liber 961 of Deeds at Page 23.

ALL OF THE ABOVE LANDS ARE BEING CONVEYED SUBJECT TO EASEMENTS, EXCEPTIONS, RESERVATIONS, RESTRICTIONS, COVENANTS AND CONSENTS OF RECORD AND FURTHER SUBJECT TO SUCH A STATE OF FACTS THAT A CURRENT ACCURATE SURVEY OF SUBJECT PREMISES WOULD DISCLOSE.

BOOK 1215 PAGE 336

Together with the appurtenances and all the estate and rights of the Grantor in and to said premises,

To have and to hold the premises herein granted unto the Grantee, Grantee's heirs and assigns forever.

And said Grantor covenants as follows:

First, That the Grantee shall quietly enjoy the premises;

Second, That said Grantor will forever Warrant the title to said premises.

Third, That, in Compliance with Sec. 13 of the Lien Law, the Grantor will receive the consideration of this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Witness Whereof, the Grantor has signed this Instrument on the day and year first above written.

Reginald Carver

Reginald Carver

L.S.

STATE OF NEW YORK)
(ss.
COUNTY OF CLINTON)

On the 8th day of July in the year 1999 before me, the undersigned, a Notary Public in and for said State, personally appeared REGINALD CARVER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

William E Russell

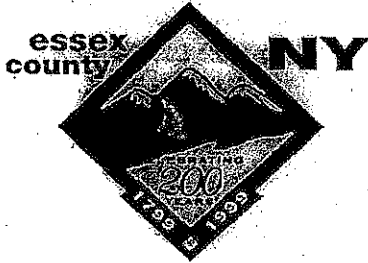
Notary Public of the State of New York

WILLIAM E RUSSELL
NOTARY PUBLIC, STATE OF NEW YORK
RESIDING IN THE COUNTY OF CLINTON
NO. 10
COMMISSION EXPIRES JULY 11, 2001

ESSEX COUNTY CLERK

LIBER 1264 PAGE 315

Instrument #



005551

Recording Stamp

Recorded Oct 25, 2000
Time 12:16 PM
Book 1264 deeds
Page 315

Grant Volery
Deputy Essex County Clerk

Document Type Warranty Deed

Town Willsboro

Consideration -0-

Party(ies): Grantor/~~Manning & Snglione~~

Daniel Arbour, Inc.

Party(ies): Grantee/~~Manning & Snglione~~

Sunset Farm, Ltd.

Recorded by: _____

Transfer Tax Stamp

Received
\$ 0.00
Real Estate
Transfer Tax
Essex County

11633

Mortgage Tax Stamp

Recd Basic Mtg Tx \$ _____
Spec Add'l Tax \$ _____
Add'l Tax \$ _____
Total Amt of Tax \$ _____
Dated _____

Essex County Clerk

Record & Return to:

Manning & Snglione
PO Box 309
Willsboro NY 12996

Time Stamp/Assignment/Discharge/Release Info

Index
Verify
Merge
Copy/Dis
Scan
Myero

WARRANTY DEED

THIS INDENTURE, made the 31st day of AUGUST, Two Thousand
BETWEEN

DANIEL ARBOUR, INC., a business corporation organized and existing under the laws of the State of New York, having its office and principal place of business at PO Box 281, Willsboro, New York 12996, hereinafter referred to as the grantor, and

SUNSET FARM, LTD., with offices located at Willsboro, New York hereinafter referred to as the grantee:

WITNESSETH, that the grantor, in consideration of ONE DOLLAR (\$1.00), paid by the grantee, does hereby grant and release unto the grantee, the distributees or successors and assigns of the grantee forever,

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, and the buildings erected, lying and being in the Town of Willsboro, County of Essex and State of New York and being more particularly described in Schedule "A" hereto annexed and made a part hereof.

TOGETHER with all right, title and interest, if any, of grantor in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the grantor in and to said premises,

TO HAVE TO HOLD the premises herein granted unto the grantee, the heirs or successors and assigns of the grantee forever.

AND the grantor covenants as follows:

FIRST, that the grantee shall quietly enjoy the said premises;

SECOND, that the grantor will forever WARRANT the title to said premises.

THIRD, that the grantor, in compliance with Section 13 of the Lien Law, covenants that the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "grantor" and "grantee" shall be construed as if it read "grantors" and "grantees" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the grantor has duly executed this deed the day and year first above written.

DANIEL ARBOUR, INC.

By:

Daniel Arbour
Daniel Arbour, President

STATE OF NEW YORK)
) SS.:
COUNTY OF ESSEX)

On this 31st day of August, in the year 2000, before me, the undersigned, a Notary Public in and for said state, personally appeared Daniel Arbour, President of Daniel Arbour, Inc. personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

David D. Scaglione
NOTARY PUBLIC

DAVID D. SCAGLIONE
NOTARY PUBLIC STATE OF NEW YORK
NO: 21-4963687 ESSEX
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 12, 2001

SCHEDULE "A"

" ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York and being part of the Thomas Carver and Catherine Carver farm and which said property herein conveyed is located on the westerly side of the State highway leading from Willsboro to Essex upon which there is now constructed a dwelling house, and being the same property conveyed to William Donald Carver by Thomas E. Carver and Catherine Carver, by deed dated December 9, 1955 and recorded in the Essex County Clerk's Office on the 21st day of March, 1956 in Book 332 of Deeds at page 489, and described as follows:

BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex in the division line between the property herein conveyed and the property of George Shanks; running thence in a general westerly direction a distance of 165 feet to a second iron stake driven in the ground; running thence in a general northerly direction a distance of 285 feet to a third iron stake driven in the ground; running thence in a general easterly direction a distance of 165 feet to a fourth iron stake driven in the ground along the westerly side of said highway and continuing thence to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 285 feet to a point opposite the first iron stake or place of beginning; running thence in a general westerly direction to the said first iron stake or the point of beginning.

EXCEPTING, HOWEVER, from the above-described premises all that portion thereof which lies within the limits of the State Highway leading from Willsboro to Essex.

Subject to the same covenants, conditions and restrictions and being the same premises as described in the Deed from Paul Anctil and Elizabeth Anctil to Vedder A. Gates dated September 9, 1968 and duly recorded in the Essex County Clerk's Office on the 19th day of September, 1968 in Liber 469 of Deeds at page 419. The said Vedder A. Gates died on the 10th day of July, 1971, a resident of the Town of Rotterdam, and his Last will and Testament was admitted to probate by the Schenectady County Surrogate's Court on the 15th day of July, 1971, and the said Mohawk National Bank of Schenectady, New York, was duly appointed Executor on said date."

BEING the same premises conveyed to Manuel Prado by Clarence R. McCormick and Catherine R. McCormick by deed dated May 22, 1975 and recorded May 22, 1975 in the Essex County Clerk's Office in Book 590 of Deeds at page 48, and

PARCEL I

ALL THAT TRACT OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex and State of New York, bounded and described as follows:

BEGINNING on the west side of the highway running from Essex to Willsboro at the southeast corner of a farm formerly owned by Jeremiah A. Williams and by Thomas Carver; running thence westerly on said Carver south line about 71 chains and 25 links to the east line of lands formerly owned by M.S. Baker and Nellie Calkins; thence southerly along the east line of said Calkins land and also on the east line of lands formerly owned by Abram Eggleston and by John Benway to the north line of lands formerly owned by Joseph Stafford and by E.W. Stafford; thence easterly along said Stafford's north line 6 chains 45 links to the northeast corner of said Stafford's lot; thence southerly 3 chains and 61 links to the north line of the lot formerly owned by Archibald Fortune and by Nellie Baldwin; thence easterly along the north line of said

Baldwin land 67 chains 67 links to the center of said highway; thence northerly along said highway to the place of beginning, containing 99 acres of land, be the same more or less.

EXCEPTING AND RESERVING therefrom, the following described property:

ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York, consisting of a lot of land 250 feet on the highway and 230 feet in depth upon which there is now constructed a dwelling house and is briefly described as follows:

BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex and running thence in a general westerly direction a distance of 230 feet to a second iron stake driven in the ground for a corner; running thence in a general northerly direction a distance of 250 feet to a third iron stake driven in the ground for a corner; running thence in a general easterly direction a distance of 230 feet to a fourth iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex and continuing thence in the same course to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 250 feet to a point opposite the place of beginning; running thence in a general westerly direction to the first iron stake or the point or place of beginning.

PARCEL II

ALL THAT TRACT, PIECE OR PARCEL OF LAND, situate in the Town of Willsboro, County of Essex and State of New York, described and bounded as follows, to wit:

BEGINNING at the southeast corner of the farm formerly owned by Melancthon Baker; thence south along the west bounds of lands of Thomas Carver 9 chains and 37 links to the north bounds of lands formerly of E.W. Stafford; thence along said north bounds west 29 chains and 84 links to a stake and stones; thence north parallel to the aforementioned west line of the Thomas Carver farm 6 chains and 87 links to a stake and stones; thence west parallel with the south line of the said Baker farm and 2 chains and 50 links from same, 8 chains and 16 links to the west side of the road leading to Willsboro Village; thence north along the west side of said road 2 chains and 50 links to the south line of the aforesaid Baker farm; thence along the south line east 38 chains to the place of beginning, containing thirty (30) acres of land be the same more or less.

EXCEPTING AND RESERVING therefrom two (2) acres, more or less as conveyed by Thomas Carver and Catherine Carver, his wife, to Horatio W. Thomas and M. Isabel Thomas, his wife, by deed dated April 7, 1927, and recorded at the Essex County Clerk's Office on June 6th, 1927 in Volume 186 of Deeds at Page 539.

PARCEL III

THAT CERTAIN PARCEL OF FARM LAND with all the buildings thereon, situate in the Town of Willsboro, in the County of Essex and State of New York and described as follows:

BEGINNING in the northerly line of Richard Eddy farm, so-called, at the point where said Eddy line crosses the westerly line of the highway; thence running westerly to the lands formerly of Edward Stafford; thence northerly ten chains (10) and twelve (12) links along said Stafford's easterly line to the lands of Thomas Carver; thence easterly in said Carver's land to the highway; thence southerly along said highway to the place of beginning, meaning to convey the westerly portion of lands with buildings thereon conveyed to Edward J. and Nellie L. Baldwin, by deed dated

September 22, 1905 and of record in Volume 132 at Page 45 of Lands Records of Essex County.

The land herein conveyed is bounded as follows: On the north by lands of Thomas Carver; on the east by the highway; on the south by lands of Richard Eddy and on the west by lands of Edward Stafford.

EXCEPTING AND RESERVING therefrom, the following:

1. ALL THAT TRACT OR PARCEL OF LAND lying in the Town of Willsboro, Essex County, New York, described and bounded as follows, to wit;

BEGINNING in the center of State Highway at the northeast corner of land of Richard T. Eddy; thence northerly along center of State Road 215 feet; thence nearly at right angles westerly 265 feet; thence nearly at right angles southerly 180 feet to line of lands of said Eddy's; thence along line of lands of said Eddy easterly 295 feet to place of beginning.

BEING the same premises conveyed by Thomas Carver and Katherine Carver, his wife, to Hamilton A. Higby and Carrie W. Higby, his wife, by deed dated May 18th, 1928 and recorded at Essex County Clerk's Office on October 18th, 1934 in Volume 209 of Deeds at page 282.

2. ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Willsboro, County of Essex and State of New York, described and bounded as follows to wit;

BEGINNING at the northwest corner of lands owned by H.A. Higby and occupied by John D. Clarke; running thence in a southerly direction 180 feet to lands owned by Richard Eddy; thence westerly along said Eddy's north line 50 feet; thence northerly parallel with east line and 50 feet therefrom 177 feet; thence in an easterly direction to place of beginning, containing about 8900 square feet of land, be the same more or less.

BEING the same premises conveyed by Thomas Carver and Cathryn Carver to John D. Clark and Ellen V. Clark by deed dated October 11th, 1930 and recorded at Essex County Clerk's Office on October 24th, 1930 in Volume 198 of Deeds at page 237.

3. ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York and being part of the Thomas Carver and Catherine Carver farm and which said property herein conveyed is located on the westerly side of the State Highway leading from Willsboro to Essex upon which there is now constructed a dwelling house. The property herein conveyed is briefly described as follows: BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex in the division line between the property herein conveyed and the property of George Shanks; running thence in a general westerly direction a distance of 165 feet to a second iron stake driven in the ground; running thence in a general northerly direction a distance of 285 feet to a third iron stake driven in the ground; running thence in a general easterly direction a distance of 165 feet to a fourth iron stake driven in the ground along the westerly side of said highway and continuing thence to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 285 feet to a point opposite the first iron stake or place of beginning; running thence in a general westerly direction to the said first iron stake or the point or place of beginning.

BEING the same premises conveyed by Thomas E. Carver and Catherine Carver, his wife, to William Donald Carver by deed dated December 9th, 1955 and recorded in the Essex County Clerk's Office on February 10th, 1956.

PARCEL IV

the following described real estate situated in Willsboro, in the County of Essex and State of New York: BEGINNING at the southeast corner of a piece of land heretofore owned by Richard Stafford; running thence south 88½ degrees west 36 chains and 40 links to the east side of the road; thence southerly along said road to the north line of the 40 acre lot heretofore willed to Jobe Stafford; thence north 88½ degrees east 44 chains and 12 links to a stake being the southeast corner of the home lot of Joseph Stafford; thence north 1¼ degrees west 19 chains and 40 links; thence south 89 degrees west 6 chains 47 links to a stake and stones; thence south 1¼ degrees east 1 chain 75 links to the place of beginning, containing 78 acres and 27 rods of land, be the same more or less.

BEING the same premises heretofore willed to Ransom Stafford.

EXCEPTING a section of land described as follows:

Starting at the southwest corner of that portion of the former Louis Carter farm and running due east on the south line of said farm for 235 feet; thence north 90 degrees for 314 feet; thence 90 degrees east for 235 feet; thence 90 degrees north for 400 feet; thence east 90 degrees for 84 feet; thence north 90 degrees for 441 feet; thence west 90 degrees for 387 feet; along the north boundary of that part of the Louis Carter farm to the northwest corner; thence along the road southerly to the point of beginning, containing 9 acres, more or less, of land.

BEING substantially the same premises conveyed by Thomas E. Carver and Catherine Carver, his wife, to Thomas E. Carver, Catherine Carver and William Donald Carver, as Joint Tenants by deed dated December 12th, 1955 and recorded in the Essex County Clerk's office on February 15th, 1956 in Volume 332 of Deeds at page 137.

BEING the same premises described in the deed made and given by Thomas E. Carver, Catherine Carver, William Donald Carver and Dorothy Carver to Art Jacques, Inc., dated March 29, 1965 recorded in the Essex County Clerk's Office on March 31, 1965 in Liber 430 of Deeds at page 294.

BEING the same premises described in the deed made and given by Art Jacques, Inc. to Charles Vosburgh, dated February 5, 1968, recorded in the Essex County Clerk's Office on February 9, 1968 in Liber 462 of Deeds at page 356.

SUBJECT to easements of record and more specifically an easement given by Thomas E. Carver and Catherine Carver, his wife, to Carl Garvey and Arthur Jacques for water rights by instrument dated April 26, 1963, recorded in the Essex County Clerk's Office on May 10, 1963 in Liber 409 of Deeds at page 250.

BEING, the same premises described in the deed from Clarence R. McCormick and Catherine McCormick to Manuel Prado, d/b/a Grouse Farms dated May 22, 1975 and recorded in the Essex County Clerk's Office May 22, 1975 in Book 590 of Deeds at page 51."

ALL OF THE ABOVE LANDS are the same premises described in deed made and given by William E. Russell, Esq. As Referee to Reginald Carver dated July 6, 1983 recorded in the Essex County Clerk's Office on November 4, 1983 in Liber 798 of Deeds at page 266.

EXCEPTING from the above described lands, the lands described in the deed made and given by Reginald Carver to Kenneth A. Schneider and Margaret A. Schneider, his wife, dated July 6, 1983, recorded in the Essex County Clerk's Office on March 22, 1985 in Liber 829 of Deeds at page 118.

PARCEL V

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND situate, lying and being in the Town of Willsboro, County of Essex and State of New York,

"Starting at the southwest corner of that portion of the former Louis Carter farm and running due east on the south line of said farm for 235 feet; thence north 90 degrees east for 235 feet; thence 90 degrees north for 400 feet; thence 90 degrees east for 84 feet; thence north 90 degrees for 441 feet; thence west 90 degrees for 187 feet along the north boundary of that part of the Louis Carter farm to the northwest corner; thence along the road southerly to the point of beginning. Containing 9 acres, more or less.

BEING part of the same premises conveyed to The Federal Land Bank of Springfield by Referee's Deed dated February 8, 1937, recorded February 13, 1937 in the Essex County Clerk's Office in Liber 215 of Deeds at page 272.

EXCEPTING a quit-claim deed limited to an easement in favor of the Town of Willsboro to enter upon the lands referred to therein for the purpose of installing, repairing and maintaining the existing water line.

BEING the same premises conveyed by Charles H. Raymond and Harriet M. Raymond, his wife, to Theodore M. Ruzow and Renee R. Ruzow, his wife, on June 15, 1966 and recorded in the Essex County Clerk's Office in Elizabethtown, New York on July 16, 1966 in Book 445 of deeds at page 33."

BEING the same premises conveyed by Theodore M. Ruzow and Renee R. Ruzow, his wife, to Reginald A. Carver, by deed dated January 11, 1990, recorded in the Essex County Clerk's Office on January 26, 1990 in Liber 961 of Deeds at page 23.

ALL OF THE ABOVE LANDS ARE BEING CONVEYED SUBJECT TO EASEMENTS, EXCEPTIONS, RESERVATIONS, RESTRICTIONS, COVENANTS AND CONSENTS OF RECORD AND FURTHER SUBJECT TO SUCH A STATE OF FACTS THAT A CURRENT ACCURATE SURVEY OF SUBJECT PREMISES WOULD DISCLOSE.

BEING the same property described in a deed dated July 8, 1999 given by Reginald Carver to Daniel Arbour, Inc. which said deed was recorded in the Essex County Clerk's Office on July 9, 1999 in Book 1215 of Deeds at page 330.

ATTACHMENT B

Adjoining Properties' Landowners Information and Tax Map References

<p>40.1-2-27.001 Mrs. Audrey E. Dickerson 3103 Essex Rd Willsboro, NY 12996</p>	<p>40.1-2-34.018 Mr. Richard J DeNeale / Mrs. Leanna L DeNeale 3221 Essex Rd Willsboro, NY 12996</p>	<p>40.1-2-13.000 Mr. George R Sayward / Mrs. Lois A Sayward P.O. Box 29 Essex, NY 12936</p>	<p>40.1-2-9.000 Mr. Mark C Bonfey 882 Middle Rd Willsboro, NY 12996</p>
<p>40.1-2-12.000 Mr. Brad A Leerkes / Mrs. Krissy L Gay 854 Middle Rd Willsboro, NY 12996</p>	<p>40.1-2-25.000 Mr. Roy C Sayward / Mr. Donald E Sayward 837 Middle Rd Willsboro, NY 12996</p>	<p>40.1-2-21.100 Mr. Kent Cauley / Mrs. Linda Cauley P.O. Box 122 782 Middle Rd Willsboro, NY 12996</p>	<p>40.1-2-19.000 Mr. David A Trost 7748 State Rte 3 Vermontville, NY 12989</p>
<p>40.1-2-17.000 Mr. Elwyn M Hoke / Dorothy Mae Hoke 3041 Essex Rd Willsboro, NY 12996</p>	<p>40.1-2-16.000 Sunset Farm Ltd. (Project Applicant) P.O. Box 281 Willsboro, NY 12996</p>	<p>40.1-2-14.200 Mr. Kenneth A Schneider / Mrs. Margaret A Schneider 3071 Essex Rd Willsboro, NY 12996</p>	<p>40.1-2-15.000 Mrs. Carol Pennell P.O. Box 303 3081 Essex Rd Willsboro, NY 12996</p>

ATTACHMENT C

Recorded Deeds dating back through May 22nd, 1973

This instrument constitutes the Clerk's endorsement required by New York Real Property Law §316 A (5)

ESSEX COUNTY CLERK



LIBER 1264 PAGE 315
Instrument #

005551

Document Type Warranty Deed

Town Willsboro

Consideration -0-

Party(ies): Grantor/~~Manning & Scaglione~~

Daniel Arbour, Inc.

Party(ies): Grantee/~~Manning & Scaglione~~

Sunset Farm, Ltd.

Recorded by: _____

Record & Return to:
Manning & Scaglione
PO Box 309
Willsboro NY 12996

Index
Verify _____
Merge _____
Copy/Dis _____
Scan _____
Micro _____

Recording Stamp

Recorded Oct 25, 2000
Time 12:16 PM
Book 1264 Deeds
Page 315

Robert Polary
Deputy Essex County Clerk

Transfer Tax Stamp

Received 110633
\$ 0.00
Real Estate
Transfer Tax
Essex County

Mortgage Tax Stamp

Recd Basic Mtg Tx \$ _____
Spec Add'l Tax \$ _____
Add'l Tax \$ _____
Total Amt of Tax \$ _____
Dated _____

Essex County Clerk

Time Stamp/Assignment/Discharge/Release Info

SCHEDULE "A"

" ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York and being part of the Thomas Carver and Catherine Carver farm and which said property herein conveyed is located on the westerly side of the State highway leading from Willsboro to Essex upon which there is now constructed a dwelling house, and being the same property conveyed to William Donald Carver by Thomas E. Carver and Catherine Carver, by deed dated December 9, 1955 and recorded in the Essex County Clerk's Office on the 21st day of March, 1956 in Book 332 of Deeds at page 489, and described as follows:

BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex in the division line between the property herein conveyed and the property of George Shanks; running thence in a general westerly direction a distance of 165 feet to a second iron stake driven in the ground; running thence in a general northerly direction a distance of 285 feet to a third iron stake driven in the ground; running thence in a general easterly direction a distance of 165 feet to a fourth iron stake driven in the ground along the westerly side of said highway and continuing thence to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 285 feet to a point opposite the first iron stake or place of beginning; running thence in a general westerly direction to the said first iron stake or the point of beginning.

EXCEPTING, HOWEVER, from the above-described premises all that portion thereof which lies within the limits of the State Highway leading from Willsboro to Essex.

Subject to the same covenants, conditions and restrictions and being the same premises as described in the Deed from Paul Anctil and Elizabeth Anctil to Vedder A. Gates dated September 9, 1968 and duly recorded in the Essex County Clerk's Office on the 19th day of September, 1968 in Liber 469 of Deeds at page 419. The said Vedder A. Gates died on the 10th day of July, 1971; a resident of the Town of Rotterdam, and his Last will and Testament was admitted to probate by the Schenectady County Surrogate's Court on the 15th day of July, 1971, and the said Mohawk National Bank of Schenectady, New York, was duly appointed Executor on said date."

BEING the same premises conveyed to Manuel Prado by Clarence R. McCormick and Catherine R. McCormick by deed dated May 22, 1975 and recorded May 22, 1975 in the Essex County Clerk's Office in Book 590 of Deeds at page 48, and

PARCEL I

ALL THAT TRACT OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex and State of New York, bounded and described as follows:

BEGINNING on the west side of the highway running from Essex to Willsboro at the southeast corner of a farm formerly owned by Jeremiah A. Williams and by Thomas Carver; running thence westerly on said Carver south line about 71 chains and 25 links to the east line of lands formerly owned by M.S. Baker and Nellie Calkins; thence southerly along the east line of said Calkins land and also on the east line of lands formerly owned by Abram Eggleston and by John Benway to the north line of lands formerly owned by Joseph Stafford and by E.W. Stafford; thence easterly along said Stafford's north line 6 chains 45 links to the northeast corner of said Stafford's lot; thence southerly 3 chains and 61 links to the north line of the lot formerly owned by Archibald Fortune and by Nellie Baldwin; thence easterly along the north line of said

Baldwin land 67 chains 67 links to the center of said highway; thence northerly along said highway to the place of beginning; containing 99 acres of land, be the same more or less.

EXCEPTING AND RESERVING therefrom, the following described property:

ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York, consisting of a lot of land 250 feet on the highway and 230 feet in depth upon which there is now constructed a dwelling house and is briefly described as follows:

BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex and running thence in a general westerly direction a distance of 230 feet to a second iron stake driven in the ground for a corner; running thence in a general northerly direction a distance of 250 feet to a third iron stake driven in the ground for a corner; running thence in a general easterly direction a distance of 230 feet to a fourth iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex and continuing thence in the same course to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 250 feet to a point opposite the place of beginning; running thence in a general westerly direction to the first iron stake or the point or place of beginning.

PARCEL II

ALL THAT TRACT, PIECE OR PARCEL OF LAND, situate in the Town of Willsboro, County of Essex and State of New York, described and bounded as follows, to wit:

BEGINNING at the southeast corner of the farm formerly owned by Melancthon Baker; thence south along the west bounds of lands of Thomas Carver 9 chains and 37 links to the north bounds of lands formerly of E.W. Stafford; thence along said north bounds west 29 chains and 84 links to a stake and stones; thence north parallel to the aforementioned west line of the Thomas Carver farm 6 chains and 87 links to a stake and stones; thence west parallel with the south line of the said Baker farm and 2 chains and 50 links from same, 8 chains and 16 links to the west side of the road leading to Willsboro Village; thence north along the west side of said road 2 chains and 50 links to the south line of the aforesaid Baker farm; thence along the south line east 38 chains to the place of beginning, containing thirty (30) acres of land be the same more or less.

EXCEPTING AND RESERVING therefrom two (2) acres, more or less as conveyed by Thomas Carver and Catherine Carver, his wife, to Horatio W. Thomas and M. Isabel Thomas, his wife, by deed dated April 7, 1927, and recorded at the Essex County Clerk's Office on June 6th, 1927 in Volume 186 of Deeds at Page 539.

PARCEL III

THAT CERTAIN PARCEL OF FARM LAND with all the buildings thereon, situate in the Town of Willsboro, in the County of Essex and State of New York and described as follows:

BEGINNING in the northerly line of Richard Eddy farm, so-called, at the point where said Eddy line crosses the westerly line of the highway; thence running westerly to the lands formerly of Edward Stafford; thence northerly ten chains (10) and twelve (12) links along said Stafford's easterly line to the lands of Thomas Carver; thence easterly in said Carver's land to the highway; thence southerly along said highway to the place of beginning, meaning to convey the westerly portion of lands with buildings thereon conveyed to Edward J. and Nellie L. Baldwin, by deed dated

September 22, 1905 and of record in Volume 132 at Page 45 of Lands Records of Essex County.

The land herein conveyed is bounded as follows: On the north by lands of Thomas Carver; on the east by the highway; on the south by lands of Richard Eddy and on the west by lands of Edward Stafford.

EXCEPTING AND RESERVING therefrom, the following:

1. ALL THAT TRACT OR PARCEL OF LAND lying in the Town of Willsboro, Essex County, New York, described and bounded as follows, to wit:

BEGINNING in the center of State Highway at the northeast corner of land of Richard T. Eddy; thence northerly along center of State Road 215 feet; thence nearly at right angles westerly 265 feet; thence nearly at right angles southerly 180 feet to line of lands of said Eddy's; thence along line of lands of said Eddy easterly 295 feet to place of beginning.

BEING the same premises conveyed by Thomas Carver and Katherine Carver, his wife, to Hamilton A. Higby and Carrie W. Higby, his wife, by deed dated May 18th, 1928 and recorded at Essex County Clerk's Office on October 18th, 1934 in Volume 209 of Deeds at page 282.

2. ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Willsboro, County of Essex and State of New York, described and bounded as follows to wit;

BEGINNING at the northwest corner of lands owned by H.A. Higby and occupied by John D. Clarke; running thence in a southerly direction 180 feet to lands owned by Richard Eddy; thence westerly along said Eddy's north line 50 feet; thence northerly parallel with east line and 50 feet therefrom 177 feet; thence in an easterly direction to place of beginning, containing about 8900 square feet of land, be the same more or less.

BEING the same premises conveyed by Thomas Carver and Cathryn Carver to John D. Clark and Ellen V. Clark by deed dated October 11th, 1930 and recorded at Essex County Clerk's Office on October 24th, 1930 in Volume 198 of Deeds at page 237.

3. ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York and being part of the Thomas Carver and Catherine Carver farm and which said property herein conveyed is located on the westerly side of the State Highway leading from Willsboro to Essex upon which there is now constructed a dwelling house. The property herein conveyed is briefly described as follows: BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex in the division line between the property herein conveyed and the property of George Shanks; running thence in a general westerly direction a distance of 165 feet to a second iron stake driven in the ground; running thence in a general northerly direction a distance of 285 feet to a third iron stake driven in the ground; running thence in a general easterly direction a distance of 165 feet to a fourth iron stake driven in the ground along the westerly side of said highway and continuing thence to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 285 feet to a point opposite the first iron stake or place of beginning; running thence in a general westerly direction to the said first iron stake or the point or place of beginning.

BEING the same premises conveyed by Thomas E. Carver and Catherine Carver, his wife, to William Donald Carver by deed dated December 9th, 1955 and recorded in the Essex County Clerk's Office on February 10th, 1956.

PARCEL IV

the following described real estate situated in Willsboro, in the County of Essex and State of New York: BEGINNING at the southeast corner of a piece of land heretofore owned by Richard Stafford; running thence south 88½ degrees west 36 chains and 40 links to the east side of the road; thence southerly along said road to the north line of the 40 acre lot heretofore willed to Jobe Stafford; thence north 88½ degrees east 44 chains and 12 links to a stake being the southeast corner of the home lot of Joseph Stafford; thence north 1¼ degrees west 19 chains and 40 links; thence south 89 degrees west 6 chains 47 links to a stake and stones; thence south 1¼ degrees east 1 chain 75 links to the place of beginning, containing 78 acres and 27 rods of land, be the same more or less.

BEING the same premises heretofore willed to Ransom Stafford.

EXCEPTING a section of land described as follows:

Starting at the southwest corner of that portion of the former Louis Carter farm and running due east on the south line of said farm for 235 feet; thence north 90 degrees for 314 feet; thence 90 degrees east for 235 feet; thence 90 degrees north for 400 feet; thence east 90 degrees for 84 feet; thence north 90 degrees for 441 feet; thence west 90 degrees for 387 feet; along the north boundary of that part of the Louis Carter farm to the northwest corner; thence along the road southerly to the point of beginning, containing 9 acres, more or less, of land.

BEING substantially the same premises conveyed by Thomas E. Carver and Catherine Carver, his wife, to Thomas E. Carver, Catherine Carver and William Donald Carver, as Joint Tenants by deed dated December 12th, 1955 and recorded in the Essex County Clerk's office on February 15th, 1956 in Volume 332 of Deeds at page 137.

BEING the same premises described in the deed made and given by Thomas E. Carver, Catherine Carver, William Donald Carver and Dorothy Carver to Art Jacques, Inc., dated March 29, 1965 recorded in the Essex County Clerk's Office on March 31, 1965 in Liber 430 of Deeds at page 294.

BEING the same premises described in the deed made and given by Art Jacques, Inc. to Charles Vosburgh, dated February 5, 1968, recorded in the Essex County Clerk's Office on February 9, 1968 in Liber 462 of Deeds at page 356.

SUBJECT to easements of record and more specifically an easement given by Thomas E. Carver and Catherine Carver, his wife, to Carl Garvey and Arthur Jacques for water rights by instrument dated April 26, 1963, recorded in the Essex County Clerk's Office on May 10, 1963 in Liber 409 of Deeds at page 250.

BEING, the same premises described in the deed from Clarence R. McCormick and Catherine McCormick to Manuel Prado, d/b/a Grouse Farms dated May 22, 1975 and recorded in the Essex County Clerk's Office May 22, 1975 in Book 590 of Deeds at page 51."

ALL OF THE ABOVE LANDS are the same premises described in deed made and given by William E. Russell, Esq. As Referee to Reginald Carver dated July 6, 1983 recorded in the Essex County Clerk's Office on November 4, 1983 in Liber 798 of Deeds at page 266.

EXCEPTING from the above described lands, the lands described in the deed made and given by Reginald Carver to Kenneth A. Schneider and Margaret A. Schneider, his wife, dated July 6, 1983, recorded in the Essex County Clerk's Office on March 22, 1985 in Liber 829 of Deeds at page 118.

PARCEL V

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND situate, lying and being in the Town of Willsboro, County of Essex and State of New York,

"Starting at the southwest corner of that portion of the former Louis Carter farm and running due east on the south line of said farm for 235 feet; thence north 90 degrees east for 235 feet; thence 90 degrees north for 400 feet; thence 90 degrees east for 84 feet; thence north 90 degrees for 441 feet; thence west 90 degrees for 187 feet along the north boundary of that part of the Louis Carter farm to the northwest corner; thence along the road southerly to the point of beginning. Containing 9 acres, more or less.

BEING part of the same premises conveyed to The Federal Land Bank of Springfield by Referee's Deed dated February 8, 1937, recorded February 13, 1937 in the Essex County Clerk's Office in Liber 215 of Deeds at page 272.

EXCEPTING a quit-claim deed limited to an easement in favor of the Town of Willsboro to enter upon the lands referred to therein for the purpose of installing, repairing and maintaining the existing water line.

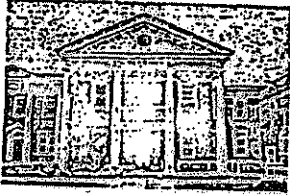
BEING the same premises conveyed by Charles H. Raymond and Harriet M. Raymond, his wife, to Theodore M. Ruzow and Renee R. Ruzow, his wife, on June 15, 1966 and recorded in the Essex County Clerk's Office in Elizabethtown, New York on July 16, 1966 in Book 445 of deeds at page 33."

BEING the same premises conveyed by Theodore M. Ruzow and Renee R. Ruzow, his wife, to Reginald A. Carver, by deed dated January 11, 1990, recorded in the Essex County Clerk's Office on January 26, 1990 in Liber 961 of Deeds at page 23.

ALL OF THE ABOVE LANDS ARE BEING CONVEYED SUBJECT TO EASEMENTS, EXCEPTIONS, RESERVATIONS, RESTRICTIONS, COVENANTS AND CONSENTS OF RECORD AND FURTHER SUBJECT TO SUCH A STATE OF FACTS THAT A CURRENT ACCURATE SURVEY OF SUBJECT PREMISES WOULD DISCLOSE.

BEING the same property described in a deed dated July 8, 1999 given by Reginald Carver to Daniel Arbour, Inc. which said deed was recorded in the Essex County Clerk's Office on July 9, 1999 in Book 1215 of Deeds at page 330.

ESSEX COUNTY CLERK



Instrument Number

003919

BOOK 1215 PAGE 330

Recording Stamp	
RECORDED	<i>July 9, 1999</i>
TIME	<i>11:02 AM</i>
BOOK	<i>1215 Deeds</i>
PAGE	<i>330</i>
<i>J. C. [Signature]</i> ESSEX COUNTY CLERK	

Type of document Deed

Party(ies): Grantor/Mortgagor/Assignor

REGINALD CARVER

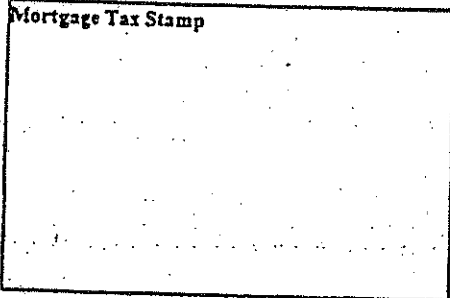
Town of Willsboro

Party(ies): Grantee/Mortgagee/Assignee

DANIEL ARBOUR, INC.

Consideration 95,000

Mortgage Tax Stamp



Transfer Tax Stamp	
RECEIVED	
180.00	
REAL ESTATE	
JUL - 9 1999	
TRANSFER TAX	
ESSEX COUNTY	

112282

Time Stamp

Record & Return to:

Manning & Seaglitz

P.O. Box 309

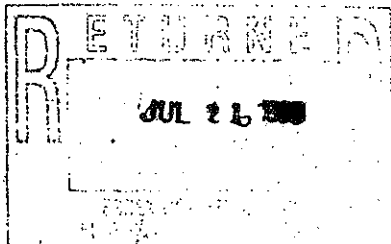
Willsboro, N.Y. 12996

[Signature]

IN
AS
MI
RE

Recorded by: _____

This sheet constitutes the Clerk endorsement required by section 316 A (5) for the Real Property Law of the State of New York.



BOOK 1215 PAGE 331

N.Y. DEED-WARRANTY with Lien Covenant

THIS INDENTURE

Made the 8th day of July

Nineteen Hundred and Ninety-Nine

Between REGINALD CARVER, residing in 295 West Road, Willsboro, New York, 12998

hereinafter referred to as the "Grantor", and

DANIEL ARBOUR, INC., a bussiness corporation organized and existing under the law of the State of New York, havin its office and principle place of business at Post Office Box 281, Willsboro, New York, 12998

hereinafter referred to as the "Grantee",

(the words "Grantor" and "Grantee" shall be interpreted in the singular or plural, as the case may be)

Witnesseth that the Grantor, in consideration of ONE HUNDRED NINETY FIVE THOUSAND DOLLARS (\$195,000.00) lawful money of the United States, and other good and valuable consideration, paid by the Grantee, does hereby grant and release, unto the Grantee, Grantee's heirs and assigns forever,

"ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York and being part of the Thoinas Carver and Catherine Carver farm and which said property herein conveyed is located on the westerly side of the State highway leading from Willsboro to Essex upon which there is now constructed a dwelling house, and being the same property conveyed to William Donald Carver by Thomas E. Carver and Catherine Carver, by deed dated December 9, 1955 and recorded in the Essex County Clerk's Office on the 21st day of March, 1956 in Book 332 of Deeds at Page 489, and described as follows:

BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex in the division line between the property herein conveyed and the property of George Shanks; running thence in a general westerly direction a distance of 165 feet to a second iron stake driven in the ground; running thence in a general northerly direction a distance of 285 feet to a third iron stake driven in the ground; running thence in a general easterly direction a distance of 165 feet to a fourth iron stake driven in the ground along the westerly side of said highway and continuing thence to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 285 feet to a point opposite the first iron stake or place of beginning; running thence in a general westerly direction to the said first iron stake or the point of beginning.

EXCEPTING, HOWEVER, from the above-described premises all that portion thereof which lies within the limits of the State Highway leading from Willsboro to Essex.

Subject to the same covenants, conditions and restrictions and being the same premises as described in the Deed from Paul Ancill and Elizabeth Ancill to Vedder A. Gates dated September 9, 1968 and duly recorded in the Essex County Clerk's

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Office on the 19th day of September, 1968 in Liber 469 of Deeds at page 419. The said Vedder A. Gates died on the 10th day of July, 1971, a resident of the Town of Rotterdam, and his Last will and Testament was admitted to probate by the Schenectady County Surrogate's Court on the 15th day of July, 1971, and the said Mohawk National Bank of Schenectady, New York, was duly appointed Executor on said date."

BEING the same premises conveyed to Manuel Prado by Clarence R. McCormick and Catherine R. McCormick by deed dated May 22, 1975 and recorded May 22, 1975 in the Essex County Clerk's Office in Book 590 of Deeds at Page 48, and

PARCEL I

ALL THAT TRACT OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex and State of New York, bounded and described as follows:

BEGINNING on the west side of the highway running from Essex to Willsboro at the southeast corner of a farm formerly owned by Jeremiah A. Williams and by Thomas Carver; running thence westerly on said Carver south line about 71 chains and 25 links to the east line of lands formerly owned by M.S. Baker and Nellie Calkins; thence southerly along the east line of said Calkins land and also on the east line of lands formerly owned by Abram Eggleston and by John Benway to the north line of lands formally owned by Joseph Stafford and by E.W. Stafford; thence easterly along said Stafford's north line 6 chains 45 links to the northeast corner of said Stafford's lot; thence southerly 3 chains and 61 links to the north line of the lot formerly owned by Archibald Fortune and by Nellie Baldwin; thence easterly along the north line of said Baldwin land 67 chains 67 links to the center of said highway; thence northerly along said highway to the place of beginning, containing 99 acres of land, be the same more or less.

EXCEPTING AND RESERVING therefrom, the following described property:

ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York, consisting of a lot of land 250 feet on the highway and 230 feet in depth upon which there is now constructed a dwelling house and is briefly described as follows:

BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex and running thence in a general westerly direction a distance of 230 feet to a second iron stake driven in the ground for a corner; running thence in a general northerly direction a distance of 250 feet to a third iron stake driven in the ground for a corner; running thence in a general easterly direction a distance of 230 feet to a fourth iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex and continuing thence in the same course to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 250 feet to a point opposite the place of beginning; running thence in a general westerly direction to the first iron stake or the point or place of beginning.

PARCEL II

ALL THAT TRACT, PIECE OR PARCEL OF LAND, situate in the Town of Willsboro, County of Essex and State of New York, described and bounded as follows, to wit:

BEGINNING at the southeast corner of the farm formerly owned by Melancthon Baker; thence south along the west bounds of lands of Thomas Carver 9 chains and 37 links to the north bounds of lands formerly of E.W. Stafford; thence along said north bounds west 29 chains and 84 links to a stake and stones; thence north parallel to the aforementioned west line of the Thomas Carver farm 6

BOOK 1215 PAGE 333

chains and 87 links to a stake and stones; thence west parallel with the south line of the said Baker farm and 2 chains and 50 links from same, 8 chains and 16 links to the west side of the road leading to Willsboro Village; thence north along the west side of said road 2 chains and 50 links to the south line of the aforesaid Baker farm; thence along the south line east 38 chains to the place of beginning, containing thirty (30) acres of land be the same more or less.

EXCEPTING AND RESERVING therefrom two (2) acres, more or less as conveyed by Thomas Carver and Catherine Carver, his wife, to Horatio W. Thomas and M. Isabel Thomas, his wife, by deed dated April 7, 1927, and recorded at the Essex County Clerk's Office on June 6th, 1927 in Volume 186 of Deeds at Page 539.

PARCEL III

THAT CERTAIN PARCEL OF FARM LAND with all buildings thereon, situate in the Town of Willsboro, in the County of Essex and State of New York and described as follows:

BEGINNING in the northerly line of Richard Eddy farm, so-called, at the point where said Eddy line crosses the westerly line of the highway; thence running westerly to the lands formerly of Edward Stafford; thence northerly ten chains (10) and twelve (12) links along said Stafford's easterly line to the lands of Thomas Carver; thence easterly in said Carver's land to the highway; thence southerly along said highway to the place of beginning, meaning to convey the westerly portion of lands with buildings thereon conveyed to Edward J. and Nellie L. Baldwin, by deed dated September 22, 1905 and of record in Volume 132 at Page 45 of the Lands Records of Essex County.

The land herein conveyed is bounded as follows: On the north by lands of Thomas Carver; on the east by the highway; on the south by lands of Richard Eddy and on the west by lands of Edward Stafford.

EXCEPTING AND RESERVING therefrom, the following:

1. ALL THAT TRACT OR PARCEL OF LAND lying in the Town of Willsboro, Essex County, New York, described and bounded as follows, to wit:

BEGINNING in the center of State Highway at northeast corner of land of Richard T. Eddy; thence northerly along center of State Road 215 feet; thence nearly at right angles westerly 265 feet; thence nearly at right angles southerly 180 feet to line of lands of said Eddy's; thence along line of lands of said Eddy easterly 295 feet to place of beginning.

BEING the same premises conveyed by Thomas Carver and Katherine Carver, his wife, to Hamilton A. Higby and Carrie W. Higby, his wife, by deed dated May 18th, 1928 and recorded at Essex County Clerk's Office on October 18th, 1934 in Volume 209 of Deeds at Page 282.

2. ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Willsboro, County of Essex and State of New York, described and bounded as follows to wit;

BEGINNING at the northwest corner of lands owned by H.A. Higby and occupied by John D. Clarke; running thence in a southerly direction 180 feet to lands owned by Richard Eddy; thence westerly along said Eddy's north line 50 feet; thence northerly parallel with east line and 50 feet therefrom 177 feet; thence in an easterly direction to place of beginning, containing about 8900 square feet of land, be the same more or less.

BEING the same premises conveyed by Thomas Carver and Cathryn Carver to John D. Clark and Ellen V. Clark by deed dated October 11th, 1930 and recorded at

Essex County Clerk's Office on October 24th, 1930 in Volume 198 of Deeds at Page 237.

3. ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York and being part of the Thomas Carver and Catherine Carver farm and which said property herein conveyed is located on the westerly side of the State Highway leading from Willsboro to Essex upon which there is now constructed a dwelling house. The property herein conveyed is briefly described as follows: BEGINNING at an iron stake driven in the ground along the westerly side of the Sate Highway leading from Willsboro to Essex in the division line between the property herein conveyed and the property of George Shanks; running thence in a general westerly direction a distance of 165 feet to a second iron stake driven in the ground; running thence in a general northerly direction a distance of 285 feet to a third iron stake driven in the ground; running thence in a general easterly direction a distance of 165 feet to a fourth iron stake driven in the ground along the westerly side of said highway and continuing thence to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 285 feet to a point opposite the first iron stake or place of beginning; running thence in a general westerly direction to the said first iron stake or the point or place of beginning.

BEING the same premises conveyed by Thomas E. Carver and Catherine Carver, his wife, to William Donald Carver by deed dated December 9th, 1955 and recorded in the Essex County Clerk's Office on February 10th, 1956.

PARCEL IV

The following described real estate situated in Willsboro, in the County of Essex and State of New York: BEGINNING at the southeast corner of a piece of land heretofore owned by Richard Stafford; running thence south 88-1/4 degrees west 36 chains and 40 links to the east side of the road; thence southerly along said road to the north line of the 40 acre lot heretofore willed to Jobe Stafford; thence north 88-1/4 degrees east 44 chains and 12 links to a stake being the southeast corner of the home lot of Joseph Stafford; thence north 1-3/4 degrees west 19 chains and 40 links; thence south 89 degrees west 6 chains 47 links to a stake and stones; thence south 1-3/4 degrees east 1 chain 75 links to the place of beginning, containing 78 acres and 27 rods of land, be the same more or less.

BEING the same premises heretofore willed to Ransom Stafford.

EXCEPTING a section of land described as follows:

Starting at the southwest corner of that portion of the former Louis Carter farm and running due east on the south line of said farm for 235 feet; thence north 90 degrees for 314 feet; thence 90 degrees east for 235 feet; thence 90 degrees north for 400 feet; thence east 90 degrees for 84 feet; thence north 90 degrees for 441 feet; thence west 90 degrees for 387 feet; along the north boundary of that part of the Louis Carter farm to the northwest corner; thence along the road southerly to the point of beginning, containing 9 acres, more or less, of land.

BEING substantially the same premises conveyed by Thomas E. Carver and Catherine Carver, his wife, to Thomas E. Carver, Catherine Carver and William Donald Carver, as Joint Tenants by deed dated December 12th, 1955 and recorded in the Essex County Clerk's Office on February 15th, 1956 in Volume 332 of Deeds at Page 137.

BEING the same premises described in the deed made and given by Thomas E. Carver, Catherine Carver, William Donald Carver and Dorothy Carver to Art Jacques, Inc., dated March 29, 1965 recorded in the Essex County Clerk's Office on March 31, 1965 in Liber 430 of Deeds at Page 294.

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BEING the same premises described in the deed made and given by Art Jacques, Inc. to Charles Vosburgh, dated February 5, 1968, recorded in the Essex County Clerk's Office on February 9, 1968 in Liber 462 of Deeds at Page 356.

SUBJECT to easements of record and more specifically an easement given by Thomas E. Carver and Catherine Carver, his wife, to Carl Garvey and Arthur Jacques for water rights by instrument dated April 26, 1963, recorded in the Essex County Clerk's Office on May 10, 1963 in Liber 409 of Deeds at Page 250.

BEING, the same premises described in the deed from Clarence R. McCormick and Catherine McCormick to Manuel Prado, d/b/a Grouse Farms dated May 22, 1975 and recorded in the Essex County Clerk's Office May 22, 1975 in Book 590 of Deeds at Page 51."

ALL OF THE ABOVE LANDS are the same premises described in deed made and given by William E. Russell, Esq. as Referee to Reginald Carver dated July 6, 1983 recorded in the Essex County Clerk's office on November 4, 1983 in Liber 798 of Deeds at Page 266.

EXCEPTING from the above described lands, the lands described in the deed made and given by Reginald Carver to Kenneth A. Schneider and Margaret A. Schneider, his wife, dated July 6, 1983, recorded in the Essex County Clerk's Office on March 22, 1985 in Liber 829 of Deeds at Page 118.

PARCEL V

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND situate, lying and being in the Town of Willsboro, County of Essex and State of New York,

"Starting at the southwest corner of that portion of the former Louis Carter farm, and running due east on the south line of said farm for 235 feet; thence north 90 degrees for 314 feet; thence 90 degrees east for 235 feet; thence 90 degrees north for 400 feet; thence 90 degrees east for 84 feet; thence north 90 degrees for 441 feet; thence west 90 degrees for 187 feet along the north boundary of that part of the Louis Carter farm to the northwest corner; thence along the road southerly to the point of the beginning. Containing 9 acres, more or less.

BEING part of the same premises conveyed to The Federal Land Bank of Springfield by Referee's Deed dated February 8, 1937, recorded February 13, 1937 in the Essex County Clerk's Office in Liber 215 of Deeds at Page 272.

EXCEPTING a quit-claim deed limited to an easement in favor of the Town of Willsboro to enter upon the lands referred to therein for the purpose of installing, repairing and maintaining the existing water line.

BEING the same premises conveyed by Charles H. Raymond and Harriet M. Raymond, his wife, to Theodore M. Ruzow and Renee R. Ruzow, his wife, on June 15, 1966 and recorded in the County Clerk's Office in Elizabethtown, New York on July 16, 1966 in Book 445 of Deeds at Page 33. "

BEING the same premises conveyed by Theodore M. Ruzow and Renee R. Ruzow, his wife, to Reginald A. Carver, by deed dated January 11, 1990, recorded in the Essex County Clerk's Office on January 26, 1990 in Liber 961 of Deeds at Page 23.

ALL OF THE ABOVE LANDS ARE BEING CONVEYED SUBJECT TO EASEMENTS, EXCEPTIONS, RESERVATIONS, RESTRICTIONS, COVENANTS AND CONSENTS OF RECORD AND FURTHER SUBJECT TO SUCH A STATE OF FACTS THAT A CURRENT ACCURATE SURVEY OF SUBJECT PREMISES WOULD DISCLOSE.

This Indenture.

Made the 9th day of December Nineteen Hundred and Fifty-five.

Between Thomas E. Carver and Catherine Carver, his wife, both of Willsboro, Town of Willsboro, Essex County, New York, hereinafter referred to as

parties of the first part, and
William Donald Carver of Willsboro, Town of Willsboro, Essex County, New York, hereinafter referred to as

party of the second part,
Witnesseth, that the parties of the first part, in consideration of

----- One and 00/100 ----- Dollar

(\$ 1.00) lawful money of the United States,

paid by the party of the second part,

do hereby grant and release unto the party of the second part,

his heirs and assigns forever, all the following described property:

ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York and being part of the Thomas Carver and Catherine Carver farm and which said property herein conveyed is located on the westerly side of the State Highway leading from Willsboro to Essex upon which there is now constructed a dwelling house. The property herein conveyed is briefly described as follows:-

BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex in the division line between the property herein conveyed and the property of George Shanks; running thence in a general westerly direction a distance of 165 feet to a second iron stake driven in the ground; running thence in a general northerly direction a distance of 285 feet to a third iron stake driven in the ground; running thence in a general easterly direction a distance of 165 feet to a fourth iron stake driven in the ground along the westerly side of said highway and continuing thence to the center of said highway; running thence in a general southerly direction along the center of said highway a distance

of 285 feet to a point opposite the first iron stake or place of beginning; running thence in a general westerly direction to the said first iron stake or the point or place of beginning.

Excepting, however, from the above described premises all that portion thereof which lies within the limits of the State Highway leading from Willsboro to Essex.

Being part of the same premises which were heretofore conveyed by Nellie L. Baldwin to Thomas Carver and Catherine Carver by deed dated the 14th day of September, 1922 which said deed was recorded in the Essex County Clerk's Office on the 30th day of April, 1923 in Liber 173 of Deeds at Page 349.

Together with the appurtenances and all the estate and rights of the part 105 of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, his heirs and assigns forever.

And said Thomas E. Carver and Catherine Carver

covenant as follows:

First. That the party of the second part shall quietly enjoy the said premises;


Second. That said Thomas E. Carver and Catherine Carver


will forever Warrant the title to said premises.

In Witness Whereof, the part 105 of the first part have hereunto set their hands and seals the day and year first above written.

In Presence of

Abraham W. Manning

Thomas E. Carver 

Catherine Carver 

_____ 

_____ 

State of New York
County of ESSEX

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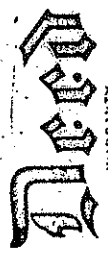
88.

of
On this 9th day of December Nineteen Hundred and
Fifty-five before me, the subscriber, personally appeared
Thomas E. Carver and Catherine Carver

to me personally known and known to me to be the same persons described
in and who executed the within Instrument, and they each and severally duly
acknowledged to me that they executed the same.

Samuel V. Manning
Notary Public

NOTARY PUBLIC
STATE OF NEW YORK
My Comm. Expires Dec 31, 1957



THOMAS E. CARVER
and
CATHERINE CARVER

TO

WILLIAM DONALD CARVER

Dated, DECEMBER 9, 1955

STATE OF NEW YORK

County of Essex 88.

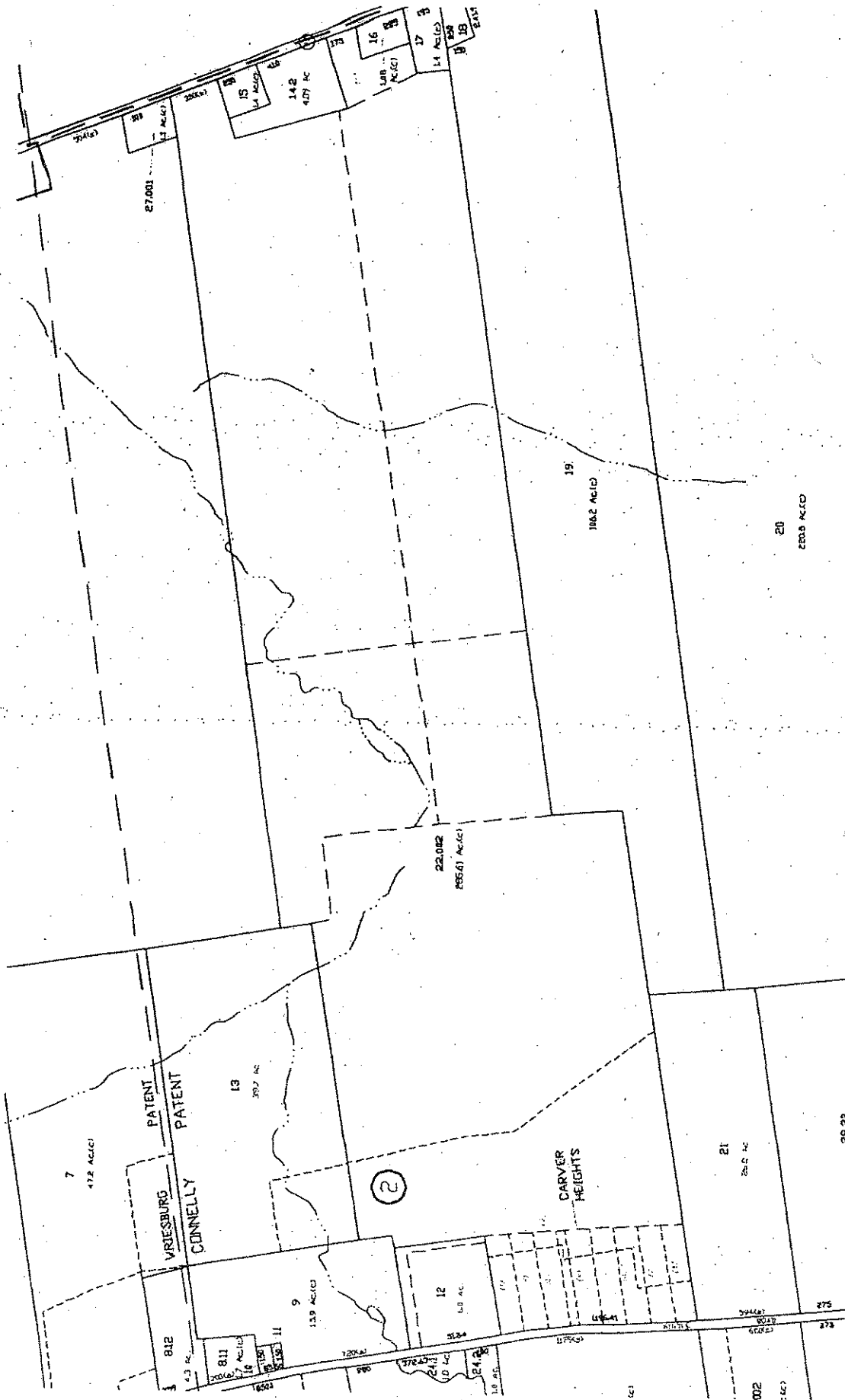
RECORDED ON THE

21 days of March A.D. 1956
at 9 o'clock P.M.
IN LIBER 112 of DEEDS
on PAGE 459 and examined

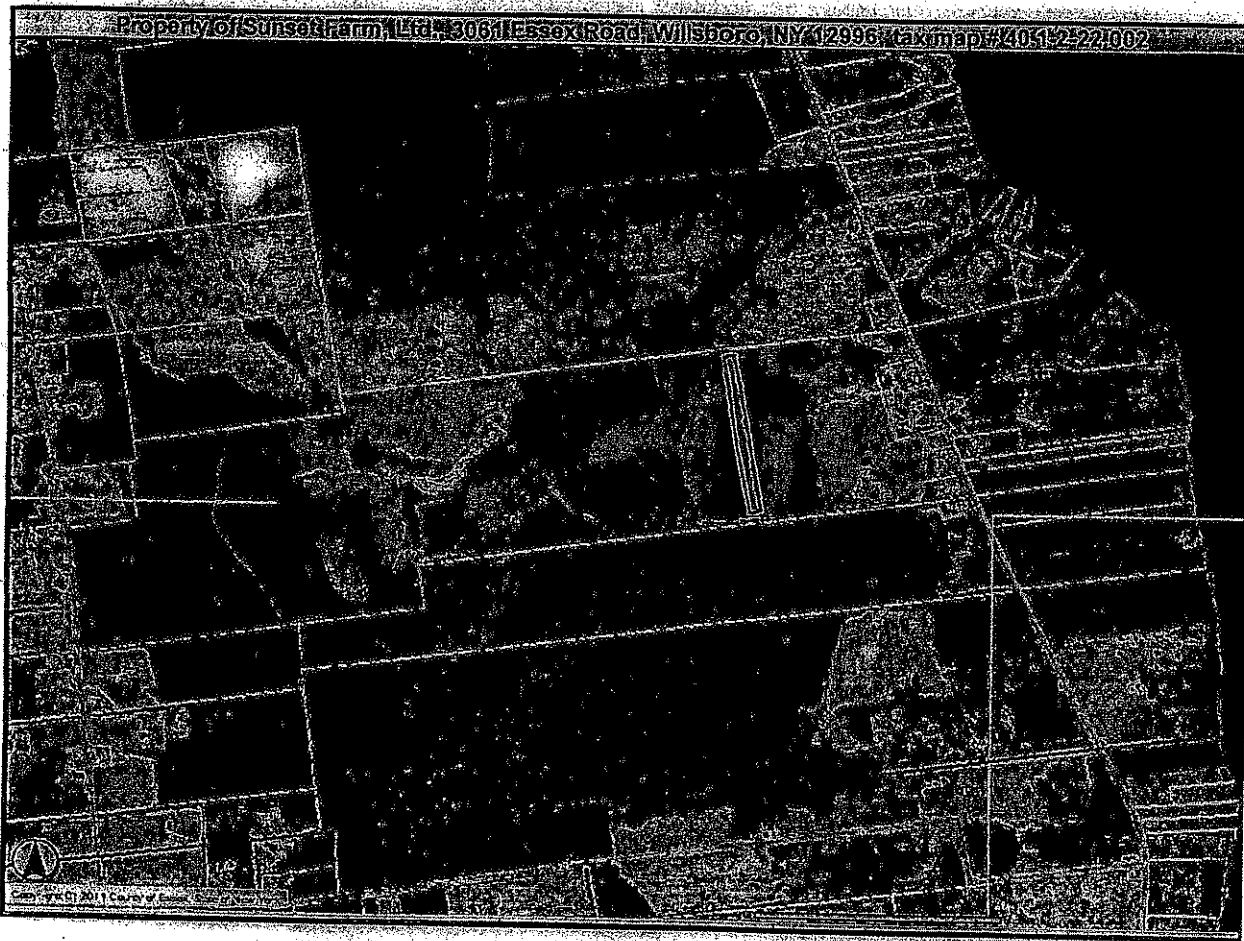
Henry W. ...

ATTACHMENT D

Full Scale Copy of Survey Map/Current Real Property Tax Map for Project
Site



Tax Map No: 40.1-2-22.002 **Property of: Sunset Farm, Ltd.**
Zoning District: RR (Rural Use) **285.61 acre(s)**
3061 Essex Road, Willsboro, NY



RUNWAY PROJECT INDICATED ON MAP BY BLACK
RECTANGLE.

ATTACHMENT E

Local Government Notice Form

ATTACHMENT F

Municipal Approval Documents



TOWN OF WILLSBORO
CODE ENFORCEMENT OFFICE

9 May 2011

Xavier Arbour
c/o Sunset Farms, Ltd.
3061 Essex Road.
Willsboro, NY 12996

Re: Private Airstrip; tax map parcel #40.1-2-22.002

Dear Mr. Arbour,

Thank you for your inquiry concerning your project at 3061 Essex Road, Willsboro, NY 12996.

Even though the Town of Willsboro Zoning Ordinance defines "Airport/Heliport – a place where aircraft can land and take off" (page 7) – the use of one is not allowed nor prohibited in any zoning district (see section 3.50 – District Purposes; pages 27-44) – thereby, our Ordinance is silent on the matter and the Town of Willsboro has no jurisdiction on such a project

Please find attached information from the NY Zoning Law and Practice (Salkin) volume citing case law and an opinion from the state comptroller on airports.

As we discussed, your project is in the Rural Use (APA) or RR (Town of Willsboro Zoning Ordinance) district – and would be a Class A Regional Project. You would need to comply to all of the Agency's regulations and procedures. Because of this Class A status, I feel comfortable in the fact that all neighbors would be duly notified and made aware of the implications of such a land use.

If there are any further questions, please feel free to contact me. Best wishes on your project.

Sincerely,

James A. Kinley,
Code Enforcement Officer

Cc: Edward Hatch, Supervisor
Members of the Zoning Board of Appeals
Members of the Planning Board

through reasonable regulation, rather than obstruction of the inevitable expansion of public utilities.⁵

E. AIRPORTS

§ 11:24 Airports; condemnation of flight hazards.

As air travel has increased, the restriction of land use in the vicinity of airports has become important. Whether airports are municipally or privately owned, the safety of passengers, as well as of residents who occupy the area which surrounds such a facility, demands that approach and turning areas be protected from buildings, structures, and natural growth which may obstruct traffic. As in the case of other objectives of land-use control, airport safety may be achieved through acquisition of surrounding land, or through use of the police power. The statutes authorize municipal use of both methods, but municipalities are required to use the police power where such use is possible, because purchase of land involves an almost prohibitive outlay of funds.¹

Section 355 of the General Municipal Law authorizes any municipality which has acquired an airport or seaplane harbor, to acquire by purchase or gift the right to abate or remove any flight hazard, including any building, structure, tower, pole, tree, "or other thing, or portion thereof, located within the flight hazard area being the approach and turning zones which lie within 3000 feet of such airport, landing field or seaplane harbor," which constitutes a menace to aircraft using the facility. A municipality may use the power of eminent domain to acquire the right to abate such a flight hazard.²

§ 11:25 Airport zoning.

Any municipality which has within its territory any part of a flight hazard area (approach and turning zones which lie within 3,000 feet of an airport)¹ is authorized, after notice and hearing, to adopt, amend, and enforce regulations for the protection of persons within such flight hazard area. The municipality may establish districts within the flight hazard area and impose different restrictions upon such districts, but the regulations must be uniform within each district. The regulations

⁵Comment, "Zoning and the Expanding Public Utility," 13 Syracuse L. Rev. 581 (1962).

See generally *Sleepy Hollow Lake, Inc. v. Public Service Commission*, 43 A.D.2d 439, 352 N.Y.S.2d 274 (3d Dep't 1974); *Niagara Mohawk Power Corp. v. City of Fulton*, 8 A.D.2d 523, 188 N.Y.S.2d 717 (4th Dep't 1959).

[Section 11:24]

¹General Municipal Law § 356.

²General Municipal Law § 355.

[Section 11:25]

¹General Municipal Law § 356.

may restrict the height of buildings or structures and the limits to which trees may be permitted to grow. Standards must conform, as far as is locally practicable, with those of the Federal Civil Aeronautics Administration or its successor.²

Where a municipality has adopted a comprehensive zoning ordinance, the grant of authority to restrict land use to prevent flight hazard constitutes a supplementary power. Airport zoning regulations may be included in the zoning regulations and enforced in connection with such regulations.³ However, a municipal airport established by a county is not required to be submitted to the site plan review board. In addition, an airport that has no scheduled commercial flights and only 45 landings per month could be classified as a recreational use and permitted in an agricultural or residential district by special permit, where evidence supports that it would not devalue the land, and if a runway is not a permitted use, it will not be permitted even though it is a use accessory to an airport.⁴

The state comptroller has opined where local zoning regulations are silent with respect to aircraft and airfields, it is doubtful that a private property owner could be prohibited, under such zoning ordinance, from landing a private plane on his property.⁵ Where, on the other hand, a local zoning ordinance has a provision which excludes certain airport uses from specific districts, a landowner must respect the ordinance, notwithstanding his proposed use is satisfactory from the standpoint of appropriate federal agencies.⁶

Where a public airport or its flight hazard area lies in more than one municipality, upon the request of the municipality which owns the airport, any affected municipality may join with the owning

²General Municipal Law § 356(2).

³General Municipal Law § 356(4).

See § 39:64, *infra*.

Annotation: Validity of zoning ordinance limiting use of land near or surrounding airport. 77 ALR2d 1362.

⁴Matter of Monroe County's Compliance With Certain Zoning and Permit Requirements of City of Rochester in Connection With City/County Airport Expansion, 131 A.D.2d 74, 520 N.Y.S.2d 676 (4th Dep't 1987), appeal granted, 71 N.Y.2d 806, 529 N.Y.S.2d 276, 524 N.E.2d 877 (1988) and order aff'd, 72 N.Y.2d 338, 533 N.Y.S.2d 702, 530 N.E.2d 202 (1988); see also Haas Hill Property Owners' Ass'n v. Zoning Bd. of Appeals of Town of New Baltimore, 202 A.D.2d 895, 609 N.Y.S.2d 416 (3d Dep't 1994); Town of Brookhaven v. Spadaro, 204 A.D.2d 533, 612 N.Y.S.2d 175 (2d Dep't 1994).

⁵1965 Ops St Compt 639.

⁶Although the Federal Aviation Agency indicated that a heliport was acceptable "from an airspace standpoint," plaintiff was nevertheless bound by the local zoning ordinance which prohibited heliports in industrial zones. The federal government did not preempt the field by its approval of the heliport from an airspace standpoint. Thomson Industries, Inc. v. Incorporated Village of Port Washington North, 55 Misc. 2d 625, 631, 286 N.Y.S.2d 187, 192 (Sup. Ct. 1967), judgment modified, 32 A.D.2d 1072, 304 N.Y.S.2d 83 (2d Dep't 1969), order aff'd, 27 N.Y.2d 537, 313 N.Y.S.2d 117, 261 N.E.2d 260 (1970).

municipality in the creation of a joint airport zoning board. The board may prepare regulations for the protection of the flight hazard area and recommend the adoption of appropriate portions thereof by the several municipalities. The cost of preparing such a plan and implementing regulations may be shared by the several municipalities.⁷

§ 11:26 Administration and appeal.

Section 356 of the General Municipal Law provides for administration of airport zoning regulations in a manner similar to that provided generally for the administration of zoning regulations. Thus, any person aggrieved by an order or decision of an administrative official charged with enforcement of the airport zoning regulations may appeal to the zoning board of appeals, if such a board is available in the municipality. Absent a board of appeals, the aggrieved person may, within 60 days after the order or decision is filed, appeal to the legislature of the municipality.¹ A decision of a zoning board of appeals, or of the legislative body of the municipality in a matter appealed to such body, is subject to review by the courts under Article 78 of the Civil Practice Law and Rules, in accordance with the provisions of the General City Law, Town Law, and Village Law relating to zoning regulations.²

F. USES OF LAND BY RELIGIOUS INSTITUTIONS

§ 11:27 Religious uses.

The problems generated by municipal regulation of religious uses require separate consideration, because the courts have detected in such uses qualities which entitle them to special treatment. Churches, synagogues, mosques, and other institutions dedicated to religious objectives are in some degree protected from the full impact of zoning restrictions. These uses are favored for reasons ranging from their unique contribution to the public welfare to constitutional guaranties of freedom of worship. The courts have consistently focused their attention on the singular characteristics of religious uses, rather than upon the features common to religious and other uses of land.¹

The inclusion of churches among uses permitted in the zoning district is tantamount to a legislative determination that the use is in

⁷General Municipal Law § 356(3).

[Section 11:26]

¹General Municipal Law § 356(5).

²General Municipal Law § 356(5).

[Section 11:27]

¹See generally, Note, "Zoning Laws and the Church," 27 St. John's L. Rev. 93 (1952); Rice, "1994-95 Survey of New York Law—Zoning and Land Use," 46 Syracuse L. Rev. 951 (1995).

ATTACHMENT G

Copies of Permits, Approvals and Determinations



U.S. Department
of Transportation

Federal Aviation
Administration

May 19, 2011

Xavier Arbour
3061 Essex Rd
P.O. Box 281
Willsboro, NY 12996

RE: (See attached Table 1 for referenced case(s))
DETERMINATION OF LANDING AREA PROPOSAL

Table 1 - Letter Referenced Case(s)

ASN	Prior ASN	Location	Latitude (NAD83)	Longitude (NAD83)	AGL (Feet)	AMSL (Feet)
2011-AEA-278-NRA		Willsboro, NY	44-19-47.48N	73-21-42.46W	1	176

Description: Establish private use airport (SUNSET) in Willsboro, NY NOTE: canc case 2011-AEA-222-NRA

We have determined that the proposed private use landing area, will not adversely affect the safe and efficient use of the navigable airspace by aircraft, provided:

- All operations are conducted in VFR weather conditions.
- The landing area is limited to private use.
- Please note that your new airport and the Bonebender Airport (41NY) and the Essex Boatworks (NY83) enter into an "Operational Letter of Agreement" which would be an acceptable method of providing compatible traffic pattern operation at the airports and any other procedures as appropriate.

We recommend that:

- A clear 20:1 approach slope be established. If there are obstructions that penetrate the 20:1 approach surface, they should be removed or lowered. If the penetrating obstructions cannot be removed or lowered, we recommend that the thresholds be displaced and appropriately marked, so as to provide a clear 20:1 approach slope surface to each runway end.
- The centerline of an airport runway should have a lateral separation of at least 60 feet from roads and other objects for aircraft with approach speeds less than 50 knots and 120 feet for airplanes with approach speeds of 50 knots or greater.

Please note that roads are defined as obstructions by FAR, Part 77. Private roads are the greater of a 10 foot obstruction or the highest mobile object that normally traverses the road. Public roads are considered a 15 foot obstruction, interstate highways are a 17 foot obstruction, railroads are 23 foot obstructions and waterways are the highest mobile object that traverses the waterway.

It is essential that each airport runway threshold meet the siting standards shown in Figures A2-1, A2-2, and A2-3 of FAA Advisory Circular (AC) 150/5300-13, Airport Design.

Please notify the FAA within 15 days of completing the landing area by calling the FAA Area Flight Service Station (AFSS) serving your landing area to let them know you are activating the landing area while the Airport Master Record Form is being processed. Please tell the Flight Service Station representative that you have received an aeronautical determination from the FAA, and supply them with the name of your landing area and the coordinates.

Please return the enclosed Airport Master Record form to this office. When the processing of the Airport Master Record form is completed, your landing area will have a site number and a permanent location identifier. Indicate whether or not you would like to have your landing area shown on aeronautical charts. Charting also depends on the amount of "clutter" already on the charts near your site.

In order to avoid placing any unfair restrictions on users of the navigable airspace, this determination is valid until November 19, 2012. Should the facility not be operational by this date, an extension of the determination must be obtained by 15 days prior to the expiration date of this letter.

This determination does not constitute FAA approval or disapproval of the physical development involved in the proposal. It is a determination with respect to the safe and efficient use of navigable airspace by aircraft and with respect to the safety of persons and property on the ground.

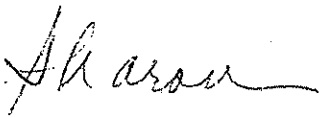
In making this determination, the FAA has considered matters such as the effects the proposal would have on existing or planned traffic patterns of neighboring airports, the effects it would have on the existing airspace structures and projected programs of the FAA, the effects it would have on the safety of persons and property on the ground, and the effects that existing or proposed manmade objects (on file with the FAA), and known natural objects within the affected area would have on the airport proposal.

The FAA cannot prevent the construction of structures near an airport. The airport environs can only be protected through such means as local zoning ordinances, acquisitions of property in fee title or aviation easements, letters of agreement, or other means.

This determination does not preempt or waive any ordinance, law, or regulation of any other governmental body or agency.

A general ordinance of the State of NY provides that certain airport constructions or alterations require a written permit prior to construction. The permit may be obtained from the NY Department of Transportation.

If you have any questions concerning this determination contact Sharon Perry, , (718)553-3341, sharon.perry@faa.gov.



Sharon Perry
DivUser

please fill out and return the 5010. Thank you

SHARON PERRY
AIRPORT AIRSPACE ANALYSIS SPECIALIST
ENJOY FLYING



Federal Aviation Administration

New letter of Determination

OE/AAA

Case Data **Part 77** Analysis Generate Letters Documents Corresp Archive Div Responses

ASN: 2011-AEA-278-NRA

Description: Establish private use airport (SUNSET) in Willsboro, NY NOTE: canc case 2011-AEA-222-NRA

City, State: Willsboro, NY
Latitude: 44-19-47.48N NAD 83
Longitude: 73-21-42.46W

Proposed
SE: 175 Ft
AGL: 1 Ft
AMSL: 175 Ft

Click on the division icon for response details.

FP Case Completed without Response	FS Case Completed without Response	USAF Auto Screen	AP Case Completed without Response	Tech Ops No Objection	USN Auto Screen	USA Auto Screen	FM Auto Screen	AT No Objection with Provision	AT-OSG Auto Screen	ATCT Not Sent
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AP Sponsor Not Sent	FSDG Not Sent	SNO Not Sent	CASFO Not Sent	API(139) Not Sent	Other Not Sent
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Division	Requested By	Requested Date	Responded By	Responded Date	Response Type	Response	Duration (Days)
AT-OSG	SYSTEM OEAAA	04/13/2011	SYSTEM OEAAA	04/13/2011	Auto Screen	LOC ID not identified in Terminal Service Area	0
Air Force	SYSTEM OEAAA	04/13/2011	SYSTEM OEAAA	04/13/2011	Auto Screen	No Conflict with USAF Conflux Program	0
Air Traffic	SYSTEM OEAAA	04/13/2011	Edward Dorsett (817) 838-1898	04/22/2011	No Objection with Provision	No objection provided the owners of the proposed Sunset Airport and the Bonebender Airport (41NY) and the Essex Boatworks (NY83) enter into an "Operational Letter of Agreement" which would provide an acceptable method of providing compatible traffic pattern operation at the airports and any other procedures as appropriate.	6
Airports	SYSTEM OEAAA	04/13/2011	Sharon Perry (718)553-3341	04/25/2011	Case Completed without Response (Terminated)	Case Completed without Response (Terminated)	7
Army	SYSTEM OEAAA	04/13/2011	SYSTEM OEAAA	04/13/2011	Auto Screen	No Conflict with USA Conflux Program	0
Flight Procedures	SYSTEM OEAAA	04/13/2011	Sharon Perry (718)553-3341	04/25/2011	Case Completed without Response (Terminated)	Case Completed without Response (Terminated)	7
Flight Standards	SYSTEM OEAAA	04/13/2011	Sharon Perry (718)553-3341	04/25/2011	Case Completed without Response (Terminated)	Case Completed without Response (Terminated)	7
Frequency Management	SYSTEM OEAAA	04/13/2011	SYSTEM OEAAA	04/13/2011	Auto Screen	Autoscreened for FM- No frequencies	0
Navy	SYSTEM OEAAA	04/13/2011	SYSTEM OEAAA	04/13/2011	Auto Screen	No Conflict with USN Conflux Program	0
Tech Ops	SYSTEM OEAAA	04/13/2011	Barry Stralsfeld (718) 977-6595	04/15/2011	No Objection		1

Case Saved Part 77 Case Data Div POS Design Nearest
Popups: Map Summary Quick View Resp Report Surfaces Report Airport Record 1 of 1

ATTACHMENT H

Deed Restrictions or Easements associated with the Project Site

NOT APPLICABLE.

No deed restrictions or easements are associated with the Project Site.

No proposed deed language exists that would restrict further subdivision or development on the Project Site.

ATTACHMENT I

Project Sponsor Legal Interest Determination

Project Sponsor: Daniel Arbour, president of Sunset Farm Ltd.
Project Site ownership: Sunset Farm Ltd.

See attached *Articles of Incorporation* for Sunset Farm Ltd.

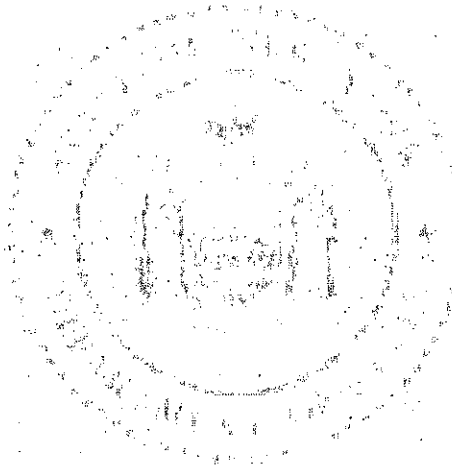
SERVICE COMPANY: ACCELERATED INFORMATION & DOCUMENT FTL

SERVICE CODE: 24

FILED: 10/25/1999 DURATION: ***** CASH#: 991025000068 FIRM #: 99025000068

ADDRESS FOR PROCESS

REGISTERED AGENT



FILED	FEE	AMOUNT	PAYMENTS	AMOUNT
CHRISTINE E. BEACOCK ACCELERATED INFORMATION & DOCUMENT FILING, INC. 9 STATE STREET / SUITE 836 ALBANY, NY 12207	FILING TAX CURE COPIES HANDLING	50.00 0.00 0.00 0.00 0.00	CASH CHECK CHARGE DRAWDOWN BILLED REFUND	60.00 0.00 0.00 60.00 0.00 0.00

of the

CERTIFICATE OF INCORPORATION

of

SUNSET FARMS, LTD.

Under Section 905 of the Business Corporation Law

The undersigned, Daniel Arbour, being the President of Sunset Farms, Ltd., hereby certifies that:

I. The name of the Corporation is Sunset Farms, Ltd. The Corporation was formed under the name Daniel Arbour, Inc.

II. The Certificate of Incorporation of the Corporation was filed by the Department of State on June 4, 1939.

III. The Certificate of Incorporation of the Corporation is hereby amended to effect the amendments specified below, each of which is authorized by the Business Corporation Law:

A. Paragraph "4" of the Certificate of Incorporation, which sets for the authorized capital stock of the Corporation, is hereby amended to increase the number of shares of the authorized capital stock of the Corporation, to change the par value of such stock and to create multiple classes of stock, so that said Paragraph "4" shall provide in its entirety as follows:

"4. The aggregate number of shares of all classes of capital stock which the Corporation shall have authority to issue is 3,000, of which 500 shares shall be designated as Common Stock, par value \$0.01 per share (the "Common Stock"); 500 shares shall be designated as Class A Preferred Stock, par value \$0.01 per share (the "Class A Preferred Stock"); 500 shares shall be designated as Class B Preferred Stock, par value \$0.01 per share (the "Class B Preferred Stock"); 500 shares shall be designated as Class C Preferred Stock, par value \$0.01 per share (the "Class C Preferred Stock"); 500 shares shall be designated as Class D Preferred Stock, par value \$0.01 per share (the "Class D Preferred Stock"); and 500 shares shall be designated as Class E Preferred Stock, par value \$0.01 per share (the "Class E Preferred Stock"). The voting powers,

optional () or special rights, and the qualifications, if any, of holders of the capital stock of the Corporation, shall be as provided in this Paragraph 4.

Common Stock

i. Voting. The holders of shares of Common Stock shall be entitled to one vote for each share of Common Stock held on the record date for the vote or consent of shareholders and the right to attend every meeting of the Corporation's shareholders, subject to the provisions of the Business Corporation Law.

ii. Dividends. The holder of shares of Common Stock shall be entitled to receive dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion, subject to the rights and privileges of holders of shares of any classes or series of the Corporation's Preferred Stock and to the provisions of the Business Corporation Law.

iii. Distribution Rights. Upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation (a "Liquidation Event"), after the payment or provision for payment of all debts and liabilities of the Corporation and all preferential amounts to which holders of shares of any classes or series of the Corporation's Preferred Stock are entitled with respect to the distribution of assets in liquidation, the holders of shares of Common Stock shall be entitled to share ratably in the remaining assets of the Corporation available for distribution.

Class A Preferred Stock

i. Voting. The holders of shares of Class A Preferred Stock shall not be entitled to vote on any matters or to attend any meetings of shareholders, except to the extent otherwise expressly required pursuant to the Business Corporation Law.

ii. Dividends. The holders of shares of Class A Preferred Stock shall have the right to receive, out of funds legally available therefor, with respect to every fiscal year, a non-cumulative and fixed dividend to be computed on the amount of the Corporation's paid-up capital in respect of such shares, at an annual rate not inferior to one per cent (1%) and not superior to twelve per cent (12%). Said dividend shall be payable at such times and in such

CLASS B PREFERRED STOCK, CLASS C PREFERRED STOCK, CLASS D PREFERRED STOCK and CLASS E PREFERRED STOCK and to the provisions of the Business Corporation Law. Holders of Class A Preferred Stock shall have no other right to any other dividend.

iii. Redemption at the Option of the Corporation.

A. Subject to the terms and conditions hereinafter set forth and to the provisions of the Business Corporation Law, the Corporation may from time to time redeem, without the consent of the holders of shares of Class A Preferred Stock, all or part of the Class A Preferred Stock.

B. For each redeemed share of Class A Preferred Stock, the Corporation shall pay an amount equal to the paid-up capital for such share plus any declared dividend which remains unpaid. If such redemption is of fewer than all of the outstanding shares of the Class A Preferred Stock, then such redemption shall be effected proportionately based on the ratio which the number of shares of Class A Preferred Stock held by each shareholder bears to the total number of shares of Class A Preferred Stock held by all shareholders, without consideration as to fractions of shares. Alternatively, redemption may be made in any other way as unanimously agreed upon between the Corporation and the holders of Class A Preferred Stock.

C. At least five (5) days prior to the date determined for the redemption, the Corporation shall give written notice to each registered holder of the shares of Class A Preferred Stock to be redeemed. This notice shall be mailed and shall state the date and the location determined for such redemption. Each holder of such shares shall receive said notice at their respective address as it appears in the Corporation's register of shareholders on the date when such notice is mailed.

D. Upon assistance by the registered holder of the certificate representing the redeemed shares, the Corporation shall cancel same and shall pay the registered holder the redemption price determined above. If only a portion of the outstanding Class A Preferred Stock of a registered holder is redeemed, the Corporation shall, without cost, issue to such holder a new certificate representing the balance of the holder's unredeemed shares of Class A Preferred Stock.

of the Board of Directors, the Corporation may, with the consent of the Corporation and the holders of shares of Class A Preferred Stock, purchase all or part of the outstanding shares of Class A Preferred Stock. If such purchase is of fewer than all of the outstanding shares of Class A Preferred Stock, then such redemption shall be effected proportionately based on the ratio which the number of shares of Class A Preferred Stock held by each shareholder bears to the total number of shares of Class A Preferred Stock held by all shareholders, without consideration as to fractions of shares. Alternatively, partial purchase of shares may be made in any other way unanimously agreed upon between the Corporation and the holders of Class A Preferred Stock.

v. Distribution Rights. Upon any Liquidation Event, each holder of Class A Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to shareholders, whether such assets are capital, surplus, or savings, before any amount shall be paid to the holders of Common Stock or any other stock ranking on liquidation junior to Class A Preferred Stock (but subject to the rights of holders of Class B Preferred Stock, Class C Preferred Stock, Class D Preferred Stock and Class E Preferred Stock), an amount equal to the paid-up amount for such shares plus any declared dividend on such shares which remains unpaid, subject to the provisions of the Business Corporation Law.

2. Class B Preferred Stock.

i. Voting. The holders of shares of Class B Preferred Stock shall not be entitled to vote on any matter or to attend any meetings of shareholders, except to the extent otherwise expressly required pursuant to the Business Corporation Law.

ii. Dividends. The holders of shares of Class B Preferred Stock shall not be entitled to receive any dividends.

iii. Redemption at the Option of the Corporation.

A. Subject to the terms and conditions hereinafter set forth and to the provisions of the Business Corporation Law, the Corporation may from time to time redeem, without the consent of the holders of shares of Class B Preferred Stock, all or part of the Class B Preferred Stock.

to the
paid-up value for such share plus any declared dividend which
remains unpaid. If such redemption is of fewer than all of the
outstanding shares of the Class B Preferred Stock, then such
redemption shall be effected proportionately based on the ratio
which the number of shares of Class B Preferred Stock held by each
shareholder bears to the total number of shares of Class B Preferred
Stock held by all shareholders, without consideration as to fractions
of shares. Alternatively, redemption may be made in any other way
as unanimously agreed upon between the Corporation and the
holders of Class B Preferred Stock.

C. At least five (5) days prior to the date
determined for the redemption, the Corporation shall give written
notice to each registered holder of the shares of Class B Preferred
Stock to be redeemed. This notice shall be mailed and shall state the
date and the location determined for such redemption. Each holder
of such shares shall receive said notice at their respective address as
it appears in the Corporation's register of shareholders on the date
when such notice is mailed.

D. Upon redemption by the registered
holder of the certificate representing the redeemed shares, the
Corporation shall cancel same and shall pay the registered holder the
redemption price determined above. If only a portion of the
outstanding Class B Preferred Stock of a registered holder is
redeemed, the Corporation shall, without cost, issue to such holder a
new certificate representing the balance of the holder's unredeemed
shares of Class B Preferred Stock.

iv. Right to Purchase. Subject to the provisions
of the Business Corporation Law, the Corporation may, upon mutual
consent of the Corporation and the holders of shares of Class B
Preferred Stock, purchase all or part of the outstanding shares of
Class B Preferred Stock. If such purchase is of fewer than all of the
outstanding shares of Class B Preferred Stock, then such redemption
shall be effected proportionately based on the ratio which the
number of shares of Class B Preferred Stock held by each
shareholder bears to the total number of shares of Class B Preferred
Stock held by all shareholders, without consideration as to fractions
of shares. Alternatively, partial purchase of shares may be made in
any other way unanimously agreed upon between the Corporation
and the holders of Class B Preferred Stock.

...of
paid out of the assets of the Corporation available for distribution to
shareholders, whether such assets are capital, surplus, or earnings,
but no amount shall be paid to the holders of Common Stock,
Class A Preferred Stock or any other stock ranking on liquidation
junior to Class B Preferred Stock (but subject to the rights of holders
of Class C Preferred Stock, Class D Preferred Stock and Class E
Preferred Stock), an amount equal to the paid-up amount for such
shares, subject to the provisions of the Business Corporation Law.

d. Class C Preferred Stock

i. Voting. The holders of shares of Class C Preferred Stock shall not be entitled to vote on any matters or to attend any meetings of shareholders, except to the extent otherwise expressly required pursuant to the Business Corporation Law.

ii. Dividends. The holders of shares of Class C Preferred Stock shall have the right to receive, out of funds legally available therefor, with respect to every fiscal year, a non-cumulative and fixed dividend to be computed on the amount of the Corporation's paid-up capital in respect of such shares, at an annual rate not inferior to one per cent (1%) and not superior to twelve per cent (12%). Said dividend shall be payable at such times and in such amounts as the Board of Directors may determine in its sole discretion, subject to the rights and privileges of holders of shares of Class D Preferred Stock and Class E Preferred Stock and to the provisions of the Business Corporation Law. No dividend shall be payable to holders of Class C Preferred Stock in any year unless and until all dividends payable to holders of Class D Preferred Stock and Class E Preferred Stock for such year have been paid. Holders of Class C Preferred Stock shall have no other right to any other dividend.

iii. Redemption at Option of Shareholder

A. Upon written request to this effect, registered holders of Class C Preferred Stock may, at any time, demand the redemption of their shares of Class C Preferred Stock by the Corporation, subject to the following terms and conditions and to the provisions of the Business Corporation Law.

B. For each redeemed share of Class C Preferred Stock, the Corporation shall pay an amount equal to the

6

C. Whenever more than one registered holder of Class C Preferred Stock simultaneously take advantage of the redemption right provided for by paragraph 4(D)(ii), and, as of the date of such redemption, the Corporation is prohibited under the Business Corporation Law from redeeming all of the shares of Class C Preferred Stock for which redemption is required, then the redemption shall be effected proportionately based on the ratio which the number of shares of Class C Preferred Stock held by each shareholder exercising such right of redemption bears to the total number of shares of Class C Preferred Stock held by all shareholders exercising such right of redemption, without consideration as to fractions of shares, and the Corporation shall redeem the remaining shares to be redeemed as soon as the Corporation is not prohibited from doing so under the Business Corporation Law. Alternatively, the redemption may be made in any other way reasonably agreed upon between the Corporation and the registered holders of Class C Preferred Stock.

D. At least thirty (30) days prior to the date determined for the redemption, the Corporation shall give written notice to each registered holder of the shares to be redeemed. This notice shall be mailed and shall state the date and the location determined for such redemption. Each registered holder of such shares shall receive said notice at their respective address as it appears in the Corporation's register of shareholders on the date when such notice is mailed.

E. Upon receipt by the registered holder of the certificate representing the redeemed shares, the Corporation shall cancel same and shall pay the registered holder the redemption price determined above. If only a portion of the outstanding Class C Preferred Stock of a registered holder is redeemed, the Corporation shall, without cost, issue to such holder a new certificate representing the balance of the holder's unredeemed shares of Class C Preferred Stock.

IV. Redemption at the Option of Corporation.
Subject to the provisions set forth in the Business Corporation Law, the Corporation may from time to time redeem, without the consent of their registered holders, all or part of the outstanding shares of Class C Preferred Stock, subject to the terms and conditions hereinafter set forth in paragraph 4(D)(ii), said paragraph to be

7. Right to Purchase. Subject to the provisions of the Business Corporation Law, the Corporation may, upon mutual consent of the Corporation and the holders of shares of Class C Preferred Stock, purchase all or part of the outstanding shares of Class C Preferred Stock. If such purchase is of fewer than all of the outstanding shares of Class C Preferred Stock, then such redemption shall be effected proportionately based on the ratio which the number of shares of Class C Preferred Stock held by each shareholder bears to the total number of shares of Class C Preferred Stock held by all shareholders, without consideration as to fractions of shares. Alternatively, partial purchase of shares may be made in any other way unanimously agreed upon between the Corporation and the holders of Class C Preferred Stock.

8. Liquidation Rights. Upon any Liquidation Event, each holder of Class C Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to shareholders, whether such assets are capital, surplus, or earnings, before any amount shall be paid to the holders of Common Stock, Class A Preferred Stock, Class B Preferred Stock or any other stock ranking on liquidation junior to Class C Preferred Stock (but subject to the rights of holders of Class D Preferred Stock and Class E Preferred Stock), an amount equal to the paid-up amount for such shares plus any declared dividend on such shares which remains unpaid, subject to the provisions of the Business Corporation Law.

9. Class D Preferred Stock.

I. Voting. The holders of shares of Class D Preferred Stock shall not be entitled to vote on any matters as to attend any meetings of shareholders, except to the extent otherwise expressly required pursuant to the Business Corporation Law.

II. Dividends. The holders of shares of Class D Preferred Stock shall have the right to receive, out of funds legally available therefor, a non-cumulative monthly fixed dividend of one per cent (1%) of the Redemption Value determined in paragraph 4(a)(iii) below. Said dividend shall be payable at such times as the Board of Directors may determine in its sole discretion, in preference to the rights of holders of shares of Common Stock, Class A Preferred Stock, Class B Preferred Stock and Class C Preferred Stock, and subject to the provisions of the Business Corporation Law. No dividend shall be payable to holders of Class D Preferred

Class D Preferred Stock shall have no other right to a dividend.

iii. Redemption at Option of Corporation.

A. Subject to the provisions set forth in the Business Corporation Law, the Corporation may from time to time redeem, without the consent of their registered holders, all or part of the outstanding shares of Class D Preferred Stock subject to the following terms and conditions:

B. For each redeemed share of Class D Preferred Stock, the Corporation shall pay the amount corresponding to the share's total Redemption Value (as hereinafter defined) plus any declared dividend on such share which remains unpaid (the "Redemption Price"). The "Redemption Price" of a share of Class D Preferred Stock is equal to the paid-up capital of such share plus a premium corresponding to the difference between:

i) on the one hand the fair market value of the property received by the Corporation in consideration of the issuance of said share; and

ii) on the other hand, the total of the paid-up capital of such share and, as the case may be, of the fair market value of any other consideration given by the Corporation to the registered holder, with respect to property received in consideration of the issuance of said share.

The fair market value of the property received by the Corporation shall be such as determined by the Corporation and by the holder of the Class D Preferred Stock upon issuance of such stock. However, if the Minister of National Revenue, the Quebec Department of Revenue or any other governmental authority issues an assessment by which it assigns the property a fair market value different from the one established by the Corporation, the following rules shall apply:

1) in the event that the Corporation or the holder of such stock opposes or contests the assessment before a competent court of law, the fair market value of the property shall be established pursuant to the final decision rendered as a result of said opposition or contestation;

opposed to the assessment, the fair market value shall be determined by the assessment;

d) however, in the event of a difference between the fair market value determined for the purposes of the Income Tax Act (Canada) and that determined for the purposes of the Taxation Act (Quebec) or any other governmental authority, the fair market value of the property shall be equal to the lesser of these two fair market values;

e) if, prior to the assessment issued by the Minister of National Revenue (Canada), by the Quebec Department of Revenue or any other governmental authority, there has been a redemption of one or several shares of Class D Preferred Stock, the Corporation shall then pay the holder of the redeemed shares an amount equal to the amount by which the Redemption Value, as adjusted pursuant to the preceding rules, exceeds the original Redemption Value; conversely, if the original Redemption Value exceeds the adjusted Redemption Value, the holder of the redeemed Class D Preferred Stock shall reimburse the Corporation an amount equal to the difference between these values;

f) in all other cases, the Corporation shall make the necessary adjustments by using the most equitable method for the registered holders of Class D Preferred Stock, by the reduction or the increase of the Redemption Value of the Class D Preferred Stock or the cancellation or the issuance of Class D Preferred Stock.

C. At least thirty (30) days prior to the date determined for the redemption, the Corporation shall give written notice to each registered holder of the shares to be redeemed. This notice shall be mailed and shall state the date and the location determined for such redemption. Each registered holder of such shares shall receive said notice at their respective address as it appears in the Corporation's register of shareholders on the date when such notice is mailed.

D. Upon requisition by the registered holder of the certificate representing the redeemed shares, the Corporation shall cancel same and shall pay the registered holder the Redemption Price. If only a portion of the outstanding Class D Preferred Stock of a registered holder is redeemed, the Corporation shall, without cost, issue to each holder a new certificate

iv. Right to Purchase. Subject to the provisions of the Business Corporation Law, the Corporation may, upon a voted consent of the Corporation and the holders of shares of the Class D Preferred Stock, purchase all or part of the outstanding shares of Class D Preferred Stock. If such purchase is of less than all of the outstanding shares of Class D Preferred Stock, then such redemption shall be effected proportionately based on the ratio which the number of shares of Class D Preferred Stock held by each stockholder bears to the total number of shares of Class D Preferred Stock held by all stockholders, without consideration as to fractions of shares. Alternatively, partial purchase of shares may be made in any other way unanimously agreed upon between the Corporation and the registered holder of shares of Class D Preferred Stock.

v. Distribution Rights. Upon any Liquidation Event, each holder of Class D Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to shareholders, whether such assets are capital, surplus, or earnings, before any amount shall be paid to the holders of Common Stock, Class A Preferred Stock, Class B Preferred Stock, Class C Preferred Stock or any other stock ranking on liquidation junior to Class D Preferred Stock (but subject to the rights of holders of Class E Preferred Stock), an amount equal to the Redemption Price of such shares, subject to the provisions of the Business Corporation Law.

f. Class E Preferred Stock.

i. Voting. The holders of shares of Class E Preferred Stock shall not be entitled to vote on any matters or to attend any meetings of shareholders, except to the extent otherwise expressly required pursuant to the Business Corporation Law.

ii. Dividends. The holders of shares of Class E Preferred Stock shall have the right to receive, out of funds legally available therefor, a non-cumulative monthly fixed dividend of one per cent (1%) of the Redemption Value determined in paragraph 4(D)(iii), below. Said dividend shall be payable at such times as the Board of Directors may determine in its sole discretion, in preference to the rights of holders of shares of Common Stock and of Class A Preferred Stock, Class B Preferred Stock, Class C Preferred Stock and Class D Preferred Stock, and subject to the provisions of the Business Corporation Law. Holders of Class E Preferred Stock shall

iii. Redemption at Option of Corporation

A. Subject to the provisions set forth in the Business Corporation Law, the Corporation may from time to time redeem, without the consent of their registered holders, all or part of the outstanding shares of Class E Preferred Stock subject to the following terms and conditions:

B. For each redeemed share of Class E Preferred Stock, the Corporation shall pay an amount equal to the Redemption Price (determined under Section 4(e)(4)(D)(ii), with reference therein to Class D Preferred Stock replaced with references to Class E Preferred Stock) for each share.

C. At least thirty (30) days prior to the date determined for the redemption, the Corporation shall give written notice to each registered holder of the shares to be redeemed. This notice shall be mailed and shall state the date and the location determined for such redemption. Each registered holder of such shares shall receive said notice at their respective address as it appears in the Corporation's register of shareholders on the date when such notice is mailed.

D. Upon remittance by the registered holder of the certificate representing the redeemed shares, the Corporation shall cancel same and shall pay the registered holder the Redemption Price. If only a portion of the outstanding Class E Preferred Stock of a registered holder is redeemed, the Corporation shall, without cost, issue to each holder a new certificate representing the balance of the holder's unredeemed shares of Class E Preferred Stock.

iv. Right to Purchase. Subject to the provisions of the Business Corporation Law, the Corporation may, upon mutual consent of the Corporation and the holders of shares of the Class E Preferred Stock, purchase all or part of the outstanding shares of Class E Preferred Stock. If such purchase is of less than all of the outstanding shares of Class E Preferred Stock, then such redemption shall be effected proportionately based on the ratio which the number of shares of Class E Preferred Stock held by each shareholder bears to the total number of shares of Class E Preferred Stock held by all shareholders, without consideration as to fractions of shares. Alternatively, partial purchase of shares may be made in

v. Distribution Rights. Upon any Liquidation Event, each holder of Class E Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to shareholders, whether such assets are capital, surplus, or earnings, before any amount shall be paid to the holders of Common Stock, Class A Preferred Stock, Class B Preferred Stock, Class C Preferred Stock or Class D Preferred Stock or any other stock ranking on liquidation junior to Class E Preferred Stock, an amount equal to the Redemption Price of such shares, subject to the provisions of the Business Corporation Law."

IV. As a result of the amendments provided herein, (i) the 100 shares of the Corporation's common stock, no par value, which are issued and outstanding, shall be changed into 100 shares of the Corporation's issued and outstanding common stock, \$0.01 per value per share; (ii) the 100 shares of the Corporation's common stock, no par value, which are authorized but unissued shall be changed into 400 shares of authorized but unissued shares of the Corporation's common stock, \$0.01 per value per share; and (iii) 500 shares of each of the following classes of Preferred Stock, par value \$0.01 per share, for an aggregate of 2,500 shares of Preferred Stock, are hereby authorized: Class A Preferred Stock, Class B Preferred Stock, Class C Preferred Stock, Class D Preferred Stock and Class E Preferred Stock.

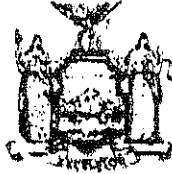
V. The amendment of the Certificate of Incorporation effected hereby was authorized by the joint unanimous written consent of the Board of Directors of the Corporation and the holder of all outstanding shares of the capital stock of the Corporation.

IN WITNESS WHEREOF, I have signed this Certificate this 14 day of August, 2000 and hereby affirm the truth of the statements contained herein under penalty of perjury.



David Adams, President

THOMAS P. DINAPOLI
STATE COMPTROLLER



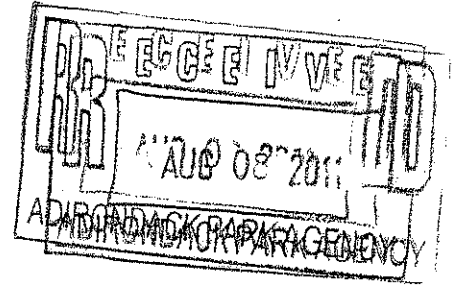
STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

NANCY G. GROENWEGEN
COUNSEL TO THE COMPTROLLER

HELEN M. FANSHAW
DEPUTY COUNSEL

July 28, 2011

James A. Kinley
Code Enforcement Officer
Town of Willsboro
5 Farrell Road
PO Box 370
Willsboro, New York 12996



Dear Mr. Kinley:

In response to your request and pursuant to the Freedom of Information Law, we are enclosing the following opinion:

Opn No. 65-639

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mitchell S. Morris'.

Mitchell S. Morris
Associate Counsel

MSM:kh
Enc.

TOWN LAW, §§ 130(15), 261, 264; where a town zoning ordinance is silent as to aircraft and airfields, it is doubtful that a private property owner could be prohibited under the zoning ordinance from landing his private plane on such property, although, if the safety and welfare of the community are thereby affected, police power prohibitions could be enforced. Discussion of amendments to a town zoning ordinance to permit the establishment of a private commercial airport.

September 17, 1965

65-639

Fredric H. Weyand, Esq.
Town Attorney
Town of Collins
47 West Main Street
Cowanda, New York 14070

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent these views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

Re: Town of Collins

Dear Sir:

This is in reply to your letter of August 25, 1965, in which you asked certain questions directed to your town zoning ordinance which was enacted in 1961.

You state that this ordinance makes no mention of aircraft or air fields. Under no district regulation is there any reference to airports as a permitted use. Under the "M" district (-manufacturing), the regulation permits "any other use". The area in which an individual wishes to put an airport is in a Residential-Agricultural District.

You ask:

(1) May the town prevent this individual from using his own property as a private airfield for his own plans?

(2) Could the town authorize the individual to conduct a commercial air field business under the said zoning ordinance by an amendment to the ordinance rezoning the property in question from "R-A" (Residential-Agricultural) to "M" (Manufacturing)?

Your first question, it seems to us, deals with what may be considered an accessory use (see Anderson, Zoning Law and Practice in New York State, section 8.20, pp. 250-251). Since your ordinance is apparently silent (or at least, not detailed) concerning permitted accessory uses in "R-A" zones, it is probable that inferences will have to be drawn from the nature of the particular vicinity involved and from the nature of the proposed use in connection with that vicinity.

It is to be noted that restrictions in zoning ordinances bear an interrelationship with a municipality's police powers. Where a zoning ordinance, or its interpretation, would deprive an owner of the use of his property on some basis wholly unrelated to the police power, such ordinance could be considered unconstitutional and invalid (see Frasnell v. Leelis, 1957, 3 NY 2d 384, 165 NYS 2d 488, for a discussion of these principles in connection with erecting a 44-foot tower for amateur radio transmission in a residentially zoned district).

In the instant case, your ordinance makes no mention of aircraft. Section 262 of the Town Law, which is the grant of power to a town to enact a zoning ordinance, sheds no light on the problem. Section 130(15) of the Town Law, constituting the general police power grant, would, it seems, be broad enough to prevent private use of an airplane in conjunction with private premises, if such use jeopardized the health, safety or general welfare of residents of the town.

Thus, we think that, while a solution to your problem may not stem from the zoning ordinance or the statutes dealing with zoning, the answers may be in the town's general police power. We see nothing in the zoning ordinance, as you have described it, to prevent a man from landing his private plane on his private property. This is not dissimilar to his right to drive his private car thereon. However, there are types of indiscriminate use of such car which could constitute a hazard to other residents which would be subject to control under the town's police power. Because of the very nature of an airplane, it conceivably could present hazards to residents in excess of those presented by an automobile. If, in fact, such hazards are created by this individual's use of his premises for his private plane, then we think the police power of the town could and should be exercised.

In the absence of such hazards, however, we are of the opinion that your zoning ordinance does not bar the use of the premises as a landing area for the individual's private plane.

(2) Your second question poses a problem which is somewhat more difficult to answer. Part of the problem is presented by the fact that the zoning ordinance makes no provision for commercial airports or air fields. It is difficult to say what was in the minds of the drafters of the ordinance in question when they inserted the words, "any other use", in the regulations applying to "M" (Manufacturing) districts.

Since we cannot say for sure whether "any other use" is sufficiently broad to include a commercial airport by implication, we also cannot say whether the expedient of rezoning the property of the individual in question from "residential-agricultural" to "manufacturing", would achieve the desired purpose. Under section 264 of the Town Law, an amendment to a zoning ordinance is subject to a public hearing. Whether a notice of hearing setting forth, as its sole object, a change from "residential-agricultural" to "manufacturing" would constitute adequate notice to interested persons of a proposed commercial airport installation is conjectural. Perhaps, at the time of the proposed rezoning amendment, another amendment broadening the stated permitted uses of the "manufacturing" zone, to include airports, should be considered. In this way, interested persons would be fully informed of all ramifications and would have an opportunity to be heard.

Anderson in Zoning Law and Practice in New York State (supra, section 6.23, pp. 254-255) discusses these questions under the general topic of "Performance Standards" and suggests that, even in the broadly zoned manufacturing and industrial areas, limitations exist as to public or private nuisances in the form of excessive smoke, dust, noise and the like. However, Anderson's discussion has to do with zoning ordinances expressly limiting such nuisances. Whether these also exist by implication or, if they do not, whether the police power would operate to prohibit excessive noise from low flying planes, together with the safety hazards these present, is again conjectural.

Anderson, at sections 9.25 and 9.26 (pp. 318-319) of his hereinbefore cited text, discusses the hazards connected with private and public commercial airports, both to residents of the area and to aircraft (from buildings, trees etc.) and delves into the advisability of incorporating airport zoning regulations into a zoning ordinance. While sections 350 et seq. of the General Municipal Law deal with municipally owned and operated airports, both these sections and Anderson's discussions thereof demonstrate the hazards connected with airports in general and the need for safety precautions. Whether these can, or should, be achieved by zoning regulations or by police power ordinances can be better determined by municipal officers having an on-the-scene understanding of both local conditions and the scope of the commercial airport operation under consideration.

In any case, it would seem to us that a town might well be overstepping its bounds in attempting to include a commercial airport as a permitted use in a "manufacturing" zone and then rezoning a "residential-agricultural" district into such "manufacturing" zone, without doing all in its power to apprise the public of the facts. At the very least, it would appear that the public, and especially property owners in the affected area, should have full and complete notice of the purported use and be given every opportunity to be heard.

It must be remembered that persons who have purchased real property in the hitherto "residential-agricultural" zone undoubtedly have relied on the protections provided by this restrictive type of zoning. Any attempt to rezone a portion thereof to "manufacturing" would no doubt bring forth protests. Such rezoning taking the form of a subterfuge, whereby the anticipated establishment of a commercial air field is concealed from these owners (or even where an attempt at such concealment is made) could well be considered a taking without due process and thereby unconstitutional and unlawful.

We trust that the above will be of assistance to you.

Very truly yours,

ARTHUR LEVITT
State Comptroller

By

Paul A. Hughes
Associate Counsel

Cooper
to

Exhibit C



NEW YORK STATE
Adirondack
parkagency

**MAJOR PROJECT PUBLIC NOTICE
APPLICATION COMPLETED**

APA PROJECT No. 2011-95

Tracking No. 7010 3090 0001 3716 2701

Date: October 27, 2011

The Agency determined on **October 27, 2011** that the application referenced below is complete and under formal review for Agency action. The purpose of this Notice is to inform you about the proposed project and to ask for any written comments that you may wish to make about the project. Comments previously submitted are already part of the project file and need not be repeated.

It is not necessary to respond to this letter unless you want to do so. If you wish to provide written comments, they must be received by **November 17, 2011**. Please address any written comments to **Suzanne B. McSherry**, the assigned Environmental Program Specialist and make reference to the above Project Number.

PROJECT SPONSOR, LOCATION AND DESCRIPTION

The Agency received an application on **June 6, 2011** from **Daniel Arbour** for a project proposed in the Town of **Willsboro, Essex County**, at **3061 Essex Road (Route 22)** in an area designated as **Rural Use** on the Adirondack Park Land Use and Development Plan Map. The tax map number of the property site is: Section **40.1 Block 2 Parcel 22.002**. The attached map shows the approximate location of the project site.

The project is briefly described as follows: A new private airport is proposed on existing agricultural fields. A 1450-foot long, 50-foot wide grass airstrip would be maintained by mowing. The runway is no less than 1400 feet westerly of Route 22 and has a north-south orientation. No runway lighting or structures are proposed. A 7-foot tall pole with an orange nylon windsock would be installed adjacent to the runway. Use of the seasonal airstrip would be limited to daylight hours during the months of June through September each year. A maximum of one daily take-off and landing is proposed. No maintenance or re-fueling will occur on-site.

10/27/11

Date

Holly E. Kneeshaw

Holly E. Kneeshaw

Assistant Director (Regulatory Programs)

HEK:SBM:slp

cc: Daniel Arbour
Xavier Arbour

Wednesday, June 29th, 2011

Adirondack Park Agency
Mrs. Suzanne B. McSherry
APA Environmental Program Specialist
P.O. Box 99, NYS Route 86, Ray Brook NY, 12977

Subject: APA Project No. 2011-95 Request for additional information

Dear Mrs. McSherry,

In response to your June 20th, 2011 request for additional information regarding the above-mentioned project and our telephone conversation of June 21st, 2011, please find enclosed the requested information.

1. Regarding item 9d. of the GIR, no existing buildings will be utilized as an airplane hangar.
2. Regarding item 13 of the GIR, as previously discussed during our telephone conversation, the NYS DoT Aviation Service Bureau has advised us that it will enter the approbation process only after the APA's determination has been issued and that its regulatory role will mainly consist of reviewing the airport's security plan. We are attaching a copy of the documents submitted to the Aviation Service Bureau in support of our application so far (see Annex A).
3. Please refer to enclosed Site Plan Map on USGS topographic map (see Annex B) for information requested in item 5 of your request.
4. Regarding item 6 of your request, the airport will be used for personal uses.
5. Regarding item 7 of your request, no other project alternative is available to establishing the projected airstrip as there are no public airports or private airports with public use rights in the vicinity.
6. Regarding item 8 of your request, the following aircraft will utilize the airport:
 - a. (1) Piper PA-18 Supercub
 - i. Engine horsepower: 90 HP
 - ii. Wing size: 35 feet
 - iii. Type/number of engines: (1) Continental C-90 piston gasoline engine

- iv. Operating noise level: 79 dB. Result of test taken on 07/01/2011 with the following instrument:
 1. Sper Scientific Sound Level Meter (IEC 651 Type 1)
 2. I.D. No. 1704 044792
 3. Calibration due: May 2012
7. Regarding item 9 of your request, here are the operating details of the projected airstrip:
 - a. Maximum number of daily takeoffs and landings: 1
 - b. Average number of daily takeoffs and landings: 1
 - c. Hours of operation: 9AM-5PM
 - d. Annual calendar of operation; June to August
8. Regarding item 10 of your request, no maintenance or fueling will occur on-site.
9. Regarding item 11 of your request, the following improvement will be installed on the project site (see Annex C for location details):
 - a. Airport windsock
 - i. Manufacturer's specifications: Airport Windsock Corporation
 - ii. Model: FAA-compliant AWCP8 USA-made 8 inch x 36 inch windsock
 - iii. Height: 7 feet
 - iv. Color: Orange
 - v. Material: Urethane-coated nylon
10. Regarding item 12 of your request, no grading or fill will be required to construct the runway. The existing land will serve as the runway.

We hope that the information hereby provided will satisfactorily answer your request for additional information. In the meantime, we remain available for further assistance should you need it.

Sincerely,

XAVIER ARBOUR
AUTHORIZED REPRESENTATIVE



NEW YORK STATE
Adirondack
parkagency

November 9, 2011

Daniel Arbour, President
Sunset Farm, Ltd.
PO Box 281
Willsboro, NY 12996

Re: Project Number 2011-95

Dear Mr. Arbour:


Thank you for your recent emails about the above-referenced project. As discussed, in order to hold an informal legislative public hearing on your proposal in the Town of Willsboro on a date when you are available to attend, you have agreed to extend the Agency's regulatory time frame (i.e., 60 and 90-day clocks), specified in §809 of the Adirondack Park Agency Act and 9 NYCRR Part 572, to determine the need for and commencing an adjudicatory public hearing and for issuing a decision on the project.

The informal legislative hearing will be held in Willsboro in early January. It is tentatively scheduled for Tuesday, January 10th at 10 AM at the Willsboro Visitor's Center at 3743 Main Street. As soon as the details are settled, we will confirm with you.

This voluntary suspension of the Agency's regulatory time frames is primarily to allow your attendance at the informal legislative public hearing in Willsboro and to allow for the project to be presented at the Agency's February 16-17, 2012 meeting. The 60-day clock is specifically extended to February 20, 2012, and the 90-day clock is specifically extended to March 21, 2012.

Please countersign and return this letter to me via FAX (518-891-3938). Your signature will confirm your agreement to extend the project review time clocks as discussed and outlined herein. Should you have any additional questions concerning this matter, please feel free to contact me.

Sincerely,



Suzanne B. McSherry
Environmental Program Specialist

SBM:slp

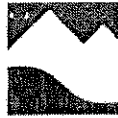
Daniel Arbour
November 9, 2011
Page 2 of 2

AGREEMENT TO EXTEND PROJECT TIME CLOCKS

As applicant for Project 2011-95, Sunset Farms Ltd., I hereby agree to extend the Agency's regulatory review time frames as described in this letter.

November 11, 2011
Date


Daniel Arbour



Adirondack
parkagency

NOTICE OF INFORMAL INFORMATIONAL HEARING
ON PROPOSED PROJECT 2011-95
For Daniel Arbour, Sunset Farms LLC

NOTICE IS HEREBY GIVEN that pursuant to §804(6) of the Adirondack Park Agency Act, the Adirondack Park Agency will hold an informational hearing on January 10, 2012 (Application No. 2011-95) regarding a proposal for a private airport in the Town of Willsboro, Essex County. The project site is located at 3061 Essex Road (Route 22) in the Town of Willsboro, Essex County in an area designated as Rural Use on the Adirondack Park Land Use and Development Plan Map. The tax map number of the property site is: Section 40.1, Block 2, Parcel 22.002.

The informal informational hearing will be held on Tuesday, January 10th, 2012, at 10 AM, Willsboro Visitor's Center, 3743 Main Street, Willsboro, NY 12996.

This informational hearing is not required by law, but is being provided by the Agency as an opportunity for additional public comment on the permit application.

The site plan and supporting application materials will be available for public inspection during the hearing; a copy of the application is currently available for public review at the Willsboro Town Offices and the Essex Town Offices. An Agency staff member will appear at the hearing to receive statements concerning the proposal.

The application involves a new private airport proposed on existing agricultural fields. A 1450 foot long, 50 foot wide grass airstrip would be maintained by mowing. The runway is no less than 1400 feet westerly of Route 22 and has a north-south orientation. No runway lighting or structures are proposed. A seven foot tall pole with an orange nylon windsock would be installed adjacent to the runway. Use of the seasonal airstrip would be limited to daylight hours during the months of June through September each year. A maximum of one daily take-off and landing is proposed. No maintenance or re-fueling will occur on-site.

This is an informal informational hearing intended to provide an opportunity for the applicant to describe his project proposal and interested parties to comment. Any person or public agency may participate. Any person may speak during the public comment period of this hearing, and may submit written comments before

Notice of Informational Hearing

December 6, 2011

Page 2 of 2

the hearing and until Friday, January 21, 2012. Written comments are preferred. All comment letters received will become part of the unsworn record for the Agency determination.

Pursuant to § 301(2) of the State Administrative Procedure Act, interpreter services will be made available to persons who are deaf at no charge upon written request to the Agency within a reasonable time prior to the hearing.

The application and supporting information are available for public inspection at both the Willsboro and Essex Town offices or by contacting Suzanne B. McSherry, the assigned Environmental Program Specialist, at Adirondack Park Agency, PO Box 99, Ray Brook, NY 12977, (518) 891-4050. Any written comments submitted in advance of the hearing should be addressed to the assigned Environmental Program Specialist and reference Project 2011-95.

DATE

Richard E. Weber III, Deputy Director
Regulatory Programs
Adirondack Park Agency

REW:SBM:slp



NEW YORK STATE
Adirondack
parkagency

January 25, 2012

Daniel Arbour, President
Sunset Farm, Ltd.
PO Box 281
Willsboro, NY 12996

Re: Project Number 2011-95

Dear Mr. Arbour:

As discussed by phone this morning, as a result of your project amendments, you have agreed to extend the Agency's regulatory time frame (i.e., 60 and 90 day clocks), specified in §809 of the Adirondack Park Agency Act and 9 NYCRR Part 572, to determine the need for and commencing an adjudicatory public hearing and for issuing a decision on the project.

This voluntary suspension of the Agency's regulatory time frames is necessitated by the material amendments you have made to your application including a change of airplanes to be used at the site, an increase of the number of annual take-offs and landings to 150, and an extension of the dates of operation to year-round. The suspension allows for re-noticing of your project proposal to reflect your proposed amendments and to allow for the project to be presented at the Agency's May 17-18, 2012 meeting. The 60 day clock is specifically extended to Friday, May 18, 2012, and the 90 day clock is specifically extended to Monday, June 18, 2012.

Please countersign and return this letter to me via FAX (518-891-3938). Your signature will confirm your agreement to extend the project review time clocks as discussed and outlined herein. Should you have any additional questions concerning this matter, please feel free to contact me. Thank you for your continued cooperation.

Sincerely,

Suzanne B. McSherry
Environmental Program Specialist

SBM:slp

Daniel Arbour
January 25, 2012
Page 2 of 2

AGREEMENT TO EXTEND PROJECT TIME CLOCKS

As applicant for Project 2011-95, Sunset Farms Ltd., I hereby agree to extend the Agency's regulatory review time frames as described in this letter.

January 25, 2012

Date



Daniel Arbour

Filters Used:
1 Tagged Record

Email Report

Form Format

Date Printed: 9/03/2013
Time Printed: 3:49PM
Printed By: MATT

Date 4/24/2012 Time 9:36AM 12:00AM Duration 0.00 (hours) Code
Subject FW: Clock Extension Agreement letter Staff Matthew D Norfolk
Client Champlain Aviation, Inc., MatterRef APA Airstrip Approval MatterNo 3772
From darbour@arbour.ca
To matt@briggsnorfolk.com

CC To
BCC To
Reminders (days before) Follow N Done N Notify N Hide N Trigger N Private N Status

User1 User3
User2 User4

On 12-01-26 3:03 AM, "Suzanne McSherry" <sbmcshe@gw.dec.state.ny.us> wrote:

>Hi Mr. Arbour -

>

>Every major permit application has a 60-day and 90-day deadline. These
>dates are relative to the date the application is deemed "complete". A
>decision on the project must be issued within 90 days of completion
>(unless there is a hearing) and any decision to direct a project to
>hearing must occur within 60 days of completion. When a project is
>brought to the Agency board for a decision, staff must bring it to them
>within the 60-day window so the board has all options for action open to
>them. That is, they would have the option to approve the project or
>direct the project to an adjudicatory hearing. A project cannot be denied
>unless there has been an adjudicatory hearing. The meeting/hearing we
>had was not adjudicatory; it was an informal "legislative" hearing or
>informational meeting. (See the hearing notice attached) An adjudicatory
>hearing is a formal proceeding with a hearing officer, sworn testimony,
>exchange of briefs, etc. We do not at this time believe that your
>project would be directed to a hearing by the board, but I cannot
>guarantee the board's decision - it is for them alone to make.

>

>In this case, I anticipate we will be in a position to recommend approval
>of the project and provide the board with a draft permit a week in
>advance of their May 17-18 meeting. (You would get a copy of the draft,
>also). In the event the board approves the project, they may require
>staff to make changes to the draft permit, but it is typical that we
>would issue the final permit within a few days of the Agency's approval.

>

>I hope this is clear and satisfies your questions.
>I'm available to talk until about 4 PM if you wish to call.

>

>Thank you.
>-Suzanne

>

>Suzanne B. McSherry
>Environmental Program Specialist

Filters Used:
1 Tagged Record

Email Report

Form Format

Date Printed: 9/03/2013
Time Printed: 3:49PM
Printed By: MATT

>Adirondack Park Agency
>P.O. Box 99
>Ray Brook, NY 12977
>Phone: 518) 891-4050 Ext. 221
>Fax: 518) 891-3938
>sbmcshe@gw.dec.state.ny.us
>www.apa.ny.gov

>
>
>*****

>WE WORK FOR THE PEOPLE
>Performance * Integrity * Pride

>
>
>

>>>> Daniel Arbour <darbour@arbour.ca> 01/25 1:25 PM >>>>

>Suzanne
> What is the adjudicatory public hearing (will there be another public
>hearing ?) and the 60/90 day clocks. I thought that the end of the
>extension was the 18 May
>Regards
>Daniel

>
>

>On 1/25/12 11:19 AM, "Suzanne McSherry" <sbmcshe@gw.dec.state.ny.us>
>wrote:

>
>>Hi Mr. Arbour - -

>>

>>It was good to talk with you this morning. Thanks again for your time in
>>talking these issues through with me.

>>

>>Attached is the agreement letter. Please sign and fax back to me.

>>

>>Safe travels and please stay in touch.

>>

>>-Suzanne

>>

>>

>>

>>Suzanne B. McSherry
>>Environmental Program Specialist
>>Adirondack Park Agency
>>P.O. Box 99
>>Ray Brook, NY 12977
>>Phone: 518) 891-4050 Ext. 221
>>Fax: 518) 891-3938
>>sbmcshe@gw.dec.state.ny.us
>>www.apa.ny.gov

>>

>>

>>*****

EXHIBIT H



February 14, 2012

Dean Caveney, Chairman
Town of Willsboro Planning Board
PO Box 370
Willsboro, NY 12996

**Re: Request for Consultation
APA Project 2011-95, Daniel Arbour, Sunset Farms, LTD**

Dear Mr. Caveney:

Enclosed for your review, please find a copy of the revised Project Notice Form describing the above-titled project and determining it complete for Agency review purposes. With this letter, we would like to commence the consultation process between the Town and the Agency as envisioned in the Adirondack Park Agency Act and the Town's land use program.

The applicant proposes a private airport with a 1400 foot long grass strip for year-round use in an area designated as Rural Use on the Adirondack Park Land Use and Development Plan Map, thereby constituting a Class A regional project. Such a project requires an Agency permit pursuant to §§809(2) and 810(1)(d)(9) of the Adirondack Park Agency Act (Executive Law, Article 27).

The attached notice describes the project proposal as amended by the applicant following our public information meeting which was held January 10, 2012 at the Willsboro Visitor's Center. The amendments requested by the applicant consist of: an increase in the operating dates of the airport to year-round, and the maximum number of take-offs and landings to 150. In addition, the applicant seeks a permit that allows a variety of single-engine aircraft to utilize the airport, rather than the original 90HP Piper SuperCub.

As you may know, the Act prohibits the Agency from approving any Class A regional project on land governed by an approved local land use program unless the Agency determines that the project (i) meets all pertinent requirements and conditions of the approved program and (ii) would not have an undue adverse impact

Dean Caveney
February 13, 2012
Page 2 of 2

as defined by the Act. The Planning Board is designated to consult with the Agency on Class A projects. As part of the consultative process, we wish to be advised of the scope of Town jurisdiction, any advice regarding the project's conformance to dimensional and other technical requirements of the Town's land use program, any restrictions and/or prohibitions that may apply, and any other comments the Board may want to share.

In addition, we ask for input with regard to the following particular matter:

- The Planning Board discussed this matter at their July 26, 2011 meeting. According to the minutes of the meeting, Mr. Caveney requested that the Town's attorney provide clarification and opinion to the planning board of section 3.21 of the Town's zoning ordinance relevant to Town jurisdiction over airports/heliports. Has that opinion been requested or obtained? Has the Town made any revision to its interpretation of that section? In addition, in a letter dated January 19, 2012 Marc Schachner, attorney for Braidlea Farms, stated "It is also not clear to us that the Town's contention of lack of Zoning jurisdiction is necessarily correct, especially given the language of Section 4.92(c) of the Willsboro Zoning Ordinance." Please advise us of your response to this statement.

We look forward to receipt of advisory comments at the earliest opportunity and by no later March 12, 2012.

Please don't hesitate to call me if there are any questions, and thank you in advance for your cooperation.

Sincerely,

Suzanne B. McSherry
Environmental Program Specialist

SBM:MJG:slp

enc.: Revised Project Notice Form

cc: James A. Kinley, Code Enforcement Officer
Brian Grisi



NEW YORK STATE
Adirondack
parkagency

MAJOR PROJECT PUBLIC NOTICE
REVISED APPLICATION COMPLETED

APA PROJECT No. 2011-95
Tracking No. 7010 3090 0001 3716 3753

Date: February 14, 2012

The Agency determined on **October 27, 2011** that the application referenced below is complete and under formal review for Agency action. The purpose of this **REVISED** Notice is to inform you about the **AMENDED** proposed project and to ask for any written comments that you may wish to make about the **AMENDED** project. Comments previously submitted are already part of the project file and need not be repeated.

It is not necessary to respond to this letter unless you want to do so. If you wish to provide written comments, they must be received by **March 8, 2012**. Please address any written comments to **Suzanne B. McSherry**, the assigned Environmental Program Specialist and make reference to the above Project Number.

PROJECT SPONSOR, LOCATION AND DESCRIPTION

The Agency received an application on **June 6, 2011**, **AMENDED on JANUARY 25, 2012** from **Daniel Arbour** for a project proposed in the Town of Willsboro, Essex County, at **3061 Essex Road (Route 22)** in an area designated as **Rural Use** on the Adirondack Park Land Use and Development Plan Map. The tax map number of the property site is: **Section 40.1 Block 2 Parcel 22.002**. The attached map shows the approximate location of the project site.

The project as **AMENDED on January 25, 2012** is briefly described as follows: A new private airport is proposed on existing agricultural fields. A 1450-foot long, 50-foot wide grass airstrip would be maintained by mowing. The runway is no less than 1400 feet westerly of Route 22 and has a north-south orientation. No runway lighting or structures are proposed. A 7-foot tall pole with an orange nylon windsock would be installed adjacent to the runway. Use of the airstrip would be limited to daylight hours during the **twelve** months of the year. A maximum of **150** take-offs and landings **annually** are proposed. No maintenance or re-fueling will occur on-site. **The airport will be utilized by single-engine planes only, without horsepower limits.**

2.14.12

Date

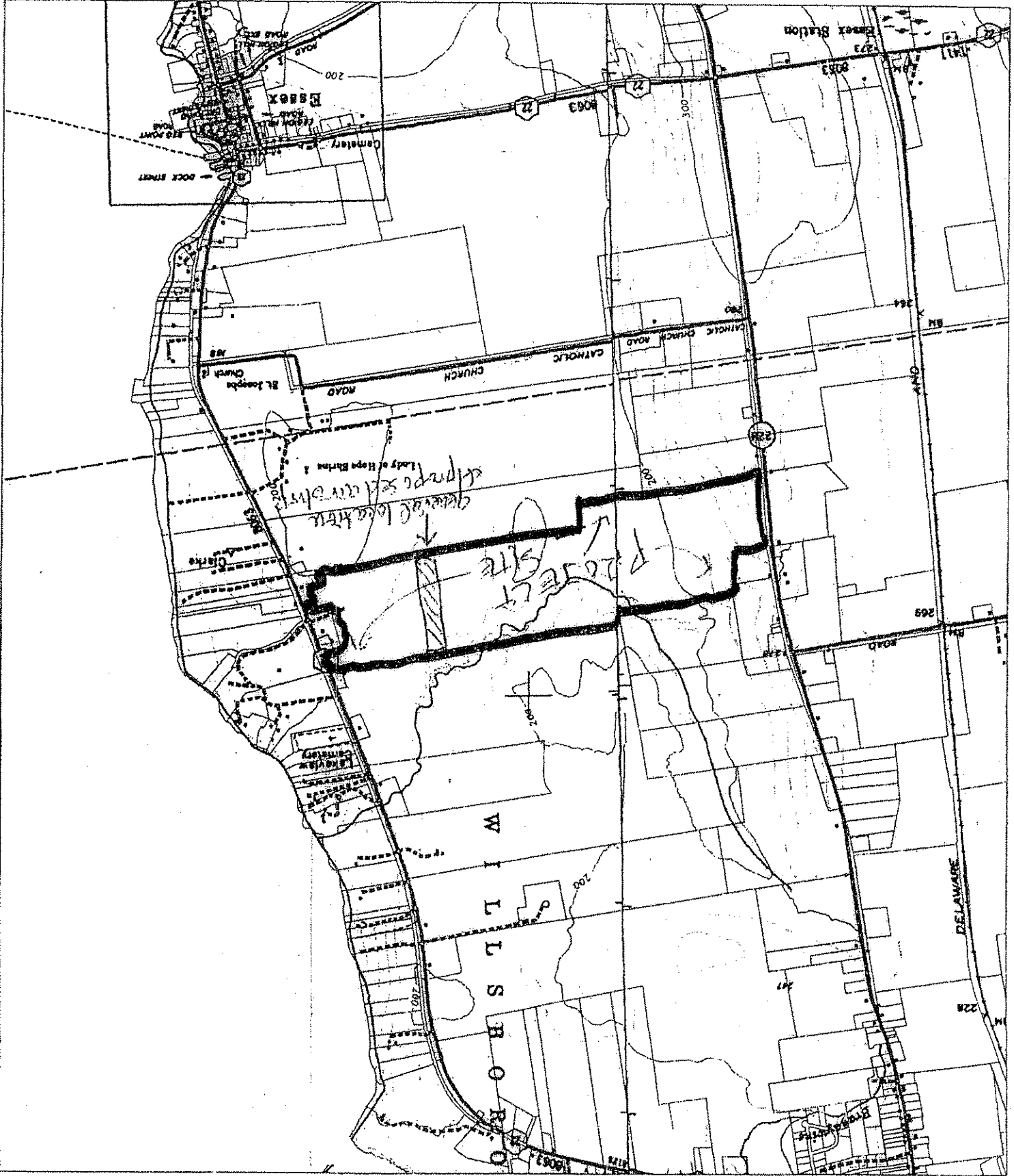
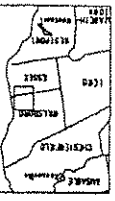
Richard E. Weber III

Deputy Director (Regulatory Programs)

REW:SBM:slp

cc: Daniel Arbour
Xavier Arbour

APA # PA11-95



Negative Declaration - Type I
 Conditioned Negative Declaration
 Draft Negative Declaration
 Positive Declaration
 with Public Scoping Session
 Exempt

Excluded

Draft EIS
 with Public Hearing
 Generic
 Supplemental
 Final EIS
 Generic
 Supplemental
 Type II

Permit(s) Applied For: **for a permit pursuant to §809 of the APA Act**

DEC Region #: 5 County: Essex Lead Agency: n/a

Within the Adirondack Park

Project Title/Sponsor: **Daniel Arbour, President
Sunset Farm Ltd.
3061 Route 22
PO Box 281
Willsboro, NY 12996**

Project or Application Number: 2011-0095

Brief Project Description: as AMENDED on January 25, 2012 is briefly described as follows: A new private airport is proposed on existing agricultural fields. A 1450-foot long, 50-foot wide grass airstrip would be maintained by mowing. The runway is no less than 1400 feet westerly of Route 22 and has a north-south orientation. No runway lighting or structures are proposed. A 7-foot tall pole with an orange nylon windsock would be installed adjacent to the runway. Use of the airstrip would be limited to daylight hours during the twelve months of the year. A maximum of 150 take-offs and landings annually are proposed. No maintenance or re-fueling will occur on-site. The airport will be utilized by single-engine planes only, without horsepower limits.

Land Use Classification: **Rural Use**

Project Location (include street address/municipality): **3061 Route 22, Willsboro, NY**

For Adirondack Park Agency: Comment Period ends: **March 8, 2012**

APA Contact Person: **Suzanne B. McSherry
P.O. Box 99, Route 86
Ray Brook, New York 12977
518-891-4050**



NEW YORK STATE
Adirondack
parkagency

MAJOR PROJECT PUBLIC NOTICE
REVISED APPLICATION COMPLETED

APA PROJECT No. 2011-95

Tracking No. 7010 3090 0001 3716 3753

Date: February 14, 2012

The Agency determined on **October 27, 2011** that the application referenced below is complete and under formal review for Agency action. The purpose of this REVISED Notice is to inform you about the AMENDED proposed project and to ask for any written comments that you may wish to make about the AMENDED project. Comments previously submitted are already part of the project file and need not be repeated.

It is not necessary to respond to this letter unless you want to do so. If you wish to provide written comments, they must be received by **March 8, 2012**. Please address any written comments to **Suzanne B. McSherry**, the assigned Environmental Program Specialist and make reference to the above Project Number.

PROJECT SPONSOR, LOCATION AND DESCRIPTION

The Agency received an application on **June 6, 2011**, AMENDED on JANUARY 25, 2012 from **Daniel Arbour** for a project proposed in the Town of **Willsboro, Essex County**, at **3061 Essex Road (Route 22)** in an area designated as **Rural Use** on the Adirondack Park Land Use and Development Plan Map. The tax map number of the property site is: **Section 40.1 Block 2 Parcel 22.002**. The attached map shows the approximate location of the project site.

The project as AMENDED on January 25, 2012 is briefly described as follows: A new private airport is proposed on existing agricultural fields. A 1450-foot long, 50-foot wide grass airstrip would be maintained by mowing. The runway is no less than 1400 feet westerly of Route 22 and has a north-south orientation. No runway lighting or structures are proposed. A 7-foot tall pole with an orange nylon windsock would be installed adjacent to the runway. Use of the airstrip would be limited to daylight hours during the twelve months of the year. A maximum of 150 take-offs and landings annually are proposed. No maintenance or re-fueling will occur on-site. The airport will be utilized by single-engine planes only, without horsepower limits.

2.14.12

Date

Richard E. Weber III

Deputy Director (Regulatory Programs)

REW:SBM:slp

cc: Daniel Arbour
Xavier Arbour

Negative Declaration - Type I
 Conditioned Negative Declaration
 Draft Negative Declaration
 Positive Declaration
 with Public Scoping Session
 Exempt
 Excluded
 Type II
 Draft EIS
 with Public Hearing
 Generic
 Supplemental
 Final EIS
 Generic
 Supplemental

Permit(s) Applied For: for a permit pursuant to §809 of the APA Act

DEC Region #: 5 County: Essex Lead Agency: n/a

Within the Adirondack Park

Project Title/Sponsor: Daniel Arbour, President
Sunset Farm Ltd.
3061 Route 22
PO Box 281
Willsboro, NY 12996

Project or Application Number: 2011-0095

Brief Project Description: as AMENDED on January 25, 2012 is briefly described as follows: A new private airport is proposed on existing agricultural fields. A 1450-foot long, 50-foot wide grass airstrip would be maintained by mowing. The runway is no less than 1400 feet westerly of Route 22 and has a north-south orientation. No runway lighting or structures are proposed. A 7-foot tall pole with an orange nylon windsock would be installed adjacent to the runway. Use of the airstrip would be limited to daylight hours during the twelve months of the year. A maximum of 150 take-offs and landings annually are proposed. No maintenance or re-fueling will occur on-site. The airport will be utilized by single-engine planes only, without horsepower limits.

Land Use Classification: Rural Use

Project Location (include street address/municipality): 3061 Route 22, Willsboro, NY

For Adirondack Park Agency: Comment Period ends: March 8, 2012

APA Contact Person: Suzanne B. McSherry
P.O. Box 99, Route 86
Ray Brook, New York 12977
518-891-4050



Via Certified Mail Return Receipt
Tracking No. 7010 3090 0001 3716 4439

NEW YORK STATE
Adirondack
parkagency

REQUEST FOR ADDITIONAL INFORMATION

APA Project No. 2011-95

Project Sponsor: Daniel Arbour, President Sunset Farm LTD. PO Box 281 Willsboro, NY 12996	Authorized Representative: Xavier Arbour PO Box 281 Willsboro, NY 12996
--------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------

Date Application Received: June 6, 2011

Type of Project: New private airport; 1500-foot grass runway

Location of Project: NYS Route 22

Essex County: (town): Willsboro

Land Use Area: Rural Use

Tax Map No.: Section: 40.1 Block: 2 Parcel 22.002

Dear Mr. Arbour:


Your permit application is currently under review by the Agency. Some important issues regarding your revised project have come to our attention.

Attached is a list of information to help staff fully understand the proposed project and to enable the Agency to make the determinations required to meet the applicable criteria for issuance of a permit.

Do not undertake your project until a permit has been issued by the Agency. "Undertake" includes, but is not limited to, any construction activities, such as excavation or other land disturbance, tree cutting, and installation of driveways or roads, or in the case of subdivision, the conveyance of any lots.

*This Notice is issued pursuant to Section 809(2)(b) Adirondack Park Agency Act and Section 572.7 of the Adirondack Park Agency Rules and Regulations.

4/3/12
Date


Richard E. Weber, III
Deputy Director (Regulatory Programs)
Adirondack Park Agency

Attachments

cc: James Kinley

REQUESTED INFORMATION

APA Project No. 2011-95

Please provide the information listed below. If you have any questions regarding this Request for Additional Information or the project review process, please contact APA Environmental Program Specialist (EPS) Suzanne B. McSherry who is assigned to review your project.

In order for the Agency to have all relevant information necessary to render a decision at its May 17-18, 2012 meeting, please submit the information requested herein as soon as possible and no later than April 20, 2012.

Additional Information

Based on the application materials submitted to date, we request the following additional information to further clarify your revised proposal and to enable the Agency to make the required findings and determinations:

1. Please find enclosed a copy of a letter addressed to the Agency from Michael Hill, Esq. dated March 8, 2012 on behalf of Braidlea Farms. The letter raises a number of issues relevant to the Agency's review and which are of concern to the neighbors. Please respond in writing to the Agency on the issues raised.
2. As you discussed with Agency Review Officer Suzanne McSherry, please submit documentation describing noise levels associated with airports similar in scale and operation to that which you propose.
3. Please provide the Agency with a copy of your application to, and any decision(s) rendered by, the Town of Willsboro and NYS Department of Transportation for a permit to establish a privately-owned airport pursuant to NYS General Business Law Article 14, Section 249.
4. You stated that because of the tall trees at the southern end of the proposed runway the airplane take-offs and landings will be to/from the north end of the runway "most of the time". Please describe the circumstances under which it may be necessary to take off or land to/from the south.

REW:SBM:MJG:slp



NEW YORK STATE
Adirondack
parkagency

April 16, 2012

Dean Caveney, Chairman
Town of Willsboro Planning Board

James A. Kinley
Town of Willsboro Code Enforcement Officer

Town of Willsboro
1 Farrell Road
PO Box 370
Willsboro, NY 12996

Re: APA Project 2011-95, Daniel Arbour, Sunset Farms LTD.

Gentlemen:

Thank you for talking with me last Thursday about the Arbour project. This is to confirm advice provided with that call.

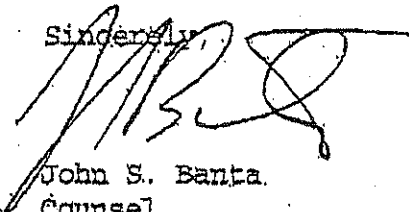
After a review of the project file, and particularly the record of the legislative hearing and associated letters from counsel for different interested parties held earlier this year, I have advised our permit review staff that 9 NYCRR § 574.6 of Agency regulations prevents approval of the proposed new private airport use because it is not a permitted use under the Zoning Ordinance and Map for the Willsboro local land use program approved by the Agency. It is not a listed "Permitted Principal", "Permitted Accessory" or "Special" use for the RR district within which this property is listed. As a result, it is to be considered a prohibited use, and 9 NYCRR § 574.6 states in pertinent part that "The Agency will not approve a project which has been denied a permit or which is a prohibited use under local zoning requirements and other local laws or ordinances."

The Agency will review this conclusion with the Project sponsor, Mr. Arbour. Brian Grisi can assist you with general information regarding possible next steps which could be taken regarding the proposal, and we urge you to proceed with advice from the Town's Counsel in this matter.

Dean Caveney
James A. Kinley
April 16, 2012
Page 2

I appreciate your continuing assistance and consultation in these matters.

Sincerely,



John S. Banta
Counsel

JSB:mp

cc: Daniel Arbour
Rick Weber
Suzanne McSherry

BRIGGS NORFOLK LLP

2296 SARANAC AVENUE
LAKE PLACID, NEW YORK 12946

RONALD J. BRIGGS*
MATTHEW D. NORFOLK

JENIFER R. BRIGGS

* ALSO ADMITTED IN SOUTH CAROLINA

TEL: 518.523.5555
FAX: 518.523.5559

www.briggsnorfolk.com

April 30, 2012

Via Facsimile Only

Mitchell Goroski, Esq.
Adirondack Park Agency
P.O. Box 99
NYS Route 86
Ray Brook, New York 12977

Re: Project No. P2011-95
Project Sponsor: Sunset Farm, Ltd.
Location: Town of Willsboro

Dear Mr. Goroski

It was a pleasure speaking to you on the telephone. As we discussed, I am the authorized representative of the project sponsor in the above-referenced matter.

As you know, Agency Staff has requested more information to enable the Agency to render a determination on my client's application for a permit for an airstrip. We are in the process of compiling the information requested to provide to Agency Staff.

On behalf of the project sponsor, I hereby agree to extend the Agency's regulatory time frame to review the permit application until July 15, 2012, and ask that the application not be heard at the Agency's May 17-18, 2012, meeting so that we may provide the information Agency Staff requested.

Sincerely

Briggs Norfolk LLP

By:


Matthew D. Norfolk

cc: Mr. Daniel Arbour
Timothy R. Smith, Esq.
Ms. Suzanne McSherry

Transaction Report

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Transaction(s) completed

No.	TX	Date/Time	Destination	Duration	P. #	Result	Mode
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BRIGGS NORFOLK LLP

2296 SARANAC AVENUE
LAKE PLACID, NEW YORK 12946

RONALD J. BRIGGS*
MATTHEW D. NORFOLK

JENIFER R. BRIGGS

* ALSO ADMITTED IN SOUTH CAROLINA

TEL: 518.523.5555
FAX: 518.523.5559

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FACSIMILE SERVICE NOT ACHIEVED

FACSIMILE COVER SHEET

DATE: April 30, 2012
TO: Mitchell Goroski, Esq.
FAX NO: 518.891.3938
FROM: Matthew D. Norfolk, Esq.
CC: Ms. Suzanne McSherry
RE: Project No. P2011-95 BN FILE NO. 3772
 Project Sponsor: Sunset Farm, Ltd.

MESSAGE: Please see attached letter.

The information contained in this facsimile message is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or is not the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this

Transaction Report

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Transaction(s) completed

No.	TX Date/Time	Destination	Duration	P. #	Result	Made
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LAKE PLACID, NEW YORK 12946

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MATTHEW D. NORFOLK

JENIFER R. BRIGGS

* ALSO ADMITTED IN SOUTH CAROLINA

TEL: 518.523.5555
FAX: 518.523.5559

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FACSIMILE SERVICE NOT ACCEPTED

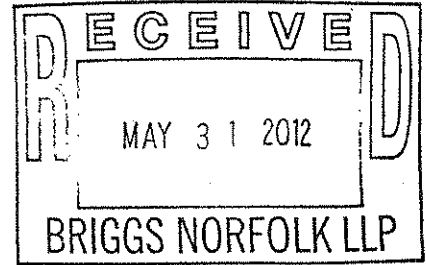
FACSIMILE COVER SHEET

DATE: April 30, 2012
TO: Mitchell Goroski, Esq.
FAX NO: 518.891.3938
FROM: Matthew D. Norfolk, Esq.
CC: Ms. Suzanne McSherry
RE: Project No. P2011-95
Project Sponsor: Sunset Farm, Ltd.

BN FILE NO. 3772

MESSAGE: Please see attached letter.

The information contained in this facsimile message is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or is not the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this



May 30, 2012

Matthew Norfolk, Esq.
2296 Saranac Avenue
Lake Placid, NY 12946

Re: P2011-95 Daniel Arbour, Sunset Farm

Dear Mr. Norfolk:

Thank you for your letter of April 30 on this project. In that letter you referred to yourself as the "authorized representative of the project sponsor." However, in the application Xavier Arbour was designated the Authorized Representative. Consequently, we need a signed statement from Mr. Daniel Arbour (Project Sponsor) that clarifies if you are the attorney and Xavier remains the authorized representative, or whether you will fulfill both roles.

As you and Senior Attorney Mitch Goroski have previously discussed, this Agency issued its February 14, 2012 Notice of Revised Application Completed for the Sunset Farm application in error, based on earlier administrative guidance received from the Town of Willsboro that the Town "has no jurisdiction" over the proposed airstrip. However, based on advice of Agency Counsel in a letter to the Town on April 16, 2012, private airports are actually prohibited uses under the Willsboro zoning ordinance. Agency regulation 9 NYCRR Section 574.6 states that "The agency will not approve a project... which is a prohibited use under local zoning requirements and other local laws or ordinances." Consequently, Sunset Farm's proposal cannot be approved by the Agency and the application cannot be considered complete.

Upon receipt of either a use variance from the Town of Willsboro or a legal determination from the Town counsel stating that the project would be lawful under Town laws, the Agency will issue a new project completion notice and will review your client's application.

Matthew Norfolk, 1.

May 30, 2012

Page 2 of 2

Please note that no decision has been made on the project by the Agency, and there will be no prejudice on any future review.

Thank you for your consideration in this matter. Please let me know if you have any questions.

Sincerely,



Richard E. Weber, III
Deputy Director, Regulatory Programs

REW:SHR:mlr

cc: Edward Hatch, Supervisor, Town of Willsboro
Tim Smith, Esq.
Dean Caveney, Chairman, Town of Willsboro Planning Board
James A. Kinley, Code Enforcement Officer,
Town of Willsboro

SUNSET FARM, LTD.
3061 Essex Road
P.O. Box 281
Willsboro, New York 12996

Dated: June 11, 2012

Richard E. Weber, III
Adirondack Park Agency
P.O. Box 99
NYS Route 86
Ray Brook, New York 12977

Re: Project No. P2011-95
Project Sponsor: Sunset Farm, Ltd.
Location: Town of Willsboro

Dear Mr. Weber:

I, Daniel Arbour, as President of Sunset Farm, Ltd., the Project Sponsor for the above-referenced project, hereby appoint Matthew D. Norfolk, Esq. as the Authorized Representative for Sunset Farm, Ltd. Mr. Norfolk will replace Xavier Arbour as the Authorized Representative. Mr. Norfolk has also been retained by Sunset Farm, Ltd. to represent it as its attorney in connection with the above-referenced project application.

Kindly direct all future correspondence and communications to Mr. Norfolk in his capacity as the Authorized Representative and attorney for Sunset Farm, Ltd., the Project Sponsor.

Sincerely,
SUNSET FARM, LTD.

By: 
Daniel Arbour, President

cc: Matthew D. Norfolk, Esq.
Timothy R. Smith, Esq.
Xavier Arbour

BRIGGS NORFOLK LLP

2296 SARANAC AVENUE
LAKE PLACID, NEW YORK 12946

RONALD J. BRIGGS*
MATTHEW D. NORFOLK

JENIFER R. BRIGGS

* ALSO ADMITTED IN SOUTH CAROLINA

TEL: 518.523.5555
FAX: 518.523.5559

www.briggsnorfolk.com

August 1, 2013

Via Certified Mail - Return Receipt Requested

Richard E. Weber, III
Deputy Director - Regulatory Programs
New York State Adirondack Park Agency
P.O. Box 99
NYS Route 86
Ray Brook, New York 12977

Re: Project No. P2011-95 (proposed grass airstrip)
Project Sponsor: Sunset Farm, Ltd.
Location: Town of Willsboro

Dear Deputy Director Weber:

As you know from my past correspondence, I am the attorney for, and authorized representative of, Sunset Farm, Ltd., the sponsor of the above-referenced project to establish a privately-owned grass airstrip, with no attending lighting or other improvements. The purpose of this letter is to provide you with additional information in support of the project and to provide you and New York State Adirondack Park Agency (hereinafter referred to as the "Agency"), as a whole, notice of the Agency's failure to timely make a decision on the application pursuant to Adirondack Park Agency Act §809(6)(a).

The (revised) project application was determined by the Agency to be complete and written notice of same, dated February 14, 2012, was issued and sent to my client, pursuant to Adirondack Park Agency Act §809(1)(b) and Adirondack Park Agency Rules and Regulations §572.8. Notice of a complete application was issued contemporaneously with a written request, dated February 14, 2012, by the Agency to the Town of Willsboro Planning Board for advisory comments on the proposed project pursuant to Adirondack Park Agency Rules and Regulations §§ 572.8(b) and 572.13(c). The planning board did not respond to the Agency's request for advisory comments with any objection or conditions to the project as proposed.

On April 16, 2012, 60 days after the Agency issued the notice of a complete application,

Richard E. Weber, III
Deputy Director - Regulatory Programs
New York State Adirondack Park Agency
August 1, 2013
Page 2

the time period for the Agency to provide notice of its intention to hold a public hearing expired. See Adirondack Park Agency Act §809(3)(d). The Agency did not provide notice of its intent to hold a public hearing within this statutory time period.

On May 14, 2012, the statutory time period for the Agency to issue or mail a decision on the above-referenced application expired pursuant to Adirondack Park Agency Act §809(3)(b). No decision on the above-referenced application was issued or mailed by the Agency on or before the May 14, 2012, deadline.

Finally, by letter, dated May 30, 2012, addressed to me, you confirmed that the Town of Willsboro provided the Agency with an advisory opinion or "guidance", as you referred to it, that the Town considers the proposed airstrip to be permissible under its local zoning and land use laws. In your May 30 letter you also advised that upon receipt of either a use variance from the Town of Willsboro or a legal opinion from the attorney for the Town of Willsboro that the proposed airstrip was lawful, "the Agency will issue a new project completion notice and will review [my] client's application." You made this request despite the fact that the Agency had already issued a notice of a complete application, the Agency already had received both "guidance" from the Town of Willsboro and a written determination from James A. Kinley, the Town of Willsboro Code Enforcement Officer, that the proposed airstrip is not prohibited under the Town's laws, and despite the fact that the Agency had failed to timely render a decision on the application.

Without waiving any rights, objections or claims of my client, and although your request for an attorney opinion letter is unjustified and inappropriate, especially considering the "guidance" the Agency received from the Town of Willsboro and the written determination of the Town of Willsboro Code Enforcement Officer that the proposed airstrip is not prohibited by local law, I made a good faith effort to obtain such an opinion from the Town of Willsboro attorney, Reginald Bedell. However, Attorney Bedell denied my request to provide such an opinion on the matter. As I understand it, Attorney Bedell's policy is not to render or issue legal opinions on Town-related matters, including actions of Town officials, requested by someone other than the Town. Frankly, I cannot fault Attorney Bedell for his decision as it is our policy and custom at Briggs Norfolk not to provide legal opinions for non-clients especially when the subject matter involves municipalities whom we represent. Accordingly, given the baselessness of the request of the Agency that the project sponsor obtain a legal opinion from the Town of Willsboro attorney and the proven impossibility of the sponsor to satisfy this request, my client cannot and will not submit to the Agency a legal opinion on the lawfulness of the proposed airstrip under local law from the Town of Willsboro attorney.

With respect to your request, in the alternative, that my client obtain a use variance, there is absolutely no legal basis to support an application for such a variance to the Town of Willsboro Zoning Board of Appeals. The Town of Willsboro Code Enforcement Officer,

Richard E. Weber, III
Deputy Director - Regulatory Programs
New York State Adirondack Park Agency
August 1, 2013
Page 3

who has been appointed, and is vested with the power and authority, to enforce and administer the local laws of the Town of Willsboro, issued a written determination that the proposed airstrip is not prohibited by the laws of the Town of Willsboro. Thus, there is no reason to seek a variance, and any attempt to do so would not be proper under New York State Town Law Article 16. Accordingly, the project sponsor will not be submitting a use variance to the Agency.

Notwithstanding the foregoing, I do have some information and documentation that I believe will be welcomed by the Agency and will alleviate any concerns that it may still have of whether the proposed airstrip is deemed lawful under federal, state and local laws. On behalf of the project sponsor, please find enclosed true and accurate copies of the following documents being submitted herewith in further support of the above-referenced application:

1. the project sponsor's petition to the Town of Willsboro Town Board, pursuant to General Municipal Law §249, for review and approval of the proposed air strip;
2. the Resolution of the Town of Willsboro Town Board, dated February 13, 2013, granting the project sponsor's petition pursuant General Municipal Law §249;
3. the determination of New York State Commissioner of Transportation, dated May 13, 2013, authorizing the project sponsor to establish the proposed privately-owned airport pursuant to General Municipal Law §249;
4. FAA approval, dated May 19, 2011, authorizing the project sponsor to establish a privately owned airstrip; and,
5. FAA approval, dated November 13, 2012, extending its May 19, 2011 approval's effective period to November 19, 2013.

The enclosures listed above, coupled with the Town of Willsboro Code Enforcement Officer James A. Kinley's determination, dated May 9, 2011, and the Local Government Notice Form signed by Mr. Kinley in his official capacity, both of which were previously provided to the Agency, demonstrate that the project sponsor has obtained the necessary approval to install or establish the proposed grass airstrip from the Town of Willsboro, New York State Department of Transportation and Federal Aviation Agency.

In light of the foregoing and pursuant to Adirondack Park Agency Act §809(6)(a), I hereby provide the Agency notice of its failure to mail a decision on the above-referenced application for a permit within 90 days from February 14, 2012, the date of issuance of the notice of application completion as required by Adirondack Park Agency Act §809(3)(b). In addition, in accordance with Adirondack Park Agency Act §809(6)(a), on behalf of the sponsor, I hereby demand that the Agency render a decision on the above-referenced application for a permit.

Richard E. Weber, III
Deputy Director - Regula Programs
New York State Adirondack Park Agency
August 1, 2013
Page 4

Thank you for your attention to this important matter. My client and I look forward to receiving a decision on the above-referenced application for a permit.

Sincerely

Briggs Norfolk LLP

By: 
Matthew D. Norfolk

Encs.

cc: Mr. Daniel Arbour
Timothy R. Smith, Esq.

VERIFIED PETITION TO THE TOWN BOARD OF THE TOWN OF WILLSBORO

Requesting Review of Proposed Airstrip
Pursuant to General Business Law §249

Petitioner, Sunset Farm, Ltd., by and through its attorneys, Briggs Norfolk LLP, with offices located at 2296 Saranac Avenue, Lake Placid, New York, 12946, respectfully petitions to the Town of Willsboro Town Board and alleges as follows:

1. Petitioner is the lawful owner of a certain parcel of real property located at 3061 Essex Road (Route 22), Town of Willsboro, County of Essex, State of New York, and bearing Tax Map Parcel No. 40.1-2-22.002 (hereinafter referred to as the "Premises"). Annexed hereto as **Exhibit A** is a true and accurate copy of petitioner's deed to the Premises.
2. Petitioner proposes to establish on the Premises a private grass airstrip approximately 1,450 feet in length and 50 feet wide. Annexed hereto as **Exhibit B** is a true and accurate copy of a certified map of the Premises indicating thereon the location and design of the proposed airstrip prepared by licensed engineer, Mark J. Buckley.
3. The Premises is 285.1 acres in size. However, petitioner recently acquired a separate, 115-acre parcel contiguous to the Premises and situate to the north. In addition, petitioner owns a four-acre parcel contiguous to the Premises and situate to the east. Finally, petitioner also owns approximately 25-acre parcel adjacent to the Premises situate to the east, on the opposite side of Route 22 (Essex Road). Accordingly, the proposed airstrip would be located within a contiguous, assembled tract of land approximately 404.1 acres in size owned by petitioner which would have a substantial geographic buffer from other neighboring private holdings. This buffer is increased when petitioner's approximately 25-acre parcel on the opposite side of Route 22 is taken into account.

4. The purpose of this petition is to request the Town Board of the Town of Willsboro to request the Commissioner of Transportation of the State of New York (sometimes hereinafter referred to as the "DOT commissioner") to determine whether or not the establishment of petitioner's proposed grass airstrip complies with her standards, pursuant to New York General Business Law (Gen. Bus. Law) §249(3). In the event the DOT commissioner provides a favorable determination approving the proposed airstrip, petitioner also requests that the Town Board then authorize the establishment of the proposed airstrip pursuant to Gen. Bus. Law §249.

5. The proposed project would not require or involve any construction, grading or excavation work. The existing land will serve as the airstrip. To create a grass airstrip, petitioner would simply need to mow the existing grass to a reasonable height for the use of petitioner's aircraft within the bounds of the proposed airstrip. Petitioner also proposes to erect a Federal Aviation Administration (hereinafter referred to as the "FAA") compliant orange windsock eight inches wide and thirty-six inches long (8" X 36") on a metal pole seven feet (7') in height adjacent to the proposed airstrip. No existing buildings on the Premises will be used as hangars. No runway lighting or new structures are proposed, other than the aforementioned windsock.

6. Use of the proposed airstrip would be limited to a single-engine plane, during daylight hours only, with a maximum of 150 takeoffs and landings per year. There will be no maintenance or refueling occurring on the Premises. Airplane use will be for private purposes only to transport to and from the Premises officers, employees and invitees of petitioner.

7. The FAA has approved petitioner's proposed airstrip. Annexed hereto as **Exhibit C** is a true and accurate copy of the FAA Determination of Landing Area Proposal, dated May 19, 2011, which approves the proposed airstrip; together with a true and accurate copy of the FAA written authorization, dated November 13, 2012, extending said FAA Determination one year.

8. The Town of Willsboro Code Enforcement Officer, James Kinley, in a written determination, dated May 9, 2011, concluded that the proposed private airstrip is not prohibited under the Town of Willsboro Zoning Ordinance. Annexed hereto as **Exhibit D** is a true and accurate copy of Code Enforcement Officer Kinley's determination. Petitioner, however, does acknowledge that former counsel to the Adirondack Park Agency ("APA"), John Banta, opined in an unsolicited letter, dated April 16, 2012, and addressed to the Town Board, among others, that the proposed airstrip is prohibited by the Town of Willsboro Zoning Ordinance. Mr. Banta's legal opinion is not binding on the Town of Willsboro, and petitioner respectfully disagrees with the attorney opinion as being incorrect and misplaced. Nonetheless, since Mr. Banta rendered his opinion, he retired from the APA in April of 2012, and APA Deputy Director Richard E. Weber, III, indicated thereafter in a letter, dated May 30 2012, and addressed to petitioner's attorney and copied to the Town of Willsboro, that the APA would deem the proposed airstrip lawful under the town zoning ordinance if the Town of Willsboro deemed it so. It is petitioner's position that the Town of Willsboro already has determined the proposed airstrip not to be prohibited under its zoning ordinance by virtue of the issuance of Code Enforcement Officer Kinley's May 9, 2011, determination.

9. Before proceeding with the application for approval of the proposed airstrip from the APA, petitioner is seeking, in part, with this petition, to obtain review and approval of the proposed airstrip by the DOT commissioner. By seeking DOT commissioner approval first, petitioner can avoid unnecessarily spending or using money, time and other resources that are likely to be needed with an APA approval application process in the event that the DOT commissioner is not inclined to approve the proposed airstrip in the first place. (It is important to note that at least one of the small number of people that have expressed concerns over the designation of the proposed airstrip have actually requested that petitioner seek DOT commissioner approval before proceeding with an APA application.)

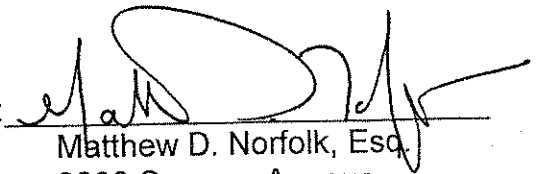
10. Pursuant to Gen. Bus. Law §249(3), the method for which to seek such review by the DOT commissioner is to petition the local municipality where the proposed airstrip is to be located to request such review by the DOT commissioner. As set forth in Gen. Bus. Law §249(3), a governing body of a city, village or town shall not authorize the establishment of such an airstrip at a requested location unless it is in accordance with the standards prescribed by the DOT commissioner. Gen. Bus. Law §249(3) requires the local governing body of a city, village or town to request the DOT commissioner to determine whether or not the establishment of such a privately-owned airstrip complies with his or her standards. In order to make such a determination of compliance, the DOT commissioner of transportation must first make findings of fact (1) that operations of such airstrip will not conflict with or affect the safety of public buildings or facilities, or operations on public highways or waterways; and (2) that the volume,

character and direction of traffic at such airstrip will constitute a menace to the safety of operations at other airstrips or airports in the vicinity.

WHEREFORE, it is respectfully requested that this petition be granted and the Town Board of the Town of Willsboro request the Commissioner of Transportation of the State of New York to determine whether or not the establishment of petitioner's proposed grass airstrip complies with her standards, pursuant to Gen. Bus. Law §249(3), and that, in the event the Commissioner of Transportation of the State of New York approves of petitioner's proposed grass airstrip, the Town Board of the Town of Willsboro authorize petitioner to establish said private airstrip on the Premises in accordance with the standards and conditions mandated by the Commissioner of Transportation of the State of New York.

Dated: Lake Placid, New York
January 25, 2013

Briggs Norfolk LLP

By: 
Matthew D. Norfolk, Esq.
2296 Saranac Avenue
Lake Placid, New York 12946
518.523.5555
Attorneys for Petitioner



ESSEX COUNTY CLERK

LIBER 1264 PAGE 315

Instrument #



005551

Document Type Warranty Deed

Town Willsboro

Consideration -0-

Party(ies): Grantor/~~Mortgagee/Assignor~~

Daniel Arbour, Inc.

Party(ies): Grantee/~~Mortgagee/Assignee~~

Sunset Farm, Ltd.

Recorded by: _____

Record & Return to:
Manning & Scaglione
PO Box 309
Willsboro NY 12996

- Index
- Verify
- Merge
- Copy/Dis
- Scan
- Mycro

Recording Stamp
Recorded Oct 25, 2000
Time 12:16 PM
Book 1264 Deeds
Page 315
Robert P. Kelly
Deputy Essex County Clerk

Transfer Tax Stamp
11633
Received
\$ 0.00
Real Estate
Transfer Tax
Essex County

Mortgage Tax Stamp
Rec'd Basis Mtg Tx \$ _____
Spec Add'l Tax \$ _____
Add'l Tax \$ _____
Total Amt of Tax \$ _____
Dated _____

Essex County Clerk

Time Stamp/Assignment/Discharge/Release Info

WARRANTY DEED

THIS INDENTURE, made the 31st day of AUGUST, Two Thousand
BETWEEN

DANIEL ARBOUR, INC., a business corporation organized and existing under the laws of the State of New York, having its office and principal place of business at PO Box 281, Willsboro, New York 12996, hereinafter referred to as the grantor, and

SUNSET FARM, LTD., with offices located at Willsboro, New York hereinafter referred to as the grantee:

WITNESSETH, that the grantor, in consideration of ONE DOLLAR (\$1.00), paid by the grantee, does hereby grant and release unto the grantee, the distributees or successors and assigns of the grantee forever,

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, and the buildings erected, lying and being in the Town of Willsboro, County of Essex and State of New York and being more particularly described in Schedule "A" hereto annexed and made a part hereof.

TOGETHER with all right, title and interest, if any, of grantor in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the grantor in and to said premises,

TO HAVE TO HOLD the premises herein granted unto the grantee, the heirs or successors and assigns of the grantee forever.

AND the grantor covenants as follows:

FIRST, that the grantee shall quietly enjoy the said premises;

SECOND, that the grantor will forever WARRANT the title to said premises.

THIRD, that the grantor, in compliance with Section 13 of the Lien Law, covenants that the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "grantor" and "grantee" shall be construed as if it read "grantors" and "grantees" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the grantor has duly executed this deed the day and year first above written.

DANIEL ARBOUR, INC.

By:

Daniel Arbour
Daniel Arbour, President

SCHEDULE "A"

* ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York and being part of the Thomas Carver and Catherine Carver farm and which said property herein conveyed is located on the westerly side of the State highway leading from Willsboro to Essex upon which there is now constructed a dwelling house, and being the same property conveyed to William Donald Carver by Thomas E. Carver and Catherine Carver, by deed dated December 9, 1955 and recorded in the Essex County Clerk's Office on the 21st day of March, 1956 in Book 332 of Deeds at page 489, and described as follows:

BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex in the division line between the property herein conveyed and the property of George Shanks; running thence in a general westerly direction a distance of 165 feet to a second iron stake driven in the ground; running thence in a general northerly direction a distance of 285 feet to a third iron stake driven in the ground; running thence in a general easterly direction a distance of 165 feet to a fourth iron stake driven in the ground along the westerly side of said highway and continuing thence to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 285 feet to a point opposite the first iron stake or place of beginning; running thence in a general westerly direction to the said first iron stake or the point of beginning.

EXCEPTING, HOWEVER, from the above-described premises all that portion thereof which lies within the limits of the State Highway leading from Willsboro to Essex.

Subject to the same covenants, conditions and restrictions and being the same premises as described in the Deed from Paul Anctil and Elizabeth Anctil to Vedder A. Gates dated September 9, 1968 and duly recorded in the Essex County Clerk's Office on the 19th day of September, 1968 in Liber 459 of Deeds at page 419. The said Vedder A. Gates died on the 10th day of July, 1971, a resident of the Town of Rotterdam, and his Last will and Testament was admitted to probate by the Schenectady County Surrogate's Court on the 15th day of July, 1971, and the said Mohawk National Bank of Schenectady, New York, was duly appointed Executor on said date."

BEING the same premises conveyed to Manuel Prado by Clarence R. McCormick and Catherine R. McCormick by deed dated May 22, 1975 and recorded May 22, 1975 in the Essex County Clerk's Office in Book 590 of Deeds at page 48, and

PARCEL I

ALL THAT TRACT OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex and State of New York, bounded and described as follows:

BEGINNING on the west side of the highway running from Essex to Willsboro at the southeast corner of a farm formerly owned by Jeremiah A. Williams and by Thomas Carver; running thence westerly on said Carver south line about 71 chains and 25 links to the east line of lands formerly owned by M.S. Baker and Nellie Calkins; thence southerly along the east line of said Calkins land and also on the east line of lands formerly owned by Abram Eggleston and by John Benway to the north line of lands formerly owned by Joseph Stafford and by E.W. Stafford; thence easterly along said Stafford's north line 5 chains 45 links to the northeast corner of said Stafford's lot; thence southerly 3 chains and 61 links to the north line of the lot formerly owned by Archibald Fortune and by Nellie Baldwin; thence easterly along the north line of said

Baldwin land 67 chains 67 links to the center of said highway; thence northerly along said highway to the place of beginning, containing 99 acres of land, be the same more or less.

EXCEPTING AND RESERVING therefrom, the following described property:

ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York, consisting of a lot of land 250 feet on the highway and 230 feet in depth upon which there is now constructed a dwelling house and is briefly described as follows:

BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex and running thence in a general westerly direction a distance of 230 feet to a second iron stake driven in the ground for a corner; running thence in a general northerly direction a distance of 250 feet to a third iron stake driven in the ground for a corner; running thence in a general easterly direction a distance of 230 feet to a fourth iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex and continuing thence in the same course to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 250 feet to a point opposite the place of beginning; running thence in a general westerly direction to the first iron stake or the point or place of beginning.

PARCEL II

ALL THAT TRACT, PIECE OR PARCEL OF LAND, situate in the Town of Willsboro, County of Essex and State of New York, described and bounded as follows, to wit:

BEGINNING at the southeast corner of the farm formerly owned by Melancthon Baker; thence south along the west bounds of lands of Thomas Carver 9 chains and 37 links to the north bounds of lands formerly of E.W. Stafford; thence along said north bounds west 29 chains and 84 links to a stake and stones; thence north parallel to the aforementioned west line of the Thomas Carver farm 6 chains and 87 links to a stake and stones; thence west parallel with the south line of the said Baker farm and 2 chains and 50 links from same, 8 chains and 16 links to the west side of the road leading to Willsboro Village; thence north along the west side of said road 2 chains and 50 links to the south line of the aforesaid Baker farm; thence along the south line east 38 chains to the place of beginning, containing thirty (30) acres of land be the same more or less.

EXCEPTING AND RESERVING therefrom two (2) acres, more or less as conveyed by Thomas Carver and Catherine Carver, his wife, to Horatio W. Thomas and M. Isabel Thomas, his wife, by deed dated April 7, 1927, and recorded at the Essex County Clerk's Office on June 6th, 1927 in Volume 186 of Deeds at Page 539.

PARCEL III

THAT CERTAIN PARCEL OF FARM LAND with all the buildings thereon, situate in the Town of Willsboro, in the County of Essex and State of New York and described as follows:

BEGINNING in the northerly line of Richard Eddy farm, so-called, at the point where said Eddy line crosses the westerly line of the highway; thence running westerly to the lands formerly of Edward Stafford; thence northerly ten chains (10) and twelve (12) links along said Stafford's easterly line to the lands of Thomas Carver; thence easterly in said Carver's land to the highway; thence southerly along said highway to the place of beginning, meaning to convey the westerly portion of lands with buildings thereon conveyed to Edward J. and Nellie L. Baldwin, by deed dated

September 22, 1905 and of record in Volume 132 at Page 45 of Lands Records of Essex County.

The land herein conveyed is bounded as follows: On the north by lands of Thomas Carver; on the east by the highway; on the south by lands of Richard Eddy and on the west by lands of Edward Stafford.

EXCEPTING AND RESERVING therefrom, the following:

1. ALL THAT TRACT OR PARCEL OF LAND lying in the Town of Willsboro, Essex County, New York, described and bounded as follows, to wit:

BEGINNING in the center of State Highway at the northeast corner of land of Richard T. Eddy; thence northerly along center of State Road 215 feet; thence nearly at right angles westerly 265 feet; thence nearly at right angles southerly 180 feet to line of lands of said Eddy's; thence along line of lands of said Eddy easterly 295 feet to place of beginning.

BEING the same premises conveyed by Thomas Carver and Katherine Carver, his wife, to Hamilton A. Higby and Carrie W. Higby, his wife, by deed dated May 18th, 1928 and recorded at Essex County Clerk's Office on October 18th, 1934 in Volume 209 of Deeds at page 282.

2. ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Willsboro, County of Essex and State of New York, described and bounded as follows to wit;

BEGINNING at the northwest corner of lands owned by H.A. Higby and occupied by John D. Clarke; running thence in a southerly direction 180 feet to lands owned by Richard Eddy; thence westerly along said Eddy's north line 50 feet; thence northerly parallel with east line and 50 feet therefrom 177 feet; thence in an easterly direction to place of beginning, containing about 8900 square feet of land, be the same more or less.

BEING the same premises conveyed by Thomas Carver and Cathryn Carver to John D. Clark and Ellen V. Clark by deed dated October 11th, 1930 and recorded at Essex County Clerk's Office on October 24th, 1930 in Volume 198 of Deeds at page 237.

3. ALL THAT PIECE OR PARCEL OF LAND situated in the Town of Willsboro, County of Essex, State of New York and being part of the Thomas Carver and Catherine Carver farm and which said property herein conveyed is located on the westerly side of the State Highway leading from Willsboro to Essex upon which there is now constructed a dwelling house. The property herein conveyed is briefly described as follows: BEGINNING at an iron stake driven in the ground along the westerly side of the State Highway leading from Willsboro to Essex in the division line between the property herein conveyed and the property of George Shanks; running thence in a general westerly direction a distance of 165 feet to a second iron stake driven in the ground; running thence in a general northerly direction a distance of 285 feet to a third iron stake driven in the ground; running thence in a general easterly direction a distance of 165 feet to a fourth iron stake driven in the ground along the westerly side of said highway and continuing thence to the center of said highway; running thence in a general southerly direction along the center of said highway a distance of 285 feet to a point opposite the first iron stake or place of beginning; running thence in a general westerly direction to the said first iron stake or the point or place of beginning.

BEING the same premises conveyed by Thomas E. Carver and Catherine Carver, his wife, to William Donald Carver by deed dated December 9th, 1953 and recorded in the Essex County Clerk's Office on February 10th, 1956.

PARCEL IV

the following described real estate situated in Willsboro, in the County of Essex and State of New York: BEGINNING at the southeast corner of a piece of land heretofore owned by Richard Stafford; running thence south 88½ degrees west 36 chains and 40 links to the east side of the road; thence southerly along said road to the north line of the 40 acre lot heretofore willed to Jobe Stafford; thence north 88½ degrees east 44 chains and 12 links to a stake being the southeast corner of the home lot of Joseph Stafford; thence north 1¼ degrees west 19 chains and 40 links; thence south 89 degrees west 6 chains 47 links to a stake and stones; thence south 1¼ degrees east 1 chain 75 links to the place of beginning, containing 78 acres and 27 rods of land, be the same more or less.

BEING the same premises heretofore willed to Ransom Stafford.

EXCEPTING a section of land described as follows:

Starting at the southwest corner of that portion of the former Louis Carter farm and running due east on the south line of said farm for 235 feet; thence north 90 degrees for 314 feet; thence 90 degrees east for 235 feet; thence 90 degrees north for 400 feet; thence east 90 degrees for 84 feet; thence north 90 degrees for 441 feet; thence west 90 degrees for 387 feet; along the north boundary of that part of the Louis Carter farm to the northwest corner; thence along the road southerly to the point of beginning, containing 9 acres, more or less, of land.

BEING substantially the same premises conveyed by Thomas E. Carver and Catherine Carver, his wife, to Thomas E. Carver, Catherine Carver and William Donald Carver, as Joint Tenants by deed dated December 12th, 1955 and recorded in the Essex County Clerk's office on February 15th, 1956 in Volume 332 of Deeds at page 137.

BEING the same premises described in the deed made and given by Thomas E. Carver, Catherine Carver, William Donald Carver and Dorothy Carver to Art Jacques, Inc., dated March 29, 1965 recorded in the Essex County Clerk's Office on March 31, 1965 in Liber 430 of Deeds at page 294.

BEING the same premises described in the deed made and given by Art Jacques, Inc. to Charles Vosburgh, dated February 5, 1968, recorded in the Essex County Clerk's Office on February 9, 1968 in Liber 462 of Deeds at page 356.

SUBJECT to easements of record and more specifically an easement given by Thomas E. Carver and Catherine Carver, his wife, to Carl Garvey and Arthur Jacques for water rights by instrument dated April 26, 1963, recorded in the Essex County Clerk's Office on May 10, 1963 in Liber 409 of Deeds at page 250.

BEING, the same premises described in the deed from Clarence R. McCormick and Catherine McCormick to Manuel Prado, d/b/a Grouse Farms dated May 22, 1975 and recorded in the Essex County Clerk's Office May 22, 1975 in Book 590 of Deeds at page 51.

ALL OF THE ABOVE LANDS are the same premises described in deed made and given by William B. Russell, Esq. As Referee to Reginald Carver dated July 6, 1983 recorded in the Essex County Clerk's Office on November 4, 1983 in Liber 798 of Deeds at page 266.

EXCEPTING from the above described lands, the lands described in the deed made and given by Reginald Carver to Kenneth A. Schneider and Margaret A. Schneider, his wife, dated July 6, 1983, recorded in the Essex County Clerk's Office on March 22, 1985 in Liber 829 of Deeds at page 118.

PARCEL V

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND situate, lying and being in the Town of Willaboro, County of Essex and State of New York,

"Starting at the southwest corner of that portion of the former Louis Carter farm and running due east on the south line of said farm for 235 feet; thence north 90 degrees east for 235 feet; thence 90 degrees north for 400 feet; thence 90 degrees east for 84 feet; thence north 90 degrees for 441 feet; thence west 90 degrees for 187 feet along the north boundary of that part of the Louis Carter farm to the northwest corner; thence along the road southerly to the point of beginning. Containing 9 acres, more or less.

BEING part of the same premises conveyed to The Federal Land Bank of Springfield by Referee's Deed dated February 8, 1937, recorded February 13, 1937 in the Essex County Clerk's Office in Liber 215 of Deeds at page 272.

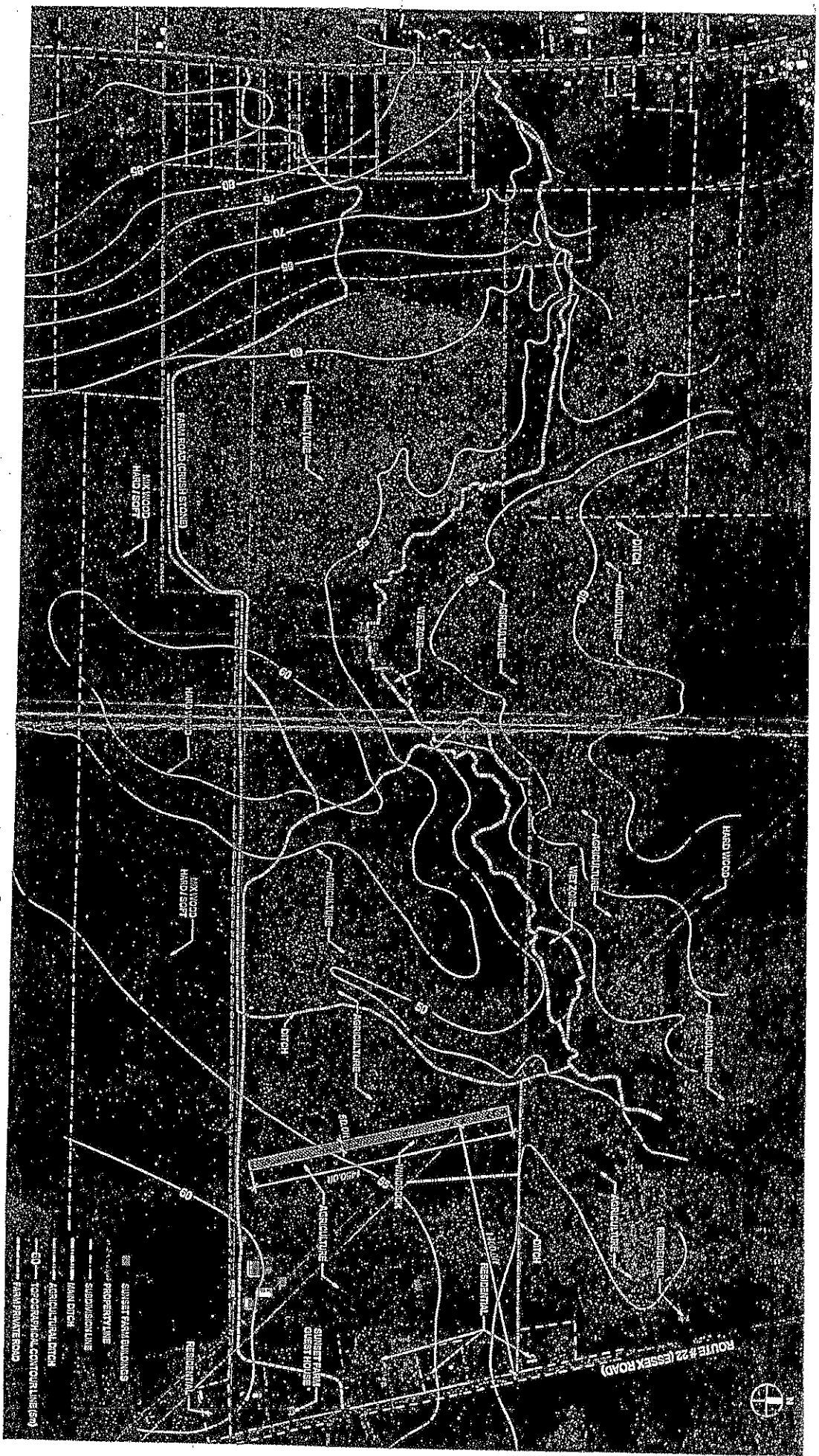
EXCEPTING a quit-claim deed limited to an easement in favor of the Town of Willaboro to enter upon the lands referred to therein for the purpose of installing, repairing and maintaining the existing water line.

BEING the same premises conveyed by Charles H. Raymond and Harriet M. Raymond, his wife, to Theodore M. Ruzow and Renee R. Ruzow, his wife, on June 15, 1966 and recorded in the Essex County Clerk's Office in Elizabethtown, New York on July 16, 1966 in Book 445 of deeds at page 33."

BEING the same premises conveyed by Theodore M. Ruzow and Renee R. Ruzow, his wife, to Reginald A. Carver, by deed dated January 11, 1990, recorded in the Essex County Clerk's Office on January 26, 1990 in Liber 961 of Deeds at page 23.

ALL OF THE ABOVE LANDS ARE BEING CONVEYED SUBJECT TO EASEMENTS, EXCEPTIONS, RESERVATIONS, RESTRICTIONS, COVENANTS AND CONSENTS OF RECORD AND FURTHER SUBJECT TO SUCH A STATE OF FACTS THAT A CURRENT ACCURATE SURVEY OF SUBJECT PREMISES WOULD DISCLOSE.

BEING the same property described in a deed dated July 8, 1999 given by Reginald Carver to Daniel Arbour, Inc. which said deed was recorded in the Essex County Clerk's Office on July 9, 1999 in Book 1215 of Deeds at page 330.



Proposed Runway: The proposed ground landing strip is constituted of the natural original ground and cut grass (50 x 1450 feet). No modification to original ground structure, drainage or topographic contour. All the structures on the farm are constructed of white pine wood painted red with aluminum roofs painted white.

- PROPOSED RUNWAY
- PROPOSED ELECTRICAL CONDUIT LINE (60 FEET DIA)
- PROPOSED WATER MAIN
- PROPOSED SEWER MAIN
- PROPOSED GAS MAIN
- PROPOSED FIBER OPTIC CABLE
- PROPOSED LAND DITCH
- PROPOSED SUBDIVISION
- PROPOSED PROPERTY LINE
- PROPOSED SUNSET FARM BUILDINGS

SUNSET FARM GRASS LANDING STRIP
 Prepared and designed by:
 Daniel Arbour, civil engineer and town planner, O.C., O.V.O.

Scale: 1" = 100'





U.S. Department
of Transportation

Federal Aviation
Administration

May 19, 2011

Xavier Arbour
3061 Essex Rd
P.O. Box 281
Willsboro, NY 12996

RE: (See attached Table 1 for referenced case(s))
DETERMINATION OF LANDING AREA PROPOSAL

Table 1 - Letter Referenced Case(s)

ASN	Prior ASN	Location	Latitude (NAD83)	Longitude (NAD83)	AGL (Feet)	AMSL (Feet)
2011-AEA-278-NRA		Willsboro, NY	44-19-47.48N	73-21-42.46W	1	176

Description: Establish private use airport (SUNSET) in Willsboro, NY NOTE: canc case 2011-AEA-222-NRA

We have determined that the proposed private use landing area, will not adversely affect the safe and efficient use of the navigable airspace by aircraft, provided:

- All operations are conducted in VFR weather conditions.
- The landing area is limited to private use.
- Please note that your new airport and the Bonebender Airport (41NY) and the Essex Boatworks (NY83) enter into an "Operational Letter of Agreement" which would be an acceptable method of providing compatible traffic pattern operation at the airports and any other procedures as appropriate.

We recommend that:

- A clear 20:1 approach slope be established. If there are obstructions that penetrate the 20:1 approach surface, they should be removed or lowered. If the penetrating obstructions cannot be removed or lowered, we recommend that the thresholds be displaced and appropriately marked, so as to provide a clear 20:1 approach slope surface to each runway end.
- The centerline of an airport runway should have a lateral separation of at least 60 feet from roads and other objects for aircraft with approach speeds less than 50 knots and 120 feet for airplanes with approach speeds of 50 knots or greater.

Please note that roads are defined as obstructions by FAR, Part 77. Private roads are the greater of a 10 foot obstruction or the highest mobile object that normally traverses the road. Public roads are considered a 15 foot obstruction, interstate highways are a 17 foot obstruction, railroads are 23 foot obstructions and waterways are the highest mobile object that traverses the waterway.

It is essential that each airport run threshold meet the siting standards shown in Figures A2-1, A2-2, and A2-3 of FAA Advisory Circular (AC) 150/5300-13, Airport Design.

Please notify the FAA within 15 days of completing the landing area by calling the FAA Area Flight Service Station (AFSS) serving your landing area to let them know you are activating the landing area while the Airport Master Record Form is being processed. Please tell the Flight Service Station representative that you have received an aeronautical determination from the FAA, and supply them with the name of your landing area and the coordinates.

Please return the enclosed Airport Master Record form to this office. When the processing of the Airport Master Record form is completed, your landing area will have a site number and a permanent location identifier. Indicate whether or not you would like to have your landing area shown on aeronautical charts. Charting also depends on the amount of "clutter" already on the charts near your site.

In order to avoid placing any unfair restrictions on users of the navigable airspace, this determination is valid until November 19, 2012. Should the facility not be operational by this date, an extension of the determination must be obtained by 15 days prior to the expiration date of this letter.

This determination does not constitute FAA approval or disapproval of the physical development involved in the proposal. It is a determination with respect to the safe and efficient use of navigable airspace by aircraft and with respect to the safety of persons and property on the ground.

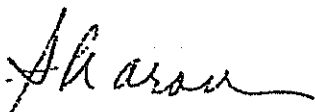
In making this determination, the FAA has considered matters such as the effects the proposal would have on existing or planned traffic patterns of neighboring airports, the effects it would have on the existing airspace structures and projected programs of the FAA, the effects it would have on the safety of persons and property on the ground, and the effects that existing or proposed manmade objects (on file with the FAA), and known natural objects within the affected area would have on the airport proposal.

The FAA cannot prevent the construction of structures near an airport. The airport environs can only be protected through such means as local zoning ordinances, acquisitions of property in fee title or aviation easements, letters of agreement, or other means.

This determination does not preempt or waive any ordinance, law, or regulation of any other governmental body or agency.

A general ordinance of the State of NY provides that certain airport constructions or alterations require a written permit prior to construction. The permit may be obtained from the NY Department of Transportation.

If you have any questions concerning this determination contact Sharon Perry, (718)553-3341, sharon.perry@faa.gov.



Sharon Perry
DivUser

please fill out and return the 5010. Thank you

SHARON PERRY
AIRPORT AIRSPACE ANALYSIS SPECIALIST
ENJOY FLYING



U.S. Department
of Transportation

Federal Aviation
Administration

Subject: Time extension letter til Nov 30, 2013

Date: November 13, 2012

Aeronautical Study Number:
2011-AEA-278-NRA

From: Sharon Perry

Reply to: Sharon Perry
(718)553-3341

To:

Dear Mr. Arbour, The Federal Aviation Administration has no objection to the 1 year time extension of the above stated aeronautical study # 11-AEA-278-NRA. At that time please forward the completed 5010 for your FAA site @ and Local Identifier. Thank you

A handwritten signature in black ink that reads "Sharon Perry". The signature is written in a cursive style with a long, sweeping underline.

Sharon Perry
DivUser



LOCAL GOVERNMENT NOTICE FORM
for Project/Variance Application to the Adirondack Park Agency

The Adirondack Park Agency will not deem the application complete until the appropriate municipal official in the Town or Village where the project is located has completed and signed this form and it has been returned to the Agency.

If the town or village in which the project site is located has zoning or other regulations which apply to the proposal, the Adirondack Park Agency will be unable to issue a permit if: (a) the town or village has either refused to grant a necessary permit or variance, or (b) the proposal is a prohibited use in that jurisdiction.

To be completed by the applicant:

Applicant Name: _____

Landowner Name: SUNSET FARM, LTD.

APA Project Number (if available): _____

Project site location: Town OF WILLSBORO Tax Map Number: 40.1-2-22.002

Project type/description: PRIVATE AIRSTRIP

If the project involves subdivision, please provide the appropriate local official a copy of the proposed plat as part of the project description with the plan title and date recorded in the space provided above.

To be completed by the Town/Village: Does the Town/Village have land use controls? Yes No

If Town/Village has zoning, provide Zoning District Name(s): RR - RESIDENTIAL RURAL

Is this "use" allowed in the zoning district(s)? Yes No SILENT

Is the project prohibited by any local law or ordinance? Yes No

Is a municipal permit, variance or other approval required for this project? Permit Variance
 Other (Specify: NONE)

Has the municipality issued any decision on this project? Yes No

Provide explanation for any decisions on this project or inconsistencies the project may have with local laws or any comments you wish to provide to the Agency about the project: _____

PLEASE SEE ATTACHED

Provide daytime telephone number if official signing this form wishes to discuss this project with Agency staff: (518) 963-7411

James A. Kinley

Signature of Zoning Official or Planning Board Chair (or Mayor/Supervisor if no such official exists)

JAMES A. KINLEY, CODE ENF. OFFICER

Name and Title (Print)

MAY 9, 2011

Date

Return this form to the: Adirondack Park Agency, PO Box 99, Ray Brook, NY 12977
or fax: 518-891-3938



TOWN OF WILLSBORO
CODE ENFORCEMENT OFFICE

9 May 2011

Xavier Arbour
c/o Sunset Farms, Ltd.
3061 Essex Road.
Willsboro, NY 12996

Re: Private Airstrip; tax map parcel #40.1-2-22.002

Dear Mr. Arbour,

Thank you for your inquiry concerning your project at 3061 Essex Road, Willsboro, NY 12996.

Even though the Town of Willsboro Zoning Ordinance defines "Airport/Heliport – a place where aircraft can land and take off" (page 7) – the use of one is not allowed nor prohibited in any zoning district (see section 3.50 – District Purposes; pages 27-44) – thereby, our Ordinance is silent on the matter and the Town of Willsboro has no jurisdiction on such a project

Please find attached information from the NY Zoning Law and Practice (Salkin) volume citing case law and an opinion from the state comptroller on airports.

As we discussed, your project is in the Rural Use (APA) or RR (Town of Willsboro Zoning Ordinance) district – and would be a Class A Regional Project. You would need to comply to all of the Agency's regulations and procedures. Because of this Class A status, I feel comfortable in the fact that all neighbors would be duly notified and made aware of the implications of such a land use.

If there are any further questions, please feel free to contact me. Best wishes on your project.

Sincerely,

James A. Kinley,
Code Enforcement Officer

Cc: Edward Hatch, Supervisor
Members of the Zoning Board of Appeals
Members of the Planning Board

through reasonable regulation, rather than obstruction of the inevitable expansion of public utilities.⁵

E. AIRPORTS

§ 11:24 Airports; condemnation of flight hazards.

As air travel has increased, the restriction of land use in the vicinity of airports has become important. Whether airports are municipally or privately owned, the safety of passengers, as well as of residents who occupy the area which surrounds such a facility, demands that approach and turning areas be protected from buildings, structures, and natural growth which may obstruct traffic. As in the case of other objectives of land-use control, airport safety may be achieved through acquisition of surrounding land, or through use of the police power. The statutes authorize municipal use of both methods, but municipalities are required to use the police power where such use is possible, because purchase of land involves an almost prohibitive outlay of funds.¹

Section 355 of the General Municipal Law authorizes any municipality which has acquired an airport or seaplane harbor, to acquire by purchase or gift the right to abate or remove any flight hazard, including any building, structure, tower, pole, tree, "or other thing, or portion thereof, located within the flight hazard area being the approach and turning zones which lie within 3000 feet of such airport, landing field or seaplane harbor," which constitutes a menace to aircraft using the facility. A municipality may use the power of eminent domain to acquire the right to abate such a flight hazard.²

§ 11:25 Airport zoning.

Any municipality which has within its territory any part of a flight hazard area (approach and turning zones which lie within 3,000 feet of an airport)¹ is authorized, after notice and hearing, to adopt, amend, and enforce regulations for the protection of persons within such flight hazard area. The municipality may establish districts within the flight hazard area and impose different restrictions upon such districts, but the regulations must be uniform within each district. The regulations

⁵Comment, "Zoning and the Expanding Public Utility," 13 Syracuse L. Rev. 581 (1962).

See generally *Sleepy Hollow Lake, Inc. v. Public Service Commission*, 43 A.D.2d 439, 352 N.Y.S.2d 274 (3d Dep't 1974); *Niagara Mohawk Power Corp. v. City of Fulton*, 8 A.D.2d 523, 188 N.Y.S.2d 717 (4th Dep't 1959).

[Section 11:24]

¹General Municipal Law § 356.

²General Municipal Law § 355.

[Section 11:25]

¹General Municipal Law § 355.

may restrict the height of buildings or structures and the limits to which trees may be permitted to grow. Standards must conform, as far as is locally practicable, with those of the Federal Civil Aeronautics Administration or its successor.²

Where a municipality has adopted a comprehensive zoning ordinance, the grant of authority to restrict land use to prevent flight hazard constitutes a supplementary power. Airport zoning regulations may be included in the zoning regulations and enforced in connection with such regulations.³ However, a municipal airport established by a county is not required to be submitted to the site plan review board. In addition, an airport that has no scheduled commercial flights and only 45 landings per month could be classified as a recreational use and permitted in an agricultural or residential district by special permit, where evidence supports that it would not devalue the land, and if a runway is not a permitted use, it will not be permitted even though it is a use accessory to an airport.⁴

The state comptroller has opined where local zoning regulations are silent with respect to aircraft and airfields, it is doubtful that a private property owner could be prohibited, under such zoning ordinance, from landing a private plane on his property.⁵ Where, on the other hand, a local zoning ordinance has a provision which excludes certain airport uses from specific districts, a landowner must respect the ordinance, notwithstanding his proposed use is satisfactory from the standpoint of appropriate federal agencies.⁶

Where a public airport or its flight hazard area lies in more than one municipality, upon the request of the municipality which owns the airport, any affected municipality may join with the owning

²General Municipal Law § 356(2).

³General Municipal Law § 356(4).

See § 39:64, *infra*.

Annotation: Validity of zoning ordinance limiting use of land near or surrounding airport. 77 ALR2d 1362.

⁴Matter of Monroe County's Compliance With Certain Zoning and Permit Requirements of City of Rochester in Connection With City/County Airport Expansion, 131 A.D.2d 74, 520 N.Y.S.2d 676 (4th Dep't 1987), appeal granted, 71 N.Y.2d 806, 529 N.Y.S.2d 276, 524 N.E.2d 877 (1988) and order aff'd, 72 N.Y.2d 338, 533 N.Y.S.2d 702, 530 N.E.2d 203 (1988); see also Haas Hill Property Owners' Ass'n v. Zoning Bd. of Appeals of Town of New Baltimore, 202 A.D.2d 895, 609 N.Y.S.2d 416 (3d Dep't 1994); Town of Brookhaven v. Spadaro, 204 A.D.2d 533, 612 N.Y.S.2d 175 (2d Dep't 1994).

⁵1965 Ops St Compt 639.

⁶Although the Federal Aviation Agency indicated that a heliport was acceptable "from an airspace standpoint," plaintiff was nevertheless bound by the local zoning ordinance which prohibited heliports in industrial zones. The federal government did not preempt the field by its approval of the heliport from an airspace standpoint. Thomson Industries, Inc. v. Incorporated Village of Port Washington North, 55 Misc.2d 625, 631, 286 N.Y.S.2d 187, 192 (Sup. Ct. 1967), judgment modified, 32 A.D.2d 1072, 304 N.Y.S.2d 83 (2d Dep't 1968), order aff'd, 27 N.Y.2d 537, 313 N.Y.S.2d 117, 261 N.E.2d 260 (1970).

municipality in the creation of a joint airport zoning board. The board may prepare regulations for the protection of the flight hazard area and recommend the adoption of appropriate portions thereof by the several municipalities. The cost of preparing such a plan and implementing regulations may be shared by the several municipalities.⁷

§ 11:26 Administration and appeal.

Section 356 of the General Municipal Law provides for administration of airport zoning regulations in a manner similar to that provided generally for the administration of zoning regulations. Thus, any person aggrieved by an order or decision of an administrative official charged with enforcement of the airport zoning regulations may appeal to the zoning board of appeals, if such a board is available in the municipality. Absent a board of appeals, the aggrieved person may, within 60 days after the order or decision is filed, appeal to the legislature of the municipality.¹ A decision of a zoning board of appeals, or of the legislative body of the municipality in a matter appealed to such body, is subject to review by the courts under Article 78 of the Civil Practice Law and Rules, in accordance with the provisions of the General City Law, Town Law, and Village Law relating to zoning regulations.²

F. USES OF LAND BY RELIGIOUS INSTITUTIONS

§ 11:27 Religious uses.

The problems generated by municipal regulation of religious uses require separate consideration, because the courts have detected in such uses qualities which entitle them to special treatment. Churches, synagogues, mosques, and other institutions dedicated to religious objectives are in some degree protected from the full impact of zoning restrictions. These uses are favored for reasons ranging from their unique contribution to the public welfare to constitutional guaranties of freedom of worship. The courts have consistently focused their attention on the singular characteristics of religious uses, rather than upon the features common to religious and other uses of land.¹

The inclusion of churches among uses permitted in the zoning district is tantamount to a legislative determination that the use is in

⁷General Municipal Law § 356(3).

[Section 11:26]

¹General Municipal Law § 356(5).

²General Municipal Law § 356(5).

[Section 11:27]

¹See generally, Note, "Zoning Laws and the Church," 27 St. John's L. Rev. 93 (1952); Rice, "1994-95 Survey of New York Law—Zoning and Land Use," 46 Syracuse L. Rev. 951 (1996).

I, MATTHEW D. NORFOLK, AN ATTORNEY AT LAW, DO HEREBY CERTIFY PURSUANT TO SEC. 2105 C P L R, THAT I HAVE COMPARED THE FOREGOING WITH THE ORIGINAL AND HAVE FOUND IT TO BE A TRUE AND COMPLETE COPY.

DATED: March 4, 2013

Matthew D. Norfolk
MATTHEW D. NORFOLK

TOWN OF WILLSBORO TOWN BOARD RESOLUTION
Pursuant To New York State General Business Law Section 249

WHEREAS, Sunset Farm, Ltd. is the owner of a certain parcel of real property located at 3061 Essex Road (Route 22), Town of Willsboro, County of Essex, State of New York and bearing Tax Map Parcel No. 40.1-2-22.002; and

WHEREAS, New York State General Business Law Section 249 provides that no person shall establish or improve a privately owned airport except by authorization of the governing board of the town in which such private airport is proposed to be established or improved; and

WHEREAS, New York State General Business Law Section 249 provides that the governing body of a town shall not authorize the establishment or improvement of a private airport at the requested location unless in accordance with the standards prescribed by the Commissioner of Transportation of the State of New York; and

WHEREAS, the airport (*i.e.*, grass airstrip) proposed to be established or improved will be privately owned and the owner of the real property upon which the establishment is to take place has consented to such establishment; and

NOW, THEREFORE, BE IT RESOLVED THAT, the New York State Commissioner of Transportation is hereby requested to make a determination as to whether or not the establishment or improvement of such a privately owned airport complies with her standards adopted pursuant to Section 249 of the New York State General Business Law.

Motion by Sean Gilliland

Seconded by: *Nancy Duester*

aye voter from all present

Dated: Willsboro, New York
February 13, 2013

Roll Call Vote:

Yes/No/Abstention

Edward Hatch, Supervisor

Edward Hatch Yes

Steve Benway, Deputy Supervisor

Steve Benway yes

Nancy Huestis, Councilwoman

Nancy Huestis yes

Charles Lustig, Jr., Councilman

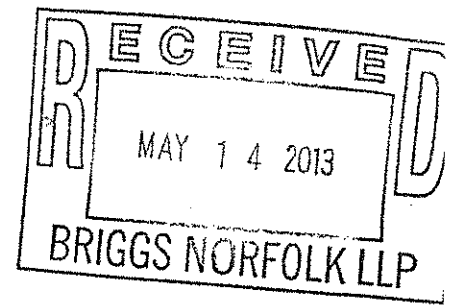
Charles Lustig Jr AYE

Shaun Gilliland, Councilman

Shaun Gilliland yes



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232
www.nysdot.gov



JOAN McDONALD
COMMISSIONER

May 13, 2013

ANDREW M. CUOMO
GOVERNOR

Nancy Huestis, Town Clerk
Town of Willsboro Town Board
5 Ferrell Road
PO Box 370
Willsboro, New York 12996

Dear Ms. Huestis:

This office has received the request from the Town of Willsboro for a determination as to whether the Sunset Farms Airport is in accordance with Department standards as per the General Business Law 249.

We are also in receipt of all the required material as per General Business Law 249. In fact the supplied plans, sketches and photos were very well done.

Pursuant to Section 249 of the General Business Law, the Department has investigated the subject landing area and finds that:

1. Operations at the airport do not appear to conflict with or affect the safety of public buildings or facilities or operations on public highways or waterways.
2. The volume, character, and direction of traffic at the proposed airport will not constitute a menace to the safety of operations at other airports in the vicinity.

Accordingly, the proposal meets our standards subject to the following:

1. The second point above was satisfied when the applicant obtained a favorable Determination of Landing Area Proposal from the FAA on 5/19/11.
2. The airport will be maintained as depicted on the drawings submitted with the proposal and on FAA form 7480-1.
3. The conditions outlined in the FAA Determination of Landing Area Proposal dated 5/19/11 to Xavier Arbour are followed.
4. The FAA recommended the airport runway should have a lateral separation of 60 feet (from the runway centerline) from roads and other objects for aircraft with approach speeds less than 50 knots; and 120 feet (from the runway centerline) for aircraft with approach speeds of 50 knots or greater.
5. The FAA Advisory Circular (AC 150.5300-13A, table 3-8) recommends a runway width of 60' for this type of airport.

This determination should not be construed to mean State approval of the physical development involved in the proposal as the law does not grant us that authority. Our determination is concerned only with the effect of operations on the safety of existing public buildings or facilities, or on public highways or waterways, as well as on operations at other airports/heliports in the vicinity, and is based on an investigation of the site or review of the information contained in the proposal. We wish Mr. Arbour well with his proposed airport.

Sincerely,

Edmund Buckley
Aviation Bureau
(518) 457-8440 or ebuckley@dot.state.ny.us

cc: Matthew D. Norfolk, Briggs Norfolk LLP



U.S. Department
of Transportation

Federal Aviation
Administration

May 19, 2011

Xavier Arbour
3061 Essex Rd
P.O. Box 281
Willsboro, NY 12996

RE: (See attached Table 1 for referenced case(s))
DETERMINATION OF LANDING AREA PROPOSAL

Table 1 - Letter Referenced Case(s)

ASN	Prior ASN	Location	Latitude (NAD83)	Longitude (NAD83)	AGL (Feet)	AMSL (Feet)
2011-AEA-278-NRA		Willsboro, NY	44-19-47.48N	73-21-42.46W	1	176

Description: Establish private use airport (SUNSET) in Willsboro, NY NOTE: canc case 2011-AEA-222-NRA

We have determined that the proposed private use landing area, will not adversely affect the safe and efficient use of the navigable airspace by aircraft, provided:

- All operations are conducted in VFR weather conditions.
- The landing area is limited to private use.
- Please note that your new airport and the Bonebender Airport (41NY) and the Essex Boatworks (NY83) enter into an "Operational Letter of Agreement" which would be an acceptable method of providing compatible traffic pattern operation at the airports and any other procedures as appropriate.

We recommend that:

- A clear 20:1 approach slope be established. If there are obstructions that penetrate the 20:1 approach surface, they should be removed or lowered. If the penetrating obstructions cannot be removed or lowered, we recommend that the thresholds be displaced and appropriately marked, so as to provide a clear 20:1 approach slope surface to each runway end.
- The centerline of an airport runway should have a lateral separation of at least 60 feet from roads and other objects for aircraft with approach speeds less than 50 knots and 120 feet for airplanes with approach speeds of 50 knots or greater.

Please note that roads are defined as obstructions by FAR, Part 77. Private roads are the greater of a 10 foot obstruction or the highest mobile object that normally traverses the road. Public roads are considered a 15 foot obstruction, interstate highways are a 17 foot obstruction, railroads are 23 foot obstructions and waterways are the highest mobile object that traverses the waterway.

It is essential that each airport runway threshold meet the siting standards shown in Figures A2-1, A2-2, and A2-3 of FAA Advisory Circular (AC) 150/5300-13, Airport Design.

Please notify the FAA within 15 days of completing the landing area by calling the FAA Area Flight Service Station (AFSS) serving your landing area to let them know you are activating the landing area while the Airport Master Record Form is being processed. Please tell the Flight Service Station representative that you have received an aeronautical determination from the FAA, and supply them with the name of your landing area and the coordinates.

Please return the enclosed Airport Master Record form to this office. When the processing of the Airport Master Record form is completed, your landing area will have a site number and a permanent location identifier. Indicate whether or not you would like to have your landing area shown on aeronautical charts. Charting also depends on the amount of "clutter" already on the charts near your site.

In order to avoid placing any unfair restrictions on users of the navigable airspace, this determination is valid until November 19, 2012. Should the facility not be operational by this date, an extension of the determination must be obtained by 15 days prior to the expiration date of this letter.

This determination does not constitute FAA approval or disapproval of the physical development involved in the proposal. It is a determination with respect to the safe and efficient use of navigable airspace by aircraft and with respect to the safety of persons and property on the ground.

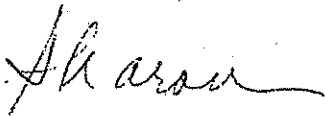
In making this determination, the FAA has considered matters such as the effects the proposal would have on existing or planned traffic patterns of neighboring airports, the effects it would have on the existing airspace structures and projected programs of the FAA, the effects it would have on the safety of persons and property on the ground, and the effects that existing or proposed manmade objects (on file with the FAA), and known natural objects within the affected area would have on the airport proposal.

The FAA cannot prevent the construction of structures near an airport. The airport environs can only be protected through such means as local zoning ordinances, acquisitions of property in fee title or aviation easements, letters of agreement, or other means.

This determination does not preempt or waive any ordinance, law, or regulation of any other governmental body or agency.

A general ordinance of the State of NY provides that certain airport constructions or alterations require a written permit prior to construction. The permit may be obtained from the NY Department of Transportation.

If you have any questions concerning this determination contact Sharon Perry, (718)553-3341, sharon.perry@faa.gov.



Sharon Perry
DivUser

please fill out and return the 5010. Thank you.

SHARON PERRY
AIRPORT AIRSPACE ANALYSIS SPECIALIST
ENJOY FLYING



U.S. Department
of Transportation

Federal Aviation
Administration

Subject: Time extension letter til Nov 30, 2013

Date: November 13, 2012

Aeronautical Study Number:
2011-AEA-278-NRA

From: Sharon Perry

Reply to: Sharon Perry
(718)553-3341

To:

Dear Mr. Arbour, The Federal Aviation Administration has no objection to the 1 year time extension of the above stated aeronautical study # 11-AEA-278-NRA. At that time please forward the completed 5010 for your FAA site @ and Local Identifier. Thank you

A handwritten signature in black ink that reads "Sharon Perry". The signature is written in a cursive style and is positioned to the right of the typed name.

Sharon Perry
DivUser

Arbour

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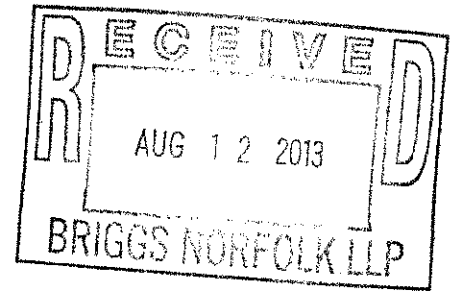
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Sent To: Dep. Dr. Richard E. Weber, III, NYS ALA
Street, Apt. No., or PO Box No. PO Box 99, NYS Route 86
City, State, ZIP+4® Ray Brook, NY 12977

PS Form 3800, August 2006 See Reverse for Instructions



NEW YORK STATE
Adirondack
parkagency



August 9, 2013

Matthew Norfolk, Esq.
2296 Saranac Avenue
Lake Placid, NY 12946

Re: P2011-95 Daniel Arbour, Sunset Farm

Dear Mr. Norfolk:

Thank you for your letter of August 1, 2013, and the accompanying materials with its explanation of the status of your client's efforts to provide the information requested by my "Request for Additional Information" dated April 3, 2012, and my letter of May 30, 2012.

Pursuant to 9 NYCRR § 574.6, the Agency cannot approve a project which is a prohibited use. As you know, former Agency Counsel John Banta opined that the proposed airport is a prohibited use in the Town of Willsboro (letter dated April 16, 2011). This opinion remains staff's position absent a more formal legal opinion on the issue or a use variance from the Town of Willsboro. In my May 30, 2012 letter, I advised you that Agency staff would complete the project upon receipt of such a legal opinion or variance. Your August 1, 2013 letter did not provide either, although you did explain your client's efforts to satisfy staff's request and his position on the issue.

In addition, of the four items noted in my April 3, 2012 "Request for Additional Information", only one (item 3) was partially satisfied by your August 1, 2013 transmittal of the May 13, 2013 NYS Department of Transportation letter. Staff still believe that the information requested for the remaining three items is needed in order to address issues related to the potential impacts of your client's project.

To move this process forward, Agency staff have decided to deem your client's application complete without the missing information that staff have requested "for purposes of commencing review of the application" pursuant to 9 NYCRR § 572.8. The Notice of Completion is attached to this letter.

Matthew Norfolk, Esq.

August 9, 2013

Page 2 of 2

However, because of the essential information that remains outstanding, staff are prepared to make a recommendation to the Agency at its September 12-13th meeting for an adjudicatory hearing on this application. The purpose of the hearing would be to obtain the missing information and to potentially deny the proposed project. Specifically, staff's recommendation would be for the hearing to focus on the issue of whether the airport is a prohibited use in the Town of Willsboro, and potentially on other issues related to the information not provided in response to my April 3, 2012 "Request for Additional Information."

Staff ask that your client make further efforts to seek a more definitive legal position from the Town of Willsboro. We would be willing to participate in discussions with the Town in that regard. Staff also encourage your client to fully respond to my April 3, 2012 "Request for Additional Information". While we would prefer to obtain this information before seeking a hearing on the project, absent your client's willingness to suspend the statutory 60-day time clock, staff must bring the project to the September meeting in order to comply with Executive Law § 809(3)(d).

If you have any questions, please feel free to contact me or Suzanne McSherry, the assigned Environmental Program Specialist.

Sincerely,



Richard E. Weber, III
Deputy Director, Regulatory Programs

REW:MJG:SBM:mlr

cc: Daniel Arbour



NEW YORK STATE
Adirondack
parkagency

MAJOR PROJECT PUBLIC NOTICE
REVISED APPLICATION COMPLETED

APA PROJECT No. 2011-95
Tracking No. 7011 1150 0000 0633 2606

Date: August 9, 2013

The Agency determined on **August 9, 2013** that the application referenced below is complete for the purpose of commencing review. The purpose of this **REVISED** Notice is to inform you about the **AMENDED** proposed project and to ask for any written comments that you may wish to make about the **AMENDED** project. Comments previously submitted are already part of the project file and need not be repeated.

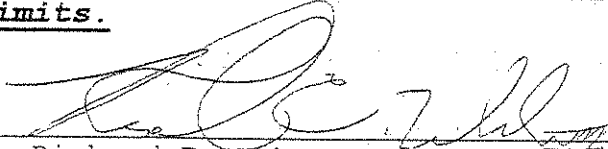
It is not necessary to respond to this letter unless you want to do so. If you wish to provide written comments, they must be received by **August 29, 2013**. Please address any written comments to **Suzanne B. McSherry**, the assigned Environmental Program Specialist and make reference to the above Project Number.

PROJECT SPONSOR, LOCATION AND DESCRIPTION

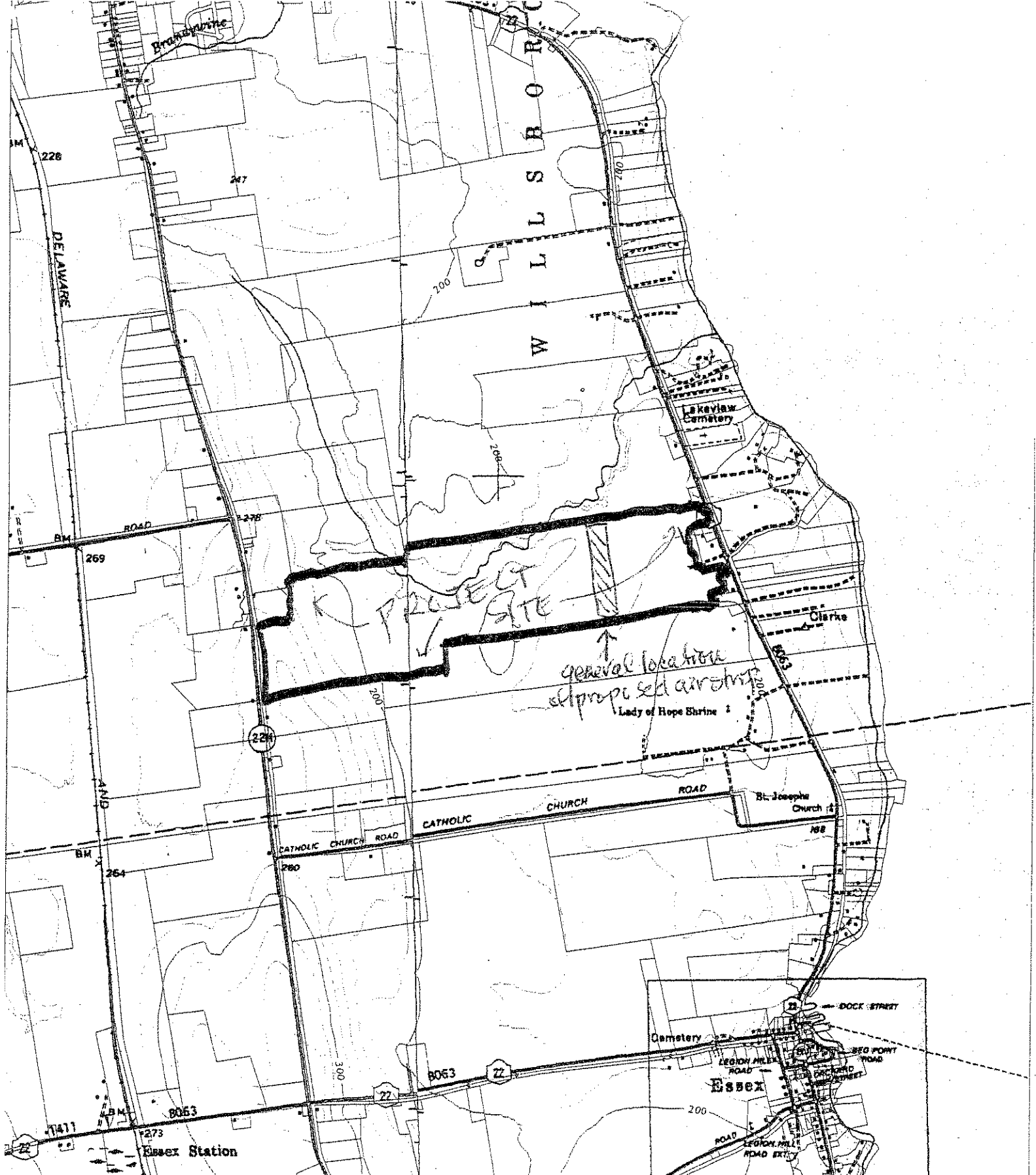
The Agency received an application on **June 6, 2011**, **AMENDED on JANUARY 25, 2012** from **Daniel Arbour** for a project proposed in the Town of **Willsboro**, **Essex** County, at **3061 Essex Road (Route 22)** in an area designated as **Rural Use** on the Adirondack Park Land Use and Development Plan Map. The tax map number of the property site is: Section **40.1** Block **2** Parcel **22.002**. The attached map shows the approximate location of the project site.

The project as **AMENDED on January 25, 2012** is briefly described as follows: A new private airport is proposed on existing agricultural fields. A 1450-foot long, 50-foot wide grass airstrip would be maintained by mowing. The runway is no less than 1400 feet westerly of Route 22 and has a north-south orientation. No runway lighting or structures are proposed. A 7-foot tall pole with an orange nylon windsock would be installed adjacent to the runway. Use of the airstrip would be limited to daylight hours during the **twelve** months of the year. A maximum of **150** take-offs and landings **annually** are proposed. No maintenance or re-fueling will occur on-site. **The airport will be utilized by single-engine planes only, without horsepower limits.**

8/9/13
Date


Richard E. Weber III
Deputy Director (Regulatory Programs)

REW:SBM:MJG:mlr



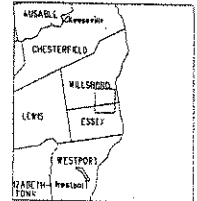
APA # P2011-95

New York State
Adirondack
Park
Agency
Geographic
Information
System

xxwestwingp10411.es

06/17/11

Scale 1:23504



Negative Declaration - Type I
 Conditioned Negative Declaration
 Draft Negative Declaration
 Positive Declaration
 with Public Scoping Session
 Exempt

Excluded

Draft EIS
 with Public Hearing
 Generic
 Supplemental
 Final EIS
 Generic
 Supplemental
 Type II

Permit(s) Applied For: **for a permit pursuant to §809 of the APA Act**

DEC Region #: **5**

County: **Essex**

Lead Agency: **n/a**

Within the Adirondack Park

Project Title/Sponsor: **Daniel Arbour, President
Sunset Farm Ltd.
3061 Route 22
PO Box 281
Willsboro, NY 12996**

Project or Application Number: **2011-0095**

Brief Project Description: as AMENDED on January 25, 2012 is briefly described as follows: A new private airport is proposed on existing agricultural fields. A 1450-foot long, 50-foot wide grass airstrip would be maintained by mowing. The runway is no less than 1400 feet westerly of Route 22 and has a north-south orientation. No runway lighting or structures are proposed. A 7-foot tall pole with an orange nylon windsock would be installed adjacent to the runway. Use of the airstrip would be limited to daylight hours during the twelve months of the year. A maximum of 150 take-offs and landings annually are proposed. No maintenance or re-fueling will occur on-site. The airport will be utilized by single-engine planes only, without horsepower limits.

Land Use Classification: **Rural Use**

Project Location (include street address/municipality): **3061 Route 22, Willsboro, NY**

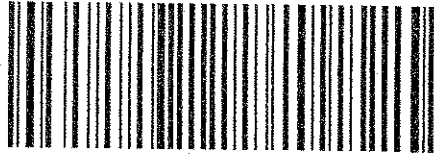
For Adirondack Park Agency: Comment Period ends: **08/29/2013**

APA Contact Person: **Suzanne B. McSherry
P.O. Box 99, Route 86
Ray Brook, New York 12977
518-891-4050**

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
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ADIRONDACK PARK AGENCY
P.O. BOX 99
RAY BROOK, NEW YORK 12977



7011 1150 0000 0633 2606

Matthew Norf
2296 Saranac
Lake Placid, N

1234567890 0004

1/11

BRIGGS NORFOLK LLP

2296 SARANAC AVENUE
LAKE PLACID, NEW YORK 12946

Watertown, New York Office: 315.755.7040

RONALD J. BRIGGS*
MATTHEW D. NORFOLK

JENIFER R. BRIGGS
JOHN J. KENEFICK

* ALSO ADMITTED IN SOUTH CAROLINA

TEL: 518.523.5555
FAX: 518.523.5559*

www.briggsnorfolk.com

*FACSIMILE SERVICE NOT ACCEPTED

August 23, 2013

Via Facsimile and Certified Mail - Return Receipt Requested

Richard E. Weber, III
Deputy Director - Regulatory Programs
New York State Adirondack Park Agency
P.O. Box 99
NYS Route 86
Ray Brook, New York 12977

Re: Project No. P2011-95 (proposed grass airstrip)
Project Sponsor: Sunset Farm, Ltd.
Location: Town of Willsboro

Dear Deputy Director Weber:

I am in receipt of your letter, dated August 9, 2013, which accompanied a second notice of revised application completion and was in response to my letter of August 1, 2013. Notably, I did not receive from the Agency a decision on the above-referenced project permit application.

Pursuant to Adirondack Park Agency Act §809(6)(a), in my letter of August 1, I provided the Agency notice of its failure to mail a decision on the above-referenced revised application for a permit within 90 days of February 14, 2012, the date of issuance of the Agency's (first) notice of revised application completion, as required by Adirondack Park Agency Act §809(3)(b). In addition, on behalf of the sponsor, in my letter of August 1, I demanded that the Agency render a decision on the above-referenced application for a permit in accordance with Adirondack Park Agency Act §809(6)(a). My August 1 letter was sent to the Agency at its headquarters in Ray Brook, New York, via certified mail, return receipt requested, as required by statute.

The Agency failed to mail a decision on the above-referenced application within five working days after receipt of my August 1 letter. Accordingly, pursuant to Adirondack Park Agency Act §809(6)(a), the application "shall be deemed approved and a permit deemed

Richard E. Weber, III
Deputy Director - Regulatory Programs
New York State Adirondack Park Agency
August 23, 2013
Page 2

granted subject to any standard terms and conditions applicable to such a permit and the agency shall provide the project sponsor with a written certification to this effect." To date, however, I have not received from the Agency a written certification confirming that the above-referenced application was deemed approved and a permit deemed granted.

Based upon the foregoing and in a good faith effort to avoid the commencement of an Article 78 proceeding, on behalf of Sunset Farm, Ltd., the project sponsor, I hereby demand that within five days of the date of this letter the Agency provide me with written certification that the above-referenced application has been approved and a permit granted as mandated by Adirondack Park Agency Act §809(6)(a).

Sincerely

Briggs Norfolk LLP

By:

A handwritten signature in black ink, appearing to read 'Matthew D. Norfolk', with a long horizontal line extending to the right.

Matthew D. Norfolk

cc: Mr. Daniel Arbour
Timothy R. Smith, Esq.

Job No.: 002104

Total Time: 0°00'45"

Page: 003

Complete

Document: doc00210420130823120000

BRIGGS NORFOLK LLP

2296 SARANAC AVENUE
LAKE PLACID, NEW YORK 12946

Watertown, New York Office: 315.755.7040

RONALD J. BRIGGS*
MATTHEW D. NORFOLK

JENIFER R. BRIGGS
JOHN J. KENEFICK

* ALSO ADMITTED IN SOUTH CAROLINA

TEL: 518.523.5555
FAX: 518.523.5559

www.brignsnorfolk.com

FACSIMILE SERVICE NOT ACCEPTED

FACSIMILE COVER SHEET

DATE: August 23, 2013
TO: Richard E. Weber, III, Deputy Director - Regulatory Programs
New York State Adirondack Park Agency
FAX NO: 518.891.3938
FROM: Matthew D. Norfolk, Esq.

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECM
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BRIGGS NORFOLK LLP

2296 SARANAC AVENUE
LAKE PLACID, NEW YORK 12946

Watertown, New York Office: 315.755.7040

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DATE: August 23, 2013
TO: Richard E. Weber, III, Deputy Director - Regulatory Programs
New York State Adirondack Park Agency
FAX NO: 518.891.3938
FROM: Matthew D. Norfolk, Esq.
CC:
~~~~~  
**RE:** Sunset Farm Project No. P2011-95 **BN FILE NO. 3772**  
**MESSAGE:** Please find letter attached.

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Send to  
Richard E. Weber, III, Dep. Director, Reg. Prog.  
Street, Apt. No.: Nys Administration Building  
or PO Box No. PO Box 86  
City, State, ZIP+4 Ray Brook, NY 12977

PS Form 3800, August 2006 See Reverse for Instructions

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Deputy Director - Regulatory Program  
Nys Administration Park Aqueduct  
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Nys Route 86  
Ray Brook, NY 12977

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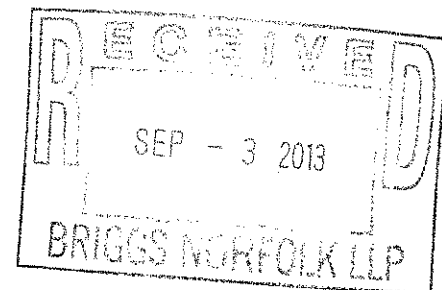
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Received by: [Handwritten Name]  
Date of Delivery: AUG 27 2013







NEW YORK STATE  
Adirondack  
parkagency



Via Facsimile and Regular Mail

August 29, 2013

Matthew Norfolk, Esq.  
2296 Saranac Avenue  
Lake Placid, NY 12946

Re: P2011-95 Daniel Arbour, Sunset Farm

Dear Mr. Norfolk:

This is to respond to your letter of August 23, 2013, and to explain why staff respectfully disagree with your position.

As you indicate in your letter, a Notice of Completion was issued for this project on February 14, 2012, triggering the statutory time periods for an Agency decision imposed by Executive Law Section 809(3)(b) and (c). However, by your letter of April 30, 2012, you consented to an extension of the time period for an Agency decision on the project until July 15, 2012. Such extensions are authorized by Executive Law Section 809(6)(b).

In your April 30, 2012 letter, you also specifically requested that the project not be referred to the Agency for a decision at its May 2012 meeting. You stated that your client would be providing additional information requested by staff "to enable the Agency to render a determination" on your client's application. (See Staff's April 3 and 16, 2012 communications).

Within the extended time period you consented to, I advised you by letter of May 30, 2012 that staff had issued the February 14, 2012 Notice of Completion in error, and would issue a new project completion notice upon receipt of "either a use variance from the Town of Willsboro or a legal determination from the Town counsel stating that the project would be lawful under Town laws." Your client did not appeal my May 30, 2012 determination to the Agency pursuant to 9 NYCRR Section 572.22(a), and the

time for doing so expired. As a result, your client's application remained incomplete until issuance of my August 9, 2013 Notice of Completion discussed below.

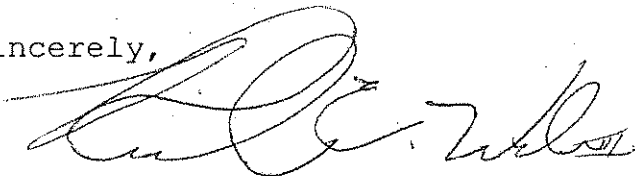
After my May 30, 2012 letter, we did not hear anything responsive from you or your client for over a year until we received your August 1, 2013 letter. That letter failed to provide the information that my May 30, 2012 letter had said was needed in order for staff to determine the application complete. Instead, it demanded a decision on the project pursuant to Executive Law Section 809(6)(a). Since the project has remained incomplete since May 30, 2012, there is no basis for your demand for an Agency decision.

I responded to your August 1, 2013 letter on August 9<sup>th</sup>, determining your client's application complete pursuant to Executive Law Section 809(2)(b) despite staff's belief that requested information critical to a decision has still not been provided. The August 9, 2013 Notice of Completion once again triggered the statutory time periods for an Agency decision imposed by Executive Law Section 809(3).

As stated in my letter of August 9, 2013 accompanying the Notice of Completion, staff will bring this matter to the Agency for action at its September 12-13, 2013 regular monthly meeting. The dates of that meeting are well within the applicable statutory time periods for an Agency decision on this project set forth in Executive Law Section 809(3).

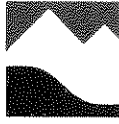
Please do not hesitate to contact me if you have any questions prior to the Agency's meeting.

Sincerely,



Richard E. Weber, III  
Deputy Director, Regulatory Programs

REW:PVC:mlr



NEW YORK STATE  
**Adirondack**  
parkagency

September 9, 2013

Deborah Johnson  
Zoning Clerk  
Town of Horicon  
PO Box 90  
Brant Lake, NY 12815

**Re: LV2013-0064**  
**Town Variance: 2013-11AV**  
**Variance Application: Lebowitz**  
**Tax Map Number: 72.13-1-35**

Dear Ms. Johnson:

Agency staff review of the above referenced variance determination has been completed. The applicant proposes to construct a 4 x 150 foot boardwalk through a wetland in order to access an existing dock. Relief is required from the Town 50-foot shoreline setback.

The project is a Class A regional project and is currently under review by the Agency as application **P2013-0129**. Based on the information presented in the record, the Agency offers no comments on the Town issued variance; **however, the landowner must obtain an Adirondack Park Agency permit prior to construction of the boardwalk.**

Thank you for your referral of this variance determination.

Sincerely,

Brian F. Grisi  
Adirondack Park  
Local Government Assistance Specialist

BFG:REB:lhb

cc: Jame Steen, Town of Horicon Code Enforcement Officer  
Gary Frenz, Zoning Board Chair  
P2013-0129 File



In the matter of an appeal filed  
pursuant to 9 NYCRR § 572.22 by:

**SUNSET FARMS, LTD.**

of an action taken by the Agency's  
Deputy Director-Regulatory Programs  
pursuant to Executive Law § 809(2)(b)  
and 9 NYCRR § 572.7

---

## **RESPONSE TO APPEAL**

Respectfully submitted by:

Agency Staff

October 2, 2013

**DOCUMENTS CITED IN STAFF'S RESPONSE TO APPEAL**

**FROM THE PROJECT SPONSOR'S**

**SEPTEMBER 5, 2013 RECORD ON APPEAL**

- Exhibit I** - Agency's Major Project Notice Revised Application Completed (Project No. 2011-95), with project sponsor location and description annexed, dated February 14, 2012
- Exhibit M** - Agency Deputy Director-Regulatory Programs ("DDRP") Richard E. Weber's letter, dated May 30, 2012, to Matthew Norfolk. Esq., attorney for the Project Sponsor
- Exhibit O** - Attorney Norfolk's letter, dated August 1, 2013, to DDRP Weber, with attachments
- Exhibit P** - DDRP Weber's letter, dated August 9, 2013, to Attorney Norfolk
- Exhibit Q** - Major Project Public Notice Revised Application Completed, APA Project No. 2011-95, dated August 9, 2013, with project sponsor, location and description attached

### The September 6, 2013 Appeal

The Project Sponsor's September 6, 2013 appeal challenges the Agency Deputy Director-Regulatory Programs' ("DDRP") August 9, 2013 determination that the Project Sponsor's application is complete for the purpose of commencing Agency review. The Project Sponsor argues that, at the time of the August 9, 2013 completeness determination, the statutory time periods for Agency review of a complete application (Executive Law § 809(3)) had already expired entitling the Project Sponsor to issuance of a permit "subject to any standard terms and conditions" pursuant to Executive Law § 809(6)(a).

In order to make this argument, the Project Sponsor asserts that the DDRP's May 30, 2012 determination that the application was incomplete<sup>1</sup> is invalid for various legal and/or procedural reasons. Based on this assertion, the Project Sponsor argues that the application was still complete and that the statutory time periods for Agency review of a complete application expired, thereby triggering its demand for issuance of a permit pursuant to Executive Law § 809(6)(a). Thus, the Project Sponsor's September 6, 2013 appeal is actually an untimely attempt to appeal the May 30, 2012 DDRP action determining the Project Sponsor's application to be incomplete.

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<sup>1</sup> The DDRP's May 30, 2012 incompleteness determination advised the Project Sponsor that the DDRP's February 14, 2012 completeness determination had been issued in error.

### Summary of Staff's Position

Staff contend that the DDRP's May 30, 2012 incompleteness determination was a final and valid Agency determination. The Project Sponsor failed to appeal it to the Agency within 30 days, as required by Agency regulations, or to challenge it in court within 60 days, as required by law. It therefore cannot be challenged now and must be treated as valid. As such, all of points and arguments in the Project Sponsor's September 6, 2013 appeal, which rely on the contention that the DDRP's May 30<sup>th</sup> determination is invalid, are not relevant and must fail.

Once the DDRP deemed the application incomplete on May 30<sup>th</sup>, the statutory time periods of Executive Law § 809(3) for Agency review of complete applications no longer applied to the Project Sponsor's application. Instead, the Project Sponsor's application was subject to the process for incomplete applications set forth in Executive Law § 809(2)(b). Thus, after the DDRP's May 30<sup>th</sup> determination, the 15-day statutory time period imposed by Executive Law § 809(2)(b) did not begin to run until staff received the Project Sponsor's August 1, 2013 submission.

The DDRP's August 9, 2013 completeness determination was issued in response to the August 1<sup>st</sup> submission. The submission showed the Project Sponsor's unwillingness or inability to provide the information requested by his May 30<sup>th</sup> incompleteness



determination. Nonetheless, within the applicable 15-day statutory time period provided by Executive Law § 809(2)(b), the DDRP determined to complete the application for the purpose of commencing Agency review.

For these reasons, the Project Sponsor's September 6, 2013 appeal should be denied.

### **Relevant Law/Regulations**

#### ***Statutory Time Periods and Incompleteness Determinations***

Executive Law § 809(2)(b) requires the Agency, upon receipt of an application, to make a determination within 15 days as to whether the application is complete. If the Agency determines that the application is incomplete, the Agency must provide a "concise statement of the respects in which the application is incomplete."

When the Project Sponsor submits the requested information, a "new fifteen calendar day period for agency review of the additional information" is triggered. The Agency must then make a new determination of completeness or incompleteness within the 15-day statutory time period.

#### ***Appeal of Actions of the Deputy Director-Regulatory Programs***

A Project Sponsor may appeal certain actions by the DDRP to the Agency, including determinations of completeness or incompleteness, pursuant to 9 NYCRR § 572.22. Appeals must be "filed with the agency not later than 30 days following the

action in question" pursuant to 9 NYCRR § 572.22(c). An Agency decision on an appeal is a final agency determination. In the absence of a decision by the Agency on an appeal, the DDRP's action is the final Agency determination. These determinations are subject to judicial review pursuant to Executive Law § 818(1) and CPLR § 7801(1).

**The May 30, 2012 Incompleteness Determination**

The DDRP's May 30, 2012 incompleteness determination stated that his February 14, 2012 completeness determination had been issued in error. The DDRP noted that staff had erred in relying on the Town of Willsboro Code Enforcement Officer's statements that the Town "had no jurisdiction" over the proposed airport.

The DDRP's May 30<sup>th</sup> determination specifically asked the Project Sponsor to provide either "a use variance from the Town of Willsboro or a legal determination from the Town counsel that the project would be lawful under Town laws." The DDRP stated that he would issue a "new project completion notice" upon receipt of that information. The DDRP thus complied with the Executive Law § 809(2)(b) process for incomplete applications by providing a "concise statement of the respects in which the application is incomplete."

### The Project Sponsor's Failure to Appeal

The Project Sponsor failed to appeal the DDRP's May 30, 2012 incompleteness determination to the Agency.<sup>2</sup> A timely appeal could have included the legal points and arguments that are now presented as the basis for the September 6, 2013 appeal. Had the appeal been granted, staff would have still had time to seek Agency action on the application. Now, over a year later, granting the September 6, 2013 appeal based on the Project Sponsor's untimely challenge to the May 30, 2012 determination would unduly prejudice the Agency and the public by limiting Agency action to the compelled issuance of a permit for a project that may not be approvable under Executive Law § 809(9).<sup>3</sup>

With the Project Sponsor's failure to appeal the DDRP's May 30<sup>th</sup> determination to the Agency, the DDRP's May 30<sup>th</sup> determination became a final Agency determination.<sup>4</sup> The Project Sponsor did not seek judicial review of the DDRP's May 30<sup>th</sup>

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<sup>2</sup> See, Affidavit of Mitchell J. Goroski, dated October 2, 2013 ("Goroski Affidavit"), for an explanation of the relevant statutory and agreed-upon time periods as they applied to this project. See also, § 572.22(c).

<sup>3</sup> Executive Law § 809(9) requires a finding of compliance with the Town of Willsboro's approved local program before an Agency permit can be issued. The Town's Zoning Board of Appeals has determined that a use variance is required for the proposed airport. See, Goroski Affidavit, ¶ 26. Based on the ZBA's determination, absent a use variance, this statutory finding cannot be made.

<sup>4</sup> "Where, as here, agency action takes the form of a letter notifying petitioners of a definitive agency position, it will be considered a final determination for CPLR 7801(1) purposes if it causes petitioner actual, concrete injury and no further agency proceedings might alleviate or avoid the injury." Essex County v. Zagata, 91 N.Y.2d 447(1998) at 454.

determination pursuant to Executive Law § 818(1) and CPLR § 7801(1). As a result, the DDRP's May 30, 2012 incompleteness determination cannot be challenged now.<sup>5</sup>

**The Effect of the DDRP's May 30<sup>th</sup> Incompleteness Determination**

The DDRP's May 30, 2012 incompleteness determination subjected the Project Sponsor's application to the Executive Law § 809(2)(b) process for incomplete applications. Under this process, no statutory time periods apply until a project sponsor responds to the incompleteness determination. Once a response is received, the Agency must make a new determination of completeness or incompleteness within 15 days. Thus, after the DDRP's May 30<sup>th</sup> incompleteness determination, the 15-day time period applicable to incomplete applications did not begin to run until the Project Sponsor responded to the DDRP's May 30<sup>th</sup> determination with its August 1, 2013 submission.<sup>6</sup>

Staff's receipt of the August 1, 2013 submission commenced "a new fifteen calendar period for agency review of the additional information for the purposes of determining completeness." See, Executive Law § 809(2)(b). On August 9<sup>th</sup>, the DDRP issued a completeness determination for the application

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<sup>5</sup> "Petitioners were entitled to challenge factual and legal determinations, inclusive of the jurisdictional objections they interposed, within sixty days.... Having missed that deadline, their claims are now time-barred." Wechsler, et al. v. New York State Adirondack Park Agency, Decision and Order (NYS Supreme Court, Franklin County), April 5, 2010, p.5. See, Hunt Bros. Contractors Inc. v. Glennon, 214 A.D. 2d 817 (3<sup>rd</sup> Dept., 1995).

<sup>6</sup> In fact, there were no substantive communications from the Project Sponsor to Agency staff between May 30, 2012 and August 1, 2013. Goroski Affidavit, ¶ 19.

to the Project Sponsor despite the fact that the Project Sponsor had failed to provide the information requested by the DDRP's May 30<sup>th</sup> determination. He made this determination because it was apparent from the August 1, 2013 submission that the Project Sponsor was either unwilling or unable to provide the requested information,<sup>7</sup> and to move the project review process forward.<sup>8</sup>

The DDRP's August 9, 2013 completeness determination was issued within the statutory 15-day time period that commenced after receipt of the Project Sponsor's August 1, 2013 submission, thereby complying with Executive Law § 809(2)(b).

### **Conclusion**

The Project Sponsor did not appeal the DDRP's May 30, 2012 determination to the Agency, or challenge it in court pursuant to Executive Law § 818(1) and CPLR § 7801(1) once it became a final Agency determination. Thus, the Project Sponsor cannot challenge it now through his September 6, 2013 appeal of the DDRP's August 9, 2013 completeness determination.

The DDRP's May 30, 2012 incompleteness determination subjected the application to the process set forth in Executive Law § 809(2)(b) for incomplete applications. Thus, after the DDRP's May 30<sup>th</sup> determination, no statutory time period applied

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<sup>7</sup> It is relevant that the Project Sponsor had previously agreed to provide this information to Agency staff. Goroski Affidavit, ¶ 14. The Project Sponsor should not now be allowed to benefit from its delay and failure to provide this promised information.

<sup>8</sup> Id., ¶¶ 23 and 24.

to the Project Sponsor's incomplete application until the Project Sponsor responded to the DDRP's May 30th determination on August 1, 2013. The statutory 15-day time period required for a new determination as to whether the Project Sponsor's application was complete was then met by the DDRP's August 9, 2013 determination.

As the August 9, 2013 completeness determination complied with Executive Law § 809(2)(b), there is no basis for the Project Sponsor's September 6, 2013 appeal and it should be denied.

Dated: Ray Brook, New York  
October 2, 2013

For Agency staff:

\_\_\_\_\_/s/\_\_\_\_\_  
Paul Van Cott  
Associate Attorney



3. This affidavit focuses on the statutory and extended time periods relevant to the Project Sponsor's September 6, 2013 appeal.

**RELEVANT LAW**

4. Executive Law § 809(2)(b) requires the Agency, upon receipt of an application, to make a determination as to whether the application is complete within 15 days of receipt of the application. If the Agency determines that the application is incomplete, the Agency must provide a "concise statement of the respects in which the application is incomplete."
5. When the Project Sponsor submits the requested information, a "new fifteen calendar day period for agency review of the additional information" is triggered. The Agency must then make a new determination of completeness or incompleteness within the 15-day statutory time period.
6. Even after a completeness determination, Executive Law § 809(2)(b) permits staff to seek additional information that will enable the Agency to make the findings required by law.



7. Executive Law § 809(3) provides the statutory time periods for Agency action after an application for a project is determined to be complete pursuant to Executive Law § 809(2)(b). For major projects, such as the Project Sponsor's application, the Agency must decide whether to hold a hearing on the project within 60 days after completion.
8. Executive Law § 809(6)(b) allows for any of the statutory time periods to be waived and extended upon mutual agreement between the Agency and a project sponsor.

**RELEVANT FACTS**

9. The January 25, 2012 letter of agreement between Agency staff person Suzanne McSherry and the Project Sponsor established May 18, 2012 as the date for the Agency to make a decision on whether to hold a hearing on the Project Sponsor's application. See, Project Sponsor's September 5, 2013 Record on Appeal ("R."), Exhibit ("Ex.") F.
10. This agreement, and the new completeness determination issued by the Agency's Deputy Director-Regulatory Programs ("DDRP") on February 14, 2012 (R., Ex. I),

were necessitated by the major and material amendments the Project Sponsor formally made to his application on January 20, 2012.

11. Based on review of the completed application and public comment, Agency staff sought additional information during the review period concerning local zoning requirements and potential noise impacts associated with the project by letters of February 14, 2012 (R., Ex. H), April 3, 2012 (R., Ex. J) and April 16, 2012 (R., Ex. K).
12. On Friday, April 27, 2012, I spoke by telephone with Matthew Norfolk, Esq., attorney for the Project Sponsor concerning the agreed-upon May 18, 2012 deadline for an Agency determination on whether to hold a public hearing on the project in light of the supplemental information sought by staff.
13. Based on our discussion, we agreed that postponing the May 18, 2012 deadline would allow his client time to provide the requested information for staff to review.
14. Consistent with our discussion, Mr. Norfolk's, Monday, April 30, 2012 letter (R., Ex. L) stated "I hereby agree to extend the Agency's regulatory time frame to review the permit application until July 15, 2012, and ask that the application not be heard at the Agency's

May 17-18, 2012, meeting, so that we may provide the information Agency Staff requested."

15. After further review of the application, the DDRP issued an incompleteness determination to the Project Sponsor on May 30, 2012. R., Ex. M. This determination noted that the February 14, 2012 completeness determination had been issued in error and sought additional information about local zoning requirements because 9 NYCRR § 574.6 states that:

The agency will not approve a project which...  
is a prohibited use under local zoning  
requirements...

16. Specifically, the DDRP's May 30<sup>th</sup> determination stated:

Upon receipt of either a use variance from the Town of Willsboro or a legal determination from the Town counsel stating that the project would be lawful under Town laws, the Agency will issue a new project completion notice and will review your client's application.

17. The Project Sponsor did not appeal the DDRP's May 30, 2012 incompleteness determination to the Agency pursuant to 9 NYCRR § 572.22, and the 30-day time period for filing such an appeal to the Agency has long since expired.

18. The Project Sponsor also did not challenge the May 30<sup>th</sup> determination in court pursuant to Executive Law § 818(1) and CPLR § 7801(1), and the 60-day time period for making such a challenge has also expired.
19. In fact, the first indication that the Project Sponsor disagreed with the DDRP's May 30, 2012 incompleteness determination was over a year later in the Project Sponsor's August 1, 2013 submission. R., Ex. O. In that letter, the Project Sponsor demanded an Agency decision on the application pursuant to Executive Law § 809(6)(a) due to the alleged failure of the Agency to comply with the statutory time periods. Notably, there had been no other substantive communication from the Project Sponsor between May 30, 2012 and August 1, 2013.<sup>1</sup>
20. However, once the application was determined to be incomplete by the DDRP on May 30, 2012, Executive Law § 809(2)(b) applied, and the statutory response periods for Agency decisions on complete applications (60 days for a hearing and 90 days for a project)

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<sup>1</sup> The only correspondence from the Project Sponsor was his June 11, 2012 letter in response to the May 30<sup>th</sup> determination confirming Matthew Norfolk, Esq. as the authorized representative for the project. R., Ex. N. That letter did not take exception with the substance of the May 30<sup>th</sup> determination.

- provided by Executive Law § 809(3) were no longer in effect.
21. In its August 1, 2013 submission, for the first time since the DDRP's May 30, 2012 incompleteness determination, the Project Sponsor set forth its position with respect to the information requested in that determination. Specifically, the Project Sponsor explained why it was unwilling and/or unable to provide the use variance or opinion of Town counsel requested in the May 30<sup>th</sup> determination. Staff considered that information and argument as the Project Sponsor's limited response to the May 30<sup>th</sup> determination.
  22. Accordingly, staff's receipt of the Project Sponsor's August 1, 2013 submission commenced "a new fifteen calendar period for agency review of the additional information for the purposes of determining completeness." See, Executive Law § 809(2)(b).
  23. Thereafter, DDRP issued a completeness determination on August 9, 2013 (R., Exs. P and Q), within the statutory 15-day time period that commenced after receipt of the Project Sponsor's August 1, 2013 response.

24. The DDRP's August 9, 2013 letter accompanying the completeness determination (R., Ex. P) stated that while the August 1, 2013 submission still lacked information that staff had requested<sup>2</sup>, he was issuing his determination to "move this process forward" and "for purposes of commencing review of the application" pursuant to 9 NYCRR § 572.8.
25. The DDRP's August 9, 2013 letter also noted that his completeness determination had triggered a new 60-day time period for an Agency determination on whether to hold a hearing on the project pursuant to Executive Law § 809(3)(d). He indicated that, because of the importance of the missing information and to comply with the 60-day statutory time period, staff were prepared to ask the Agency, at its September 12-13, 2013 meeting, to hold a hearing on the project to "obtain the missing information." He offered to work with the Project Sponsor to obtain that information if the Project Sponsor would agree to suspend the time period for the Agency to make a decision on whether to hold a public hearing.

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<sup>2</sup> This was the same information that the Project Sponsor had previously agreed to provide. See, ¶ 14 supra.

26. After the DDRP's August 9, 2013 completeness determination, Agency staff learned that the Town of Willsboro Zoning Board of Appeals ("ZBA"), on April 23, 2012, determined that a use variance is required for the Project Sponsor's proposed airport. The ZBA's determination is reflected on the bottom of page 3 of the draft minutes from the ZBA's April 23, 2012 meeting (copy attached). The minutes were adopted by the ZBA without modification of this determination at its June 19, 2012 meeting.

\_\_\_\_\_/s/\_\_\_\_\_  
**Mitchell J. Goroski, Esq.**

Sworn to before me this  
2nd day of October, 2013.

\_\_\_\_\_/s/\_\_\_\_\_  
**Notary Public**

received  
4/24/12

DRAFT



**TOWN OF WILLSBORO**  
ZONING BOARD OF APPEALS

**ZONING BOARD OF APPEALS**  
**APRIL 23<sup>RD</sup>, 2012 AT 7:00PM AT THE TOWN HALL**

In Attendance: Robert Bruno, Chairman; Lane Sayward, Vice Chairman; Carol deMello; Scott Christian, Briana Holland – New Member - Absent

**Chairman Robert Bruno called the meeting to order at 7:00pm.**

**MINUTES**

**Mr. Christian moved to approve the minutes from the March board meeting and Ms. Sayward seconded. All voted in favor and the motion carried.**

*Correction:* Mr. Kinley noted that there was one typo on the third page under the Miller case. He noted that the sentence states "Mr. Kinley oriented the board on the case". He stated that it should be stated "Mr. Kinley oriented the board on the case."

**PUBLIC HEARING**

*4979 - Kevin & Kathleen Miller - 381 Bay Lane - 20.20-1-61.000 - RL-1 - Front Porch Addition; Front Yard Setback; Lot Coverage*

Mr. Bruno noted that the board had requested that the applicant provide more information for the public hearing. He stated that the documents were submitted. Mr. Christian asked how many steps would extend off from the porch and if they would be facing the road or the side of the parcel. Mr. Miller stated that there should only be one step and that it would come out to the sidewalk. Mr. Christian asked if Mr. Kinley gathered the measurements from the proposed porch to the road. He noted that he was not able to visit the site to measure it, but that based on the paperwork it would be 20 feet plus the one step. Mr. Bruno asked the applicant if it would be 20 feet from the step to the road.

**Mr. Bruno opened the public hearing.**

Ms. deMello noted she spoke with the Valachovics earlier in the day while visiting the site. She noted that they did not have any objections. Ms. deMello stated that she noticed that the house just beyond Mr. Miller's was a house that was much closer to the road than Mr. Miller's and that she doesn't see it as detrimental to the surrounding structures.

**Mr. Bruno closed the public hearing.**

*4981 - Robert & Carol deMello - 289 Corlear Drive - 11.17-1-70.000 - RL-1 - Front Yard Setback; Lot Coverage; Lot size*

**Ms. deMello recused herself from the board table.**



Mr. Bruno noted that Ann Marie Spilling wrote a nice letter on behalf of the deMello's case. Mr. Kinley stated that Joan Sloper spoke with him personally and stated that she had no objections to the case. He stated that he also received a letter from Sue Horne in support of the case.

Mr. deMello noted that they have made a small change to the plans. Ms. deMello stated that the angle of the house has been changed to change the position of the peak of the roof with regard to the driveway. Ms. deMello noted that that has changed some of the setback distances. Mr. Kinley referred to the shoreline requirements within the ordinance. Mr. Kinley stated that because the applicant has at least 100' of shoreline they are allowed a 20' front yard setback.

#### **Mr. Bruno opened the public hearing.**

Mr. Christian asked what the rear yard setback requirements were and if the applicants complied. Mr. Kinley stated that the rear yard setback requirements are 50 feet. He noted that the applicants have approximately 75 feet. Mr. Christian asked for clarification on the deck plans. He noted that if the deck/porch was not part of the plans that the applicant would not need a variance. Mr. Christian asked what the square footage was of the entire proposed project. Ms. deMello stated that it was 2,316 square feet. Mr. Kinley pointed out the dimension on the plans. Mr. Christian asked if the applicants were going to end up living in this house and sell the other house. Ms. deMello stated that that is what they would like to do. Ms. deMello noted that they designed it to comply with ADA requirements as she has a handicap brother. She stated that they tried to include everything so that they would not have to come back time and time again. The board discussed the removal of some of the trees for construction purposes. Ms. deMello noted that it is her hope and desire to preserve as many of the trees as they possibly can. Ms. Sayward asked about the size of the lot. Mr. Christian responded that it is 19,900 square feet. Ms. Sayward asked how far over lot coverage the applicants would be if the structure was built as proposed. Mr. Christian noted that they would be over by 362 square feet (1.76%). Ms. Ann Marie Spilling stated that she is in support of the proposed project.

#### **Mr. Bruno closed the public hearing.**

#### **OLD BUSINESS**

*4979 - Kevin & Kathleen Miller - 381 Bay Lane - 20.20-1-61.000 - RL-1 - Front Porch Addition; Front Yard Setback; Lot Coverage*

#### **Area Variance Criteria**

1. Yes – but not with the same effect. Mr. Bruno noted that there are other options that the applicant could do.
2. Mr. Bruno stated that he does not see the proposed project as undesirable. He noted that the public obviously doesn't see it as undesirable either as no one came to the meeting.
3. Ms. deMello noted that she disagrees with the applicant's answer in stating that the request is substantial. She stated that the request is over lot coverage by 1.3%.
4. Mr. Bruno stated that he does not feel that there would be any adverse physical or environmental effects. Mr. Christian stated that there are currently rain gutters on the structure.
5. Mr. Christian stated that technically the porch will only go out two more feet than where the existing flower beds lie.

Mr. Christian moved to approve the variance for the Millers with the stipulation that the porch have recessed steps to comply with the 25 feet requirement and that the eaves be placed back on the house after construction. Ms. Sayward seconded. All voted in favor and the motion carried.

*4981 - Robert & Carol deMello - 289 Corlear Drive - 11.17-1-70.000 - RL-1 - Front Yard Setback; Lot Coverage; Lot size*

The board reviewed the Area Variance Criteria.

1. Mr. Bruno stated the proposed project could not be achieved by other means necessary as the lot size is a pre-existing undersized lot. Mr. Bruno stated that the house could be decreased in size, but that it would not be what the applicants would want.
2. Mr. Bruno stated that he does not see how it would be an undesirable change to the neighborhood.
3. Mr. Bruno stated that he does not feel that the request is substantial because they are not significantly over the lot coverage requirements.
4. Ms. Sayward noted that the applicants have a plan for storm water runoff, that will be preserving most of the existing trees, and that they will be replacing the existing septic system with a new system.
5. Mr. Bruno stated that the hardship is not self-created as the lot is a pre-existing undersized lot.

Mr. Christian stated that the applicants are very thorough and have addressed all of the concerns of the board. **Ms. Sayward moved to approve the variance for the deMello case with the changes to the drawings as presented to the board. Mr. Christian seconded. All voted in favor and the motion carried.**

## NEW BUSINESS

### CONCERNS/INFORMATION

*Zoning Board Bylaws* – Mr. Kinley noted that the document was corrected. Mr. Christian stated that the only correction he has is that the board meetings must be held within the community. He stated that he also wanted to note that it should be something stated about the chairman voting. Mr. Christian asked if, when a tie occurs, the chairman would become the tie breaker. Mr. Kinley stated that the chairman has to vote. Mr. deMello mentioned the majority vote requirement. Mr. Bruno stated that the one thing that was brought up by Mr. Belanger was that the chairman of the board could not make a motion. He noted that he has asked several people and read several things that state otherwise.

*Arbour Airstrip* – Mr. Kinley updated the board on the Arbour Airstrip case. The board determined that a Use Variance was required.

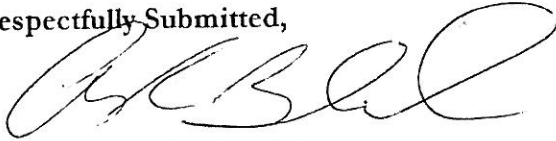
*Glen Sweeney – Class B Permit* – Mr. Bruno stated that he does not feel that a parking lot and a private driveway mesh well. Mr. Kinley stated that the hiking path will continue, but that he will be placing the driveway entrance where the parking lot is located. Mr. Bruno asked if the applicant even owns the property in that area. Mr. Bruno stated that according to the tax maps it appears that Highland Forest owns it and that the

Sweeney's own the property a little further over. Mr. Kinley presented the tax maps and discussed the placement of the driveway and camp.

**ADJOURNMENT**

The meeting adjourned at 8:05 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'ARBL', written in a cursive style.

Ashley Ryan Blanchard, Secretary  
Zoning Board of Appeals

# MEETING ATTENDANCE SHEET

MEETING DATE: 4/23/12

COMMITTEE/BOARD: Zoning Board

PLEASE **PRINT** YOUR NAME CLEARLY TO ASSURE THE CORRECT SPELLING IS USED IN THE MINUTES OF THIS MEETING.

1. BOB DE MELLO
2. Don-mario S. S. S. S.
3. Pete SOWIZDRZAL
4. \_\_\_\_\_
5. \_\_\_\_\_
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RECEIVED  
4/24/12

TOWN OF WILLSBORO, NY

ZONING BOARD OF APPEALS

**DECISION FORM**

TAX MAP NO: 20.20-1-61.000 DATE: 4/23/2012 APPLICATION NO: 4979

NAME: Kevin Miller

ADDRESS: 381 Bay Lane

REQUEST: Variance from front yard setback requirements

REQUEST GRANTED: X REQUEST DENIED: \_\_\_\_\_

CONDITIONS: Motion:

Mr. Christian moved to approve the variance for the Millers with the stipulation that the porch have recessed steps to comply with the 25 feet requirement, and that the eaves be placed back on the house after construction. Ms. Sayward seconded. All voted in favor and the motion carried.

SIGNATURE OF ZBA CHAIRMAN: Robert Bruno DATE: 5/3/12

|                  |                                | <u>VOTE</u>       |          |
|------------------|--------------------------------|-------------------|----------|
| MEMBERS PRESENT: | <u>Rob Bruno, Chairman</u>     | <u>Y</u> <u>X</u> | <u>N</u> |
|                  | <u>Lane Sayward</u>            | <u>Y</u> <u>X</u> | <u>N</u> |
|                  | <u>Carol DeMello</u>           | <u>Y</u> <u>X</u> | <u>N</u> |
|                  | <u>Scott Christian</u>         | <u>Y</u> <u>X</u> | <u>N</u> |
|                  | <u>Briana Holland - Absent</u> | <u>Y</u>          | <u>N</u> |

received  
4/24/12

TOWN OF WILLSBORO, NY

ZONING BOARD OF APPEALS

**DECISION FORM**

TAX MAP NO: 11.17-1-70.000 DATE: 4/23/2012 APPLICATION NO: 4981

NAME: Robert & Carol deMello

ADDRESS: 289 Corlear Drive

REQUEST: Variance from front yard setback, lot coverage, and lot size requirements

REQUEST GRANTED: X REQUEST DENIED: \_\_\_\_\_

CONDITIONS: Motion:  
Ms. Sayward moved to approve the variance for the deMello case with the changes as presented to the board. Mr. Christian seconded. All voted in favor and the motion carried.

SIGNATURE OF ZBA CHAIRMAN: Robert Bruno DATE: 5/3/12

|                                             | <u>VOTE</u>       |          |
|---------------------------------------------|-------------------|----------|
| MEMBERS PRESENT: <u>Rob Bruno, Chairman</u> | <u>Y</u> <u>X</u> | <u>N</u> |
| <u>Lane Sayward</u>                         | <u>Y</u> <u>X</u> | <u>N</u> |
| <u>Carol DeMello</u>                        | <u>Y</u> <u>X</u> | <u>N</u> |
| <u>Scott Christian</u>                      | <u>Y</u> <u>X</u> | <u>N</u> |
| <u>Briana Holland - Absent</u>              | <u>Y</u>          | <u>N</u> |



# MILLER, MANNIX, SCHACHNER & HAFNER, LLC

ATTORNEYS AT LAW  
15 WEST NOTRE DAME STREET  
P.O. BOX 765  
GLENS FALLS, NEW YORK 12801  
(518)793-6611

Mark Schachner\*  
Robert H. Hafner  
Cathi L. Radner\*  
Michael J. Hill  
Leah Everhart  
Jacquelyn P. White

\*Also Admitted in Massachusetts  
\*Also Admitted in Maryland and Pennsylvania

John W. Miller (1908-1968)  
John C. Mannix (1931-2006)

Facsimile: (518)793-6690  
Toll Free: 1-800-421-6166

E-Mail: [mail@mmslaw.com](mailto:mail@mmslaw.com)  
Web Site: [millermannix.com](http://millermannix.com)

October 2, 2013

Terry Martino, Executive Director  
Adirondack Park Agency  
P.O. Box 99, NYS Route 86  
Ray Brook, NY 12977

**VIA FACSIMILE: 891-3938,  
E-MAIL & FIRST CLASS MAIL**

Re: APA Project No. P2011-095 – Sunset Farms Ltd. / Sponsor's Appeal

Dear Ms. Martino:

We write on behalf of the members of Braidlea Farms, L.P., ("Braidlea"), which owns property near the Applicant's proposed private airport. We offer the following comments in opposition to the Applicant's Appeal in these matters and urge the Board of Commissioners to deny the Appeal for the reasons set forth below.

## **Background:**

The Applicant's appeal results from a procedural dispute with the Agency. The Applicant contends that the Agency did not timely set a Public Hearing or make a determination on its application. As a result, Applicant asserts that it is entitled to a Permit by default. As we understand it, the Agency's position is that the Notice of Revised Application Completed for the project was based on erroneous information of fundamental importance. Because the Agency was originally given incorrect information and later notified the Applicant about it, the Agency contends that the Application was not complete and the time to set a Public Hearing or make a determination on the Application has not expired.

## **Timeline:**

January 25, 2012 – The deadlines for the Agency to set a Public Hearing and make a determination on the Application were extended to May 18, 2012 and June 18, 2012, respectively, by mutual agreement of the Applicant and the Agency.

February 14, 2012 – The Agency issued a Notice of "Revised Application Completed" for Applicant's proposed private airport in the Town of Willsboro, reflecting changes in the application requested by the Applicant. The Town has an Agency-



approved Local Land Use Plan. A Local Government Notice form signed by the Town's Zoning Administrator was among the materials submitted with the Application. The form indicates: 1) that the Town's zoning is "silent" on whether the proposed airport is an allowed use, and 2) that it would not be prohibited by any local law or ordinance.

February 14, 2012 – The Agency advises the Applicant that additional information will be necessary to enable the Agency to determine whether to issue a Permit. Among other information requested, the Agency asked for information confirming that the proposed airport would be an allowed use under the Town's zoning.

April 16, 2012 – The Agency's former Counsel John Banta wrote to the Town of Willsboro's Zoning Administrator and Planning Board Chairman confirming a conversation with them. The letter states that because airports like the one proposed are not listed as a permitted use under the Town's Zoning Ordinance and Map, the Agency would consider the proposed airport to be a prohibited use and the Applicant's project therefore could not be approved for a Permit under the Agency's Regulations. The Applicant was copied on former Counsel's letter to the Town officials. There was apparently no response from Town officials or the Applicant questioning or objecting to the Agency's position as set forth in the former Counsel's letter.

April 23, 2012 – The Town's Zoning Board of Appeals (ZBA) determined that the proposed airport would require a Use Variance (neither the Applicant nor the Agency were apparently aware of the ZBA's determination at the time).

April 30, 2012 – The Applicant's attorney wrote to the Agency's Senior Attorney as a follow-up to a phone conversation with him. The letter from the Applicant's attorney states in relevant part:

*As you know, Agency Staff has requested more information to enable the Agency to render a determination on my client's application for a permit for an airstrip. We are in the process of compiling the information requested to provide to Agency Staff.*

*On behalf of the project sponsor, I hereby agree to extend the Agency's regulatory time frame to review the permit application until July 15, 2012, and ask that the application not be heard at the Agency's May 17-18, 2012 meeting so that we may provide the information Agency Staff requested.*

May 30, 2012 – The Agency's Deputy Director wrote to the Applicant's attorney confirming a prior conversation between the Agency's Senior Attorney and the Applicant's attorney in which the Agency's Senior Attorney informed the Applicant's attorney that the Agency's Notice of Revised Application Completed of February 14, 2012 had been issued



in error and, for the same reason set forth in the letter dated April 16, 2012 from the Agency's former Counsel, the Applicant's proposed private airport could not be approved by the Agency. The Deputy Director's letter went on to say that, upon the Agency's receipt of either a use variance from the Town of Willsboro or a legal determination from the Town's Counsel stating that the proposed airport would be lawful under the Town's laws, the Agency would issue a new project completion notice.

August 1, 2013 – After the passage of more than a year since the Deputy Director's letter of May 30, 2012 noted above, the Applicant's attorney wrote back to the Deputy Director notifying him of the Agency's failure to mail a decision on the Applicant's permit application and demanding that the Agency render a decision.

**Points in Opposition to Applicant's Appeal:**

- 1) The Notice of Revised Application Completed issued by the Agency on February 14, 2012 was void and the Application was therefore never complete or eligible for a decision by the Agency and review deadlines did not apply.**

The Notice of Revised Application Completed issued on February 14, 2012 was premised in part on the Local Government Notice Form submitted with the application. That form indicated that the proposed airport would not be a prohibited use within the Town. However, information that the Agency subsequently received from the Town makes it clear that private airports are not an allowed use under the Town's zoning. This information is critically important because the Agency is statutorily prohibited from issuing a Permit where a proposed use does not comply with the zoning of a town, such as Willsboro, which has an approved Local Land Use Plan (APA Act 809(9)).

Due to the fundamental importance of compliance with local zoning for purposes of applying for a Permit and due to the erroneous information in the Local Government Notice Form, the Notice of Revised Application Completed issued on February 14, 2012 should be deemed void and of no effect. Consistent with such treatment, the Application would not have been eligible for review or decision-making by the Agency, no time limits would have applied for issuing a decision on the Application and no Permit or certificate would issue by default.

- 2) The applicant failed to timely appeal the Deputy Director's determination of May 30, 2012 that the Notice of Revised Application Completed was issued in error. The Application therefore could not be considered complete and Agency review was properly suspended.**

The Deputy Director's letter of May 30, 2012 confirms prior discussions between the Applicant's attorney and the Agency's Senior Attorney about the Agency's position that the Notice of Revised Application Completed was issued in error. The letter goes on to state that the "application cannot be considered

complete” and notes the additional information that would be necessary for the Agency to issue a project completion notice.

The Applicant suggests that, if only the Deputy Director's letter of May 30, 2012 had been sent via certified mail and worded a bit differently, the Applicant would have had notice of the Agency's action and would have appealed it. However, the Applicant's suggestion is disingenuous. The Deputy Director's letter clearly constitutes an appealable determination. It is certainly at least as much of an appealable determination as the Deputy Director's letters of August 9<sup>th</sup> and August 29<sup>th</sup> of 2013, which the Applicant promptly appealed and are under consideration in this proceeding. Furthermore, the Applicant does not deny receiving the Deputy Director's letter of May 30, 2012, which states in relevant part:

*As you and Senior Attorney Mitch Goroski previously discussed, this **Agency issued its February 14, 2012 Notice of Revised Application Completed for the Sunset Farm application in error.....***

*.....private airports are actually prohibited uses under the Willsboro zoning ordinance. Agency regulation 9 NYCRR 574.6 states that “The Agency will not approve a project which is a prohibited use under local zoning requirements and other local laws or ordinances.” Consequently, Sunset Farm's proposal cannot be approved by the Agency and **the application cannot be considered complete.***

***Upon receipt of either a use variance from the Town of Willsboro or a legal determination from the Town Counsel stating that the project would be lawful under Town laws, the Agency will issue a new project completion notice and will review your client's application.***  
(Emphasis added.)

Anyone reading the Deputy Director's letter, particularly an attorney representing the Applicant, would realize that the Agency had determined that Sunset Farm's application was incomplete and no longer under consideration by the Agency, despite the previous notification that the application was complete. Any applicant and any attorney representing an applicant would have obviously been put on notice by the Deputy Director's letter that there were significant issues surrounding the application and that the Applicant's rights and possible remedies should be explored immediately.

Nothing prevented the Applicant from appealing the Deputy Director's letter of May 30, 2012. Yet the Applicant failed to do so (though it did not hesitate to promptly appeal from the Deputy Director's subsequent letters of August 9<sup>th</sup> and 29<sup>th</sup> of this year). The substance of the Deputy Director's letter – that the application was incomplete and no longer under consideration by the Agency – would have been of critical importance to any applicant and warranted a prompt response from the Applicant. However, the Applicant allowed well over a year to pass before responding in any way. The Applicant clearly "sat on its rights" and let the time period for filing an appeal to expire. Having missed the opportunity to timely appeal the Deputy Director's determination, it appears the Applicant is now trying to assert a procedural loophole in an effort to obtain a Permit that the Agency would be clearly prohibited from approving. The Applicant's dilatory conduct in failing to timely exercise its right to appeal the Deputy Director's letter of May 30, 2012 should not be rewarded by the issuance of the requested Permit or certification.

- 3) The letter of April 30, 2012 from the Applicant's attorney must have been intended to extend to June 18, 2012 the deadline for the Agency to decide whether to hold a Public Hearing on the application.**

The Applicant's appeal papers attempt to suggest that the Applicant did not request or agree in the April 30, 2012 letter from Applicant's attorney to extend the deadline for the Agency to decide whether to hold a Public Hearing. The then-pending deadline was May 18, 2012, which would have required the Commissioners to decide at their meeting of May 17-18 whether to hold a Public Hearing on the application. However, the Applicant's letter of April 30, 2012 specifically asks that the application NOT be heard at the May 2012 meeting of the Board of Commissioners. The letter also agrees that the deadline for review of the application be extended to July 15, 2012, a date which fell after the Commissioners' July 12<sup>th</sup> meeting.

The Applicant could not have intended that the Commissioners be deprived of their rightful opportunity to decide whether to hold a Public Hearing on the application. Considering the Agency's 60-day and 90-day decision-making "clocks", the only logical conclusion is that the letter of April 30, 2012 from the Applicant's attorney impliedly agreed to extend the Agency's deadline to decide whether to hold a Public Hearing to June 18, 2012, thereby enabling the Commissioners to make a decision on this question at their meeting on June 14-15, 2012. However, the Deputy Director's letter of May 30, 2012 determining that the application was incomplete and suspending further review of the application made it unnecessary for the Commissioners to consider at their June meeting whether to hold a public hearing.

- 4) **The letter of April 30, 2012 from the Applicant's attorney evidences Applicant's request and agreement to extend the respective dates for the Agency to decide whether to hold a Public Hearing on the application and whether to approve the application.**

The Applicant's appeal papers try to suggest that the letter of April 30, 2012 from the Applicant's attorney simply made a request to extend the date for the Agency's review of the application and could not unilaterally extend the deadlines for Agency review. However, the letter of April 30, 2012 did not merely ask for an extension of time, it also explicitly agreed to such extension. By implication, it likewise evidenced the Applicant's request and agreement to extend the time for the Agency to decide whether to hold a Public Hearing, as noted in Point 3 above.

Furthermore, contrary to the Applicant's suggestion, Section 809(6)(b) of the APA Act does not require the Agency to provide written consent to an applicant's written request for an extension of time periods for Agency review. Rather, section 809(6)(b) simply requires the Agency's consent, without specifying that it must be given in any particular form. In its entirety Section 809(6)(b) states:

*Any time period specified in this section may be waived and extended for good cause by written request of the project sponsor and consent of the Agency, or by written request of the Agency and consent of the project sponsor.*

If the intent of 809(6)(b) was, as the Applicant suggests, to require written consent of both the Agency and sponsor to any extension request, it could have been written much more simply to state that extensions require a written agreement signed by both parties. The fact that 809(6)(b) does not require such an agreement and does not specify that the consenting party must express its consent in writing evidences the law's intent to allow an extension where the party requesting it does so in writing and other party has actual notice of the request and there is any indication of the other party's consent to the request. Thus, even the lack of a timely objection to a written request for an extension would constitute consent under 809(6)(b) where the request was properly made.

In this case, the Agency's consent can be construed from the context of the April 30, 2012 letter from the Applicant's attorney (referring to a prior conversation about the application with the Agency's Senior Attorney) and the lack of any responsive letter from the Agency objecting to the Applicant's request.

In light of Point 3 above and the Agency's evident consent to the Applicant's request to extend the dates for Agency decision-making on the application, it is clear that Deputy Director Weber's letter of May 30, 2012 was issued before the deadline for the Agency to determine whether to hold a Public Hearing on the application. The Deputy Director's letter advising the Applicant that its application

was incomplete therefore suspended the Agency's review and the deadlines by which Agency would have been required to decide whether to hold a Public Hearing or issue a determination on the application.

**5) The Agency must have an inherent authority to rescind a Notice of Completed Application.**

The Notice of Revised Application Completed was issued for the Applicant's proposed project on February 14, 2012. The Notice was based on erroneous information from the Town of Willsboro. Correct information from the Town's ZBA was subsequently received by the Agency. Logically speaking, the Agency must be allowed to consider correct new information if and when such information becomes available before the Agency renders a decision on a permit application. Unless such correct information can be considered, the Agency could be required to issue a permit approval even though the Agency is statutorily prohibited from doing so, as it is with the pending application.

Section 809(9) of the APA Act prohibits the Agency from approving a Class A regional project, like the proposed private airport, where the project would not be allowed under an Agency-approved Local Land Use Plan such as the Town of Willsboro Zoning Law. Fundamentally, the Agency cannot be bound by law to act contrary to law. The Agency must therefore have an implied or inherent authority in such circumstances to treat such an application as incomplete and suspend review pending receipt of new information establishing that the proposed use would be lawful.

**6) The Agency is statutorily required to deny the application regardless of whether the Willsboro ZBA notified the Applicant of the ZBA's consideration of the lawfulness of the Applicant's proposed airport under the Town's Zoning Law.**

As set forth in Point 5, the Agency has a statutory obligation to deny approval for the proposed airport because it would not be allowed under the Town's Zoning Law. The Town of Willsboro's ZBA made that determination on April 23, 2012 after being informed about the proposed project by the Town's Zoning Administrator. The ZBA is the body of the Town duly authorized to review decisions of the Zoning Administrator and interpret the Town's Zoning Law. As such, the ZBA is in a position of higher authority than the Zoning Administrator with respect to interpreting Willsboro's Zoning Law.

It is not relevant to the Agency's fulfillment of its statutory responsibilities whether the ZBA afforded the Applicant notice of the ZBA's intent to review the lawfulness of the Applicant's proposed airport. Whether the ZBA followed any necessary procedures in that regard has no bearing on the Agency's duty and responsibility under the APA Act to deny the permit application. The only thing that

should matter to the Agency is that the Agency received new information, issued by the authoritative body at the Town, confirming that the proposed airport would require a use variance under the Town's Zoning Law and would therefore not otherwise be a lawful use. Pursuant to Section 809(9) of the APA Act, the Agency must therefore deny the application unless the Applicant first obtains a use variance.

For all of the reasons stated above, we respectfully ask on behalf of the members of Braidlea Farms that the Commissioners deny the Applicant's appeal as well as its application for a Permit. Thank you for your consideration of this matter.

Very truly yours,

MILLER, MANNIX, SCHACHNER & HAFNER, LLC



Michael J. Hill

cc: Braidlea Farms, L.P.