

**RESOLUTION
HARPERSFIELD PLANNING BOARD**

**APPLICATION OF MOUNTAINTOP AIRFIELD, LLC
FOR SITE PLAN AMENDMENT**

DATE: May 29, 2024

WHEREAS, Mountain Top Airfield, LLC (the “Applicant”) submitted an application to the Town of Harpersfield Planning Board (“Planning Board”), for site plan amendment to add a new track on the site of its existing motorcycle training facility located on 134-acres of land located at 396 Zimmerman Road in the Town of Harpersfield (the “Property”) and to change and expand the land use activities taking place on the property (“Application”); and

WHEREAS, the Property was improved with a single family residence, a second building described as an airplane hangar, and functioning air strip or runway; and

WHEREAS, in 2011 the Planning Board granted site plan approval for a motorcycle training facility on the Property. The approval included the construction of a two (2) mile-long track described as a “motorcycle safety course” that would be used to instruct ten (10) to twenty-five (25) people, three (3) days per week, during daylight hours only. The 2011 application was approved based on these representations and the Applicant’s commitment that there would be no racing on the site and that automobiles would not be permitted on the track. A Negative Declaration was issued prior to approval which relied on these representations and certain other mitigation measures. The two (2) mile-long track was constructed in or around 2012 and is hereinafter referred to as the “Existing Track”; and

WHEREAS, the 2011 site plan approval was issued pursuant to Section 5.040 of the Town of Harpersfield Site Plan Review Law (Local Law No. 1 of 2006)(hereinafter, the “Site Plan Law”). The Site Plan Law requires site plan review and approval prior to any new land use activities or change in use is undertaken. “Land Use Activity” is defined as:

[A]ny construction or other activity which changes the use or appearance of land or a structure or the intensity of use of land or a structure. “Land Use Activity” shall explicitly include, but not be limited to, the following: new structures, expansion to existing structures, new uses, changes in or expansions of existing uses, roads, driveways and excavations for the purpose of extracting soil or mineral deposits. This shall include, but is not limited to residential structures, commercial buildings, residential or commercial accessory structures, signs, parking lots, communication towers, mines, roads and wind mills.

WHEREAS, the Town of Harpersfield Code Enforcement Officer (“CEO”) issued a written determination on September 12, 2012 confirming the scope of the Applicant’s 2011 site plan approval and was to the land use activities limited by the representations made by the Applicant; and

WHEREAS, the CEO issued a second written determination on January 11, 2013,

confirming a new site plan approval would be required before the Applicant could undertake any new land use activities or changes in the approved land use (i.e., a “motorcycle training facility”); and

WHEREAS, the CEO’s 2013 written determination also stated use of the Existing Track for racing events and large scale track events was outside the scope of the 2011 approval and would require new site plan approval; and

WHEREAS, in 2014, David Lubinitsky, on behalf of the Applicant and the purported operator of the motorcycle training facility, New York Safety Track, LLC (“NYST”) requested a written determination from the Code Enforcement Officer as to whether certain land use activities would require further site plan review. The CEO issued a third written determination on May 30, 2014, which determined in relevant part as follows:

- The continued operation of the track during daylight hours would not require further site plan review. This determination was made based on the express representation that the track “closes at or about 6:00pm or a little later and that “no evening activities using the track” were proposed.
- The continued provision of instructional sessions for motorcycles with a maximum twenty (20) riders or participants and five (5) instructors on the track at the same time would not require further site plan review.
- Operation of the facility two (2) to four (4) days per week would not require further site plan review.
- The use of automobiles on the Existing Track would require a new site plan approval. This determination was based on the CEO’s determination that the use of automobiles was not originally proposed so the Planning Board was not given an opportunity to evaluate whether automobiles (as compared to motorcycles) raised additional site plan issues such as site access, lighting, bathrooms, parking, noise, traffic and dust.
- The prior CEO’s determination that racing and large-scale track events were prohibited was reiterated.

WHEREAS, the CEO’s May 30, 2014, determination was challenged by neighboring property owners and was affirmed in a Decision of the New York State Appellate Division, Third Department (*Ballard v. New York Safety Track, LLC*, _____) as having a rational basis; and

WHEREAS, in 2015, the Applicant applied for a site plan amendment to construct a “storage building” on the property. The application representing the storage building was for personal use by the occupant of the single-family residence on the property and would not be used for commercial purposes or served by utilities. On December 30, 2015, the Planning Board approved a site plan amendment for construction of the new storage structure subject to specified conditions including the following: 1) the new storage structure shall not be equipped with

electricity or plumbing or served by any on-site or off-site water supply or septic/ wastewater disposal system; and 2) access to the new storage structure is restricted to those times with the Existing Track is not in active use; and

WHEREAS, in 2017, the Applicant applied for site plan approval to allow the use of automobiles on the Existing Track. The Planning Board determined it required the assistance of an acoustical engineer to assist with its review of the application and entered into an escrow agreement with the Applicant for this purpose pursuant to Sections 1.050 and 7.070 of the Site Plan Law. After several months of review, the Planning Board was forced to table the application when the Applicant would not permit its acoustic engineer access to the Property. A resolution tabling the Application was adopted by the Planning Board on November 29, 2017; and

WHEREAS, on July 27, 2022, petitioners appeared for a pre-application meeting to present a concept plan for a site plan amendment to construct and operate a “a go-cart track for children”. At that time, the applicant said there would be no change in hours of operation at the existing facility and no need to expand parking. On August 1, 2022, petitioners submitted an application for site plan review. The application recites a proposed “go-cart” track (hereinafter, the “New Track”) would be added to the site and that the amount of parking would remain the same. The application included a sketch plan that did not include the entire site or any existing conditions; and

WHEREAS, at the Planning Board meeting held on August 31, 2022, the Applicant was informed construction of a new track on the property would be classified as a Type I action and a Full Environmental Assessment Form (“EAF”) under SEQRA would be required due to the amount of physical disturbance proposed (confirmed verbally by the applicant engineer at the meeting) and the property’s location in a NYS Certified Agricultural District. The Planning Board also adopted a resolution to require the establishment of an escrow account to allow the Planning Board to engage legal counsel and a technical consultant to assist the board with its review of the Application;

WHEREAS, on October 19, 2022, the Applicant submitted a Full EAF to the Planning Board that described the action as the construction of a “Professional go-kart/ mini-bike track”. A partial Site Plan w/E&S Control (Sheet C102, dated 09/28/22) showing the area proposed for the New Track was included with the submission, together with a Project Narrative, Sound Study prepared by Ostergaard Associates (dated October 12, 2022), and an unsigned Agricultural Data Statement; and

WHEREAS, The Full EAF submitted on October 19, 2022, stated four (4) acres would be disturbed by the proposed action and, post-construction, the facility intended to operate seven (7) days a week and on holidays during “daylight hours”. The Full EAF noted there would be an increase of 1.4 acres of impervious surfaces post construction, and that there would be removal of 1.8 acres of forested lands and 0.3 acres of grassland/ brush (total 2.1 acres to be removed). The accompanying Project Narrative (the “First Project Narrative”) confirmed that expanded days of operation was being sought, and a change/ expansion of land use activities to include the use of automobiles on the Existing Track and proposed New Track; and

WHEREAS, on November 30, 2022, the Applicant appeared before the Planning Board and admitted clearing 2 – 3 acres of forest where the New Track was proposed in violation of the Town of Harpersfield Site Plan Review Law and NYS SPDES General Permit for Construction Activities. The Planning Board agreed to continue processing the Application on the condition the Applicant immediately cease and desist from engaging in activities that were part of the action being reviewed under SEQRA and the Town Site Plan Law; and

WHEREAS, the Planning Board also identified several substantive deficiencies and/or omissions in the application. At that time, the Planning Board acknowledged, while certain information may not be pertinent to the proposed action, it was explained that a full site plan showing all existing conditions and improvements had to be submitted, together with a proposed condition sheet detailing all new, proposed improvements. The Planning Board also requested that the site plan identify adjoining property owners and setbacks for existing and proposed improvements. Over the next several weeks, the Planning Board’s attorney sent regular correspondence to the Applicant’s counsel reiterating the need for a complete site plan and directing the Applicant to Section 3.030 of the Site Plan Law which includes a comprehensive list of site plan requirements; and

WHEREAS, from November from 2022 to March 2023, the Applicant submitted five different project narratives, a second revised Full EAF, and a second revised SWPPP with drawings that had been submitted to the NYSDEC showing a proposed new “parking area” that had not been previously disclosed. The Applicant was also made aware of social media posts that advertised the site as having a shooting range, with gun and ammunition sales, and shooting lessons taking place on the property; none of which was previously disclosed or approved by the Planning Board; and

WHEREAS, on March 6, 2023, a new revised Project Narrative (“Fifth Revised Project Narrative”) was received from the Applicant. In addition to other changes, the Fifth Project Narrative now maintains it will voluntarily limit the number of riders using each track to 20 riders and 5 instructors on each track, instead of 50 riders on each track that was proposed in the Applicant’s prior narratives. The Fifth Revised Project Narrative identified the proposed new land use activities and change of use on the Property as follows:

1. Proposed New Improvements

- Construction of a second, 0.7 mile 18’ wide asphalt mini-track (“New Track”), “and associated grading, paving, landscaping, drainage infrastructure and utilities”.
- Construction of a new 125’ by 175’ paved “staging area” for motorcycles and vehicles.

2. Proposed Change/ Expansion of Land Use Activities

- Expansion of the type of vehicles to be used on the Existing Track and proposed New Track to include all types, model and years of automobiles, go-karts, and dirt bikes, in addition to motorcycles.

- Holding racing events on the Existing Track and New Track. On peak days, the facility would accommodate up to 100 guests (which includes entire families).
- Racing and training on the Existing Track and New Track at the same time. There would be up to twenty (20) riders using the Existing Track and twenty (20) riders using the New Track at any given time (total 40 riders at once for racing events). When instruction is taking place, there would also be up to five (5) instructors on each track on each track at one time (total 50 riders and instructors at once when instruction is taking place).
- Expansion of operating hours to allow use of the facility from 9:00 am to 10:00 pm, with racing events and training occurring between the hours of 9:00 am and 6:00 pm, other “recreational” use of the track until 8:00 pm with the facility remaining open to guests until 10:00 pm.
- Expanding the days of operation from 2 to 4 days per week, to 5 to 7 days per week.

WHEREAS, on March 9, 2023, the Applicant delivered hard copies of the Revised Site Plan with revised Sheet C102 which included “operational conditions” that were proposed in the Fifth Project Narrative; and

WHEREAS, on March 10, 2023, a SEQRA Lead Agency Coordination Notice was sent to Involved and Interested Agencies. The proposed improvements and change/ expansion of land use activities were identified in the Notice and electronic copies of the most recent application documents were provided including: The Fifth Project Narrative (submitted March 6, 2023), the latest revised site plan set (submitted March 9, 2023), Part I of the third revised Full EAF (submitted December 2023), noise report prepared by the Applicant’s consultant, Ostergaard Acoustical Associates (dated October 12, 2022), and NYSDOT General Aviation Airport Certificate of Registration (submitted March 6, 2023); and

WHEREAS, on March 28, 2023, the Planning Board’s technical consultant, SLR Engineering Landscape Architecture, and Land Surveying P.C. (“SLR”) provided a report prepared by its acoustic engineer reviewing the report prepared by Ostergaard Associated which and submitted by the Applicant. SLR’s report concluded the Ostergard sound study “did not contain sufficient information needed to assess adverse noise impacts in the surrounding community, such as would be required as part of a State Environmental Quality Review (SEQRA) process.” SLR recommended that the Applicant conduct an ambient sound measurement survey in residential uses and noise impact assessment that accounts for New Track and expanded scope of uses on the Existing Track and proposed New Track; and

WHEREAS, on March 28, 2023, the Planning Board’s technical consultant submitted a second memo to the Planning Board reviewing the Applicant’s SWPPP. The report included general comments and recommendations relating to the content of the SWPPP, stormwater practices and requested additional information from the Applicant; and

WHEREAS, on March 29, 2023, several months after the Application was submitted, and the Planning Board made repeated requests for the information required under Section 3.030 of the Site Plan Law, the Applicant submitted a written request to waive certain site plan requirements; and

WHEREAS, on March 29, 2023, the Applicant's attorney appeared before the Planning Board to present the Fifth Revised Project Narrative and the Applicant's waiver request. As reflected in the meeting minutes, it was noted the Applicant was seeking to add racing events and to expand the days of operation to 5 to 7 days a week. Planning Board members commented that additional detail regarding the proposed hours of operation, lighting, and use of the on-site shooting range was needed. Regardless, the Planning Board then made a motion to proceed with a public hearing in April, "understanding that those concerns must be addressed before the hearing is scheduled"; and

WHEREAS, on June 9, 2023, the Applicant submitted new application documents, including: 1) an "abstract of the proposed new improvement and changes to the land use activities" for which site plan approval is requested, 2) McManus Engineering Group, LLC's May 9, 2023, response to comments regarding the Applicant's SWPPP contained in SLR's March 2023 SWPPP Review Memo, and 3) Ostergard Acoustical Associates' (Ostergard) Technical Memorandum dated May 16, 2023 responding to SLR's March 2023 Sound Study Review Memo. The new "abstract" stated "[n]o new uses or improvements have been added since the Applicant's most recent submission (March 2023 [the Fifth Revised Project Narrative])."; and

WHEREAS, the Planning Board proceeded to schedule a public hearing on the Application for July 26, 2023. Notice of the Public Hearing was sent to the Town of Davenport and the Delaware County Planning Board pursuant to N. Y. Town Law §§239-m and 239-nn. A copy of the public hearing notice and full statement of the application were also sent to property owners listed on the Agricultural Data Statement that was submitted with the Application; and

WHEREAS, on July 14, 2023, the Applicant's attorney submitted new documents for the public hearing on July 26, 2023, including an affidavit of Gregory Lubinitsky, as the "owner and operator of New York Safety Track". Then, on July 24, 2023 (two days before the public hearing), a new Site Plan Sheet C102 with revised operating conditions was submitted to the Planning Board together with a new SWPPP ("July 2023 SWPPP"). The revised operating conditions indicated the proposed New Track would only be used for mini-bikes and go-karts; and

WHEREAS, a public hearing was opened on July 26, 2023, and the Applicant proceeded to submit new application submissions to the Planning Board via hand delivery at the public hearing, including: 1) a second Affidavit regarding the on-site shooting range; 2) a written statement prepared by the Applicant's attorney; and 3) an "Updated Request to Waive Site Plan requirements"; and

WHEREAS, due to the myriad of new submissions by the Applicant and the tremendous public interest in the operations of New York Safety Track and its application for site plan amendment, the public hearing was left open and continued in August, September, and October. During the public hearing, members of the public made comments detailing specific concerns

including but not limited to comments regarding the potential for new and different noise impacts, community character impacts, increased traffic coming into and out of the facility, and impacts from stormwater runoff. It is noted the public hearings included a number of residents from the Town of Harpersfield, and neighboring Towns located in Delaware, Oswego and Schoharie Counties who commented that, due to the elevation of the Property and topography of the surrounding area, noise impacts from the proposed new and expanded activities would have far-reaching and widespread effects on the surrounding community; and

WHEREAS, on August 25, 2023, SLR submitted a report to the Planning Board entitled, “Acoustical Comments and Response/ NYST Noise Issues”. In the report, SLR recommended that the Planning Board “reject any requests to increase the number of days (per week)” the Existing Track and New Track may operate until “a comprehensive noise study is undertaken to quantify noise impacts from operation of the facility”; and

WHEREAS, similarly, SLR concluded a comprehensive noise study was needed to assess the potential impacts if racing events were permitted at the facility and that without this study, “there is no basis to conclude noise resulting from a change in scope to include racing on the new track and existing track will not be significant or adversely impact the environment or surrounding community”; and

WHEREAS, with regard to the proposed New Track, SLR concluded operation of the proposed New Track would not create the potential for additional or different noise impact if the track was operated simultaneously with the Existing Track, within the scope of its existing approval and if other specified operating conditions were adhered to; and

WHEREAS, on August 29, 2023, the Applicant submitted a map entitled, “Decommissioned Private Range”, dated August 27, 2023. An affidavit of Gregory Lubinitsky, as the owner and operator of New York Safety Track, stating: “The shooting range is defunct and permanently closed as of July 1, 2023.”; and

WHEREAS, by separate communication on August 29, 2023, the Applicant submitted two new affidavits, executed by David Lubinitsky as the owner and operator of New York Safety Track (collectively referred to as, the “August 2023 Affidavits”). The August 2023 Affidavits state: “Mountaintop Airfield, LLC has decided to minimize the scope of their proposed project in order to mitigate the need for further sounds studies”. The August 2023 Affidavits states the Applicant and New York Safety Track would adhere to certain operational controls for the proposed New Track, maintain the facility’s days of operation at 2 to 4 days a week, and “remove the proposal for racing events on either track”; and

WHEREAS, on September 27, 2024, members of the public commented that construction vehicles were observed entering and exiting the Property. The Town of Harpersfield Code Enforcement Officer subsequently requested and was denied permission to enter the Property. The NYSDEC conducted an inspection of the facility on October 13, 2023, and confirmed the Applicant had proceeded with construction of the proposed new track in violation of the SPDES General Permit for Stormwater Discharges for Construction Activities (GP-0-20-001); and

WHEREAS, on October 25, 2023, the Planning Board adjourned continuation of the public hearing and proceeded to schedule and hold special meetings on November 16, 2023, December 12, 2023, and January 18, 2024, to review the Application and Part II of the FEAF. During this time, the Planning Board also consulted with its technical consultants regarding issues related to potential impacts on land, surface and ground water resources, stormwater runoff, noise and community character. A third report by the Applicant's acoustical engineer, addressing proposed noise mitigation measures stated in affidavits submitted by the Applicant was provided to the Planning Board in December 2023; and

WHEREAS, the Planning Board also made repeated attempts to schedule a site visit when the facility was not in operation. The Applicant imposed conditions on any site visit, including the execution of a "Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement", that required each board member to indemnify and hold harmless unnamed promoters, racing associations, sanctioning organizations, officials, and a myriad of other unnamed parties, in addition to the track operators and owners, from loss or injury whether caused by the negligence of those parties or otherwise. A completed "Visitor Information Form" was also required, which called for the disclosure of personal information and confidential medical history. On the advice of counsel, the Planning Board members would not execute these forms and, therefore, were denied access to the site; and

WHEREAS, during its review of Part II of the Full EAF, the Planning Board identified several moderate to large impacts, but was left unable to complete its review based on correspondence from the Applicant's attorney indicating another change in the scope of the Application and the Planning Board's inability to access the Property for a site visit; and

WHEREAS, by letter dated January 26, 2024, the Planning Board requested that the Applicant submit an amended application that clearly articulated and confirmed what land use activities were proposed for the property. The correspondence requested that the Applicant provide a response to seven (7) specific questions concerning the Applicant's proposed activities; and

WHEREAS, the Applicant responded with a new submission, three days later on January 30, 2024. The Submission included a revised application, revised "Mini-Track Narrative", document entitled "Existing NYST Uses", new "optional lighting plan", emergency response plan (which had previously been requested by the Planning Board), and resubmissions of reports and affidavits that are already in the record including Ostergard Associates, October 2022 sound report, SLR's August 2023 memo to the Planning Board, and the one of the August 2023 Affidavits; and

WHEREAS, the Planning Board sent repeated requests to replenish the escrow account, but no funds have been provided since October 2023. The Planning Board proceeded with its review of the Application over several months in good faith despite the Applicant's repeated failure to fund the account that was established to pay the Planning Board's legal and technical consultants; and

WHEREAS, on March 6, 2024, the Applicant commenced a legal proceeding in Delaware County Supreme Court requesting relief compelling the Planning Board to take certain actions relevant to the Application; and

WHEREAS, on April 24, 2024, the Planning Board continued the public hearing on the Application and received additional comment from the public on the Applicant's latest submissions. The Planning Board determined at the April 24, 2024, meeting to leave the public hearing open for an additional two (2) week period, until May 8, 2024, so residents could submit written comments to the board. Additional written comments were received, and the public hearing was closed on May 8, 2024; and

WHEREAS, members of the public commented that the Applicant had posted a schedule online demonstrating its intent to operate the facility more than four (4) days per week during the 2024 season. It was also noted, based on personal observation and publicly available information posted online by New York Safety Track and the guests or clubs that use the facility, the Applicant intends to conduct or allow "racing" and camping on the Property. Members of the public also reiterated concerns about potential noise and traffic/ road impacts associated with the track's request for the proposed New Track and Expanded Scope of Uses on the Existing Track, safety concerns related to the shooting range on the Property; and

WHEREAS, members of the Planning Board have reviewed and confirmed information that is publicly available online corroborates comments received from members of the public and have made this information part of the record; and

WHEREAS, the Planning Board referred the Application to the Delaware County Planning Board on March 20, 2023, and conducted a second and third referral on October 26, 2023, and April 13, 2024 respectively. The Delaware County Planning Board responded to each referral and has recommended that the Planning Board deny the Application for site plan amendment; and

WHEREAS, the Town Board has discussed the application documents, technical reviews by the Town's consultants, comments that have been received from other agencies and the public, and information that is publicly available and part of the record. There were extended discussions of the Application and the Planning Board duly noticed and held two special meetings on May 16, 2024, and May 21, 2024, to review the standards the Planning Board must consider under the under the Site Plan Review Law; and

WHEREAS, after due deliberation, the Planning Board directed its' attorney to prepare draft findings memorializing its discussion of the standards set forth in the Site Plan Review Law for its review and consideration; and

WHEREAS, the Planning Board has duly considered all the materials before it and included in the record, and the determination and findings set forth herein.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE PLANNING BOARD OF THE TOWN OF HARPERSFIELD, DELAWARE COUNTY, NEW YORK:

The Planning Board hereby denies the Applicant's request for site plan amendment pursuant to Section ____ of the Site Plan Review Law as follows:

GENERAL FINDINGS

Compliance with SEQRA

Pursuant to SEQRA's implementing regulations, "[n]o agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQRA". 6 NYCRR 617.3. Actions that are classified as Type I Actions require the preparation of a Full EAF and coordinated review. The Planning Board must consider the "Action" as a whole and cannot engage in impermissible "segmentation", defined as "the division of the environmental review of an action such that various activities or stages are addressed [] as though they were independent, unrelated activities, needing individual determinations of significance". 6 NYCRR 617.2 (ah). Thus, SEQRA requires that the Planning Board consider the entire "action" and prohibits it from limiting its review to only the construction and operation of the proposed New Track, or any single component of the Application.

Findings: The Planning Board complied with the provisions of SEQRA by classifying the action as a Type I Action, requiring the preparation of a Full EAF, declaring its intent to act as Lead Agency, and initiating a coordinated review pursuant to 6 NYCRR 617.6. The Planning Board spent considerable time reviewing Part 2 of the Full EAF and identified several moderate to large impacts but did not proceed to Part 3 or issue a determination of significance. As set forth in more detail below, after due deliberation, the Planning Board has determined the Application must be denied as it does not meet the standards for approval under the Site Plan Review Law. Therefore, no further review under SEQRA is required.

The Applicant's Request to Waive Site Plan Requirements

Pursuant to Section 3.035 of the Site Plan Review Law, "[t]he Planning Board may elect to conduct a less intensive review for minor types of projects that do not generate significant, amounts of traffic, and or that have little or no potential adverse impacts to neighboring properties and uses, including agriculture." To do so, the Planning Board "may waive any requirements in Section 3.030 for the site plan submitted for approval." The Site Plan Review Law permits such waivers when the Planning Board finds "any requirements . . . not to be requisite in the interest of public health, safety or general welfare or inappropriate to a particular site plan." Any request for such a waiver, "must be made in writing to the Planning Board, must demonstrate that compliance would cause undue hardship, and shall be determined at the time of the sketch plan." The Site Plan Review Law requires "in no case shall a waiver be ore than a minimum easing of requirements and in no instance shall it result in any conflict with the adopted Town of Harpersfield Comprehensive Plan and shall not nullify the intent and purpose of the site plan review law." Site Plan Review Law, Section 3.035.

Findings: The Applicant did not submit a written request for a waiver therefore the Planning Board could not consider or grant any waivers at the sketch plan conference. On the contrary, the Planning Board informed the Applicant that a complete site plan showing existing and proposed conditions was required. The Applicant and its consultants were referred to the site plan requirements at Section 3.030 of the Site Plan Law on several occasions, and Applicant's representative confirmed

it understood the level of detail that was required. Thus, the Planning Board has already found a less intensive review is not warranted and that a complete site plan showing all existing conditions and proposed conditions is required in the interest of public health, safety or general welfare. On March 29, 2023, more than six months after the Application was filed, the Applicant submitted a written request for waivers. An updated waiver request was submitted to the Planning Board during the public hearing on July 26, 2023. On January 30, 2024, the Applicant submitted another waiver request and represented that certain requirements were “Waived as Per Sketch Plan Meeting”. This statement is false. The Site Plan Review law provides that the requirements of the local law “may not be waived except as properly voted by the Planning Board”. The Planning Board did not vote to waive any site plan requirements pursuant to Section 3.035 of the Site Plan Review Law.

On-Site Camping

The Applicant has repeatedly represented that camping is not permitted on the Property and that there is no overnight use of the facility. The 2011 Site Plan approval did not include on-site camping or overnight accommodations and the Applicant has not requested a site plan amendment to permit overnight camping or accommodations for overnight guests on the Property.

Findings: Overnight camping or accommodation for overnight guests remains prohibited on the Property.

On-Site Shooting Range

The Planning Board is aware the Applicant and/or New York Safety Track had advertised the sale of guns and ammunition on the Property, and that there was a shooting range on the property that was advertised as being available to paying guests by reservation. The advertisement stated a federally licensed firearms expert was available on the property and that the shooting range would be open to anyone looking to buy firearms, take a shooting class or “just have some fun on the range after the track day”. The 2011 Site Plan Approval did not include an on-site shooting range or land use activities that involved the sale of guns, ammunition and/or shooting lessons. The Applicant acknowledged there is a shooting range on the property but maintained it was only for personal use by the property owner. The Applicant then represented the shooting range was decommissioned in July 2023 and submitted a map entitled “Decommissioned Shooting Range”. The Applicant’s attorney confirmed on August 15, 2023, “[t]he shooting range is no longer in use and is not part of the site plan or even the project site anymore. “It’s defunct”. The Applicant has not requested a site plan amendment to permit a shooting range on the Property.

Findings: The construction and use of a shooting range remains prohibited on the Property.

FINDINGS AND WRITTEN DETERMINATION **DENYING THE APPLICATION FOR SITE PLAN AMENDMENT**

The Applicant requested a site plan amendment to allow the following uses on the Property which are not currently permitted:

- 1) Expansion of the type of vehicles to be used on the Existing Track to include all types,

model and years of automobiles, go-karts, and dirt bikes, in addition to motorcycles.

- 2) Construction of the Proposed New Track which it now purports to limit only to what has been described as go-karts, dirt-bikes and/or mini-bikes.
- 3) Holding racing events on the Existing Track and New Track. It was proposed that racing and training on the Existing Track and New Track would take place at the same time.
- 4) Expansion of operating hours to allow use of the facility from 9:00 am to 10:00 pm, with racing events and training occurring between the hours of 9:00 am and 6:00 pm, other “recreational” use of the track until 8:00 pm with the facility remaining open to guests until 10:00 pm.
- 5) Expanding the days of operation from 2 to 4 days per week, to 5 to 7 days per week.

Through various submissions, the Applicant has changed the scope of the Application on several occasions, the most recent amendment being submitted on January 30, 2024. In the January 2024 submission, the Applicant purported to limit the Application to “No use change, constructing small mini track with same use” which was described as “safety training for kids on go karts and mini bikes”. However, the submission also acknowledges an intent to keep the facility open to guests until 10:00 p.m. The January 2024 submission includes an affidavit, previously submitted in August 2023, which states the facility is open 2-4 days per week and that “[t]he site plan application proposes to maintain these same days of operation for both the existing track and proposed mini track.” The January 2024 submission states “no automobiles will be permitted to operate on the proposed mini-track” but is silent regarding the request to permit the use of automobiles on the Existing Track. The January 2024 submission states “the public will not have access to the proposed Mini-Track or otherwise be permitted to engage in racing thereupon”. There is no mention of racing on the Existing Track.

During the public hearing on the Application, members of the public commented that information available online conflicts with statements made in the Application documents and referred the Planning Board to information that is posted on the facility’s website and otherwise publicly available. The Planning Board has reviewed the facility’s website and other information that is publicly available relating to activities planned for the 2024 season and has included the same in the record of this Application. This information confirms the Applicant’s intent to operate more than 4 days per week and to allow the use of automobiles on the Existing Track. It is noted that some materials show events on the Property are being advertised as a “race” or “time trial”. Regarding days of operation, the facility’s own calendar conclusively demonstrates events are being planned up to 7 days per week, and up to twelve (12) days in a row. Publicly available information demonstrates events on the Property are being advertised on dates that are marked as “private” on the calendar.

It would be arbitrary for the Planning Board to disregard these facts and limit its review of the Application to one component of the Application (i.e., construction of the Proposed New Track). The Applicant has stated the days and times of operation will be the same for the Existing Track and proposed New Track. Therefore, the Planning Board must consider the Application as a whole,

including the request to expand the facility's days of operation from 2-4 days per week to 5-7 days per week.

For the reasons set forth below, following due deliberation and extensive consideration, the Planning Board hereby determines the Application does not meet the standards for site plan approval and hereby denies the Applicant's request to: 1) to construct and operate the proposed New Track and associated staging area; 2) to expand the days of operation to 5-7 days per week; 3) to expand the hours of operation to 10:00 p.m.; 4) to allow the use of automobiles on the Existing Track, and 5) to conduct racing on the Property.

The Town of Harpersfield Comprehensive Plan

The Site Plan Review Law requires the Planning Board to ensure compatibility between the proposal and the Town of Harpersfield Comprehensive Plan. The Comprehensive Plan contemplates that commercial growth must be done in a manner that compliments and enhances the existing small town and rural character of the Town, and in a way that does not negatively impact the environment. *See* Comprehensive Plan, Goal 10b (p. 66). To ensure that residential and commercial growth are compatible with the environment, it is a goal that negative impacts of new development be mitigated or eliminated.

The Site Plan Review Law implements the goals of the Comprehensive Plan. The Site Plan Review Law specifically provides, "[I]t is not the intent of this local law to prohibit per se any land use activity but to allow all land use activities which will meet the standards set forth in this local law. It is the intent of this article to promote and encourage good design standards, adequate site amenities and visual and physical qualities in residential, commercial, and industrial development." Site Plan Review Law, Section 1.030.

Section 5.040 Review Standards

The Planning Board has reviewed the standards for site plan approval at Sections 4.010 and 5.040 of the Site Plan Review Law, considered the Application as a whole as is required under applicable law and, for the reasons set forth below, hereby determines the Application, when considered as a whole, does not meet the standards for approval.

- (1) The location, nature and intensity of the use involved shall be such that it will be in harmony with the orderly development of the Town as proposed in the Comprehensive Plan, and the location and nature of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings.**

Based on the record of this Application, the Planning Board cannot conclude the location, nature and intensity of the proposed new improvements and expanded scope of land use activities proposed by the Applicant will be in harmony with the orderly development of the Town as proposed by the Comprehensive Plan. On the contrary, the evidence in the record demonstrates impacts of the Application as a whole cannot or have not been mitigated to ensure noise from the new and expanded scope of uses will not discourage the appropriate development and use of

property in the surrounding area. First it is acknowledged the facility is currently permitted to operate a motorcycle training facility on the Property and this use is part of the existing “baseline condition” that is not being reviewed as part of this Application. The Planning Board’s review is limited to the incremental impacts of the changes that are proposed by the Applicant as part of this Application, including the request to expand the days of operation from 2-4 days per week to 5-7 days per week. The Planning Board’s acoustic engineer has confirmed increasing the number of days the facility is in operation would result in track-emitted noise on days when no such noise should exist. Therefore, it was recommended that the Planning Board “reject any requests to increase the number of days (per week)” the Existing Track and New Track may operate until “a comprehensive noise study is undertaken to quantify noise impacts from operation of the facility”. The Planning Board accepts the rationale of its technical expert as set forth in SLR’s March 28, 2023, and August 25, 2023, reports to the Planning Board and determines the Application cannot be granted in the absence of a comprehensive noise study. The Applicant has stated it will not perform this noise study and has offered other mitigation, including affidavits representing certain operating controls will be implemented to “mitigate the need for further sound studies”. While it is acknowledged the Applicant has agreed to certain mitigation measures to ensure noise from the proposed New Track is drowned out by the Existing Track (i.e., running both tracks simultaneously), it has not addressed the impact of running the Existing Track (and New Track) more than the currently permitted 4 days per week. The only mitigation offered to address this impact is an affidavit of the purported facility operator attesting that the facility will limit its operations to 2-4 days per week. However, information that is publicly available demonstrates this is not true and, therefore, the representation in this and other Affidavits attesting the facility will maintain operations at 2-4 days per week has no mitigation value. Because the Planning Board cannot segment its review and only consider aspects of the Application, it must deny the Application as a whole. Operation of the facility at more than the currently permitted 4 days per week would result in the use of automobiles on the Existing Track and proposed New Track, in addition to motorcycle safety training, on days when the track is not currently permitted to operate. Members of the public have commented that expanding the number of days the facility is permitted to operate will exacerbate and increase the impact of noise from the existing facility. Several commentors have stated an expansion of the permitted use will result in an interference with the use and enjoyment of their property and discourage the operation and new development of residential and other non-residential uses in the area. The Planning Board finds the comments from residents regarding noise impacts to be credible and acknowledges these impacts have been reported not only by residents in Harpersfield, but in neighboring Towns as well. Thus, the decision to permit an expanded use of the existing facility will have a far-reaching impact beyond adjacent properties. While the existing facility has the right to continue operating within the limits of its prior approvals (and the representations upon which those approvals were based), the Planning Board hereby determines the proposed New Track and expanded scope of uses on the Property cannot be approved without the comprehensive noise study that is undertaken in accordance with the recommendation of the Planning Board’s technical consultant and the methodology outlined in SLR’s March 28, 2023 memo to the Planning Board.

(2) Existing streets are suitable and adequate to carry anticipated traffic generated by the proposed use and in the vicinity of the proposed use.

The Planning Board has received and considered comments from the public and the Highway Superintendents for the Townes of Harpersfield and Davenport relative to the existing streets that

provide access to the facility and the anticipated traffic generated by the proposed new improvements and expanded scope of uses proposed as part of the Application. During the Planning Board's review, it was noted that Parker Schoolhouse Road in the Town of Davenport receives a majority of the traffic coming into and out of the facility. According to the Town of Davenport Highway Superintendent, Parker Schoolhouse Road is a dirt road that was not designed for the amount and type of traffic that would be generated by this Application. Specifically, it was noted the road is in poor condition due to the heavy wear and tear that it has already experienced during ten years of the existing facility's operation. It was noted there are many heavy vehicles that use the road on a daily basis to get to and from the Property, including campers and trailers pulling automobiles and motorcycles. It was also noted the Applicant had already commenced construction of the proposed New Track, resulting in construction generated traffic that was noted during the public comment period. The result has been heavier than normal wear and tear on the road. The road is a dirt road that has had oil and stone applied to portions to keep the dust under control, but significant repairs are needed. It was noted the shoulders of the road are deteriorating causing the roadway to break up and this is indicative of impact from heavy vehicle traffic. It was also noted Parker Schoolhouse Road is one of many roads that are in need of repair in the Town of Davenport and the Town has limited resources. David Lubinitsky himself noted during the public comment period, that Parker Schoolhouse Road was "not built properly" but disclaimed any responsibility for its condition or needed repairs. The Planning Board finds the Application, which includes an expansion of the facility's operation from 2-4 days per week to 5-7 days per week, would inevitably result in more traffic on Parker Schoolhouse Road than was originally envisioned when the facility was permitted in 2011. There is evidence in the record that the road is not adequate to handle this increase in traffic. Therefore, the Planning Board cannot say the existing roadway is suitable and adequate to carry the anticipated traffic generated by the expanded scope of use.

(3) The proposed use will not be detrimental to personal safety within the area, the natural characteristics of the site or area, and present surrounding uses.

For the reasons set forth in Number (1) and (2) above, the Planning Board determines the proposed new improvements and expanded scope of uses will be detrimental to the natural characteristics of the area and present surrounding uses, including adjacent and surrounding lands and local roads. With regard to personal safety, it is noted members of the public have commented that automobiles entering and exiting the facility speed and/or drive hazardously on local roads. However, the Planning Board has maintained that speeding on local roads is outside the scope of its site plan review authority and is within the jurisdiction of other local officials/ agencies. As such, the Planning Board makes no findings as to whether such activities are detrimental to personal safety within the area. Similarly, with regard to the shooting range on the Property. The Applicant has represented the shooting range has been decommissioned and is now "defunct" and will no longer be used. Therefore, its use will remain prohibited on the Property and should not propose any detriment to personal safety within the area.

(4) The general standards under Section 4.010.

See discussion below.

Section 4.010 - Review Standards

- 1. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs. Structures that are visible from public roads shall be compatible with each other and with traditional structures in the surrounding area in architecture (including but not limited to roof style and facades), massing and placement, shall harmonize with traditional elements of the area; and shall avoid features such as flat roofs, large expanses of undifferentiated facades and long plain wall sections. Architectural design shall be in keeping with the small-town architectural character of the area. Exterior lighting fixtures shall minimize glare and use design features such as, but not limited to, fully shielded fixtures to prevent light from shining directly onto neighboring properties or public ways. Structures should be optimally placed to protect important viewsheds.**

It is noted there is no proposed change in the location, arrangement, size, design and general site compatibility of existing buildings as part of this Application. While the proposed New Track is a structure, there is no evidence in the record that it will be visible from the public road. However, based on the site plan, it is apparent the proposed New Track is being constructed near the property line in an area that had previously been forested. Although a proposed new berm with landscaping is proposed along that property line, it is not clear to what extent these improvements will shield the appearance of the New Track from the adjoining property. Similarly, the Applicant has maintained there is no existing exterior lighting on the site and, until January 2024, had proposed that there would be no new exterior lighting as part of the Application. The January 2024 submission states as follows: The site does not include any outdoor lighting of the track or other areas. Members leave once daylight hours are over, which is often well before 10:00 p.m. There is no overnight use of the facility. An optional lighting plan is included implementing solar lights if the planning board believes lighting is necessary, which for the past 13 years it has not been". It is presumed the Applicant has included an "optional lighting plan" in connection with its request to expand the hours of operation to allow "recreational use of the track" until 10:00p.m. and then use of the facility grounds for "grilling and socializing" until 10:00 p.m. The plan shows the proposed location of "solar lights" along the existing driveway and parking lot within the Property and spec sheets for the light fixtures are provided. The spec sheets describe the lights as "flood lights" that do not appear to be downward facing or designed to minimize glare. In fact, there is no indication in the record that the proposed light fixtures are designed to prevent off-site impacts or light pollution.

- 2. Adequacy, arrangement, and compliance with the Town Driveway Regulations of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls, and adequacy of snow storage and ease of snow removal. The Town Planning Board shall forward these plans to the Road Review Committee, who shall review these proposed plans within the time frames established in the Site Plan Review process.**

The Application does not propose the construction of a new driveway and the facility only operates during the months of May through October, making snow removal and

snow storage unnecessary.

3. Location, arrangement, appearance and sufficiency of off-street parking and loading.

The Application documents state, on peak days, the facility would accommodate up to 100 guests (which includes entire families) and that the existing parking lot, which can accommodate up to 150 vehicles, is sufficient for the proposed expanded scope of use. With regard to the proposed New Track specifically, it is noted the Applicant has represented the new track will be used by children and that these children will be accompanying adults who have reservations to use the new track. Therefore, the Applicant maintains no additional traffic or parking needs would be generated by the construction of the New Track itself. However, when the Applicant was asked to confirm if separate or additional track days or events would be held on the New Track, including Motocross Events, Kart Racing Events or Track Days for mini-bikes and go-kart riders, no response was provided. In addition, there is nothing in the record to confirm the track would not permit a child to use the proposed New Track unless they were accompanied by a parent with a reservation to use the Existing Track, and no explanation is given as to how the Town could ensure such a condition was being adhered to. It is also noted that information available online claims: “The Member Track Days will be completely different from your regular 150 person track day”. Moreover, the proposed new “Staging Area” next to the New Track was originally identified as a parking lot in submissions to the NYSDEC. Regardless, the inclusion of this feature indicates additional room is needed for “parking” or the “staging” of vehicles. However, based on the information in the record, the Planning Board is unable to confirm what is proposed is “sufficient” for the proposed new and expanded uses.

4. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.

There are no designated pedestrian access or walkways shown on the Site Plan and none are being proposed as part of this Application. It is noted that access to the storage structure that was approved in 2015 is restricted to those times when the track is not in active use to ensure pedestrian safety. No change to these conditions is proposed as part of this Application.

5. Adequacy of stormwater and drainage facilities.

A Stormwater Pollution Prevention Plan (SWPPP) has been prepared for the Project which includes post-construction stormwater controls and sedimentation and erosion control measures to limit impacts from stormwater runoff. The Planning Board’s technical consultant has reviewed the SWPPP, and the Applicant has incorporated recommended revisions. As such, the Planning Board finds the stormwater management features and treatment practices described in the SWPPP are adequate.

6. Adequacy of water supply and sewage disposal facilities.

In 2011, it was represented there were two (2) wells, two (2) septic systems, and six (6) full bathrooms located on the Property between two (2) then-existing buildings on the site; a private

residence and an airplane hangar. No new water or wastewater improvements were proposed, and it was represented that there would be portable toilets for students if necessary. No information has been provided as to whether portable toilets are necessary and there are none shown on the proposed site plan. As noted above, there is conflicting information in the record regarding the number of additional people on-site that could result from the new improvements and expanded scope of uses that re proposed as part of the Application. It is noted the FEAF submitted with the Application states there will be 500 gallons per day of sanitary wastewater generated by the Application. However, there is no explanation provided as to whether existing septic systems the Property have the capacity to treat this waste. Therefore, the Planning Board is unable to conclude the existing on-site water supply and sewage disposal facilities are adequate for the proposed new and expanded scope of uses.

- 7. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation. Landscaping shall be an integral part of the project area. To the extent practical, existing trees and other vegetation shall be conserved and integrated into the landscape design plan. Landscaping shall buffer incompatible uses such as large-scale commercial uses and residences.**

The Planning Board notes the Applicant cleared approximately five (5) acres of trees while this application was under review, in violation of applicable state and local law and regulations. This 5-acre forested area was cleared to accommodate the construction of the proposed New Track in an area that is located in close proximity to a neighboring property line. The area that was cleared is located between the Existing Track and adjoining lands, and therefore, would have been considered a buffer area between the Existing Track and neighboring land uses. The record is devoid of any information or analysis demonstrating the track could not be built in another area of the Property that would have required less tree clearing. In sum, the Application demonstrates there has not been "maximum retention of existing vegetation" and that additional noise generating improvements are not proposed in an area that had previously been identified as forested buffer. As noted previously, although a proposed new berm with landscaping is proposed along that property line, it is not clear to what extent these improvements provide an adequate buffer between the proposed New Track and adjacent land uses.

- 8. Adequacy of fire lanes and other emergency zones to provide emergency access to structure(s) and the provision of fire hydrants if necessary.**

The Planning Board has reviewed and considered this factor and believes adequate access for emergency service providers is provided.

- 9. Protection of adjacent or neighboring properties against noise, glare, unsightliness or nuisances.**

See discussion in response to Section 5.040(1), Section 4.010 (1) and (7) above.

The Planning Board cannot determine, based on the information in the record, that adjacent properties will be protected from noise or glare resulting from the Application. The Planning Board's acoustic engineer has confirmed increasing the number of days the facility is in operation

from 2-4 days per week to 5-7 days per week would result in track-emitted noise on days when no such noise should exist. Therefore, it was recommended that the Planning Board “reject any requests to increase the number of days (per week)” the Existing Track and New Track may operate until “a comprehensive noise study is undertaken to quantify noise impacts from operation of the facility”. Similarly, SLR concluded a comprehensive noise study was needed to assess the potential impacts if racing events were permitted at the facility and that without this study, “there is no basis to conclude noise resulting from a change in scope to include racing on the new track and existing track will not be significant or adversely impact the environment or surrounding community”. The Planning Board accepts the rationale of its technical expert as set forth in SLR’s reports to the Planning Board and determines the Application cannot be granted in the absence of a comprehensive noise study. While it is acknowledged the Applicant has agreed to certain mitigation measures to ensure noise from the proposed New Track is drowned out by the Existing Track (i.e., running both tracks simultaneously), it has not addressed the impact of running the Existing Track (and New Track) more than the currently permitted 4 days per week. The only mitigation offered to address this impact is an affidavit of the purported facility operator attesting that the facility will limit its operations to 2-4 days per week. However, information that is publicly available demonstrates this is not true and, therefore, the representation in this and other Affidavits attesting the facility will maintain operations at 2-4 days per week has no mitigation value.

It is noted the Applicant has offered to have a “web camera” installed so the Town could designate an individual to monitor the track’s activities and confirm if it is operated both tracks simultaneously. However, the Town does not have the staff or resources to assign an individual to monitor the track’s activities and ensure operational controls are being implemented. Regardless, a web camera does nothing to mitigate noise impacts arising from an increase in the days of operation. The use of a remote sound meter on the Property was also proposed by the Applicant, however, the Planning Board’s technical consultant has opined monitoring devices are of limited value unless there is an established noise criteria which would require a detailed noise impact study.

Regarding the Applicant’s request to extend the hours of operation, neighboring residents have also expressed concerns that the resulting noise associated with “recreational use” of the tracks until 8:00 p.m. and “grilling and socializing” until 10:00 p.m. will negatively impact the use and enjoyment of their properties. Glare from any exterior lighting and cars entering and existing the facility until 10:00 p.m. have also been identified as a concern. Based on the testimony of residents and information in the record indicating how the Applicant intends to use the facility after track operations cease at 6:00 p.m., the Planning Board cannot conclude that neighboring property owners will be protected from noise and glare.

10. Protection of solar access on adjacent or neighboring properties.

The proposed new and expanded activities that are being reviewed as part of this Application are not expected to have an impact on access to adjacent or neighboring properties.

11. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.

The area where new improvements are proposed has not been identified as an area susceptible to

ponding, flooding or erosion.

12. Overall impact on the neighborhood including compatibility of design consideration.

For the reasons set forth herein, the Planning Board determines the Application would have a negative impact on the neighborhood and therefore, should not be approved.

13. Special attention to the adequacy and impact of structures, roadways and landscaping in areas of steep slope and along ridgelines.

The area where new improvements are proposed has not been identified as an area with steep slopes or along ridge lines. It is noted, however, that the location of the Property in relation to the surrounding topography results in far-reaching noise impacts. The Planning Board notes that the public hearing was attended by numerous residents from neighboring Towns who commented that noise from the Property travels a great distance and affects the use and enjoyment of property beyond the lands that immediately adjoin the site. The Planning Board finds these comments to be credible and refers to its responses above and the conclusion that a comprehensive noise study must be conducted before the proposed new and expanded uses on the Property can be approved.

WHEREUPON, this Resolution was declared adopted by the Planning Board of the Town of Harpersfield:

The motion was moved by_____.

The motion was seconded by_____.

The vote was as follows:

AYE:

NO:

ABSENT: