

An Analysis of the Special Events Venues (SEV) Subcommittee Report

Summary

The Special Events Venues (SEV) Subcommittee Report released in December 2018 mischaracterizes and misrepresents the process that unfolded and outlines a series of erroneous assumptions and conclusions. It captures what can only be described as an alternative reality to the one experienced by several committee members.

The Report's most flagrant misrepresentations include the suggestions that data and factual information was presented to and analyzed by the Subcommittee members and that the group came to a consensus on a number of issues. The following is a brief list that more accurately represents what happened:

- No data was presented by town officials that demonstrated a need for creating legislation to manage an influx of SEV in Marbletown
- No research, statistics or analysis was provided by town officials on how SEVs would positively affect the town
- No data or analysis was performed by town officials on any of the issues surrounding SEV (such as noise, public safety or effects on the environment) that were outlined in the presentations

In addition, the Report misrepresented the information that the town used as evidence to justify SEV, including:

- Misconstruing NYS laws regarding agritourism
- Misconstruing NYS definitions, guidelines and recommendations surrounding marketing ventures (ie, SEV) and land use for agricultural districts

The Report also misrepresents its analysis regarding SEV zoning laws in neighboring Towns (the report cites towns *not* included in the Subcommittee information packet of local legislation). It also does not acknowledge original research that was created regarding the impact of SEV on property values and the local economy (neither were shared with Subcommittee members after they were told it would be).

In regards to zoning and SEV, the most contentious issue of each meeting, various Subcommittee members urged the chair to thoughtfully analyze the proposed zoning changes that would allow SEV in residential zones, preferably starting with areas more conducive to SEVs (ie, business districts). This never happened. Consequently, the main focus of the current legislation on farms and business districts was never fully discussed in public or by the committee.

Finally, and perhaps most troubling, the Report blatantly disregarded the vocal and valuable contribution and engagement of local professionals and residents who vigilantly attended the public meetings and attempted to offer input throughout.

Overview

What follows is an analysis of 7 issues that were erroneously presented in the SEV Report. This Report was presented by Subcommittee Chair Dan Proctor to the town's PZC in December 2018. The PZC were instructed by the Supervisor to use the Report as a reference for making recommendations to town board members regarding SEV legislation.

1. "There is a Demand for Events in Marbletown" The Reality of Requests

The SEV Report asserts: "Over the past several years there has been an increasing demand for special event permits to allow local citizens to hold recurring for-profit events on their land in Ulster County." This statement was complicated by the fact that the town consistently confused family events with for-profit weddings. Rich Parete repeatedly alludes to events in Marbletown dating back "40 years," yet failed to say that that these most likely were family, not commercial, affairs.

Several Subcommittee members continued to question the Chair and officials. Yet the town was never able to offer a clear or compelling rationale or exact number of SEV requests that would lead to changing existing residential zoning codes to allow SEVs.

Many findings, in fact, contradicted the position. Initially, it was argued that the Town was receiving many requests for SEV and that there was an overwhelming support for wedding venues in Marbletown and neighboring townships. However, the Town was able to identify only one formal request (by a NYC speculator) to hold commercial events in a residential district.

Given that no facts were presented for demand or need for SEV legislation, the question arose: Why change Marbletown zoning laws? The impetus for the proposed zoning changes may actually stem from the Town's legal challenge to an events venue on Mill Dam road. Since Town code did not include "wedding" venues, zoning officials were forced to uphold the appeal after a long process and significant public opposition. The case effectively nullified the legal basis of commercial wedding operations. Consequently, the new legislation Local Law XX (2018) is purported to reflect town consensus and recommendations regarding SEV; this is false. Thus, the proposed law is not based on any needs assessment, local zoning trend or concern for balanced economic development; rather it was intended to provide cover for legal errors made by the Town that persist to date.

2. "Other Towns Have Events" The Zoning Laws in Neighboring Towns

While Subcommittee members were given zoning laws in neighboring towns regarding SEVs, they were never discussed or analyzed. Yet in an independent review of the laws, overall, zoning supportive of SEV in residential areas is an exception, NOT the rule.

The Report references zoning laws in the Communities of "Hyde Park, Rochester, Union Vale, South Paul", however, this was not the original list presented to committee members. In addition, the Town of South Paul does not exist. The Report may have meant Southold, a town not akin to Marbletown; rather it has over 20,000 people and is located in Suffolk County on the North Fork of Long Island. Meanwhile the Report ignores townships closer to Marbletown in

terms of location and history such as Hurley and Rosendale. It also fails to report the Chair's findings regarding a meeting with officials from the village of Rhinebeck, a town more similar in rural quality and demographic as Marbletown (however, the former has developed a more robust retail community in its town center). While zoning laws regarding SEV varied throughout the original list of town's provided, allowing commercial events in residentially zoned areas was not the norm.

3. "Events Will Bring Tourism Dollars": The Weak Case for Agri-tourism and SEVs

Another pro-SEV argument presented by the Town is that it is a way to tap into NY state's growing agri-tourism sector. To date, SEV are not explicitly defined as agri-tourism and the full impact of SEV on the sector is not fully understood. Some early data suggest that the SEVs exacerbate economic disparities, pits locals against visitors and create endless nuisances (such as noise and public safety issues), as well as lawsuits.ⁱ Other areas of agri-tourism, not involving SEV, have been successful and less controversial.

As evidence for the Town's position, the SEV Report cited a document "Audit of the Marbletown Zoning Law prepared by Katherine Daniels of the NY Planning Federation (which is contained as an appendix of the Federation Plan.)" This document was never publically presented or discussed at Subcommittee meetings, yet focuses on agri-tourism. This document does state that the "Definitions for agricultural uses and agricultural lands should be consistent with, and reference New York Agriculture and Markets Law Section Section 301 (11)."ⁱⁱ

State and local laws explicitly define agri-tourism as well as the local and state zoning laws regarding land use. Combined existing laws forbid commercial weddings. Daniels suggests including other activities in the definition of *Agri-tourism*, that were never specifically discussed with Marbletown residents such as "u-picks, CSAs, road stands, orchards, maple sugar shacks, cideries/distilleries/wineries/ craft breweries, greenhouse operations, corn mazes, hay rides, pumpkin patches, seasonal events, school programs, weddings and parties, farm markets, bakeries, farm stores and restaurants, bed and breakfasts, and farm stays."

This extensive list of activities was never addressed by the Subcommittee. Town residents (numbering 50+ at each meeting) frequently suggested that other more compatible farm-based initiatives should be promoted. The range and relative value of other more suitable options were never comprehensively explored. Yet many residents, planners and other professionals maintained that other means of tourism could ensure a more equitable form of economic development, with fewer negative economic impacts and without creating a community-wide nuisance.

Additionally, existing research argues that weddings can detract from and even undermine other types of more productive tourism where benefits may be more broadly distributed. In general, there are few details specifically on the economic value of agri-tourism relative to other forms of tourism or its broader impact.

Worse, lawsuits concerning SEV are increasingly common. In fact, the SEV Report overlooks articles submitted to the committee about recent lawsuits concerning nearby commercial weddings in Hurley, NY as well as an analysis of over 16 randomly selected legal cases across the USA where towns and neighbors sought legal recourse in response to commercial weddings. Importantly, 13 (81%) of the cases reviewed involved farm-based weddings. In nearly all of the cases the wedding venues were forced to close down, after significant legal expenses to the town.

Additionally, the Subcommittee Report states “Reviewing NYS Agricultural Land Use Directives the committee learned that the state supports select SEVs to conserve farm lands with appropriate controls.” (p.6). However, in an email sent to Town Supervisor it was clearly outlined that the town had sought guidance from the NYS Dept. of Agriculture and the mandate it received was clear:

“The event must be tied in with the sale of product grown on the farm”

The guidance also directed the town to the following document:

<https://www.agriculture.ny.gov/ap/agservices/guidancedocuments/305-a-Winery-Distillery-Guideline.pdf>

One relevant excerpt on Marketing Activities (e.g., wedding receptions, parties and special events) from this document concludes:

The Department has concluded that on-farm wedding receptions, parties and special events (e.g., harvest festivals or distillery, brewery, cidery and wine tastings), including charitable events, held at farms which market their crops as wine, beer, cider and distilled spirits, help market the farm operation’s product. These activities are evaluated on a case-by case basis to determine whether they are protected as part of the farm operation. The Department interprets AML §301(11) to include such receptions, parties and special events held on-farm as part of a farm operation under certain conditions. The events, whether public or private, must be: 1) directly related to the sale and promotion of the beverage produced at the farm (from at least 51% on-farm produced grain, hops, grapes/fruit/juice); 2) incidental and subordinate to the retail sale of the beverage on-site; 3) hosted by the farm or customers of the farm (not outside, unrelated parties); and 4) feature the beverage produced at the farm (from at least 51% on-farm produced grain, hops, grapes/fruit/juice).

The Department considers events to be “incidental” only when the gross annual sales from the non-beverage portion of event sales (including any facility rental/vendor fees, admission fees, catering charges, sales of other alcoholic beverages, etc.) does not exceed 30% of total gross sales from the retail sale on-site of the beverage produced at the farm (from at least 51% on-farm produced grain, hops, grapes/fruit/juice) at such events, plus the retail sale of any other crops, livestock or products or beverage-related food products (produced on the farm) that may be sold at such events.⁶ All products must be sold at a cost no higher than the current retail price of such products sold at the farm.

Farm operations must keep sufficient records to prove that this requirement is met. Further, local governments can require the farm to submit an annual report to the locality showing that these conditions have been met.

The carve-out for Ag clearly follows NYS AG rules regarding the sale or service of food to the public with the exception of the following:

On land used in agricultural production, the sale or service of food products composed primarily of ingredients produced on site; or On land used in agricultural production that maintains a winery or farm winery license issued by the New York State Liquor Authority, the sale or service of food items which customarily complement wine tastings and that are ordinarily consumed while standing or walking and without the need for utensils.

It also noted that:

Occasional events on private residential properties hosted by the owner thereof to celebrate family events, holidays, charitable or other not-for-profit fundraisers; however, any use of residential property for profit, such as a venue for weddings or other events, is prohibited.

Clear definitions for eligible farms are critical as elsewhere in New York State, such as the Town of Cazenovia, NY, residents have said they believe they were misled by efforts of one farm, for example, to operate as a farm winery, not an event facility.ⁱⁱⁱ The events venue permit was eventually denied.

As a way around NYS guidance, in December 2018 the Town introduced Local Law 2, creating a new celebratory events category that tried to radically change the activities permitted on farms. This wording was inserted and a clear attempt to push the events agenda and subvert transparency. The Ulster County Planning Board unanimously rejected the proposed law.

Curiously, the referenced document by Daniels and Franz also warns that “Generally smaller rural communities “overzone” for commercial development within their boundaries by zoning land for commercial development far above and beyond what their population can economically sustain, or even desire.”^{iv}

Without some sort of build-out study or analysis of eligible land or an economic impact study it remains unclear whether the proposed law is economically sustainable or is likely to “overzone” for commercial development. Town residents and a subcommittee member were eager to use existing data to analyze the number of properties eligible for SEVs based on stated requirements, be it 25 acres in residential areas, agricultural districts, or on active farms. Tracey Dewart submitted information at meetings and offered to run data for any relevant criteria. No requests were made for the data and factual findings that were submitted to the Subcommittee were never posted as promised on the Town website.

4. “SEV Generate \$\$\$ and Jobs” The Reality of SEV Economics

The Town has presented SEV as a positive economic force for tourism. The Chair of the Subcommittee requested a preliminary economic study that was neither reviewed, nor posted on the Town’s website (as promised). The meeting when the study was to be presented was

abruptly closed to the public. The preliminary analysis indicated that the financial toll on the town and most taxpayers would be huge relative to the benefits to a handful of businesses.^v

In this last public meeting, the committee chair also changed the group's mandate to exclude the economic impact and then inaccurately reported "the public present at the meetings strongly believed that Marbletown should first consider the economic benefits of allowing SEVs into the community before the details of the regulations could be developed." Dan Proctor, the Sub Committee chair, unequivocally stated at the third meeting on July 19th, 2018 that the economic impact had to be understood prior to further discussions and it was at his request that a preliminary economic analysis was done by Tracey Dewart.

in terms of economic impact, it is disingenuous for the SEV Report to identify a need to "Determine real facts about the impact SEVs have on property values" when there is extensive information documenting significant depreciation. Financial planner, local resident and public official Doug Adams had completed and presented that specific analysis at the PZC Subcommittee meeting in June 2018. His findings reflect research conducted by professionals in the real estate industry and land planners. Sources such as The Appraisal Institute, RISMedia, a real estate outlet, and other real estate and planning journals, indicate that noise nuisances can depreciate property values by 10-40%. Adams submitted a noise impact report that placed the numbers at around 11-18% yet noted that home adjacent to loud noise are likely "unsellable." He concluded:

Carried to its logical conclusion, an open air events venue in residential areas poses clear downside financial and political risks to both the Town and the Rondout Valley School District that have not to date been neither anticipated, let alone appreciated. It is neither the role nor the responsibility for citizens' action committees or kindred groups to draw attention to the glaring lack of a cost-benefit analysis that would normally form the basis of an informed Town decision on the matter of staging outdoor event venues in residential districts that hold the distinct probability of lowering property values of adjacent homeowners. This is the role of responsible government. That role has yet to be demonstrated by our newly elected officials.^{vi}

Again, the Town Board and Dan Proctor had agreed to make this report available to the public but to date have still not done so.

5. "Events Are in Line with Town Plans" Arriving at False Conclusions

Certain statements in the SEV report are simply false and a misrepresentation of the process that unfolded, which culminated in the following unfounded conclusion:

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

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

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

On the contrary, public statements, newspaper articles, and research submitted for the record consistently suggested that such legislation could undermine every one of these goals. The participants that wrote those planning documents, as well as a local professional planner Matt Rudikoff, hired to review those documents, concluded the *exact opposite* and stated so in public forums. Committee members specifically commented that most of these planning documents were completed with no consideration of commercial weddings did not gain popularity until recently.

To date, many local officials, professional planners and the public maintain that SEVs largely violated the Town's Comprehensive Plan, as well as many other plans. Those plans support moderate and, in general, low-impact economic development that strengthens the two hamlets of Stone Ridge and High Falls as focal points for activity in the Town. Meanwhile, plans warn against large commercial businesses that impact the rural and undeveloped character of the Town. This includes concerns for the capacity of smaller country roads to handle the speed, volume and weight of traffic. Given traffic, public safety, and the potential noise and air quality impacts, it asserts: "Uses incompatible with the nature and intended use of town roads should be prevented." Proposed zoning changes direct development to areas previously identified by the Marbletown plan 2005 as inappropriate for growth and business development.^{vii} Several towns that embraced event spaces are now reversing course specifically because the sector has altered the rural and local character of towns and created nuisances too difficult to mitigate.^{viii}

Similarly, the SEV Report claims: "While the charter allowed time to examine the guidance available that supported the SEV use, the goal of the group was not to determine if the local zoning code should include a SEV use, but to review and improve existing SEV draft legislation. "

6. "Events Will Help Our Farmers" The False Narrative of SEV Protecting Farmland and Stopping Development

The SEV Report indicates a shift in thinking that occurred post Subcommittee meetings: It suggests moving away from SEV in residential areas to agricultural districts under the guise that SEV will help farmers and protect farmland that might otherwise be developed. However, the definition of NYS Agricultural Districts often includes residential neighborhoods, so the agriculture option is deceptive unless clarified. The Report refers to agriculture districts yet there are only residential district in Marbletown that also happen to be in New York State Agricultural Districts.

Among the Report's many unfounded assertions is the statement that "It has been determined that, if designed, located and operated under appropriate conditions, special events venues can be an effective tool to protect and preserve such resources."

It is not clear when or who determined this. No consensus or evidence supporting this assertion was presented. The impact of concerts or SEV on agricultural districts and business districts was never addressed. Instead, the alarm over residential areas prevented progress on many other substantive areas. The impact of the law on farms and areas zoned for business was never

publically considered. This is of concern given that most SEV lawsuits in the US appear to involve wedding venues on farms. The Town and subcommittee have done no build-out on the number of properties that would be affected.

The idea that SEV limit development has never been demonstrated. On the contrary, if existing zoning restrictions are not respected it may promote rapid marketing and development of farmland. Parcels from an intact farm could be subdivided and dedicated to commercial events such as weddings. The rationale that those with interest in housing developments will disappear due to the option of commercial weddings is ridiculous. Not every developer wants to run wedding venues, so development will continue in any case. Yet the new zoning laws may fuel speculation of underdeveloped lands by agritourist entrepreneurs.

These types of zoning laws have been held responsible for the fragmenting and stripping of intact forests. Marbletown's own landscape is notable for its forest cover. According to the Natural Heritage Plan, two-thirds of the Town of Marbletown is forested, with much of the forest occurring in contiguous blocks of 100 acres or more. The Plan also emphasizes the need to protect intact forests.^{ix}

Other Towns that include weddings in agri-tourism laws have discovered that undeveloped and wooded land gets purchased and then cleared to become farms associated with wedding venues. Challenges to business operations originally listed as 'wedding venues' cause owners to change the original stated purpose to 'farms' ^x resulting in townships questioning what can be classified as a farm and who is a farmer. These deceptive practices are not always successful at getting farm weddings to be approved, as was demonstrated by the Barn of Chapel Hill at Wild Flora Farm, which has been embroiled in extensive legal and local actions.^{xi}

The strategy is relatively new and to date there is no peer-reviewed academic articles assessing its relative impact. There are strong indications that farm weddings are not a successful strategy for preserving farms or rural character. More importantly, far more effective strategies exist, as outlined in the Natural Heritage Plan to achieve those goals.

Before commercial venues can be presented as a means to preserve land, greater research is needed to analyze whether the changes to zoning laws truly protected land or slowed land subdivision and the sale of farms. Until this is done, the notion is conjecture at best and very plausibly a dangerous experiment. So far these zoning changes have not restricted other types of development; rather, they introduce all sorts of other commercial uses to farm districts. Also in Towns such as Warwick NY, that justified agri-tourism as a means to prevent farm subdivisions, has not prevented owners from listing farms lands as available for sale and subdivision.^{xii}

Meanwhile, it should be noted that no farmers have come forward to advocate for SEV. Only a small group of wedding entrepreneurs and businesses with vested interests want this. One farmer, Eddie Croswell at a Town Board meeting on December 4th, 2018 indicated that it was not "real" farmers who were lobbying for commercial weddings.

7. “The Subcommittee Has a Clear Mandate” The SEV Subcommittee and Its Changing Mandate

The SEV report misrepresents the composition of the committee as a cross section of the town. It claimed that the Committee Members “represented a broad sampling of community opinions on the need for Special Event legislation in Marbletown”. Committee members, however, disproportionately represented individuals with business interests related to weddings such as commercial event spaces and caterers. Other committee members possess large land holdings and were positioned to gain if SEVs were permitted in residential areas.

Another false claim of the SEV Report relates to the subcommittee’s original mandate. Materials presented at early meetings include: “Determine if the town supports the addition of Special Event Venue regulations in Zoning Code; Provide a detailed review of the draft legislation and generate recommendations to improve the draft to the Town board.” Several members, including Tracey Dewart, Nancy Gagliardi, and Daisy Foote, were specifically told that they would be helping to advise whether and if so where such venues were appropriate; their work would involve an assessment of the impact of SEV in terms of their advantages and disadvantages. When the mandate abruptly changed in the final public meeting, the three resigned from the committee.

From its inception until the resignations, the SEV Subcommittee Chair and Rich Parete misrepresented the committee’s mandate for political purpose. When the data on events (that was not presented to members) was contrary to the original mandate, the chair narrowed its mandate to tweaking the proposed law. These “members terminated their participation” because the mandate was misrepresented, resulting in their time and efforts being abused for political purposes. It became apparent that the role of members was limited to fine-tuning a law that was not supported by many town residents, and which very few people actually wanted.

Conclusion

Given the extensive willful ignorance, erroneous statements, and poorly substantiated positions reflected in the Report it is essential that the Town complete a serious needs assessment, a build-out of affected lands, an economic impact study, and survey of the public (as proposed by several committee members) before further legislative actions. To date, too many Town Officials have demonstrated a preference to remain poorly informed on the facts or the specific impact of SEVs. The Town must embrace existing public data and local research to better understand the broader implications of wedding venues in Marbletown.

This SEV Report represents a damaging departure from long-established processes that prioritized community values and participation, and respected residents’ desire to protect laws that safeguard rural neighborhoods from nuisances such as noise and traffic. Finally, it seriously undermines public trust in the body that produced it and brings into question their legitimacy and motivations.

ⁱ GAJ Bowdin et al., *Events Management*, Oxford, Butterworth-Heinemann, The hospitality, Leisure and tourism series, 2001.; GETZ, D. 1997. *Event management and event tourism*. New York: Cognizant Communications Corporation. 386 p. FREDLINE, L., JAGO, L. & DEERY, M. 2003. The development of a generic scale to measure the social impacts of events. *Event management*, 8(1):23-37. Saayman, 2000:144; Yeoman et al., 2004:46; Daniel Shepherd et al 2011. Small et al 2005;

ⁱⁱ **Guidelines for Land Use Regulations to Protect Farmland** Based on Excerpts and Recommendations from Katherine Daniels at the New York Planning Federation and George Franz at Cornell University, p.113

ⁱⁱⁱ Don Cazentre Can Cazenovia's Ower Vineyards continue to host weddings? It's looking doubtful Updated January 6, 2014 NYup.com

^{iv} **Guidelines for Land Use Regulations to Protect Farmland** Based on Excerpts and Recommendations from Katherine Daniels at the New York Planning Federation and George Franz at Cornell University, p. 112.

^v Tracey Dewart, **OPINION: At What Cost? Three Ways Commercial Venues Impact A Town And Its Residents, 9/06/2018, Shawangunk Journal**, <http://www.shawangunkjournal.com/sjx/180906/6867/at-what-cost--three-ways-commercial-venues-impact-a-town-and-its-residents.html>

^{vi} Doug Adams Marbletown Noise Assessment, July 2018. P. 8.

^{vii} Marbletown New York Town Plan Adopted January 18, 2005.

^{viii} This include Warwick NY, and Cazenovia, NY

^{ix} Marbletown Natural Heritage Plan 2007, Behan Planning.

^x DAVID HUDNALL, The Party Barn: Are Rustic Weddings Destroying a Way of Life in Rural Orange County? *Indy Week* SEP. 14, 2016

^{xi} <https://www.orangecountync.gov/1722/Current-Interest-Projects>

^{xii} (December 11, 2018, Trulia.com <https://www.trulia.com/property/5039800654-Mission-Land-Road-Pine-Is-Warwick-NY-10990>)