

**IN THE MATTER OF:**

**APPLICANT TONY D. SAMENTO AND  
CARYN M. SAMENTO**

**OBJECTOR/PARTY WILBUR E. WOLF,  
III AND AMY WOLF**

**OBJECTOR/PARTY KAREN DODGE**

**OBJECTOR/PARTY NORMAN LAW**

**OBJECTOR/PARTY MARIAN DECKMAN**

**APPLICATION FOR CONDITIONAL USE  
RELIEF**

**BOARD OF SUPERVISORS**

**MONROE TOWNSHIP**

**CUMBERLAND COUNTY,  
PENNSYLVANIA**

**WRITTEN DECISION**

**EXHIBITS**

- B-1 Conditional Use Application and Narrative
- B-2 Certificate of Service of Public Notice and Written Notice
- B-3 Transmittal Letter to the Monroe Township Planning Commission
- B-4 Transmittal Letter to the Cumberland County Planning Commission
- B-5 Minutes from July 6, 2022 Monroe Township Planning Commission Meeting, including written materials provided by Karen Dodge.
- B-6 Full Text of Monroe Township Zoning Ordinance
- T-1 Comments from Gregory R. Rogalski, P.E., Township Engineer
- A-1 Email correspondence from Attorney Hubert Gilroy to Attorney Michael Pykosh continuing July 12, 2022 hearing
- A-2 Curriculum Vitae of Douglas S. Brehm, P.L.S., Engineer for Applicant

- A-3 Plans submitted by Brehm-Lebo Engineering, Inc.
- A-4 Monroe Township Conditional Use Written Decision (Bordelon)
- A-5 Monroe Township Conditional Use Written Decision (Cook)
- A-6 Section 201 of Monroe Township Zoning Ordinance
- A-7 Applicant's Suggested Conditions
- A-8 Curriculum Vitae of Robert C. Kolmansberger
- A-9 Noise Analysis Report submitted by Robert Kolmansberger
- A-10 Schultz Data Report submitted by Robert Kolmansberger
- A-11 Screenshots of Facebook Page – Wolf Creek Live Edge
- \*No Exhibit A-12\*
- A-13 Curriculum Vitae of Nathaniel Weinstock
- A-14 Amendment to Appendix C – Sound Report
- W-1 Entry of Appearance of Nathan C. Wolf, Esq. on behalf of Wilbur E. Wolf, III and Amy T. Wolf
- W-2 Screenshot of Facebook Page "Party Barn Peep"
- Correspondence dated September 16, 2020 from Township Zoning Officer to Mr. Samento
- Correspondence dated October 8, 2020 from Attorney Wayne Pecht to Township Zoning Officer
- Correspondence dated October 12, 2020 from Attorney Wayne Pecht to Township Zoning Officer
- Stipulation between Samentos and Monroe Township dated October 31, 2020
- W-3 Court Orders from the Honorable Edward Guido and Stipulation between parties
- W-4 Application for Zoning Permit

## **FINDINGS OF FACT**

1. Tony D. Samento and Caryn M. Samento (collectively “Applicant”) own property located at 1066 Park Place, Monroe Township, Cumberland County, Pennsylvania, identified as Tax Parcel No: 22-12-0350-002 (hereinafter the “property”).
2. Applicant requests relief in the form of Conditional Use by way of Section 107, Uses Not Provided For, of the Monroe Township Zoning Ordinance of September 17, 1998, last amended, May 14, 2015 (hereinafter “zoning ordinance”).
3. Applicant is proposing a change in the use of a pole barn to a special events venue on the property.
4. The property is located in the Agricultural zoning district of Monroe Township, Cumberland County, Pennsylvania.
5. Public Notice of the hearing in this matter was published in the Carlisle Sentinel, a newspaper of general circulation in Monroe Township on June 21, 2022 and June 28, 2022.
6. The Written Notice of the hearing was forwarded to the following individuals and entities on June 13, 2022: Applicants, Tony D. Samento and Caryn M. Samento, Applicants’ Engineer and Architect, Monroe Township Planning Commission, Director of the Cumberland County Planning Commission, and neighboring residents.
7. The Municipal Building and the Township’s website were posted with the Notice of Hearing on June 14, 2022. The property was posted on June 14, 2022.
8. No objections as to the method and timing of Notice and advertising were raised.
9. An objection was raised by Attorney Diane Radcliffe on behalf of Norman Law to Exhibit A-4. The objection was noted, overruled, and admitted into evidence to be given proper weight, if any, by the Board of Supervisors.
10. An objection was raised by Attorney Nathan Wolf on behalf of Wilbur Wolf and Amy Wolf to Exhibit A-11. The objection was noted, overruled, and admitted into evidence to be given proper weight, if any, by the Board of Supervisors.
11. The first public hearing of the Monroe Township Board of Supervisors occurred on July 12, 2022. The first hearing was subsequently postponed to September 1, 2022. Additional hearings of the Board of Supervisors were held on September 20, 2022 and October 12, 2022.

12. Applicant has standing to apply for conditional use relief under the Monroe Township Zoning Ordinance and the Municipalities Planning Code.
13. Testimony was presented on behalf of the Applicant from Mr. Douglas Brehm of Brehm Lebo Engineering regarding the Applicant's desired use of the property.
14. Testimony was also presented by Mr. Robert Kolmansberger and Mr. Nathaniel Weinstock regarding sound analysis which was conducted on the Applicant's property.
15. The Board of Supervisors did not find the testimony of Mr. Kolmansberger and Mr. Weinstock regarding sound emanating from the property to be credible and persuasive.
16. Wilbur E. Wolf, III and Amy T. Wolf, residents of 1056 Park Place, were granted party status and participated in the proceedings as Objectors.
17. Karen Dodge, resident of 1090 Shaffer Road, was granted party status and participated in the proceedings as an Objector.
18. Norman Law, property owner at 1049 Park Place, was granted party status and participated in the proceedings as an Objector.
19. Marian Deckman, property owner at 11301 Park Place, was granted party status and participated in the proceedings as an Objector.
20. Testimony was presented by Mr. Gregory Rogalski, P.E. Zoning Officer for Monroe Township, regarding prior occurrences at the Applicant's property.
21. Mr. Rogalski testified that he first became aware that large scale events were being held on the property in September 2020.
22. Mr. Rogalski testified that there have been reports of 42 separate events on the Samento property since 2020.
23. The Board of Supervisors found Mr. Rogalski's testimony credible regarding prior use of the Samento property in violation of the Township Zoning Ordinance.
24. Wilbur Wolf, Amy Wolf, and Karen Dodge, Objectors, testified to prior occurrences on the Samento property and the detrimental effect that these occurrences had on the use and enjoyment of their own property.

25. The Board of Supervisors found the testimony of Wilbur Wolf, Amy Wolf, and Karen Dodge credible in rendering this decision denying the Conditional Use Application.
26. The Board of Supervisors ascertains this testimony from the Objectors and gives it considerable weight and credibility in light of prior Pennsylvania Supreme Court decisions which have expressly established that such testimony is not speculative and should be given credibility by the governing body.

### **CONCLUSIONS OF LAW**

1. The Monroe Township Board of Supervisors has jurisdiction to hear the above-captioned appeal and application pursuant to Article 7 Section 704.1 of the Monroe Township Zoning Ordinance and Section 603(c)(2) of the Municipalities Planning Code.
2. Proper Notice of the hearing was given to the public and to all interested parties.
3. All exhibits were properly admitted into evidence.
4. Applicant has not met their burden in establishing the requirements for an approval of Conditional Use in accordance with the conditions as set forth in the attached decision and order.
5. Objectors have sufficiently demonstrated that Mr. Samento's prior use of the property without the necessary pre-requisite Township approval had a detrimental effect on the health, safety, and welfare of the neighborhood.
6. Objectors have sufficiently demonstrated that their concerns regarding the continued use of the Applicant's property as an event venue is not speculative, but rather is based in what they experienced firsthand while an event venue was being operated on the property without necessary Township approval.

### **LEGAL STANDARD**

Tony D. Samento and Caryn M. Samento (hereinafter "Applicant") submitted an application for Conditional Use relief on May 23, 2022. The subject of the application is property located at 1066 Park Place, Mechanicsburg, PA 17055 within the Township Agricultural Zone.

A zoning ordinance classifies uses in a given zoning district as "permitted uses as of right" or "prohibited uses." At its discretion, the municipality may classify certain uses as permitted by special exception, or as conditional uses. 53 P.S. §10603(c)(1) [pertaining to special exception] and 53 P.S. §10603(c)(2) [pertaining to conditional use]. Based upon a

determination by the Township Zoning Officer, the proposed use of the property as a special events venue is not specifically defined within the Monroe Township Zoning Ordinance. Accordingly, this application for Conditional Use approval is made by way of Section 107 of the Zoning Ordinance, which states as follows:

"Whenever, under this Ordinance, a use is neither specifically permitted nor denied, and an application is made by an applicant to the Zoning Officer for such use, the Zoning Officer shall refer the application to the Board of Supervisors to hear and decide such request as a conditional use. The Board of Supervisors shall have the authority to permit the use or deny the use in accordance with the standards governing conditional use applications. ***The use may be permitted if it is similar to and compatible with the permitted uses in the zone in which the subject property is located, is not permitted in any other zone under the terms of this Ordinance, and in no way is in conflict with the general purposes and intent of this Ordinance. The burden of proof shall be upon the applicant to demonstrate that the proposed use meets the foregoing criteria and would not be detrimental to the public health, safety and welfare of the neighborhood.*** For the purposes of this section, a specifically denied use shall be considered a use that is not a permitted use in the zone in question but is a permitted use in another zoning district." Emphasis added.

In classifying a use as a special exception or conditional use, the municipal governing board makes a legislative decision that the use is permissible and legitimate use of property within a given zoning district and not adverse to the public interest per se. *Bailey v. Upper Southampton Twp.*, 690 A.2d 1324 (Pa. Cmwlth. 1997); *Perkasie v. Moulton Builders, Inc.*, 850 A.2d 778 (Pa. Cmwlth. 2004). As previously stated, the proposed use of the property as an event venue is not specifically permitted in the agricultural district via conditional use approval. Rather, it is categorized as a "use not provided for" where the zoning ordinance dictates that the proposal proceed as a conditional use application. Accordingly, the applicant must satisfy the above-mentioned requirements of Section 107 in addition to all other required provisions of the ordinance.

A zoning ordinance classifying uses as conditional uses properly must set forth in the zoning ordinance the standards for such cases. These standards may be objective or subjective in character. An applicant for a conditional use is required to demonstrate compliance with the objective criteria of the zoning ordinance. *Bray v. Zoning Bd. Of Adjustment*, 410 A.2d 909 (Pa. Cmwlth. 1980). Objective criteria include the following: (1) the kind of use (i.e. the threshold definition of what is authorized as a conditional use); (2) specific requirements or standards applicable to a particular conditional use (e.g., special setbacks); and (3) specific requirements generally applicable to such a use (e.g., parking requirements). *Bray*, 410 A.2d at 911.

Article 7 Section 704.1 of the Monroe Township Zoning Ordinance requires that a conditional use application must show the following:

1. Ground floor plans and elevations of proposed structures. This requirement shall not apply for proposed single family dwellings.
2. Names and addresses of adjoining property owners including properties directly across a public right-of-way.
3. A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Ordinance.
4. A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Ordinance.

Further, Article 7 Section 704.2 of the Monroe Township Zoning Ordinance sets forth the General Criteria that each Applicant for a Conditional Use Relief must demonstrate compliance:

1. The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance;
2. The proposed use shall be detracted from the use and enjoyment of adjoining or nearby properties;
3. The proposed use will not affect a change in the character of the subject property's neighborhood;
4. Adequate public facilities are available to serve the proposed use (e.g. schools, fire, police and ambulance protection, sewer, water, and other utilities, vehicular access, etc.);
5. The proposed use complies with the Monroe Township Floodplain Ordinance;
6. The proposed use shall comply with those criteria specifically listed in Article 4 of this Ordinance. In addition, the proposed use must comply with all other applicable regulations of this Ordinance; and,
7. The proposed use will not substantially impair the integrity of the Township's Comprehensive Plan.

Once the applicant has provided such information, and the information demonstrates compliance with the objective requirements of the zoning ordinance, the applicant is entitled to approval because the use is presumed to be consistent with the public health, safety, and welfare. *Perkasie v. Moulton Builders, Inc.*, 850 A.2d 778 (Pa. Cmwlth. 2004); *Bailey v. Upper Southampton Twp.*, 690 A.2d 1324 (Pa. Cmwlth. 1997).

The governing body may disapprove the application if parties that object to the proposal demonstrate with sufficiently particularized evidence. Speculative or generalized evidence is not

sufficient to deny an application (i) that it does not meet the subjective criteria of the zoning ordinance or (ii) that there is a high degree of probability that the use would have effects greater than those normally generated by that type of use and those effects will pose a substantial threat to the health and safety of the community. See *Marquise Inv., Inc. v. City of Pittsburgh*, 11 A.3d 607 (Pa. Cmwlth. 2010); *Brickstone*, 789 A.2d at 333, 341-342.

## **DISCUSSION – CASE-IN-CHIEF OF APPLICANT**

A series of three public hearings were conducted by the Monroe Township Board of Supervisors. Applicant first presented testimony from Mr. Douglas Brehm of Brehm Lebo Engineering. Mr. Brehm testified that the 5.8-acre property is presently comprised of the Samento home, garages, a shed, a pool, and a pole barn. (N.T. – September 1, 2022 - pg. 22). Outside of the pole barn is a patio area, as well as an area for parking and a restroom located behind the pole barn. (N.T. – September 1, 2022 - pg. 22). Mr. Brehm testified that he referenced two prior conditional use decisions of the Monroe Township Board of Supervisors in preparation of this current application. Both prior decisions were introduced and admitted into evidence as Exhibit A-4 and Exhibit A-5<sup>1</sup>. Mr. Brehm acknowledged, however, that while both of the prior conditional use applications pertained to proposals for special events venues, the construction of the barn in the present application differs from the structures in the previous application, as the pole barn at the Applicant's property is not permanently enclosed. (N.T. – September 1, 2022 - pg. 37). Mr. Brehm testified that the structure is "not permanently enclosed. There are curtains there, some sort of sound curtain." (N.T. – September 1, 2022 - pg 37).

The Board of Supervisors next heard testimony from Mr. Robert Kolmansberger of Navarro and Wright Consulting Engineers. Navarro and Wright Consulting Engineers was hired to perform a sound evaluation at the property. At the onset of his testimony, Mr. Kolmansberger noted that Monroe Township does not have an ordinance which regulates noise levels within the township. (N.T. – September 1, 2022 – pgs. 99-100). A total of 48 hours of noise monitoring was conducted at various selected locations on the Applicant's property. (N.T. – September 1, 2022 – pg. 103). The first 24-hour evaluation was conducted on Tuesday, August 16 into Wednesday, August 17, and the second 24-hour evaluation was conducted on Friday, August 19 into Saturday, August 20. (N.T. – September 1, 2022 – pg. 103). Three sites were chosen on the Applicant's property; site 1 was located at the western property line about 190 feet from the pole barn, site 2 was at the southern property line about 380 feet from the pole barn, and site 3 was at the eastern property line about 390 feet from the pole barn. (N.T. – September 1, 2022 – pg. 101). Mr. Kolmansberger identified in his testimony that the eastern property line was the most critical for purposes of analysis, as it is closest to an adjacent residential land use. (N.T. – September 1, 2022 – pg. 101). Sound monitoring was also performed at several sites off of the Samento's 1066 Park Place property, including at a property at 922 Park Place which is also owned by the Applicant. Mr. Kolmansberger testified that activities taking place on the property during the period of monitoring included a lawn mower being used, as well as a birthday party with a live band.

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<sup>1</sup> Exhibit A-4, Monroe Township Conditional Use Written Decision (Bordelon), was introduced into evidence over the objection of Attorney Diane Radcliffe. (N.T. – September 1, 2022 – Pg. 24).



Based upon an analysis of the data, Mr. Kolmansberger identified that typical ambient levels at site 1 are in the 40 to 50 decibel range, at site 2 they are in the 45 to 57 decibel range, and at site 3 they are in the 45 to 58 decibel range. During the period when a lawn mower was used, sound levels increased to a range of 63 to 68 decibels. Additionally, during the period in which a band was performing during the birthday party being held on the property on August 19th, sound levels increased to a range of 59 to 64 decibels. This information led Mr. Kolmansberger to opine that "levels at the Party Barn do not appear excessive in comparison to typical sound levels in a community like this or levels in typical government regulation." (N.T. September 1, 2022 – Pg. 112). Applicant also presented documentation regarding the "Schultz Curve," which is a measure of a person's annoyance to particular sound levels.

Throughout the course of testimony, it became evident that there was a mislabeling of data included in the documentation presented as Exhibit A-9, which resulted in Applicant presenting testimony from Mr. Nathaniel Weinstock, also of Navarro and Wright Consulting Engineers, to provide the following clarification:

"The original report was submitted with incorrect labels on the raw 1-minute meter data downloads that were submitted in Appendix C. That was due to human error. That was my error. The appendix was the very last piece of the report that was assembled and a legacy version of an earlier Appendix, which I did not have labeled correctly. I was having problems there a little bit with Adobe and Excel. I was up against the deadline to get the report out and I inadvertently had incorporated an earlier version of the data. It's important to state that all other data presented in that report, in the text, in the graphs, in the tables, and on the site sketches is accurate and correct as presented." (N.T. – October 12, 2022, Pg. 8).

While Mr. Kolmansberger and Mr. Weinstock provided a breadth of information relating to sound levels at the property, this information was overshadowed by several factors. First, neither Mr. Kolmansberger nor any other representative of Navarro and Wright was present on the Applicant's property during any time other than at the beginning and end of the noise monitoring periods. (N.T. – September 20, 2022 – Pg. 8). Neither Mr. Kolmansberger nor any other representative of Navarro and Wright was present at the property during two critical times of the sound analysis – while the lawn mower was being operated and when a birthday party was being held. There was no testimony from the Applicant regarding the distance of the lawnmower to the sound collecting device, nor was there any testimony from the Applicant regarding the sound system utilized by the band. There was also no testimony from anyone regarding the control of the band's sound system. Mr. Kolmansberger conceded that to come to the conclusion of whether the birthday party on August 19 was a "typical" event, multiple events would have needed to have been observed. The characterization that this birthday party was a "typical" event was solely based upon Mr. Samento's own representation to Mr. Kolmansberger. (N.T. – September 20, 2022- Pg. 28).

Applicant offered testimony from Mr. John Statler. Mr. Statler testified that he has attended several events on the Applicant's property, including the birthday party that was held on August 19 as the noise monitoring was occurring. Mr. Statler indicated that based upon his experience of being present at several other events, the event on August 19<sup>th</sup> was not different from other prior events held on the property. (N.T. – September 20, 2022 – Pg. 72). Based upon Mr. Statler's testimony, however, it is unclear which prior events he attended at the Applicant's property. Mr. Statler indicated that he is not related to Mr. Samento, that he received no direct invitation to the events on Mr. Samento's property, and that he found out about the events on the Applicant's property via a Facebook group. (N.T. – September 20, 2022 – Pg. 80). Additionally, Mr. Statler testified that the purpose of his attendance at the Applicant's property on August 19 was not for a birthday party, but rather to hear the band that was playing that evening. (N.T. – September 20, 2022 – Pg. 81). Mr. Statler's testimony provided little value to the Board of Supervisors in rendering a decision in this matter.

### **DISCUSSION – CASE-IN-CHIEF OF OBJECTORS**

The Board of Supervisors next heard testimony from Mr. Gregory Rogalski, P.E., Zoning Officer for Monroe Township. Mr. Rogalski testified that he first became aware that the Applicant's property was being utilized as an event venue in September 2020. (N.T. – October 12, 2022 – Pg. 33). During this time, the Township also became aware of a Facebook group titled "Party Barn Peeps," which at one time had approximately 4,400 members<sup>2</sup>. (N.T. – October 12, 2022 – Pg. 34). This prompted Mr. Rogalski to issue a written determination to the Applicant on September 16, 2020, indicating that the use of the property as an events venue is not specifically permitted nor denied within the Township Zoning Ordinance and thus, conditional use approval by the Board of Supervisors was required. In response to Mr. Rogalski's September 16, 2020 letter, the Township received correspondence from Wayne Pecht, Esq., who was counsel for the Applicant during this time. (N.T. – October 12, 2022 – Pg. 38). Communication between the Township and Attorney Pecht led to an agreement between the parties dated October 31, 2020, wherein the parties agreed that no events would be held on the property during the pendency of the appeal of Mr. Rogalski's September 16, 2020 determination, as well as the conditional use application process.<sup>3</sup> As Mr. Rogalski testified during the hearing, the pertinent part of the agreement reads as follows:

"Monroe Township and Tony and Caryn Samento are in agreement that the application for conditional use should proceed to resolution prior to any action being taken on the pending appeal to the Zoning Hearing Board. The parties also agree that no events shall take place on the premises during the pendency of the appeal."<sup>4</sup> Emphasis added.

Mr. Rogalski additionally testified that despite the agreement between Monroe Township and the Samentos, the Township continued to receive reports of large-scale events being held at the 1066 Park Place property. In one specific instance, the Township became aware that a homecoming event for a local high school was scheduled to occur on the property. (N.T. –

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<sup>2</sup> See Exhibit W-2

<sup>3</sup> See Exhibits C, D, and E within Exhibit W-2.

<sup>4</sup> See Exhibit F within Exhibit W-2

October 12, 2022 – Pg. 41). This resulted in the Township filing an injunction in the Cumberland County Court of Common Pleas, and the Court scheduling an emergency hearing on October 1, 2021. (N.T. – October 12, 2022 – Pg. 41). Following the injunction hearing, the Honorable Edward Guido of the Cumberland County Court of Common Pleas issued a temporary injunction dated October 1, 2021, attached hereto and marked as Exhibit W-3. A stipulation was reached between the parties and filed with the Court and the Court issued a subsequent Order dated December 1, 2021 permanently enjoining the Defendants from operating the premises as an event venue without approval from Monroe Township.<sup>5</sup>

Mr. Rogalski testified that despite the Court's December 1, 2021 Order, the Township continued to receive complaints from multiple individuals regarding large-scale events being held on the Applicant's property. (N.T. – October 12, 2022 – Pg. 46). The most recent complaint was received on July 16, 2022. In total, the Township has received reports of 42 different events being held on the Applicant's property between the period of September 2020 and July 2022. (N.T. – October 12, 2022 – Pg. 46).

Objector Amy Wolf provided testimony to the Board of Supervisors regarding her past experiences living next to the Applicant's property. Mrs. Wolf described prior situations where hundreds of people would enter the Samento property approximately 20 feet from her driveway. (N.T. – October 12, 2022 – Pg. 96). She testified that attendees of Mr. Samento's prior events would frequently turn into her driveway, thus necessitating the use of traffic cones being utilized to block access to their property. (N.T. – October 12, 2022 – Pg. 96). Prior occurrences on the Applicant's property involving the use of fireworks resulted in debris falling on the Wolf property. (N.T. – October 12, 2022 – Pg. 99). Mrs. Wolf also testified that they have witnessed multiple people who appeared to be visibly intoxicated stumble near their property line. (N.T. – October 12, 2022 – Pg. 99). Regarding sound emanating from the property, Mrs. Wolf testified "even when the windows were closed, we could hear the party barn and sometimes we would feel vibrations up in the – up in our bedroom space." (N.T. – October 12, 2022 – Pg. 102).

The Board of Supervisors also heard testimony from Objector Wilbur Wolf. Mr. Wolf testified that he has lived at his property located at 1056 Park Place since June 1998. (N.T. – October 12, 2022 – Pg. 105). Mr. Wolf explained that he observed Applicant first violate their October 31, 2020 agreement with the Township beginning on November 7, 2020, and events continued repeatedly thereafter. (N.T. – October 12, 2022 – Pg. 107). Additionally, events were observed on the property on October 1, 2021, the same day that Judge Edward Guido issued an Order temporary enjoining the property from being utilized as an event venue. (N.T. – October 12, 2022 – Pg. 107). Additional events were held on October 2, 2021 and October 23, 2021. (N.T. – October 12, 2022 – Pg. 107). Specifically, with reference to the October 23, 2021 event, Mr. Wolf testified that a car came to his house, asking for directions to the Applicant's property, and stated that they were there for a birthday party. Since this time, Mr. Wolf has observed "at least two dozen other hosted parties at the party barn night club, many of them with loud bands." (N.T. – October 12, 2022 – Pg. 109). Regarding concerns moving forward if the requested conditional use approval would be granted, Mr. Wolf testified "what is the enforcement

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<sup>5</sup> See Order of Court dated December 1, 2021, identified in Exhibit W-3.

mechanism? What is it to stop things from going right back to the horrific conditions of August to October of 2020? When we had to endure two to four large band parties with fireworks and repeated violations of our property every weekend." (N.T. – October 12, 2020 – Pg. 110). Regarding the testimony pertaining to the sound analysis, Mr. Wolf explained that the noise emanating from the Applicant's property on the evening that the sound analysis was conducted while a party was being held on the property was not at all typical to previous parties which have occurred. (N.T. – October 12, 2022 – Pg. 110). Specifically, Mr. Wolf testified that the recent party referenced in the sound analysis report was "significantly" more subdued than previous parties. (N.T. – October 12, 2022 – Pg. 111). The occurrences on the Applicant's property over the past two years have resulted in Mr. and Mrs. Wolf installing a surveillance system on their property and has also affected their ability to host company outside on their property. (N.T. – October 12, 2022 – Pg. 111).

Objector Norman Law, who owns property located at 1049 Park Place, presented testimony. Mr. Law does not live on the property, as he currently rents the property to a tenant. Mr. Law testified that since events have begun occurring on the Samento property, he has observed an increase in the amount of trash that is deposited on his property. (N.T. – October 12, 2022 – Pg. 125). Additionally, Mr. Law testified that his tenants are aware of what has occurred at the Samento property, as they are usually the ones who pick up trash from the property. (N.T. – October 12, 2022 – Pg. 125). As highlighted in cross examination, Mr. Law cannot directly attribute the trash, as well as accidents on nearby roads, solely to the Samento property. (N.T. – October 12, 2022 – Pg. 127).

Lastly, Objector Karen Dodge, who lives nearby at 1090 Shaffer Road, testified regarding her prior experiences with the Samento property. Ms. Dodge specifically adopted the letter that she submitted to the Monroe Township Planning Commission, highlighting in detail her prior observances of the Applicant's property. Ms. Dodge's letter to the Monroe Township Planning Commission is incorporated in Exhibit B-5. Ms. Dodge specified that her main objection pertains to the noise which emanates from the Samento property during events. In particular, Ms. Dodge stated "And it had occurred to me that unless you've personally heard it for yourself or witnessed this place for yourself, you can't put yourself in any of our shoes. It's not – it can't be described. It's not someone's backyard party. It is an all out nightclub. It goes on night after night. The volume is unbelievable." (N.T. – October 12, 2022 – Pg. 129). Ms. Dodge additionally testified:

"Well, the party barn, we can hear it at our place. We're a third of a mile away. We can hear when the party starts sitting in the living room with the windows closed, TV's on, air conditioning is on. You can feel it thumping in your gut. I'm not lying. I can hear it. And I invite you personally to come to our place and you can witness it for yourself. You can hear it inside. When you go outside, you can hear the words. You can hear the songs." (N.T. – October 12, 2022 – Pg. 130).

Following the conclusion of testimony from Objectors, comments were made by the general public. Attorney Jamie Strong of McNees Wallace and Nurick provided comments on behalf of his client, Five Way Partners Limited Partnership, an entity owned by the Lehrman

family. Five Way Partners Limited Partnership owns properties located approximately one mile from the Applicant's property. (N.T. – October 12, 2022 – Pg. 140). Attorney Strong summarized that there are no uses permitted by right within the agricultural zone which are similar to the use that the applicant is proposing. (N.T. – October 12, 2022 – Pg. 140). Attorney Strong underscored that since the proposed use is not specifically permitted or denied within any of the Township zoning districts, the applicant has a burden that the use is "similar to and compatible with" other permitted uses in the particular zoning district. (N.T. – October 12, 2022 – Pg. 141). Additionally, Attorney Strong summarized "I think the testimony that you have heard has clearly demonstrated that not only will the use substantially detract from the use and enjoyment of adjoining properties, but it already has. This is a different situation where we're not just talking about a proposed use. We're talking about a use that has been in effect off and on over the prior two years. So we know what those impacts are. We know what those effects are. I think I clearly demonstrated that this use detracts from the use and enjoyment of adjoining and nearby properties." (N.T. – October 12, 2022 – Pg. 143).

## CONCLUSION

It is well established that a presumption arises that a conditional use must be granted *unless* protestants present sufficient evidence to establish that there is a high degree of probability that the use will cause substantial threat to the community. The evidence of objectors cannot consist of mere bald assertions or personal opinions and perceptions of the effect of the use on the community. The degree of harm required to justify denial of the conditional use must be greater than that which normally flows from the proposed use.

Our Courts have offered guidance on what type of evidence is proper to ascertain when denying a conditional use application. In *Visionquest National v. Board of Supervisors*, 569 A.2d 915 (Pa. 1990), the Pennsylvania Supreme Court analyzed whether a Township Board of Supervisors properly denied an application for conditional use approval pertaining to a youth rehabilitative facility. The facility began operating without obtaining necessary approval from the Township. The Township cited the facility as being in violation of the zoning ordinance. A conditional use application was then submitted to the Township. At the public hearing on the application, nearby residents testified that obscenities and loud noises could be heard emanating from the facility while the facility had been operating illegally.

Upon analyzing the record of the conditional use hearing, the Court established the following rule: "***Testimony as to prior experiences with the specific proposed use, while the use was conducted unapproved or unlawfully, should be given greater weight in determining the detriment to the community as such testimony is clearly not speculative.***" Emphasis added.

The above-mentioned rule in the *Visionquest* case was the basis of a recent 2019 decision from the Supreme Court – *EQT. Prod. Co. v. Borough of Jefferson Hills*, 208 A.3d 1010 (Pa. 2019). In the EQT case, a natural gas extraction company submitted an application for conditional use to the Borough of Jefferson Hills to conduct drilling operations on a site within the Borough. At the public hearing, eight individuals testified in opposition to the proposal. Four of the individuals were residents of the Borough of Jefferson Hills, while three of the

individuals were residents of an adjoining Township where the natural gas company had been conducting activities similar to that which was proposed in the conditional use application. The objectors from the nearby township testified from their own experiences that the natural gas extraction operation had caused vibrations of their home and pollution of the air, as well as strong odors that were believed to be diesel fuel and sulfur. The Borough Council denied the application for Conditional Use on the basis that the objectors satisfied the heavy burden of persuasion that the proposal would be adverse to the health, safety, and welfare of the area. This denial was appealed on the basis that the Borough of Jefferson Hills should not have considered testimony from residents of another municipality. A majority of the Commonwealth Court reversed the denial and held that the testimony of non-residents should not have been considered, and such testimony was based upon assertions and speculation. In a dissenting opinion by Judge McCullough, she articulated that the PA Supreme Court's prior holding in the *Visionquest* case should be extended to this set of circumstances, and that testimony from past experiences should be considered, irrespective of whether the testimony is coming from a resident of the municipality or not.

On appeal to the PA Supreme Court, a majority of the Court adopted the rationale of Judge McCullough and extended the holding in the *Visionquest* case. In adopting this rationale, the Court cited previous decisions in cases not pertaining to land use such as licensing. In referencing a case dealing with the operation of a bar in violation of the Pennsylvania Liquor Control Board, the Supreme Court stated "As a general matter, our Court has recognized the relevancy and probative value of an applicant's past conduct in determining whether he meets the conditions of licensure for conducting future business activities of the same nature as those in which he had previously engaged. *EQT*, 203 A.3d 1010, 1025 (Pa. 2019), referencing *Street Road Bar and Grille v. Pennsylvania Liquor Control Board*, 876 A.2d 346, 357 (Pa. 2005).

Within the context of a land use application, the Supreme Court in the *EQT* case stated "Of greatest pertinence to the issue we are considering, in the context of a hearing on an application for conditional use approval, our Court has regarded evidence relating to past conduct and practices of a facility's owners, and specific impacts on the community from the functioning of the facility, to be relevant and probative in determining whether, if conditional use authorization were granted, the facility's operation would pose a threat to the welfare of the community."

With guidance from the above-referenced decisions in the *Visionquest* and *EQT* cases, the Board of Supervisors gives great weight and credibility to the testimony presented by Mr. Rogalski and the Objectors in denying the instant conditional use application. The Board considered testimony highlighting that 42 events have been reported to the Township since the first becoming aware in 2020 of events being held on the Applicant's property. These events have been hosted in contravention to prior agreements with the Township, as well as two separate Court Orders enjoining the Applicant from holding events on the property without township approval. As the testimony from Wilbur Wolf, Amy Wolf, and Karen Dodge indicated, these previous events have been numerous, large scale, and have had a repeated negative effect on nearby property owners. The breadth of testimony from Objectors regarding increased traffic in the area and loud music cannot be disregarded. It is clear from the testimony

of Wilbur Wolf, Amy Wolf, and Karen Dodge that their concerns are not speculative, but rather illustrate what they have experienced firsthand over the past two years.

While the Township appreciates the Applicant taking the step of presenting testimony regarding noise analysis, the findings in the noise analysis report do not overshadow the firsthand experiences of the objectors over the course of the past two years. As noted by the objectors, the event which was held on the Applicant's property during the period where noise analysis was being conducted was much more subdued compared to other events that have been held on the property. Additionally, regarding testimony pertaining to decibel levels at the time of the party, as well as while a lawnmower was being operated on the property, one major flaw is the fact that no one from Navarro and Wright was actually present on the property at any time other than the beginning and end of the noise monitoring periods. Decibel levels on a spreadsheet do not outweigh the firsthand accounts of people who live near the property and who have witnessed occurrences on the property over the course of the past two years.

The Board of Supervisors accepts as credible the testimony from Mr. and Mrs. Wolf, as well as Ms. Karen Dodge, who detailed numerous instances of loud noise interfering with the enjoyment of their own property, increased traffic on Park Place, as well as numerous occurrences of attendees at the Applicant's property coming onto the Wolf's driveway area. Applicant's adjudicated violation of their October 31, 2020 agreement, along with the 42 documented complaints made to the Township zoning officer, gives concern to the Board of Supervisors pertaining to the Applicant's behavior moving forward. The extent to which events have occurred and have been documented with the township by the objectors cannot be disregarded. For the foregoing reasons, we issue the following decision denying the Applicant's request for conditional use approval.

**DECISION:**

And now, this 18<sup>th</sup> day of November, 2022, in consideration of Applicant's request and after a series of public hearings, the Applicant's request for Conditional Use approval, pursuant to its application dated May 23, 2022, is denied by a vote of 2-1 of the Monroe Township Board of Supervisors.

**Monroe Township Board of Supervisors**

(s/ Philip Kehoe by Michael J. Piskich  
Philip Kehoe, Chairman

(s/ A.W. Castle III by Michael J. Piskich  
A.W. Castle, III, Supervisor

**Dissenting Vote**

(s/ Philip Paetzold by Michael J. Piskich  
Philip Paetzold, Supervisor

(Written Decision of Findings issued this 18<sup>th</sup> day of November, 2022)