State of Illinois County of Kendall Zoning Petition #18-26

## ORDINANCE NUMBER 2018-

GRANTING A SPECIAL USE PERMIT ON PROPERTY ZONED A-1 AGRICULTURAL FOR A BANQUET FACILITY AND A VARIANCE TO SECTION 7.01.D.10.A OF THE KENDALL COUNTY ZONING ORDINANCE TO ALLOW A BANQUET FACILITY TO BE LOCATED OFF OF A NON-ARTERIAL OR NON-MAJOR COLLECTOR ROADWAY AND A VARIANCE TO SECTION 11.02.F.2 OF THE KENDALL COUNTY ZONING ORDINANCE TO ALLOW OFF-STREET PARKING AND DRIVING AISLE TO NOT BE IMPROVED WITH A PERMANENT, CONCRETE, UNIT PAVER, ASPHALT SURFACE, OR SOME OTHER ENVIRONMENTALLY FRIENDLY OR GREEN DESIGN PRACTICE AND A VARIANCE TO SECTION 11.02.F.12.B OF THE KENDALL COUNTY ZONING ORDINANCE TO WAIVE THE REQUIREMENT FOR "FULLY SHIELDED" OR CUT-OFF LIGHT FIXTURES FOR THE PAKING FACILITIES FOR A 5.112 ACRE +/- PARCEL LOCATED AT 14905 HUGHES ROAD, NEWARK, ILLINOIS AND IDENTIFIED BY PARCEL IDENTIFICATION NUMBER 04-34-100-001 IN FOX TOWNSHIP

<u>WHEREAS</u>, Section 13.08 of the Kendall County Zoning Ordinance permits the Kendall County Board to issue special use permits and place conditions on special use permits and provides the procedure through which special use permits are granted; and

<u>WHEREAS</u>, Section 13.04 of the Kendall County Zoning Ordinance permits the Kendall County Board to issue variations and place conditions on variations and provides the procedure through which variations are granted; and

<u>WHEREAS</u>, Section 7.01.D.10 of the Kendall County Zoning Ordinance permits the operation of banquet facilities as a special use with certain restrictions in the A-1 Agricultural Zoning District; and

<u>WHEREAS</u>, Section 7.01.D.10.a of the Kendall County Zoning Ordinance requires banquet facilities located in the A-1 Agricultural Zoning District to have direct access to an arterial roadway or major collector road as defined in the Land Resource Management Plan; and

<u>WHEREAS</u>, Section 11.02.F.2 of the Kendall County Zoning Ordinance requires all off-street parking areas and access drives be constructed or re-constructed after May 20, 2008, shall be improved with a permanent, concrete, unit paver, asphalt surface, or some other environmentally friendly surface or green design practices; and

<u>WHEREAS</u>, Section 11.02.F.12 of the Kendall County Zoning Ordinance requires only "fully shielded" or "cut-off" lighting fixtures; and

<u>WHEREAS</u>, the property which is the subject of this Ordinance has been, at all relevant times, and remains currently located within the A-1 Agricultural Zoning District and consists of approximately 5.112 acres located at 14905 Hughes Road, Newark, Illinois (PIN: 04-34-100-001) in Fox Township. The legal description for the subject property is set forth in Exhibit A attached hereto and incorporated by reference, and this property shall hereinafter be referred to as "the subject property."; and

<u>WHEREAS</u>, the subject property is currently owned by Maurice E. Ormiston as Trustee u/t/a No. 101 and Marilyn J. Ormiston as Trustee u/t/a 102 and Gay Hoddy currently resides at the subject property and shall hereinafter be referred to as "Petitioner"; and

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<u>WHEREAS</u>, on or about July 22, 2018, Petitioner filed a petition for a Special Use Permit allowing the operation of a banquet facility at the subject property and variances to Sections 7.01.D.10.a, 11.02.F.2, and 11.02.F.12 of the Kendall County Zoning Ordinance; and

<u>WHEREAS</u>, following due and proper notice by publication in the Kendall County Record not less than fifteen days prior thereto, the Kendall County Zoning Board of Appeals conducted a public hearing on August 27, 2018, at 7:00 p.m., in the County Office Building at 111 W. Fox Street in Yorkville, at which the Petitioner and presented evidence, testimony, and exhibits in support of the requested special use permit and variances and zero members of the public testified in favor or in opposition; and

<u>WHEREAS</u>, based on the evidence, testimony, and exhibits, the Kendall County Zoning Board of Appeals has made their Findings of Fact and recommended approval of the special use permit and variances with conditions as set forth in the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, dated August 27, 2018, a true and correct copy of which is attached hereto as Exhibit B; and

<u>WHEREAS</u>, the Kendall County Planning, Building and Zoning Committee of the Kendall County Board has reviewed the testimony presented at the aforementioned public hearing and has considered the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has forwarded to the Kendall County Board a recommendation of approval of the requested special use permit and variances with conditions; and

<u>WHEREAS</u>, the Kendall County Board has considered the recommendation of the Planning, Building and Zoning Committee and the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has determined that said petition is in conformance with the provisions and intent of the Kendall County Zoning Ordinance; and

<u>WHEREAS</u>, this special use permit and variances shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property; and

# <u>NOW, THEREFORE, BE IT ORDAINED, BY THE COUNTY BOARD OF KENDALL COUNTY, ILLINOIS</u>, as follows:

- 1. The Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals attached hereto as Exhibit B is hereby accepted and the Findings of Fact set forth therein are hereby adopted as the Findings of Fact and Conclusions of this Kendall County Board.
- 2. The Kendall County Board hereby grants approval of Petitioner's petition for a special use permit and variances allowing the operation of a banquet facility on the subject property subject to the following conditions:
  - A. The site, including parking plan, shall be developed in accordance to the attached site plan attached hereto as Exhibit C. The owner of the business allowed by this special use permit may remove the porta-potties shown on the site plan if adequate, permitted facilities (i.e. septic system) are installed on the property for use at the banquet facility. The owner of the business allowed by this special use permit may also install one or more temporary tents located west of the framed barn.
  - B. A maximum of two hundred fifty (250) guests in attendance at a banquet center related event may be on the subject property at a given time.
  - C. The lighting shall be developed in accordance to the attached site plan and photometric plan attached hereto as Exhibit C. The operator of the banquet facility may install two (2)

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decorative lights on the south side of the barn and two (2) decorative lights on the east side of the barn.

- D. Events shall be confined to the framed barn, patio area, and grassy area west of the barn. No events may be held in the loft or second story or above of the framed barn (unless these areas are included in the occupancy permit), the corn crib, garage, residence, or any new barns or accessory buildings on the property without an amendment to this special use permit.
- E. A variance shall be granted to the requirement that the facility shall have direct access to a road designated as an arterial roadway or major collector road as identified in the Land Resource Management Plan as required in Section 7.01.D.10.a of the Kendall County Zoning Ordinance.
- F. The subject parcel must be a minimum of five (5) acres.
- G. The use of this property shall be in compliance with all applicable ordinances. The banquet facility shall conform to the regulations of the Kendall County Health Department and the Kendall County Liquor Control Ordinance. (Ord. 99-34)
- H. Off-street parking, lighting and landscaping shall be provided in accordance with the provisions of Section 11 of the zoning ordinance except where variances are granted.
- I. A variance shall be granted to the requirement contained in Section 11.02.F.2 of the Kendall County Zoning Ordinance that the business allowed by this special use permit shall be exempt from the requirement that all required open off-street parking areas and access drives constructed or re-constructed after May 20, 2008 shall be improved with a permanent, concrete, unit paver, asphalt surface or some other environmentally friendly surface or green design practices. This variance shall not be extended to parking and parking related facilities required by the Americans with Disabilities Act.
- J. A variance shall be granted to the requirement contained in Section 11.02.F.12.B of the Kendall County Zoning Ordinance that the business allowed by this special use permit shall provide only "fully shielded" or "cut-off" light fixtures.
- K. All signage shall comply with the provisions of Section 12 of the Kendall County Zoning Ordinance. The signage shall be developed in accordance to the attached site plan. The signage will not be illuminated.
- L. Retail sales are permitted as long as the retail sales will be ancillary to the main operation.
- M. The noise regulations are as follows:

Day Hours: No person shall cause or allow the emission of sound during daytime hours (7:00 A.M. to 10:00 P.M.) from any noise source to any receiving residential land which exceeds sixty five (65) dBA when measured at any point within such receiving residential land, provided; however, that point of measurement shall be on the property line of the complainant.

Night Hours: No person shall cause or allow the emission of sound during nighttime hours (10:00 P.M. to 7:00 A.M.) from any noise source to any receiving residential land which exceeds fifty five (55) dBA when measured at any point within such receiving residential land provided; however, that point of measurement shall be on the property line of the complainant.

**EXEMPTION:** Powered Equipment: Powered equipment, such as lawn mowers, small lawn and garden tools, riding tractors, and snow removal equipment which is necessary for the

maintenance of property is exempted from the noise regulations between the hours of seven o'clock (7:00) A.M. and ten o'clock (10:00) P.M.

- N. No music shall originate outside of any building associated with the special use permit. This exemption shall not apply to non-amplified music used or performed as part of a wedding ceremony. No bands shall perform at any events.
- O. Events shall be held between May 1 and October 31. The property owner or banquet operator may hold events outside of this timeframe with the approval of the Planning, Building and Zoning Committee.
- P. No more than four (4) events in a seven (7) day period may be held at the property.
- Q. Setup for events shall not commence prior to 10:00 a.m.
- R. All events must cease by Midnight except for cleaning up after an event which must cease by 1:00 a.m.
- S. A new certificate of occupancy must be issued for the framed barn.
- T. The operator of the banquet facility allowed by this special use permit shall reside at the subject property as their primary place of residence.
- U. The operator of the banquet facility and property owner(s) acknowledge and agree to follow Kendall County's Right to Farm Clause.
- V. The property owner and operator of the banquet facility allowed by this special use permit shall follow all applicable Federal, State, and Local laws related to the operation of this type of business.
- W. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
- X. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.
- 3. The Zoning Administrator and other appropriate County Officials are hereby authorized and directed to amend the Official Zoning Map of Kendall County to reflect this special use permit.

<u>IN WITNESS OF</u>, this ordinance has been enacted by a majority vote of the Kendall County Board and is effective this 18<sup>th</sup> day of September, 2018.

Attest:

Kendall County Clerk Debbie Gillette

Kendall County Board Chairman Scott R. Gryder

## Exhibit A

### LEGAL DESCRIPTION OF PARCEL SUBJECT TO SPECIAL USE PERMIT APPLICATION AND VARIANCE APPLICATION

THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 36 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID WEST HALF; THENCE NORTH 89 DEGREES 41 MINUTES 16 SECONDS EAST, ALONG THE SOUTH LINE OF SAID NORTH HALF, 425.00 FEET FOR THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 18 MINUTES 44 SECONDS WEST, 240.00 FEET; THENCE NORTH 89 DEGREES 41 MINUTES 16 SECONDS EAST, 175.00 FEET; THENCE NORTH 02 DEGREES 40 MINUTES 49 SECONDS WEST, 100.09 FEET; THENCE SOUTH 89 DEGREES 41 MINUTES 16 SECONDS WEST, 170.86 FEET; THENCE NORTH 00 DEGREES 18 MINUTES 16 SECONDS WEST, 260.00 FEET; THENCE NORTH 89 DEGREES 41 MINUTES 16 SECONDS WEST, 260.00 FEET; THENCE NORTH 89 DEGREES 41 MINUTES 16 SECONDS EAST, 400.00 FEET; THENCE SOUTH 89 DEGREES 18 MINUTES 44 SECONDS EAST, 400.00 FEET; THENCE SOUTH 00 DEGREES 18 MINUTES 16 SECONDS WEST, 260.00 FEET; THENCE SOUTH 89 DEGREES 41 MINUTES 16 SECONDS WEST, 400.00 FEET; THENCE SOUTH 00 DEGREES 18 MINUTES 16 SECONDS WEST, 400.00 FEET; THENCE SOUTH 00 DEGREES 18 MINUTES 44 SECONDS EAST, 400.00 FEET; THENCE SOUTH 00 DEGREES 18 MINUTES 44 SECONDS EAST, 400.00 FEET; THENCE SOUTH 00 DEGREES 18 MINUTES 44 SECONDS EAST, 400.00 FEET; THENCE SOUTH 00 DEGREES 18 MINUTES 44 SECONDS EAST, 400.00 FEET; THENCE SOUTH 00 DEGREES 18 MINUTES 44 SECONDS EAST, 400.00 FEET; THENCE SOUTH 00 DEGREES 18 MINUTES 44 SECONDS EAST, 400.00 FEET TO SAID SOUTH LINE; THENCE SOUTH 89 DEGREES 41 MINUTES 16 SECONDS WEST, 400.00

THE ABOVE DESCRIBED PROPERTY CONTAINS 5.1126 Acres

### Exhibit B FINDINGS OF FACT-SPECIAL USE

§ 13.08.J of the Zoning Ordinance outlines findings that the Zoning Board of Appeals must make in order recommend in favor of the applicant on special use permit applications. They are listed below in *italics*. Staff has provided findings in **bold** below based on the recommendation:

That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, or general welfare, provided that the site is developed in accordance with an approved site plan. The Kendall County Sheriff's Department, Fox Township Road District, and Newark Fire Protection District have not submitted comments expressing concerns for public health and safety. However, without proper buffering or screening, light and noise from the proposed use could impact the comfort of the property located southeast of the subject property.

That the special use will not be substantially injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. The Zoning classification of property within the general area of the property in question shall be considered in determining consistency with this standard. The proposed use shall make adequate provisions for appropriate buffers, landscaping, fencing, lighting, building materials, open space and other improvements necessary to insure that the proposed use does not adversely impact adjacent uses and is compatible with the surrounding area and/or the County as a whole. The **proposed use could be injurious to the enjoyment of other property in the immediate vicinity due to noise and light created from the proposed use. Some of the negative impacts of the proposed use on properties in the immediate vicinity could be mitigated by restrictions related to hours of operation, number of events, and buffering within the ordinance granting the special use permit.** 

That adequate utilities, access roads and points of ingress and egress, drainage, and/or other necessary facilities have been or are being provided. True, adequate utilities, drainage, and points of ingress and egress are provided.

That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Zoning Board of Appeals. Provided that variances are approved regarding distance to arterial and collector roads, the waiver of the requirement that off-street parking areas and access drives be improved with a permanent, concrete, unit paver, asphalt surface, or some other environmentally friendly surface or green design practice, and the waiver of the requirement that only "fully shielded" or "cut-off" light fixture are allowed, the special use would conform to the applicable regulations of the district.

That the special use is consistent with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. True, the proposed use In consistent with an objective found on Page 3-6 of the Kendall County Land Resource Management Plan which states as an objective "Encourage Agriculture and Agribusiness." Also, if the business allowed by this special use permit were to cease operations, the land could be easily converted to other uses allowed in the A-1 Zoning District.

### **FINDINGS OF FACT-VARIANCE**

§ 13.04.A.3 of the Zoning Ordinance outlines findings that the Zoning Board of Appeals must make in order to grant variations. They are listed below in *italics*. Staff has provided findings in **bold** below based on the recommendation:

That the particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship or practical difficulty upon the owner if the strict letter of the regulations were carried out. If the owner of the business allowed by this special use permit were required to install the required parking, the property would have greater difficulty reverting back

to a farmstead if the business ceased operations. The required light is for businesses located in a more developed, commercial area and not a rural, agricultural area. The proposed banquet facility is approximately one point two (1.2) miles from an arterial roadway (Route 71); an existing, approved banquet facility on the same road is approximately one point five (1.5) miles away from an arterial roadway or major collector roadway.

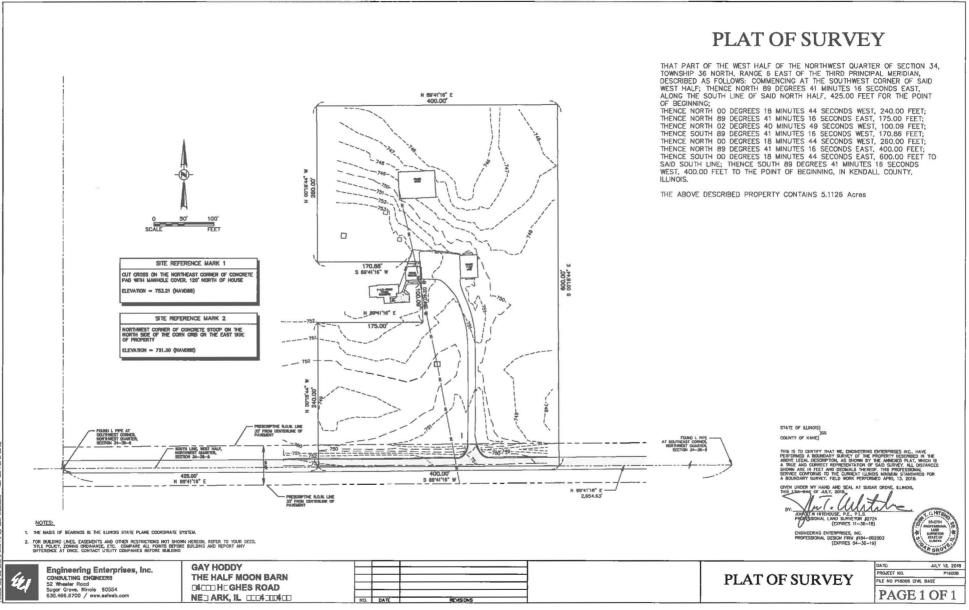
That the conditions upon which the requested variation is based would not be applicable, generally, to other property within the same zoning classification. This is not true. Other banquet facilities in the rural areas could face similar concerns related to lighting, parking, and access to an arterial roadway or major collector roadway. The specific number of properties sharing similar characteristics is unknown.

That the alleged difficulty or hardship has not been created by any person presently having an interest in the property. While no one involved with the requested special use permit and variances platted the subject property, the Petitioners created the hardship by desiring to have a banquet facility at the subject property.

That the granting of the variation will not materially be detrimental to the public welfare or substantially injurious to other property or improvements in the neighborhood in which the property is located. True, the Kendall County Sheriff's Department, Fox Township Road District, and the Newark Fire Protection District have not expressed any concerns regarding the proposed use being materially detrimental to the public welfare or injurious to other property in the neighborhood.

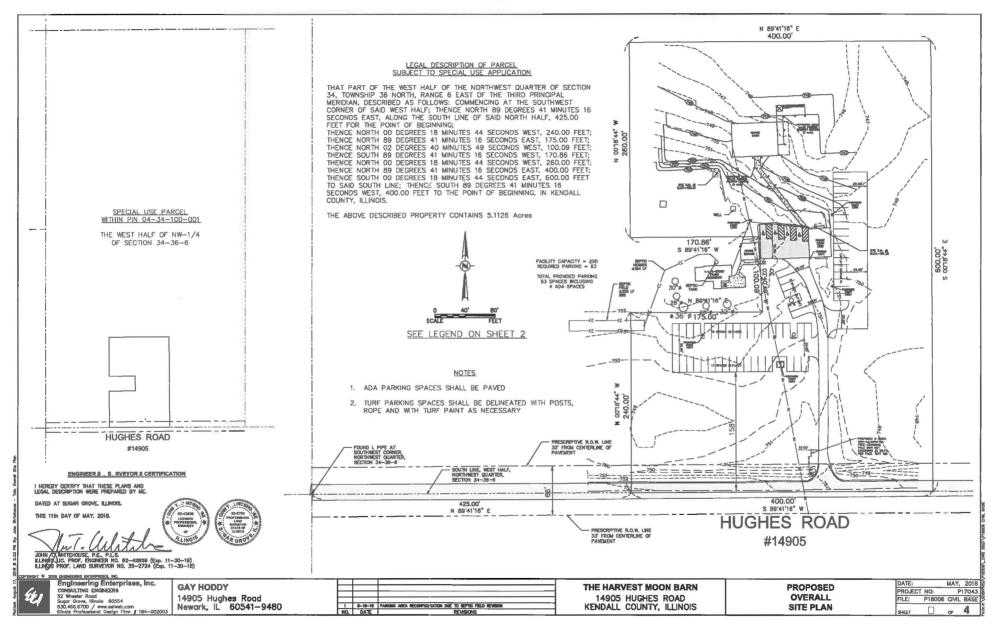
That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets or increase the danger of fire, or endanger the public safety or substantially diminish or impair property values within the neighborhood. True, the proposed use will not block light or air from adjacent properties. The proposed use will not cause an increase in congestion on public streets because events will not be held every day. Provided the business allowed by the special use permit follows the restrictions placed on the special use permit, no increase to the danger of fire or the endangerment of public safety should occur. Data does not exist as to whether the placement of the proposed use will diminish or impair the property value of the property located southeast of the subject property.

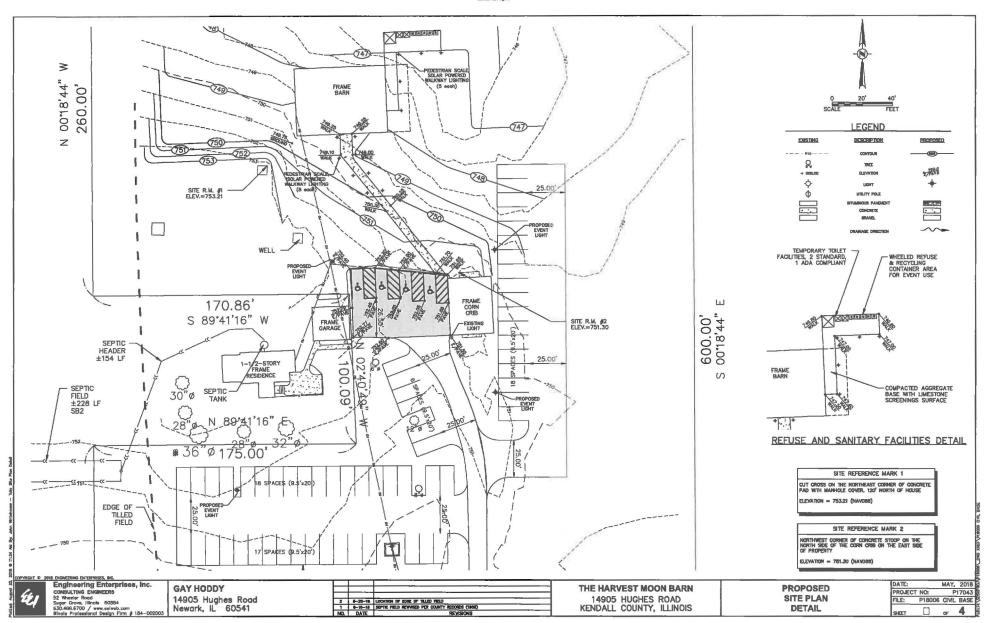
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