

IN THE MATTER OF)
)
THE APPLICATION FOR APPEAL OF)
INTERPRETATION OF CURRENT)
PLANNING SUPERVISOR TO BOARD)
OF ADJUSTMENT OF HIS OCTOBER 13, 2017)
DECISION CONCERNING SOUTHEAST)
PROPERTY GROUP, LLC’S PROPERTY ON)
MORROW MILL ROAD)

**MOTION TO QUASH
AND MODIFY SUBPOENAS**

Pursuant to N.C.G.S. §§ 153A-345.1 and 160A-388(g), Wild Flora Farm, LLC, Southeast Property Group, LLC, The Barn of Chapel Hill, LLC, Chris Brewer, and Kara Brewer (“Subpoena Recipients”) move that the Chair of the Orange County Board of Adjustment (“BOA”) modify and quash the Subpoenas issued by the BOA on May 25, 2018 in this case. In support of this motion, Movants offer the following:

1. N.C.G.S. § 160A-388(g) establishes standards for the issuance of subpoenas by a board of adjustment – specifically, a determination that the subpoenas are relevant, reasonable in nature and scope, and not oppressive.

2. The merits of the underlying appeal involve an interpretation of NCGS § 153A-340(2a), which in relevant part states that a “building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farmer sales tax exemption certificate from the Department of Revenue”

3. As such, there is only one relevant question at issue – does the owner of the subject property hold a qualifying farmer sales tax exemption certificate.

4. The Planning Staff determination being appealed was based on documentation submitted on behalf of Kara Brewer, Wild Flora Farm, LLC, and Southeast Property Group, LLC. There is nothing in the record that would indicate that any other parties are relevant to the merits of this appeal. As such, the Subpoenas issued to The Barn of Chapel Hill, LLC and Chris Brewer should be quashed as irrelevant and not reasonable in nature and scope.

5. The case materials transmitted to the BOA by Planning Staff include the Articles of Merger and Certificate of Merger showing that Southeast Property Group, LLC (“SPG”) was merged into Wild Flora Farm, LLC (“WFF”) effective February 26, 2018. As a result, SPG no longer exists as a legal entity. Therefore, the Subpoena issued to SPG should be quashed as irrelevant.

6. The information sought in all Subpoenas is over-broad, vague, and does not describe with reasonable particularity the matters on which examination is requested. Therefore, all Subpoenas should be quashed as not reasonable in nature and scope and as potentially oppressive.

7. All Subpoenas issued by the BOA on May 25, 2018 seek information on the legal relationship of the recipient to various persons and entities that are not relevant to this merits of this appeal, including The Barn of Chapel Hill, LLC, Kara Brewer Designs, LLC, KB Special Events, LLC, and Chris Brewer. Given the lack of relevance, the information sought is not reasonable in nature and scope. Therefore, any and all Subpoenas that are not quashed should be modified to exclude such information.

8. This Motion is respectfully made without waiving, forfeiting, or otherwise abandoning any other challenges or defenses to the subject Subpoenas, which are or may be available to the Subpoena Recipients under the laws of this State.

WHEREFORE, the Subpoena Recipients respectfully request that the Chair quash all Subpoenas issued on May 25, 2018 in this case as not reasonable in nature and scope. In the alternative, the Subpoena Recipients respectfully request that:

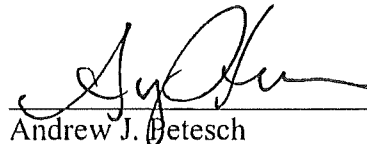
1. The Chair quash the Subpoenas issued Southeast Property Group, LLC, The Barn of Chapel Hill, LLC, and Chris Brewer as lacking relevance and not reasonable in nature and scope;

2. The Chair modify the Subpoenas issued to Wild Flora Farm, LLC, Kara Brewer, and any other Subpoenas not quashed to exclude information as to the legal relationship between the recipient and The Barn of Chapel Hill, LLC, Kara Brewer Designs, LLC, KB Special Events, LLC, and/or Chris Brewer based on a lack of relevance and of reasonableness in nature and scope.

Respectfully submitted, this the 9th day of July 2018.

PETESCH LAW

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