



# Town of Hopkinton

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## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES AUGUST 20, 2018

Members present: Chairman Daniel Rinden, Seth Greenblott, Charles Koontz, Toni Gray, and Jonathan Eck. Staff present: Planning Director Karen Robertson.

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*A site visit of 1301 Bound Tree Road took place at approximately 5:10 PM, prior to the hearing. During the visit, the Board asked identifying questions, heard the sound system from various locations, including a neighboring property, viewed the condition and measured the width of Bound Tree Road, and measured the width of a horse trailer. During this time, public testimony was not permitted.*

*A conference call (attorney/client) occurred at approximately 6:15 PM, prior to the hearing, between the Board and their Attorney Christine Fillmore of Gardner, Fulton & Waugh, PLLC.*

**I. Call to Order.** Chairman Rinden called the meeting to order at approximately 6:30 PM in the Slusser Center.

**II. Application.**

**#2017-03 Rhapsody Farm, LLC** Remand hearing for the sole purpose of determining whether the Special Exception criteria would be satisfied if the number of horse shows were limited or if other appropriate conditions were imposed, pursuant to the Merrimack County Superior Court Order, dated June 11, 2018<sup>1</sup>. The property is owned by 1301 Bound Tree Road, LLC and is located at 1301 Bound Tree Road, Hopkinton, in the R-3 district, Tax Map 204 Lot 2.

Attorney Jeremy Eggleton of Orr & Reno, 45 South Main Street, Concord, addressed the Board introducing Annie Kennedy, principal of 1301 Bound Tree Road, LLC and Rhapsody Farm, LLC.

Attorney Eggleton noted that he intentionally had not created an added submission of the application as he understood that the Court's order was primarily directed to the Board. He then provided the Board with copies of his response to what he noted as inaccuracies in Kenneth and Valerie Aubry's submission.

In the Aubrys' submission they commented on the location in which the monitors had been placed to gather the information for the sound study. In response, Attorney Eggleton noted that the Zoning Ordinance does not require that the equipment to measure the sound be placed at the property line of a particular abutting property. He stated that Mr. Rueter will concede that

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*Adopted: 09/05/2018*

he did not measure from the Aubrys' property line as he did not view it as an obligation to do so. Instead, Mr. Rueter measured from the property line of the closest residence.

Attorney Eggleton's client is now seeking an allowance of 5-7 horse shows from May to October. He noted that the Noise Ordinance provides for an extra allowance (5 dB) for uses that are less than once per week and only confined to daylight hours. The horse shows will happen during day light hours. To the extent that is not the case, such as people (personal friends) spending the night afterwards, the Board can impose conditions, such as no music or amplification. Furthermore, a time limit of 5:00 AM to 7:00 PM, during the horse shows, can be imposed so to address most of the issues raised by the neighbors.

Attorney Eggleton stated that the analysis for a Special Exception is whether there has been a substantial change in the characteristics of the neighborhood by allowing 5-7 horse shows. In response, he believed that the 5-7 shows would not cause a substantial change in the character of the neighborhood.

In the Aubrys' submission they argued that the data for the sound study was not completed during a horse show. Attorney Eggleton went on to explain that the data was gathered from August 4 – 7, 2017, and that on Sunday August 6 there was a horse show. The graphic in the original submission of the sound study showed an increase in sound on the Friday before the show. The increased sound was due to Ms. Kennedy using her tractor in preparation for the show on Sunday. The Hopkinton Zoning Ordinance exempts farm equipment for consideration under the Noise Ordinance. On Saturday, the horse show had not started. Then, on Sunday there was a slight elevation in decibels in the afternoon that increased the ambient sound level to between 41 – 42, which was an increase of about 5 decibels.

With respect Mrs. Hampe's opinion about the home sales that were in the vicinity of the Stumpfield Road horse stable, Attorney Eggleton explained that there was a private sale through a third-party buyer before the transaction that the Board had believed was the owners buying back the property.

With respect to the video clips that were provided to the Board of the Sunny Creek facility, Attorney Eggleton noted that the clips appear to have been taken next to the announcer's booth, so the Videos may not accurately represent what you would hear on the ground.

In addition, the letter from Aubrys mentions that approximately 229 separate rides had taken place during a given show. Attorney Eggleton explained that often those are duplicative. There may have been as many as 50 riders that engage in separate rides during an event; however, some riders carry a time (best time), so that an initial time or ride will carry over to the next event. The rider will be listed even though that rider does not actually ride during the next event.

During the Board's site visit, the Board viewed how the ring is situated and the four (4) speakers on the booth where announcements are made. Attorney Eggleton explained how the speakers can be modulated in different directions, so that they can be directed away from the Aubry house and diminish in volume. Furthermore, the volume can be altered, or a cap (known as a "limiter") placed on it. Additionally, a condition can be imposed that the volume be set at a certain level.

Acoustical Engineer Eric Rueter prepared and passed out an updated version of the graph that is in his original report. He explained how the sound study was limited to the amplification system for both music and speech. As that is the only component of the activities that is regulated by the Ordinance. In gathering the information to complete the sound study, Mr. Rueter had viewed an aerial photo to determine the location of those residences that are closest to the speaker system as a point to monitor the ambient sound levels. The outcome identified the property line, which is at the driveway entrance, as a point of monitoring the ambient levels.

Mr. Rueter explained that the Ordinance requires the use of the metric called “L90” which is a 90-percentile sound level. He reviewed that portion of the graph that represented the ambient L90 in the sound study. In this case, these were 1-hour values over the course of 4 ½ days, ranging from Thursday to Monday in August 2017. The blue L90 was during the time of day when there would be activities. Mr. Rueter used the most conservative approach that is to take the lowest L90 reached during the measurement period. He then went on to explain that the orange line in the graph represented the Leq (equivalent sound level) energy averaged over the course of one hour.

Lastly, Mr. Reuter opined that the instrument that the Board had used to measure the sound during the site visit is not of sufficient quality to make any legal determination. It would have needed to be calibrated within one hour of the measurement.

Realtor Judy Hampe addressed the Board to explain that she had submitted a letter that had referenced two (2) separate sales. One sale was for 351 Stumpfield Road. She believed that this was the property that the Board mistakenly believed was not an arms-length transaction. Mrs. Hampe was referencing a 2006 sale in which she had listed the property and ultimately sold it for \$750,000 to a buyer that was interested in Pheonix Stables, since their daughter rode horses. This was an arms-length transaction. Subsequently, the earlier owners wanted to come back to New Hampshire and that sale was not an arms-length transaction. The sellers sold the property for a premium price and moved to Briar Hill Road where they built a large horse barn.

Then, across the street from 351 Stumpfield Road, Mrs. Hampe was asked to complete a sales analysis of the home as the owners were interested in placing the home on the market. At the time, the people at Pheonix Stables knew of someone who used their Stables that they believed would be interested in the home. Ultimately the home was sold, privately, to the individual because of their use of Pheonix Stables. The sale price was more than Mrs. Hampe had expected.

Mr. Eggleton inquired about Pheonix Stables having events or shows at the time of the sales. Mrs. Hampe believed they had horse shows but was unsure of the number, nature, or size of the shows.

The last item noted in the submission by the Aubrys concerned the quality and impact that the horse shows will have on the roads. In response, Public Works Director Dan Blanchette stated that four (4) shows per month with 50-60 attendees is too much for the roads. He suggested that one (1) or two (2) shows from May to October, or 5-7 per year, is tolerable. Chairman Rinden suggested that the widest point of the road is 25-feet.

Chairman Rinden measured the horse trailer at 8-feet wide. A fire truck is 8 ½ feet wide. Chairman Rinden suggested that it doesn't leave a lot of room when traveling a 25 feet road. In response, Mr. Blanchette stated that there are paved roads that are just as narrow.

Chairman Rinden stated that he thought that it would be difficult to pass by a trailer. Mr. Blanchette stated that there are points along the road that are narrow, so that it would be difficult for a fire truck to pass by another vehicle.

Mr. Greenblott stated the L90 for August 6 is fairly consistent over the baseline. In reviewing the graph, the orange line represents the sound level during the August horse show that is 10-15 units above the baseline. Mr. Rueter replied yes, indicating that level is before the calibration of the sound system. Mr Greenblott reiterated that the volume heard today is not the show volume that was experienced by the abutters as the shows were taken place. Mr. Rueter agreed.

At this time, there were discussions concerning the specific setting that had been used when calibrating the sound system.

Mr. Eck asked Attorney Eggleton if he had additional information concerning the effects of horse shows, in particular, on property values for neighboring or nearby properties. Attorney Eggleton referred to the testimony from Mrs. Hampe., and Mrs. Hampe confirmed that she had no additional information.

Mr. Greenblott inquired about the various lengths of horse trailers. In response, Ms. Kennedy stated that the maximum length, without requiring a CDL, is 34 feet which is the size of her large trailer. She also has one trailer that is approximately 21 – 22 feet long. She noted that the 34 foot trailer is excessive and that most people don't use that size.

Mr. Greenblott questioned the number of participants that the events could be limited to. Ms. Kennedy suggested using the average number of participants that she has had in the past, noting that it depends upon the type of show. She argued that there can be more than one rider using a horse; therefore, the number of participants can be misleading.

Mr. Greenblott asked Ms. Kennedy to explain what a small horse show would look like. In response, Ms. Kennedy stated that her property could have a maximum of 50 horses, which could involve 38 trailers. It is difficult to know how many will show up for a show. She noted that there is a window of time of approximately 2 ½ hours for trailers coming into the site. Then, after the show, it takes approximately 1-hour to empty 35 trailers from the parking lot.

While Ms. Kennedy agreed that pre-registry is possible, she noted that there are many riders that may decide on the day of the show to attend, and therefore, they would not be pre-registered.

Mr. Greenblott questioned whether a limit of no more than 10 trailers would make it impossible to operate a show. Attorney Eggleton estimated between 30-40 trailers would be feasible.

Attorney Eggleton asserted that the issue of traffic safety had been addressed as the Board was originally in receipt of a letter from the Fire Chief indicating that he did not have concerns

with access. Furthermore, there was a letter submitted by the Police Chief indicating that there was no risk to public safety from these events.

Mr. Koontz asked Ms. Kennedy for the minimum number of trailers, horses, or riders that she believed to be necessary to make operation of the horse shows sustainable. Ms. Kennedy estimated 40 trailers, 40 horses, and between 5-7 shows. She believed that placing a cap on the number of horses is unreasonable because people can carpool with their horses. The way her business is built she cannot exceed the numbers she has already had onsite, estimating 40 trailers and 50 riders as a maximum number.

Attorney Eggleton pointed out that on Sunday, August 8 there was a horse show. There has been some confusion of whether the sound during the horse show was measured. He stated that the ambient data measured the horse show. The Leq and L90 levels are higher for that day. Based on the data, the sound system was calibrated, and the sound limits were set based on the 30-dba limit at the property line. Since the limits were established there has never been a horse show at the property.

Attorney Eggleton then informed the Board of a way to broadcast through an FM transmission, so that people in their vehicles can hear the broadcast from their radios.

Attorney Eggleton stated that with a limiter there is a means of capping the volume levels, but it is not tamper proof. Mr. Rueter agreed.

Attorney Matthew Snyder of Sulloway and Hollis, 9 Capitol Street, Concord, introduced his clients, Kenneth and Valerie Aubry, who are abutters to Rhaposdy Farm.

Attorney Snyder provided a brief history of the events that led to the remand hearing. He noted that the Board received his filings, in advance of the hearing, including a letter from Mr. and Mrs. Aubry, along with letters from other abutters and residents who have concerns. Attorney Snyder suggested that the Board had already completed an analysis as to whether horse shows meet the criteria for a Special Exception.

The Applicant originally requested 50 shows per year, then requested 27 shows, then in the Motion for Rehearing requested 7-15 shows, and now is requesting 5-7 shows. At the original hearing, the Board heard testimony from Mr. Blanchette with regards to the number of trailers and the condition of Bound Tree Road. The Board took that testimony under consideration when denying the Motion for Rehearing. It is Attorney Snyder's clients' request that horse shows continue to be excluded from the Special Exception approval.

Knowing that the Board would not have had an opportunity to view an actual horse show, Attorney Snyder provided a video of a horse show at the Sunny Creek Equestrian Center. He and his clients attended shows in July to give the Board a sense of the kind of horse shows that take place. These shows were on the same circuit as the shows that the Applicant had hosted on her property in 2017.

Attorney Snyder stated that during a video taping of the horse show he had attended he was seated approximately 30 feet away from the announcer's booth. Attorney Snyder indicated that Sunny Creek was having technical difficulty with their sound system, so as a result they had reduced the sound level.

Videos one and three represented riders that were taking part in the barrel horse races. This represented the same announcements that the Aubrys heard from their home in 2017, when the races were taking place at the Applicant's property.

Attorney Snyder advised that at the championship show that the Applicant had hosted in 2017, there were 229 separate rides that day in which the Aubrys heard announcements.

Video four represented the trailers that attended the Sunny Creek shows. They had observed approximately 45 trailers on both days. Some of the trailers were pulled by vehicles the size of an 18-wheel tractor. People attended the shows from all over New England, including New York. Some of the trailers had RV features, so that they could accommodate extended stays and overnight sleeping, which the Aubrys object to.

Videos five and six were recorded by the Aubrys in May of this year. They represent the Applicant's music being played over the loud speakers.

Lastly, Attorney Snyder had included in his filing a chart comparing several of Hopkinton's horse stables. Since the Applicant, throughout the process, had drawn comparisons to what was going on at other stables in Hopkinton, Attorney Snyder had collected information about those various shows, using their websites, social media postings and by calling the other facilities. He suggested that there isn't a comparison as to what the Applicant is proposing to do from what takes place at other stables in Hopkinton. For example, Shared Gifts and Back in the Saddle stables are non-profits. MRF Dressage hosts three (3) shows per year that are really schooling and instruction clinics that do not include barrel racing. They do not use a loud speaker. Pheonix Stable has not hosted horse shows in recent past. They do have one (1) loud speaker. Dawn Mar stable has a PA system with two portable loud speakers that are used rarely. When used they are used for children that are hearing impaired. While Dawn Mar and Pheonix Stables have indoor arenas, they have hosted shows at the fairgrounds. All four stables are in the R-4 district, which is the most rural residential zone. Additionally, all four stables are located off paved roads.

Attorney Snyder stated that the Applicant cannot satisfy the criteria requiring the location to be appropriate for the proposed use. He argued that the Board's review of the Motion for Rehearing, the Board still concluded that the Applicant's request for 7-15 shows is inappropriate. Attorney Snyder quoted the following from the November 16, 2017 meeting minutes:

"Ms. Scheinman stated that the location is inappropriate because of several factors, which included the location of the property along the road and the area of the neighborhood in which the shows were being operated. The location wasn't considered inappropriate because of the definition of a riding stable. The decision was that the location (property and neighborhood) was inappropriate for horse shows."

Attorney Snyder suggested that limiting the number of horse shows is not going to improve the location of the Applicant's property. He believed that limitations on hours, overnight stay and types of events will have an impact on the Applicant's ability to host barrel events or similar event.

Attorney Snyder quoted the following excerpt from the Applicant's appeal to the Court:

"The petitioner testified that she relied upon the horse shows as a key commercial component to her commercial riding stable, and that they were standard at commercial riding stables around the country. She testified she that while she could earn some revenue from stabling horses, the horse shows were financially essential."

Attorney Snyder referenced the Special Exception criteria that requires there to be no detriment to property values. In his filing, he had submitted letters from local realtors, Barbara Ruedig and Francis Brown. Ms. Ruedig had opined that allowing horse shows would make the Aubrys' home "virtually unsaleable".

In rebuttal to Mrs. Hampe's letter, Attorney Snyder stated her letter only mentions boarding and riding lessons and doesn't reference shows. However, tonight Mrs. Hampe offered testimony that she believed shows were on-going at Pheonix Stables at the time of the sale of the two (2) properties referenced. Attorney Snyder noted that it is in the record that Mrs. Hampe did not attend the horse shows at Rhapsody Farm. Furthermore, the comparison of what goes on at Pheonix Stables and the other stables in Hopkinton is no comparison to the activities and amenities at Rhapsody Farm.

Attorney Snyder discussed the essential characteristics of the neighborhood on account of noise. He stated that the Board, at prior hearings, had heard testimony from abutters and neighbors about noise. He suggested that even if the sound study is found to be in compliance with the noise ordinance, the Zoning Ordinance and NH Statutes require the more restrictive provision to control the situation. Attorney Snyder stated that the Board is permitted to restrict the noise levels as a condition of the Special Exception that goes beyond the Noise Ordinance.

Other issues raised by Attorney Snyder involved the measurement locations for the instruments used in measuring the noise level. He argued that it would have made sense to take the measurements at the property line of the abutting property, rather at the property line of the closest residence. The Aubrys' property line is the closest to the noise source, which is the announcer's booth.

The third of the Special Exception criteria referenced was that there can be no creation of a traffic safety hazard or increase in traffic congestion in the vicinity. Attorney Snyder's clients and others in the neighborhood had testified that the vehicles/trailers from the shows have caused congestion and may potentially cause problems for emergency vehicles. He noted that Mr. Blanchette had previously testified to the increased maintenance and dust that would be created.

Attorney Snyder asked Mr. Blanchette whether the large trailers would pose a problem for a fire truck to be able to pass by. Mr. Blanchette believed so, if the vehicles had met along certain sections of the road.

Attorney Snyder argued that limiting the number of horse shows or trailers is not going to improve the dangerous conditions. He reiterated his client's request that the Board not include

horse shows in their prior approval. He noted that the Fair Overlay District is the only area where horse shows are allowed, as a right; therefore, he proposed that the Applicant be required to host horse shows at the fairgrounds.

Mrs. Aubry played recordings that she had taken of the sound of the horse shows from within her home. In response, Mr. Koontz asked Mrs. Aubry about her video recording of the sound. He asked if the window was open. Mrs. Aubry replied yes, stating that there was a screen that she wanted to be shown in the video so that the Board would realize that she was inside her house. On other days, the announcer can be heard from inside the house with the windows closed. She reiterated the Zoning Ordinance only references horse shows as taking place, as a right, at the fairgrounds.

Mr. Eck asked about the encounters with horse trailers that have occurred along the road. Mrs. Aubry responded that the vehicles pull to the side, so that the trailers can get by as they tend to ride in the middle of the road. She maintained that there was a day that they could not pass the trailers because they were at the top of the hill, at the entrance to the farm. The location is a blind corner along the road.

Mr. Koontz asked if there is a substantial increase in traffic during a horse show. Mrs. Aubry said that it depends upon when the vehicles/trailers come and go from the property because some stay overnight.

Mr. Eck inquired of Mr. Blanchette whether traveling the road during the month of May is a problem. Mr. Blanchette replied no; however, all dirt roads are annually posted for heavy trucks. Mr. Eck then asked about the width of the narrowest point of the road. Mr. Blanchette was unsure. Mr. Aubry stated that the road gets narrower after heavy rain.

Chairman Rinden gave members of the audience an opportunity to state new information in favor or opposed to the application.

MJ DeBrusk of 1186 Bound Tree Road addressed the Board pointing out that the spectators in the videos appeared to act differently than those that were at the Applicant's shows. She stated that while the speakers are loud there is a lot of cheering from the crowd that can be very loud. Mrs. DeBrusk then noted that she had originally called the gentleman that completed the sound study, who had told her that he had not completed the sound test during the shows. In response, Mr. Rueter stated that background measurements spanned the shows. The measurements for calculating the speaking system was on a different day.

Lastly, Mrs. DeBrusk suggested that it would be difficult to enforce a limitation on the number of trailers if there was a pre-registration.

With no other person seeking to provide remarks, Chairman Rinden declared public testimony closed; at which time, the Board began deliberations.

Mr. Greenblott clarified the instruction received from the Superior Court. The Board must determine if there are conditions that can be placed on the application that would allow the Applicant to meet the Special Exception requirements. The conditions may include a limitation on the number of shows or some other conditions or limitations.



Chairman Rinden reiterated the Applicant's request to hold 5 to 7 horse shows. He inquired with the Board members concerning their opinion as to whether the Applicant had met the criteria to be granted a Special Exception. Mrs. Gray responded no, stating that the shows would negatively impact property values in the vicinity. Mr. Greenblott concurred, observing that the Board has received evidence that the shows have a negative impact on property values. The evidence is based on the number of abutters present and letters received from those that object to the application. At this time, members of the audience indicated that they are abutters that are in favor of the proposal.

Chairman Rinden suggested that another issue is the impact that the vehicles/trailers will have on the road and the noise that the shows will produce. Mrs. Gray concurred, noting that the issue of noise and affect property values go together.

Chairman Rinden believed that the sound level that was heard during the site walk, which was very quiet, is different than the level of sound that was heard by the neighbors during the 2017 shows. Mrs. Gray agreed, stating that when on the site walk she could not hear the sound system. Chairman Rinden stated at the original hearing, the Applicant had noted that the level of the loud speakers was necessary so that people in the trailer section of the parking lot could hear when their number was called. Chairman Rinden stated that it was difficult for him to hear anything from the sound system, when he had walked where the trailers are to be parked. Mr. Greenblott agreed, noting that he, too, walked back to that section of the property. He could hear the music; however, the announcements on the PA system were inaudible.

Mr. Eck questioned whether the sound level would need to be higher than what was heard today by the Board (which the Applicant proposed as a sound level acceptable to her). Mr. Greenblott agreed, questioning whether maintaining the level required is practical for the Applicant's business.

Mr. Eck referred members to sections 5.5 and 5.5.1 (b) of the Noise Ordinance, which indicates that the noise level produced should not exceed 10 dB or more of the a-weighted residual ambient sound level of the noise source operating. Mr. Eck suggested that there are ways to control the noise level that are within the spirit of the Ordinance (such as the limiter). However, he expressed concern with the practicality of enforcement. Mr. Greenblott concurred, but believed that there are ways to limit the sound, so to address some of the concerns and so that the Applicant can meet the requirements to be granted a Special Exception.

When discussing the traffic congestion, the impact of the vehicles/trailers on the road and the size of the shows, Board members suggested the possibility of requiring a police officer be present during the times when the vehicles/trailers are entering and exiting the property.

Following discussion, Mr. Greenblott questioned whether there is a procedure for the motion to be written and the language to be reviewed and approved by the Board. Mrs. Robertson responded yes, stating that the Notice of Decision and Minutes of the meeting will be reviewed and approved at the Board's next meeting. Mrs. Gray stated that the Applicant cannot move forward until the Notice of Decision is formally approved.

At this time, Board members reviewed the criteria for Special Exception to determine whether the Applicant's proposal satisfied all requirements.

- 1) **Standards provided by this Ordinance for the particular use permitted by Special Exception.** The application is before the Board following a remand by Judge McNamara.
- 2) **No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.** The Board agreed that there were no hazards.
- 3) **No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.** Mrs. Gray believed that any horse shows will affect the property values in the area. Mr. Eck suggested that there are ways of addressing the concerns relative to property values, including placing a limitation on any Special Exception granted. Mr. Greenblott believed that having 40 trailers, small to tractor trailers, parking in the area does affect the essential characteristics of the residential neighborhood. The larger trailers are analogs to commercial size vehicles that are similar to the size of vehicles used for a small commercial operation. Mr. Eck was conflicted with the issue of trailers as he believed that the vehicles will arrive in the morning and stay for the day. There conceivably could be a problem if there are fifty (50) trailers trying to access within the same limited time. Furthermore, trucks pulling trailers will most likely travel closer to the center line or middle of the road making it difficult for vehicles to pass by. Mr. Greenblott estimated, based on testimony of the Applicant, that for four (4) hours in a day, which is a substantial portion of the day, these types of vehicles/trailers will be occupying a washed-out narrow dirt road. While the Board identified this as an issue of concern, Mr. Eck suggested that the Board discuss operation limitations or modifications that could address those concerns.

Mr. Greenblott agreed, suggesting that if there were a limitation on the number of trailers, such as a maximum of 10-trailers permitted with the maximum size of 12-feet, then many of the concerns may be addressed in an effort to meet the criteria for Special Exception. Mr. Eck agreed with the limitations in principle but expressed concerns with enforcement. Chairman Rinden wondered if requiring pre-registration and proof of size of the trailer would be an appropriate way to enforce the suggested limitation. Mr. Greenblott stated that if there are restrictions imposed that allow the Applicant to meet the criteria for Special Exception, then the Applicant must grant access to the property for enforcement. If there is a pre-registration, then it must be closed by a certain date so that the Applicant can provide the information to the Town for verification. At this point all members agreed that enforcement would be a large burden on the municipality.

Mr. Eck stated that when comparing the points of access to the fairgrounds to that of the subject property, the fairgrounds has multiple entrances and exits; while, there is only one access, which is on a hair-pin turn, to the subject property.

Mr. Greenblott believed that a police officer would need to be at the entrance of the facility to turn people away should the number and size of trailers exceed that approved. Chairman Rinden noted that the police officer may be an officer from another Town if one isn't available in Hopkinton. The officer would be at the site during the morning when trailers are entering the property and then in the afternoon when they are leaving the property. Mr. Eck suggested that a limit on the number of trailers would be self-policing

because it could be a problem for the Applicant if people show up and the police turn them away because capacity had been met. Mr. Greenblott agreed, and clarified his proposal that having the police officer on site would be at the Applicant's expense.

Mr. Eck stated that the Applicant's request for 5-7 shows from May to October is much smaller than what was originally proposed (50) and for a shorter time period. Mr. Greenblott agreed, stating that he was concerned when the Applicant had wanted 50 shows; however, now the number of shows doesn't concern him. However, he is concerned with the size of the shows. Mrs. Gray suggested that the Board place a specific limit on the number of shows, such as no more than six (6) shows. One show per month. All members agreed. Mr. Eck then questioned whether there is a recommendation that there be a limitation on the number of trailers that can attend the shows. In response, Mr. Greenblott stated that trailers are the only way to practically limit the size of a show. If there are ten (10), 34-foot trailers with six horses in each, then there is a possibility of sixty (60) horses at a show.

At this time, there was discussion as to the various sizes of trailers and the possible limitation on the number of trailers. Chairman Rinden suggested that there anything under 20-feet be permitted. Mr. Koontz preferred a maximum size of 12-feet. This seems to be the standard size trailer. The smaller trailer would be easier for vehicles to get by especially where there are hair-pin turns in the road. Mr. Eck heard the Applicant speaking about 40 trailers and then heard discussion about 30 trailers. The issues are the concern of safety, traffic, wear on the road, access by emergency vehicles, and retaining the essential characteristics of the neighborhood. Requiring a smaller event addresses these concerns.

In addition, there were concerns with noise emanating from the crowd and sound system, requiring a smaller event to address those concerns.

The Board agreed that the number of shows would be limited to six (6) from the months of May – October.

- 4) **No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.** The Board agreed that imposing conditions with respect to the size of the events will address these concerns.
- 5) **No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.** Conditions limiting the number and size of trailers will address the concerns with the wear on the road and further address concerns with traffic and safety.
- 6) **No significant increase of storm water runoff onto adjacent property or streets.** There were no concerns.
- 7) **An appropriate location for the proposed use.** Limiting the size and number of events makes this an appropriate location for horse shows.

Mr. Koontz questioned whether it is necessary to have a sound system. In response, Mr. Eck noted that the organizers will need to communicate information to people. Chairman Rinden questioned whether it would be possible to eliminate the music as it is not

necessary to the operation of the horse shows. In response, Mr. Greenblott stated that it is not the Board's responsibility to decide what the Applicant needs. However, the Board does have an opportunity to place restrictions on the sound system that can achieve the Applicant's goal and address concerns with noise.

Mr. Eck questioned whether the issue of noise would need to be addressed if the Applicant is not violating the Noise Ordinance. In response, Chairman Rinden stated that if the noise were to be as regulated and as it was heard today, then it will not be an issue. However, many members have doubts that the noise during the horse shows will be at the same level as was represented and heard during the site visit. Furthermore, in order to address potential enforcement issues, Board members suggested that specific noise limitations should be considered.

With the restrictions contemplated, the Applicant addressed the criteria.

**8) Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.**

By limiting the size and frequency of the events, the Board is addressing concerns with traffic safety, access by emergency vehicles, and those issues that would negatively affect the health and safety of residents in the area. Furthermore, it was agreed that with the restrictions contemplated, the Board does not believe that the events will be detrimental to the use or development of adjacent or neighboring properties.

The Board further discussed the maneuverability of the sizes of trailers. The contemplated limitation on the number and size of trailers would most likely address the Board's concerns about access by emergency vehicles.

**9) In the public interest and in the spirit of the ordinance.**

Allowing people to use their property in a reasonable way that doesn't negatively impact their neighbors is in the public interest and spirit of the Ordinance. If the use wasn't allowed, a Variance would be required rather than a Special Exception.

Brief discussion ensued concerning the contemplated conditions. Chairman Rinden asked that the Board restrict the shows to Saturdays as he believed that it would be a day that would be the least nuisance to others. Since the Board is discussing only one day per month over a six-month period, several members didn't have a strong feeling one way or another.

Chairman Rinden polled the members to determine the maximum size allowed for the trailers. Three (3) members (Greenblott, Koontz, and Gray) agreed on a maximum size of no more than 12-feet.

Seth Greenblott moved to **APPROVE** the application (horse shows) subject to the following restrictions:

- 1) That the Applicant install a limiter on her sound system limiting the volume to the levels and settings that were represented at the hearing, and at no event will the sound system be any louder than the statutory limitations;

- 2) That the shows be limited to one (1) commercial horse show per month from May to October, inclusive of both those months;
- 3) That the participants in those shows be limited to ten (10), 12-foot trailers;
- 4) That the Applicant, at their own expense, have a police officer present from 6:30 AM to 8:30 AM directing traffic during the shows and, again, from one-half (1/2) hour before the end of the show and from one-half (1/2) hour at the end of the show, and
- 5) That the shows be limited to take place only on Saturdays.

Mr. Eck questioned whether the Board should be more explicit on the statutory representations. Mr. Greenblott agreed to amend his motion to include reference to section 5.5.1 (b) of the Zoning Ordinance.

Mr. Koontz asked that the words “restrictions and conditions” be referenced in the motion. Mr. Greenblott agreed.

Mr. Eck questioned the time frame for the presence of the police officer given the fact that the opponent had represented that people tend to arrive early for registration. Mr. Greenblott agreed to amend his motion to require a police officer two and one-half (2 ½) hours prior to registration and thirty (30) minutes after the beginning of registration.

Seth Greenblott's **AMENDED** motion to **APPROVE** the application (horse shows) subject to the following restrictions and conditions:

- 1) That the Applicant install a limiter on the sound system limiting the volume to the levels and settings that were represented at the hearing, and at no time will the sound system be any louder than the statutory limitations referenced in subsection 5.5.1(b) of the Hopkinton Zoning Ordinance;
- 2) That the horse shows be limited to one (1) commercial horse show per month from May to October, inclusive of both those months;
- 3) That the participants in those shows be limited to ten (10), 12-foot trailers;
- 4) That the Applicant, at their own expense, have a police officer present, directing traffic, two and one-half (2 ½) hours prior to registration and one-half (1/2) hour after the beginning of registration and, again, one-half (1/2) hour before the end of the show and for one-half (1/2) hour at the end of the show, and
- 5) That the shows be limited to take place only on Saturdays.

With five members voting, four voted in favor (Greenblott, Koontz, Gray and Rinden) and one voted in opposition (Eck). Motion carried in the affirmative. With the restrictions and conditions imposed, the Applicant successfully addressed all criteria to be granted a Special Exception as outlined in Section XV of the Zoning Ordinance.

The restrictions and conditions limiting the size and frequency of the events were necessary to satisfy items 3-5 and 7-9 of the criteria for Special Exception. Specifically, to address the following concerns:

- The property values in the vicinity;
- The location and whether it is appropriate;
- The health and safety of the residents in the vicinity;
- The changes in the characteristics of the residential neighborhood on account of noise, traffic

- safety, and traffic congestion;
- The increase in demand on the road when considering its present condition;
- The use and/or development of adjacent and neighboring properties;
- The public’s interest, and the spirit of the Zoning Ordinance.

**III. Adjournment.** Chairman Dan Rinden, seconded by Charles Koontz, moved to **ADJOURN** the meeting at 9:47 PM. Motion carried in the affirmative.

Karen Robertson  
Planning Director

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<sup>i</sup> History:

- a) September 6, 2017, ZBA Public hearing held and continued to allow time to review additional information received and to seek a legal opinion concerning “horse shows”.
- b) October 3, 2017, ZBA approved Special Exception to operate a Commercial Riding Stable with the condition that “horse shows” be excluded from the approval.
- c) November 16, 2017, ZBA denied Motion for Reconsideration (Rhapsody Farm, LLC).
- d) June 11, 2018, Merrimack County Superior Court Order.