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HOPKINTON ZBA MATERIAL – AUGUST 20, 2018

RHAPSODY FARM LLC

<u>Date</u>		<u>Page No.</u>
8/20/18	<p style="text-align: center;">Slusser Center</p> <p>Notice of Hearing – Agenda/Site Visit re Remand Hearing Reminder: Meet at Library at 5:00 PM to carpool to 1301 Bound Tree Road.</p>	
6/11/18	Merrimack County Superior Court Order (yellow)	
8/21/17	Special Exception for Rhapsody Farm LLC Submitted by Jeremy Eggleton, Esq. dated 8/21/2017. Includes the following:	
	a) Cover letter	CR 000001
	b) Application for Special Exception	CR 000008
	c) Abutters List.....	CR 000010
	d) Fiduciary Deed.....	CR 000012
	e) Select Board Permit Denial, dated 6/12/2017.....	CR 000015
	f) Excerpt from Zoning Ordinance	CR 000016
	g) Building/Use Application, dated 6/08/2017	CR 000020
	h) Exhibit 1: Survey Plan, dated 3/18/1991.....	CR 000023
	i) Exhibit 2: Photographs.....	CR 000025
	j) Exhibit 3: Emails between Atty. Eggleton & Chief Yale.....	CR 000036
	k) Exhibit 4: Letter Judy Hampe to Atty. Eggleton (not dated)	CR 000039
	l) Exhibit 5: Letter Eric Reuter to Atty. Eggleton, dated 8/14/2017	CR 000041
	m) Exhibit 6: Emails between Atty. Eggleton & Chief Pecora	CR 000048
	n) Exhibit 7: Email Atty. Eggleton to DPW Blanchette	CR 000051
	o) Exhibit 8: Letter Sean P. Sweeney to Atty. Eggleton, dated 8/17/2017.....	CR 000053
9/06/17	ZBA Minutes. Continued to 10/03/2017. Includes the following:	CR 000058
	a) Letter Valerie & Kenneth Aubry, dated 9/06/2017	CR 000069
	i. Photographs.....	CR 000077
	ii. Article <u>Concord Monitor</u> , dated 4/22/2017	CR 000078
	b) Letter Mary Jo & Peter DeBrusk, dated 9/06/ 2017	CR 000081
	c) Letter John E. Young, dated 9/06/2017	CR 000085
10/03/17	ZBA Minutes. Continued from 9/06/2017. Application for Special Exception granted with condition “horse shows” excluded	CR 000088
11/02/17	Motion for Rehearing, dated 11/02/2017 (exhibits not included)	CR 000097
11/07/17	ZBA Minutes Scheduling Motion for Reconsideration.....	CR 000161
11/16/17	ZBA Minutes denying Motion for Rehearing.....	CR 000163



Town of Hopkinton

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HOPKINTON ZONING BOARD OF ADJUSTMENT PUBLIC NOTICE – AGENDA AUGUST 20, 2018

Notice is hereby given that the Hopkinton Zoning Board of Adjustment will meet on Monday, August 20, 2018, at 6:00 PM in the Hopkinton Town Library Community Room, 61 Houston Drive, Hopkinton (Contoocook), NH, to review and take action on the following.

I. Call to Order.

II. Applications.

- ✓ #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. 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.

Note: A site visit will be held at approximately 5:10 PM, prior to the hearing. During the visit, the Board will ask identifying questions, hear the sound system from various locations and view the condition of Bound Tree Road. No public testimony will be permitted.

IV. Adjournment.

History:

1. 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".
2. October 3, 2017, ZBA approved Special Exception to operate a Commercial Riding Stable with the condition that "horse shows" be excluded from the approval.
3. November 16, 2017, ZBA denied Motion for Reconsideration (Rhapsody Farm, LLC).
4. June 11, 2018, Merrimack County Superior Court Order.

The State of New Hampshire

MERRIMACK, SS

SUPERIOR COURT

1301 Bound Tree Road, LLC, *et al.*

v.

Town of Hopkinton

No. 217-2017-CV-00663

ORDER

1301 Bound Tree Road, LLC and Rhapsody Farm, LLC (collectively “the Petitioner”), appeal a decision of the Town of Hopkinton Zoning Board of Adjustment (“the Board”), granting the Petitioner’s application for a special exception to operate a commercial riding stable at 1301 Bound Tree Road in Hopkinton, New Hampshire with the condition that “horse shows” are excluded from that approval. The Petitioner argues the Board’s decision was unlawful and unreasonable. Kenneth and Valerie Aubry are intervenors opposing the appeal. The Court held a hearing on May 21, 2018. Based on the following, the Board’s decision is REVERSED and REMANDED.

I

Any person aggrieved by a decision of the zoning board of adjustment may appeal to the superior court. RSA 677:4. The appealing party must prove that the decision was either unlawful or unreasonable. RSA 677:6. All findings of fact made by the zoning board are considered *prima facie* lawful and reasonable. RSA 677:6. The decision will be affirmed unless the board made an error of law, or the Court finds, based upon a balance of probabilities, that the decision was unreasonable. RSA 677:6. “The review by the

superior court is not to determine whether it agrees with the zoning board of adjustment's [factual] findings, but to determine whether there is evidence upon which they could have been reasonably based." Lone Pine Hunters' Club, Inc. v. Town of Hollis, 149 N.H. 668, 670 (2003) (quotation omitted).

II

In April 2017, the Petitioner applied to the Board for a special exception to operate a commercial riding stable on a 36.3 acre lot in Hopkinton, New Hampshire ("the Property"). (Certified Record [hereinafter "C.R."] at 1-10.) The Property is owned by 1301 Bound Tree Road, LLC, and Rhapsody Farm, LLC operates the business on the Property. Margaret Kennedy is the principle member of 1301 Bound Tree Road, LLC and Rhapsody Farm, LLC.

In Hopkinton's R-3 district, where the Property is located, "commercial riding stables" are permitted by special exception. (Hopkinton Zoning Ordinance [hereinafter "the Ordinance" or "Z.O."] § 3.6.C.3.)¹ The Petitioner's application for a special exception stated that the Petitioner:

proposes to operate a commercial riding stable and show ring. She will stable horses for paying customers, who will come and go from time to time. In addition, she has operated, and intends to continue operating, public horse shows in her riding ring that can attract 25-50 visitors per show, and their animals.

(C.R. at 2.) During the shows, the Petitioner expects to play music and use a sound system for announcements, and will occasionally use fireworks. (Id. at 59.)

During a hearing on September 6, 2017, the Board heard from Ms. Kennedy and Attorney Jeremy Eggleton on behalf of 1301 Bound Tree Road, LLC and Rhapsody

¹ Hopkinton's Zoning Ordinance is included in the certified record. (See C.R. at 172-328.) Rather than cite to the page on which the relevant ordinance appears in the certified record, the Court will simply site to the section of the Ordinance.

Farm, LLC, and from abutters and non-abutters. (*Id.* at 58–65.) On October 3, 2017, the Board held a second hearing regarding the application during which it considered whether “horse shows” are within the allowable parameters of a special exception for a “commercial riding stable.” (*Id.* at 89.) The Board determined that they were not. However, the Board considered whether the Petitioner’s application satisfied the special exception criteria even if horse shows were permitted by special exception. Principally concerned about increased traffic, demands on municipal services, and noises associated with the proposed horse shows, the Board ultimately concluded the Petitioner’s application could not satisfy the special exception criteria so long as the Petitioner sought to use the Property for horse shows. Therefore, the Board approved the Petitioner’s special exception application for a commercial riding stable with the condition that “horse shows” are excluded from that approval. (*Id.* at 90–92.) On November 2, 2017, the Petitioner moved for reconsideration of this decision, which the Board denied on November 16, 2017. (*Id.* at 97–103, 163–71.) This appeal followed.

III

The Petitioner argues the Board’s decision was unreasonable and unlawful for a number of reasons.² The Petitioner first argues the Board erroneously defined the term “commercial riding stable” to exclude the essential function of horse shows. In response, the Board contends that it relied on a variety of sources to correctly conclude that horse shows are not permitted by special exception in the R-3 district. Alternatively, the Board asserts the Petitioner failed to present sufficient evidence to support a favorable finding on all criteria for a special exception with respect to horse shows.

² The Petitioner argued, in part, that horse shows are permitted as an accessory use to the primary use of the commercial riding stable. (See Pet’r’s Pre-Hearing Mem. at 15–17.) At the hearing on May 21, 2018, counsel for the Petitioner withdrew this argument.

"The interpretation of a zoning ordinance is a question of law, which [courts] review de novo." Town of Bartlett Bd. of Selectman v. Town of Bartlett Zoning Bd. of Adjustment, 164 N.H. 757, 761 (2013) (quotations omitted). "When the language of an ordinance is plain and unambiguous, [courts] need not look beyond the ordinance itself for further indications of legislative intent." Fox v. Town of Greenland, 151 N.H. 600, 605 (2004). Courts determine the meaning of a zoning ordinance "from its construction as a whole, not by construing isolated words and phrases." Feins v. Town of Wilmot, 154 N.H. 715, 719 (2004). "Pursuant to the rules of statutory construction, all undefined words and phrases of an ordinance will 'be construed according to the common and approved usage of the language, and [courts] will consider legislative intent only when a term is ambiguous.'" Cosseboom v. Town of Epsom, 146 N.H. 311, 314 (2001).

Pursuant to the Table of Uses set forth in the Ordinance, "commercial riding stables" are permitted in the R-3 district only by special exception. (Z.O. § 3.6.C.3.) The Ordinance does not define "commercial riding stable," nor does it list out specific uses that are considered to be part of a "commercial riding stable." Pursuant to the Ordinance, undefined words "shall have the meaning given in Webster's Unabridged Dictionary, Third Edition." (Id. § 2.1.) It appears undisputed that Webster's Dictionary provides no meaningful guidance as to the meaning of "commercial riding stable."

With respect to certain uses, the Ordinance also provides that: "Uses listed in the Table of Use Regulations under the classes Retail and Service Trades and Wholesale Trade and Manufacturing shall be further defined by the Standard Industrial Classification Manual published by the U.S. Bureau of Census ["SICM"]." (Id.) The parties do not argue, nor does the Court conclude that "commercial riding stable" falls under the classes Retail and Service Trades and Wholesale Trade and Manufacturing.

Therefore, the SICM will not guide the Court's interpretation because there is no indication that the drafters intended for the SICM to control or influence the meaning of "commercial riding stable." For this same reason, the Court will not address whether the Board referenced the most relevant or applicable classification under the SICM when defining "commercial riding stable," particularly given that the Board was not required to consult or reference the SICM.

Stating the obvious, the plain meaning of the term "commercial riding stable" contemplates uses involving the riding and stabling of horses for commercial purposes. This broad definition indisputably encompasses a range of activities. By virtue of the fact that the Board granted the Petitioner's application for arena rentals, riding lessons, horse boarding, and training, (C.R. at 20, 94), it would appear uncontested that these uses fall within the broad definition of a "commercial riding stable." It is equally apparent to the Court that the proposed horse shows likewise involve the riding of horses for commercial purposes. Although there are conceivable rationales for construing "commercial riding stable" to exclude horse shows from the definition, the Court finds no reasonable justification in the Ordinance for doing so. Accordingly, absent a reasonable inference in the Ordinance to the contrary, the Court interprets "commercial riding stable" such that it includes horse shows of the type contemplated by the Petitioner's application. For these reasons, the Court concludes the Board erred when it determined that horse shows are not included in the term "commercial riding stable" and therefore never permitted by special exception.

However, this does not end the Court's review as the Board included the horse show component in its analysis of the remaining special exception criteria. Ultimately, the Board concluded that even if horse shows could be held at a commercial riding

stable, the special exception criteria are not met if horse shows are held on the Property, but that all criteria are satisfied if horse shows are excluded from the special exception approval. As a result, the Board decided to approve the special exception with the condition that the Petitioner could not host horse shows. The Petitioner argues that it was unlawful and unreasonable for the Board to impose this condition.

In considering whether the special exception criteria were met, the Board did not determine that any and all organized riding events or activities could not be held on the Property, nor did the Board attempt to prevent individuals and their horses from visiting the Property. Rather, the Board took issue with the ancillary effects associated with horse shows, such as noise, traffic, and the demand on municipal services. While these are necessary considerations in deciding whether to grant a special exception, (see Z.O. § 15.8.2(a)), the Board did not conclude, nor was there evidence that all horse shows would be unacceptable or that all shows produce an impermissible level of traffic and noise or create an excessive demand on municipal services. In fact, the Board was presented with evidence to the contrary.

One of the primary concerns with the proposed horse shows related to the impact that numerous horse trailers would have on the gravel roads leading to the Property. It is undisputed that Dan Blanchette, the Director of Public Works, expressed concern with the impact that 50 to 60 vehicles traveling to and from the Property for horse shows four times per month would have on the roads. (C.R. at 67.) However, he suggested that "10-20 vehicles, up to four (4) times per month, would be acceptable." (Id.) To the extent the Board was not convinced that limiting the number of vehicles would sufficiently reduce the demand on municipal services, Mr. Blanchette also informed the Board that his reservations about the condition of the roads under greater

use due to the horse shows would be fully satisfied if the number of shows were limited to 20 to 25 shows annually. (*Id.* at 101.) Despite having evidence that fewer shows with fewer trailers would eliminate all concern with respect to the impact that horse shows would have on the roads, the Board did not consider whether horse shows would be permitted if the frequency of shows was limited or if a condition as to the number of trailers traveling to and from the Property was imposed.

The Board takes the position that it did not need to consider limiting the number of horse shows when considering the application because the Petitioner did not ask the Board how many shows would be acceptable. Based on the certified record, the Court disagrees. First, the Ordinance specifically states that limiting the methods and times of operation are permissible conditions that may be placed on special exception approvals. (Z.O. § 15.8.2(b).) It was not necessary for the Petitioner to ask what number of shows would be acceptable in order for the issue to be considered. Moreover, while the Petitioner's application indicated that the ultimate goal was to host 50 shows per year, it is clear from the application, as well as the minutes, that the application was made with the understanding that the number of shows would ultimately be a decision for the Board. The application explicitly stated that the Petitioner was "willing to accept a limitation on the number of public events or shows annually." (C.R. at 5.) Not only did the Petitioner express a readiness to accept such a limitation, the Board directly discussed reducing the frequency of shows at the hearing on September 6, 2017. Specifically, the Board discussed the "traditional [horse show] season" with Ms. Kennedy and asked her whether "27 shows from April–October would be acceptable," to which Ms. Kennedy answered "yes." (C.R. at 67.) Despite this, the Board's deliberations

did not include a discussion of whether the special exception criteria would be satisfied if a limited number of shows were permitted each year.

Additionally, it appears from the record there may be an acceptable level of noise and/or traffic if fewer shows were held and if certain conditions were imposed during the events. Ms. Aubry, an abutter to the Property and an intervenor in this matter, stated to the Board that "there is a significant difference in three (3) horse shows per year without a sound system versus 50 horse shows that are broadcasted over four (4) loud speakers." (C.R. at 67.) The Aubrys requested that "the horse shows be prohibited or that the number and size of the horse shows be limited, and that the loud speakers be eliminated." (Id. at 65 (emphasis added).) Despite such statements, the Board did not consider whether horse shows would be permitted if the loud speakers were eliminated or if other conditions could be imposed that would alleviate noise concerns.

In light of the above, the Court concludes it was unreasonable for the Board to wholly restrict the Petitioner from hosting horse shows without considering whether the special exception criteria would be satisfied if the number of shows were limited or if other appropriate conditions were imposed. Accordingly, the Board's decision is REVERSED and REMANDED for further proceedings consistent with this Order.

SO ORDERED

6/11/18
DATE

Richard B. McNamara
Richard B. McNamara,
Presiding Justice

Orr&Reno

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RECEIVED

AUG 21 2017
ZBA App.
HOPKINTON
PLANNING DEPT.
CK 73629@150.-

August 21, 2017

Karen Robertson
Zoning and Planning Dept.
330 Main Street
Hopkinton, N.H. 03229

**Re: 1301 Bound Tree Road, LLC
1301 Bound Tree Road Commercial Stable
Tax Map 204, Lot 002
Rhapsody Farm, Application for Special Exception**

Dear Ms. Robertson:

This letter supports and incorporates Rhapsody Farm, LLC's Application (on behalf of 1301 Bound Tree Road LLC) to the Hopkinton Zoning Board of Adjustment for a Special Exception to operate a commercial riding stable or equestrian facility at 1301 Bound Tree Road, in Hopkinton, N.H.

Introduction

The location of the site is in the R-3 "Low Density Residential" Zoning District, at Tax Map 204, Lot 002. The lot is 36.3 acres, sloping downward in a southwesterly direction from Bound Tree Road across approximately twenty acres of open fields. Prior to the Applicant's ownership, the property was used, on information and belief, as a commercial riding stable for many years in the 1970s and 80s. From then to the present, the property was a commercial farm. The proposed use continues the historic agricultural use of the property, restores the preexisting use as a commercial riding stable, and advances a number of the Town's and the State's objectives regarding the use of agricultural amenities to foster tourism and economic activity. ZO §2.1.A.4(II)(a)(5), VI. A survey plan of the former commercial riding stable and commercial farm, updated with the location of the new horse barn and riding ring and the general parking areas for visiting guests, is included as Exhibit 1. Exhibit 2 contains an aerial photograph of the site, together with numerous other photo perspectives.

The purpose of the R-3 Zoning District is "to provide for open space conservation, some agricultural use, and predominantly very low density residential development on individual lots or in conservation subdivisions which can be accommodated on the land without major disruptions of the natural terrain, vegetation, watercourses or surface drainage and which would not customarily have Precinct water and sewer systems." ZO §3.5.2.

In the R-3 Zoning District, equestrian facilities are permitted by special exception. §3.6 TABLE OF USES (C)(3) (providing for "commercial riding stables and riding trails"). There are three other commercial riding stables in Hopkinton, one on Hatfield Road (R-4 Zoning District) and two on Stumpfield Road (R-4 Zoning District).¹

The Applicant proposes to operate a commercial riding stable and show ring. She will stable horses for paying customers, who will come and go from time to time. In addition, she has operated, and intends to continue operating, public horse shows in her riding ring that can attract 25-50 visitors per show, and their animals. At this time, the Applicant holds shows approximately once per month, but they have proven popular and the ultimate goal would be to hold up to 50 shows per year.

Special Exception Standards

§15.8.2, Special Exceptions empowers the Board to "hear and decide requests for special exceptions provided for in this Ordinance. The Board shall grant special exceptions which are in harmony with the general purpose and intent of this Ordinance and meet the standards of this subsection. Appropriate conditions as set forth in §15.8.2(b) may be placed on special exception approvals when necessary. The Board shall deny requests for special exceptions that do not meet the standards of this section." Those standards are:

- (1) Standards provided by this Ordinance for the particular use permitted by special exception.
- (2) No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.
- (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, odors, smoke, gas, dust or other pollutant, noise, glare, heat, vibration or unsightly outdoor storage of equipment, vehicles or other materials.
- (4) No creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity.
- (5) No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools.
- (6) No significant increase of storm water runoff onto adjacent property or streets.
- (7) An appropriate location for the proposed use.
- (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.
- (9) In the public interest and in the spirit of the ordinance.

The proposed use of the property meets these standards for the reasons that follow:

¹ The R-4 "Low Density Residential" Zoning District applies the same standard for operating a commercial riding stable, *i.e.*, by Special Exception, as the R-3 Zoning District where the applicant's property is located. ZO §3.6 TABLE OF USES (C)(3).

(1) Standards provided by this Ordinance for the particular use permitted by special exception

The proposed commercial riding stable is contemplated for the R-3 Zoning District, and it fulfills the broader goals of the Zoning Ordinance because it conserves nearly all of the ca. 36.3 acre lot as "open space... [with] some agricultural use ... without major disruptions of the natural terrain, vegetation, watercourses or surface drainage." It also meets the specific standards that follow.

(2) No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

Hopkinton Fire Chief Jeff Yales has visited the site and reviewed it in light of the contemplated use. As set forth in the attached email, Exhibit 3, he agrees that the commercial riding stable presents no particular risk of potential fire, explosion or release of toxic materials. Manure from horse activity is gathered daily in a concrete, open air crib, and taken for agricultural use by a local farmer.

(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, odors, smoke, gas, dust or other pollutant, noise, glare, heat, vibration or unsightly outdoor storage of equipment, vehicles or other materials.

Licensed N.H. Real Estate agent Judith Hampe has represented clients in the sale and purchase of Hopkinton property for many decades. She has reviewed the location of the property and driven the roads in the area specifically for the purpose of evaluating this question. In her view, the proposed commercial riding stable will not adversely affect property values in the vicinity or change the essential characteristics of the neighborhood. Exhibit 4. The neighborhood is a rural, wooded road with sporadic housing, and a riding stable is the kind of amenity one might expect in such a neighborhood. If anything, Ms. Hampe believes that the commercial stable could enhance property values because it represents an attractive amenity. Exhibit 4. It is worth noting that allowing the commercial riding stable would make it less likely that the large acreage of the property will be subdivided and redeveloped into tract housing for Concord area commuters.

With respect to noise, the Applicant does expect to play music and use a sound system for announcing horse shows, and occasionally will use fireworks. The Applicant has used fireworks in this location and has been in compliance—and will remain in compliance—with the Fire Department's restrictions, if any, with respect to fireworks.² Naturally, enforcement of any fireworks guideline is welcome and expected.

With regard to the sound system used by the Applicant for horse shows, licensed Acoustical Engineer Eric Reuter, investigated the site during a show and took observations using sound evaluation equipment. His full report is included at Exhibit 5. With the proper

²³ On information and belief, the Town of Hopkinton Fire Department allows N.H. Class C Fireworks—those typically sold for personal use on a retail basis—and does not restrict their use as to time or location.

positioning of the sound system's speakers, which the Applicant is in the process of implementing, the Applicant meets all noise requirements of the Zoning Ordinance. §5.5. This letter constitutes written confirmation of the Applicant's intent to take all necessary steps to avoid producing objectionable noise. §5.5.4.

The Applicant notes that the summer camp on Clement Pond (Camp Ponderosa) has nightly sound system use, including for music, and occasional firework noise that is readily heard from her property and in the surrounding neighborhood. With regard to dust, the Applicant uses a calcium/magnesium overlay (typical for gravel roads) on the dirt road leading downhill from Bound Tree Road to the areas where visitors and guests may park. Those areas are also almost entirely encircled by thick forest which prevents dust, sound and views from penetrating to neighboring properties.

(4) No creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity.

Chief Stephen Pecora of the Hopkinton Police Department has visited the site and been apprised of the potential for gathering of people at the property during the Applicant's horse show events. He does not believe that the proposed use would create a traffic safety hazard, or a substantial increase in the level of traffic congestion in the vicinity. Exhibit 6. As he points out, access to the property by attendees of any of the Applicant's horse shows would be primarily from the Warner, N.H. side of the property from Pleasant Pond Road, as that is the most direct access from Exit 7 of Interstate Route 89. Thus, attendees coming for a show would typically be on the roads of the Town of Hopkinton for only approximately ¼ of a mile, and for the brief load in and load out times associated with a day-long horse show, this would not result in a substantial increase in traffic congestion. Exhibit 6.

(5) No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools.

Fire Chief Yales and Police Chief Pecora both confirm that the proposed use will not create an excessive demand on their respective departments' services. Exhibit 3, Exhibit 6. Of course, on occasional show days when there are more people on the property than on typical weekday, there is always a risk that a gathering of people might increase the likelihood of some EMS response for medical or injury issues. Still, Chief Yales does not view that potential increase in the possibility of a call as being "excessive." Regarding water, sewer and waste disposal, the site is not served by Town facilities and day-to-day operations will require no additional infrastructure other than the ordinary private septic and water services already existing. For show days, the Applicant uses removable porta potty-type toilet facilities, so there is no increase, temporary or permanent, in sewage outflow from the proposed use. With regard to schools, the proposed use does not present any increase in demand whatsoever.

Town Public Works Director Dan Blanchette did confirm that there is no traffic safety hazard from the proposed horse shows. Exhibit 7. He has concerns about the condition of the ¼ mile of access road from the Warner line. This portion of the road (Pleasant Pond and Bound Tree) is gravel, and increased numbers of visitors may require additional grading than is currently applied to that stretch of road. He pointed out that his department is already

substantially overburdened by the many demands of maintaining a largely rural road network. Although cold weather shows will have no impact on the roads (other than the need for salting and sanding), warm weather shows more than once per month may increase the need for grading on the ¼ mile stretch from the Warner line to the Applicant's property. As a mitigation measure, he does suggest that the Applicant guide visitors to the property from Pleasant Pond Road, so that only ¼ mile of Hopkinton roads are affected (and, in Warner, Pleasant Pond Road is paved). Furthermore, he suggests that the Applicant include specific slow driving instructions on public directions to the property. Finally, the load-in, load-out timing of show day visitation will limit actual traffic impact on the road to those specific, limited times of day.

Regarding Mr. Blanchette's comments, the Applicant—a lifetime citizen of Hopkinton whose family goes back generations—certainly appreciates the burdens on his Department. She is pleased to undertake any reasonable communication requirement to ensure that her guests follow all reasonable protocols for using the ¼ stretch of gravel road accessing the property. However, the mere possibility that some additional grading may be required is not the standard in this case. The Zoning Ordinance specifically forbids an "excessive" impact on Town services, and whether a given impact is "excessive" is a matter of the Board's discretion. The Applicant submits that if the standard for a given use were whether *any* additional resources were required to accommodate the new use, then no new development would be possible. This is particularly the case for an amenity such as a commercial stable, which—under Mr. Blanchette's analysis, may never be permitted on a gravel road. That is not a reasonable reading of the Zoning Ordinance.

The Applicant is willing to accept a limitation on the number of public events or shows annually, but she hopes to strike the maximum balance between the needs of her business and livelihood and those of the Town with respect to road maintenance.

(6) No significant increase of storm water runoff onto adjacent property or streets.

The attached report of Sean Sweeney, PE, of Headwaters Hydrology, Littleton, N.H., confirms that the Applicant's proposed use of the project will not result in any significant increase at all of storm water runoff onto adjacent property or streets. Exhibit 8. The Board should note at the outset that virtually no stormwater runoff flows off the property in the direction of Bound Tree Road, as the horse stable is at the height of land, and the land drops relatively steeply downward from there, away from the road. The road, in other words, is at the very top of the property. None of the parking areas used by the Applicant for horses and trailers are above that grade. As Mr. Sweeney notes, the proposed use contemplates occasional parking by visiting guests and horse trailers in existing open fields, with no improvement or hardening of ground surfaces. There will be no alteration of the landscape, therefore, that would affect storm water runoff. The unimproved field surfaces will absorb storm water, and to the extent there is excess, it runs into the wooded portions of the property at the base of the field. In short, virtually all the water that could be produced by a storm is successfully absorbed by the present configuration and that will not change with the proposed use. Exhibit 8.

(7) An appropriate location for the proposed use.

The proposed use is appropriate for this location because it is at the outer edge of the Town of Hopkinton, in a very rural, wooded part of Town. The property was used as a commercial stable historically, and most recently was a commercial farm. Its proposed use is in keeping with this history, and with the broad norms and goals of the Town Zoning Ordinance, including its goals of preserving agricultural uses and promoting agrotourism. ZO §3.5.2, §2.1.A.4.

(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.

The proposed use restores and continues a previous longstanding uses on this property. Those uses, commercial agriculture and equestrian services, have no inherent adverse effects on health and safety of residents and others in the area and will not present any detriment to the use or development of adjacent or neighboring properties. If any such detriment were likely or even possible, it would have been observed by now, as the property was used as a commercial riding stable in the past, and most recently as a commercial farm. This is not to say that there will be no impacts whatsoever on neighbors or adjacent properties. They may hear the music or commentary from a horse show; they may—if close enough—catch the scent of the barnyard once in a while. But these are not unhealthy or unsafe things, and far from being detrimental, the presence of a commercial stable may actually make adjacent or neighboring properties more desirable. See Exhibit 4.

(9) In the public interest and spirit of the ordinance.

The Zoning Ordinance strikes the balance between the rural, agricultural Hopkinton of the last century and the wooded bedroom community it is becoming today. Uses like what the Applicant proposes are part of the fabric of Hopkinton's past and its present. The Zoning Ordinance expressly promotes agriculture and agrotourism, and contemplates commercial stables in the zoning district in question. Thus, the special exception is in the spirit of the Zoning Ordinance. Granting the special exception would be in the public interest because it offers a new amenity for the public, and increases the Town's tax rolls by increasing the value of the property.

Request for Relief


For the foregoing reasons, the Applicant requests that the board GRANT the special exception.

Respectfully submitted,

Rhapsody Farm, LLC

August 21, 2017

By:



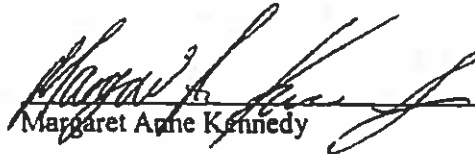
Jeremy D. Eggleton, Esq.
Ort & Reno, PA
PO Box 3550

Concord, N.H. 03302-3550
(603) 223-9122
jeggleton@orr-reno.com

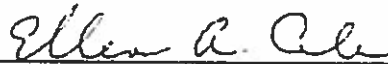
Verification

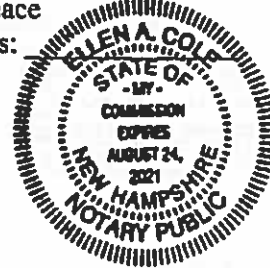
I, Margaret Anne Kennedy, member of Rhapsody Farm, LLC, hereby swear or affirm that the foregoing facts and assertions are true and correct to the best of my knowledge and belief.

Date: 8-21-2017


Margaret Anne Kennedy

Signed and sworn before me this the 21st day of August, 2017 by Margaret Anne Kennedy, known to me or proven.


Name: _____
Notary/Justice of the Peace
My Commission expires: _____



1892073_1

Town of Hopkinton, New Hampshire
Zoning Board of Adjustment
330 Main Street, Hopkinton, NH 03229
Tel: (603) 746-4487 · Fax (603) 746-2952
e-mail: planzone@hopkinton-nh.gov

HOPKINTON ZONING BOARD OF ADJUSTMENT
APPLICATION FOR APPEAL

Name of Applicant: Rhapsody Farm LLC (Princ. Margaret Kennedy) o/b/o 1301 Bound Tree Road LLC
Mailing Address: 1301 Bound Tree Road, PO Box 278 Contoocook NH 03229
Telephone (days): (603) 496-7871
Name of Property Owner: 1301 Bound Tree Road LLC
Mailing Address: PO Box 278 Contoocook NH 03229
Telephone (days): (603) 496-7871
Tax Map: 204 Lot: 002 Location of Property: 1301 Bound Tree road

Zoning of property in question (circle one). R-1 R-2 R-3 R-4 B-1 M-1 VR-1 VB-1 VM-1

Section of Hopkinton Zoning Ordinance under which your application was denied or you believe your proposal relates to: Section: 3.6 Paragraph/Table: C (3)

A copy of your denied Building/Use Application or administrative decision must be attached.

This application is for: Variance Special Exception Equitable Waiver Administrative Appeal

The undersigned hereby requests a Variance, Special Exception, Equitable Waiver, and Administrative Appeal in order to permit the following:

Operation of a Commercial Stable, allowed by Special Exception. Please find attached narrative and exhibits. I further authorize my counsel, Jeremy D. Eggleton, Esq., of Orr & Reno, PA, PO Box 3550 Concord NH 03302-3550 to appear on behalf of Rhapsody Farm LLC and 1301 Bound Tree Road LLC in this application. I will also attend the public hearing in this matter.

NOTE: This application is not acceptable unless all required statements have been completed. Additional information may be supplied on a separate sheet if the space provided is inadequate.

1. Hearing, Abutter, Notification Fees:

- Variance – \$100.00
- Special Exception – \$100.00
- Equitable Waiver – \$100.00
- Administrative Appeal – \$100.00
- Rehearing – \$100.00
- Notification of each Owner, Applicant, Agent, Abutter – \$5.00 cert. 8-25-17
- Published Notice – \$75.00 published 8-29-17, 9-25-17

2. List of names and mailing addresses of all abutters to the property as defined by NH RSA 672:3. Supply information on separate sheet. Abutter is any person whose property adjoins or is directly across the street or stream from the land under consideration.

3. Attach location map showing exact location of property in relation to at least one prominent landmark (road junction, business, town building, etc.). Include north arrow and label road names. Indicate with an X the location of the property in question.

4. Attach site plan of property showing: Boundaries and area of parcel; north point, scale and legend; location, size and type of all existing and proposed buildings, uses, parking, signs, roadways, screening, etc.
5. List provisions to be made for septic disposal, fire protection, water supply, parking, noise, smoke, surface drainage, etc. Supply information on separate sheet.
6. Letter of Authorization to allow an Agent or Attorney to represent Applicant, if applicable.
7. Copy of property deed of the subject property.
8. Any other pertinent information that you feel the Board may need to assist in their decision making process.

You must appear at the public hearing or be presented by an authorized agent or attorney for the Board to take action on your application. The application will be terminated or tabled for failure to appear at a scheduled public hearing, without first providing written notification to the Planning Department.

You are fully responsible for researching and knowing any and all laws, which may be applicable and affect the outcome of the Board's decision on your application request. The Town of Hopkinton assumes no responsibility or liability relating to your failure to research and know all applicable laws including, but not limited to, state, federal and local laws, codes, land development regulations and comprehensive plan. The Town of Hopkinton strongly encourages all applicants to consider consulting an attorney regarding their application.

You are encouraged to review the attached Rules of Procedures used by the Board of Adjustment at the public hearing.

I/we being duly sworn, depose and say that I am/We are the owner(s)/lessee(s) of land included in the application and that the foregoing statements herein contained and attached, and information or attached exhibits thoroughly to the best of my/our ability represent the arguments on behalf of the application herewith submitted and that the statements and attached exhibits referred to are in all respect true and correct to the best of my/or knowledge and belief.

In addition, I/We understand this application must be filed with all pertinent information as it pertains to the requirements of the Town of Hopkinton Zoning Ordinance and all other information requested or required by the Zoning Board of Adjustment in order to be considered complete. I/We understand that this application will not be filed until all required information has been received, and do further understand that the Town of Hopkinton reserves the right to postpone this request until such time as the requirements are met.

Furthermore, I/We understand that I/We, our representative as stated on the application, should appear at the public hearing. If photographs, documents, maps or other materials are provided to the Board as evidence at the public hearing, said evidence will become property of the Town of Hopkinton and will remain on file for future reference.

Also, I/We recognize and understand that the public hearing before the Board of Adjustment regarding land development is considered quasi-judicial in nature. State and local law strictly prohibits applicants and/or interested parties from participating in ex-parte communications with Board members in person, by phone, e-mail, or in writing before the application is discussed at a public hearing.

Applicant's Signature: Margaret A. Kennedy Date: 8-21-2017
 Applicant's Printed Name: Margaret A. Kennedy Date: 8-21-2017
 Owner's Signature: Margaret A. Kennedy Date: 8-21-2017
 Owner's Printed Name: Margaret A. Kennedy Date: 8-21-2017

Special Exception Request and Site Plan Review Application

Rhapsody Farm LLC for 1301 Bound Tree Road LLC

1301 Bound Tree Road, PO Box 278, Hopkinton NH 03229

Tax Map 204, Lot 002

Applicant:

Rhapsody Farm LLC for 1301 Bound Tree Road LLC

PO Box 278

Contoocook NH 03229

Abutters:

Clement Pond LLC

PO Box 278

Contoocook NH 03229

RPF Management LLC

402 Park Ave. PO Box 691

Contoocook NH 03229

Brian Hall

1327 Bound Tree Road

Contoocook NH 03229

Kenneth P. & Valerie Aubry

1369 Bound Tree Road

Contoocook NH 03229

Shari L. Courser

1340 Bound Tree Road

Contoocook NH 03229

Richard A. and Roxann Ellis

1314 Bound Tree Road

Contoocook NH 03229

Contoocook Village Precinct

PO Box 414

Contoocook NH 03229

Engineer:

Sean Sweeney, PE
Headwaters Hydrology PLLC
254 Mann's Hill Road
Littleton NH 03561

Counsel:

Jeremy D. Eggleton
Orr & Reno PA
PO Box 3550
Concord NH 03302-3550

(4)

MERRIMACK COUNTY RECORDS *Kathi L. Guay, CPO, Register*

After Recording, Return to:
William V.A. Zorn, Esq. / JRD #97132
McLane, Graf, Raulerson & Middleton, P.A.
900 Elm Street, P.O. Box 326
Manchester, NH 03105-0326

18-49
2-22
25-

2636.00

FIDUCIARY DEED

KAREN J. KENNEDY and MILDRED KENNEDY-STIRLING, Executrices of the Estate of Richard E. Kennedy, Jr., both of P.O. Box 278, Contoocook, New Hampshire 03229 by the power conferred by the Will of Richard E. Kennedy, Jr., and every other power, for consideration paid, grant to 1301 BOUND TREE ROAD, LLC, a New Hampshire Limited Liability Company, having a mailing address of P.O. Box 278, Contoocook, New Hampshire 03229, the following described premises:

A certain tract of land with buildings thereon situated on Bound Tree Road, Town of Hopkinton, County of Merrimack, and State of New Hampshire, more particularly bounded and described as follows:

Beginning at a point on the westerly side of the road leading from the Bound Tree, so-called, in the northerly part of said Hopkinton, at land now or formerly of one Brown, at a wire fence;

- (1) Westerly by said wire fence and by said Brown land to a stone wall running southerly;**
- (2) Southerly by said stone wall and by land now or formerly of one Patch to a corner in the said wall;**
- (3) Easterly across a wood road to the end of another wall;**
- (4) Southerly by the last-named wall to a gateway across another wood road;**

- (5) From the easterly side of the last-mentioned wood road easterly by wire fence to a corner in said fence;
- (6) In a northerly, easterly and northerly direction as the wire fence now runs to the end of a stone wall;
- (7) Northerly by said wall to the end of the same;
- (8) Continuing in the same direction by a wire fence to the southwesterly side of the said highway;
- (9) Northwesterly by said highway to the place of beginning,
being thirty (30) acres, more or less.

These premises are also shown as Lot #1 on plan entitled, "MINOR SUBDIVISION, PROPERTY OF KENNETH & LUCY MILLER, LOCATED SOUTH SIDE, BOUND TREE ROAD, HOPKINTON, NH, ", dated November, 1982 and recorded at the Merrimack County Records as Plan No. 7278.

EXCEPTING the premises conveyed to John P. H. Chandler, 3rd and Nellie B. Chandler by Kenneth R. Miller and Dawn W. Miller, dated June 17, 1972 and recorded in the Merrimack County Records, Book 1135, Page 240 and the premises conveyed to Kenneth P. Aubry and Valerie S. Aubry by Kenneth R. Miller and Lucy M. Miller, dated December 21, 1982 and recorded in the Merrimack County Records, Book 1431, Page 535.

SUBJECT TO a right to pass and repass as contained in deed of Sarah E. L. Sawyer and Leon W. Sawyer to Edward II. and Edward L. Carroll, dated May 25, 1915, recorded at the Merrimack County Records, Book 410, Page 258; and

SUBJECT TO Current use taxation, recorded at the Merrimack County Records on August 12, 1976 in Book 1278, Page 543.

MEANING AND INTENDING to convey the same premises conveyed to Richard E. Kennedy by foreclosure deed of Peter M. Rose and Patricia Rose, dated June 8, 1990 and recorded in the Merrimack County Registry of Deeds at Book 1839, Page 1823. Richard E. Kennedy, Jr., a/k/a Richard E. Kennedy, died on January 15, 2014. See the 6th Circuit – Probate Division – Concord, Docket No. 317-2014-ET-00116.

signatures on following page

Signed on 6/15, 2015.

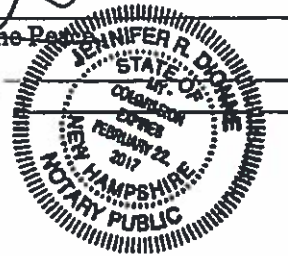
Karen J. Kennedy
KAREN J. KENNEDY,
EXECUTRIX OF THE ESTATE OF RICHARD E.
KENNEDY, JR.

Mildred Kennedy-Stirling
MILDRED KENNEDY-STIRLING,
EXECUTRIX OF THE ESTATE OF RICHARD E.
KENNEDY, JR.

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

The foregoing instrument was acknowledged before me on June 12, 2015,
by Karen J. Kennedy.

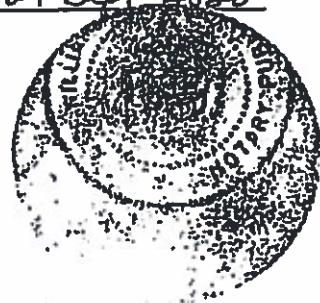
Jennifer R. O'Connell
Notary Public/Justice of the Peace
Printed Name: _____
My Commission Expires: _____
(Seal)



STATE OF Maine
COUNTY OF York

The foregoing instrument was acknowledged before me on 15 June, 2015,
by Mildred Kennedy-Stirling.

AC Williams
Notary Public/Justice of the Peace
Printed Name: AC Williams
My Commission Expires: 27 Sept 2020
(Seal)



Office Use:

Permit No. _____ Name of Applicant/Owner: 1301 Bound Tree Road/Margaret Kennedy

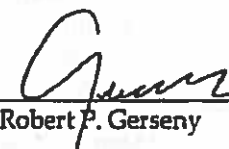
Tax Map/Lot 204/02 Address: 1301 BOUND TREE ROAD Zoning District: R-3

PERMIT DENIED

Date: 06/12/2017

HOPKINTON SELECT BOARD


James O'Beigh, Chair


Robert P. Gerseny


Ken Traim, Vice Chair

Sabrina Dunlap

Steve Lux, Jr.

DENIED PER HOPKINTON ZONING ORDINANCE: Table of Uses 3.6.C.3. (Commercial Riding Stables and Riding Trails) – permitted use subject to Special Exception.

Note: Site Plan Review required per Section I, 1.1 Authority, (change of use for non-residential purposes) of the Site Plan Review Regulations.

Zoning Ordinance Review:

- Commercial riding stables and riding trails are permitted by Special Exception per Table of Uses 3.6.C.3.
- Agriculture, Farm, Farming is a permitted principal use per Table of Uses 3.6.D.1, 3.6.D.2.
- Agriculture, Agritourism, Farm, Farmers' Market, Farming definition per 2.1.A.4.
- Special Exception definition per 2.1.S.8.

History:

- 1979 Kenneth & Lucy Miller (Ponderosa Ranch) Site Plan approval for riding school with condition that cars not be parked on the Town road.

SECTION II DEFINITIONS

2.1 DEFINITIONS Except where specifically defined herein, the words used in this Ordinance shall carry their customary meaning. Words used in the present tense include the future; the singular number includes the plural, the plural the singular; the words "used" or "occupied" include the words "designed," "arranged," "intended," or "offered," to be used or occupied; the words "building," "structure," "lot," "land" or "premises" shall be construed as though followed by the words "or any portion thereof" and the word "shall" is always mandatory and not merely directory. Terms and words defined in the Hopkinton Building Code, if any, or Subdivision Regulations or Site Plan Review Regulations shall have the meaning given therein unless a contrary intention clearly appears. Words not defined in either place shall have the meaning given in Webster's Unabridged Dictionary, Third Edition. Uses listed in the Table of Use Regulations under the classes Retail and Service Trades and Wholesale Trade and Manufacturing shall be further defined by the Standard Industrial Classification Manual published by the U.S. Bureau of Census. The following words are specifically defined:

2.1.A.1 Abutter: Abutter means any person whose property adjoins or is directly across the street or stream from the land under consideration. For purposes of receiving testimony only, and not for purposes of notification, the term abutter shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.

2.1.A.2 Accessory Building: A detached building whose purpose is subordinate to that of the main building. For the purpose of this Ordinance a breezeway, a garage or a carport that is attached directly, or by means of another structure, to the main building shall be regarded as an integral part of the main building.

2.1.A.3 Administrative Officer: The Building Inspector, Town of Hopkinton, New Hampshire.

* **2.1.A.4 Agriculture, Agritourism, Farm, Farmers' Market, Farming:**

- (i) The word "farm" means any land, buildings, or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock, and in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and any other structures used in operations named in paragraph II of this section.
- (ii) The words "agriculture" and "farming" mean all operations of a farm, including:
 - (a) (1) The cultivation, conservation, and tillage of the soil.
 - (2) The use of and spreading of commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage and, where permitted by municipal and state rules and regulations, other lawful soil amendments.
 - (3) The use of and application of agricultural chemicals.
 - (4) The raising and sale of livestock, which shall include, but not be limited to, dairy cows and the production of milk beef animals, swine, sheep, goats, as well as domesticated strains of buffalo or bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus elphus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elphus*), and reindeer (*Rangifer tarandus*).
 - (5) The breeding, boarding, raising, training, riding instruction, and selling of equines.
 - (6) The commercial raising, harvesting, and sale of fresh water fish or other aquaculture products.

SECTION II DEFINITIONS

(VII) For purposes of this Ordinance, slaughter houses, rendering plants, or tanneries are not considered as falling within this definition.

2.1.A.5 Alteration: Any construction, reconstruction or other action resulting in a change in the structural parts of height, number of stories or exits, size, number of units, use or location of a building or other structure.

2.1.A.6 Antique Shop: A store, whether a principal use or accessory use, which sells exclusively antique furniture and home furnishing over seventy-five (75) years old.

2.1.B.1 Basement: A portion of a building, partly below grade, which has more than one-half of its height, measured from finished floor to finished ceiling, below the average finished grade of the ground adjoining the building. A basement is not considered a story unless its ceiling is six (6) feet or more above the finished grade.

2.1.B.2 Bedroom: A room primarily used for sleeping.

2.1.B.2.a Bed and Breakfast Home: Any Dwelling Unit located on one (1) Lot of Record, containing no more than three (3) Lodging Units offered to the public for compensation for transient or semi-transient accommodations, provided that such Dwelling Unit is owned and operated by an individual person or persons, and that all such owner(s) shall occupy the Dwelling Unit. A Bed and Breakfast Home shall be subject to the provisions of Section III, Paragraph 3.7.2 and 3.7.4 of this Ordinance.

2.1.B.2.b Bed and Breakfast Inn: Any Dwelling Unit, together with any accessory buildings thereto, located on one (1) Lot of Record, containing more than three (3) Lodging Units offered to the public for compensation for transient or semi-transient accommodations, provided that such Dwelling Unit and accessory building are owned and operated by an individual person or persons, and that all such owner(s) shall occupy the Dwelling Unit. A Bed and Breakfast Inn shall be subject to the provisions of Section III, Paragraph 3.7.2 and 3.7.6 of this Ordinance.

2.1.B.2.c Buffer: A vegetated area of land with dimensions, composition and use subject to approval by the Planning Board.

2.1.B.3 Building: A combination of any materials, whether portable or fixed, having a roof, and enclosed within exterior walls or firewalls, built to form a structure for the shelter of persons, animals or property. For the purpose of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature.

2.1.B.4 Building, Attached: A building having any portion of one or more walls in common with adjoining buildings.

2.1.B.5 Building Coverage: The aggregate of the maximum horizontal cross section area of all buildings on a lot exclusive of cornices, caves, gutters, chimneys, unenclosed porches, bay windows, balconies and terraces, expressed as a percentage of total lot area.

2.1.B.6 Building, Detached: A building having open space on all sides.

SECTION II DEFINITIONS

communicate information to them about products, accommodations, services, or activities on the lot where the device is located.

- (1) **Sign, Awning:** A sign that is a part of, or attached to an awning, a canopy, or other fabric, plastic, or structural protective cover over a door, window, or outdoor service area.
- (2) **Sign, Banner:** A sign of lightweight fabric or similar material that is mounted to poles or the wall of a building. A flag, as defined in this ordinance, is not a banner sign.
- (3) **Sign, Building:** Any sign that is attached or affixed to a building including wall signs, projecting signs, awning signs, marquee signs, roof signs, and window signs.
- (4) **Sign, Building Marker:** Any sign indicating the name of a building and/or the date and incidental information about the construction of the building, and which sign is made part of, or permanently integrated into, the materials from which the building is constructed.
- (5) **Sign, Free-standing:** A self-supporting sign, the supports of which are permanently anchored in the ground and are independent from any building.
- (6) **Sign, Marquee:** Any sign attached to or in any manner made part of a permanent roof-like structure projecting beyond the wall of a building.
- (7) **Sign, Monument:** A type of free-standing sign for which the sign, its supports, and base are a monolithic structure.
- (8) **Sign, Pennant:** Any lightweight plastic, fabric or similar material, whether or not containing a message of any kind, suspended from a rope, wire, or other material, usually in a series, designed to move in the wind.
- (9) **Sign, Portable:** Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported.
- (10) **Sign, Projecting:** Any sign affixed to a building with the plane of the sign at an angle to the plane of the wall of the building.
- (11) **Sign, Roof:** Any sign erected and constructed wholly on and over the roof of a building and supported by the roof structure.
- (12) **Sign, Temporary:** A sign that is used in connected with a circumstance, situation, or event that is designed, intended, or expected to take place or to be completed within a reasonably short or definite period of time after the erection of the sign; or a sign that is intended to remain on the location where it is erected or placed for a reasonably short or definite period of time after the erection of the sign. If the sign display area is permanent but the message displayed is subject to periodic changes, that sign shall not be regarded as a temporary sign.
- (13) **Sign, Wall:** A sign attached to, or erected against the wall of a building with the face of the sign in a parallel plane to the plane of the building wall, and projecting no more than fourteen (14) inches from the building wall.
- (14) **Sign, Window:** Any sign that is placed inside or upon the window panes or glass, and that is visible from the exterior of the building or structure.

See Section VII, Signs, of this Ordinance for additional requirements.

- * **2.1.S.8 Special Exception:** A use allowed by the Zoning Ordinance but under pre-determined conditions and after a public hearing before the Board of Adjustment to determine if the conditions as outlined in Section XV, Board of Adjustment, have been met.

2.1.S.9 Story: That part of a building comprised between a floor and the floor or roof next above. If a mezzanine floor area exceeds one-third of the area of the floor immediately below, it shall be deemed to be a story. A basement shall be classified as a story when its ceiling is six (6) or more feet above the finished grade.

**SECTION III
ESTABLISHMENT OF DISTRICTS AND USES**

3.6 TABLE OF USES	R-4	R-3	R-2	R-1	B-1	M-1	VR-1	VB-1	VM-1	W-1
A. Residential Uses										
1. Single family detached dwelling.	P	P	P	P	X	S	P	S	S	
2. Two family dwelling.	S	S	P	P	S	S	P	S	S	
3. Multi-family dwelling with a maximum of eight (8) dwelling units per building.	X	X	S	P	S	X	S	S	X	
4. Manufactured Housing on individual lots.	X	X	X	X	X	X	X	X	X	
5. Manufactured Housing Park in accordance with Section IX.	X	S	S	S	X	X	S	X	X	
6. Manufactured Housing subdivision in accordance with Section XI.	P	P	P	P	X	X	S	X	X	
7. Congregate Care Housing	X	X	S	S	S	X	S	S	X	
8. Affordable Housing Option in accordance with Section XVI.	X	P	P	P	X	X	P	X	X	
B. Temporary Residential Uses										
1. Non-profit overnight and day camps and cottage colonies.	S	S	S	X	X	X	X	X	X	
2. Bed and Breakfast Home in accordance with Section III, paragraph 3.7.2 and 3.7.4.	S	S	S	S	P	X	S	P	X	
3. Bed and Breakfast Inn in accordance with Section III, paragraph 3.7.2 and 3.7.6.	S	S	S	S	P	X	S	P	X	
4. Hotels, Motels, Inns.	X	X	X	X	P	S	X	P	S	
C. Outdoor/Recreational Uses										
1. Forestry, wildlife, timber preserves, reservoirs, and nature study areas, conservation areas and preserved or protected open space.	P	P	P	P	P	P	P	P	P	
2. Public parks and playgrounds.	P	P	P	P	P	P	P	P	P	
* 3. Commercial riding stables and riding trails.	S	S	S	X	X	X	X	X	X	
4. Historic building or site open to public.	P	P	P	P	P	P	P	P	P	
5. Recreational camping/tenting parks and recreational camping vehicles.	S	S	S	X	X	X	X	X	X	
D. Agricultural/Forestry Uses										
1. Agriculture, horticulture and floriculture except a greenhouse or stand for retail sale, including customary accessory structures and uses.	P	P	P	S	S	P	S	S	P	
2. Farming including dairying, livestock, animal and poultry raising, and crop production including customary accessory structures and uses.	P	P	P	S	S	P	S	S	P	
3. Year-round greenhouse or farm stand.	S	S	S	S	S	P	S	P	P	

Section XII Wetlands Conservation District (Overlay)



TOWN OF HOPKINTON, NH BUILDING/USE APPLICATION

Completed application must be returned to the Selectmen's Office by 12 Noon on Friday, in order to have the application processed for review by the Selectmen at their next scheduled meeting. The application must be accompanied by a check payable to the Town of Hopkinton. No refund will be made if the application is denied. More than one permit may be applied for using the same form; however, the permits being sought must apply to the same piece of property. For questions, please contact the Planning Department at (603) 746-4487 or email planzone@hopkinton-nh.gov

SUBMISSION REVIEW CHECKLIST (Office Use)

Permit No. _____	Phasing Applicability: Permit _____ of _____	Subdivision: _____
Application Received <u>6/8/11</u>	<input type="checkbox"/> Driveway Permit	<input type="checkbox"/> PUC Approval
By: _____ (initial) Fee Pd.: _____	<input type="checkbox"/> Septic Approval	<input type="checkbox"/> Floodplain
	<input type="checkbox"/> Fire/Life Safety	<input type="checkbox"/> ZBA
		<input type="checkbox"/> Shoreland Protection
		<input type="checkbox"/> Code Enforcement
		<input type="checkbox"/> PB

PROPERTY INFORMATION

Street Address 1301 Bound Tree Road	Tax Map No. 204	Tax Lot No. 002	Zoning District R-3
<input type="checkbox"/> Demolition <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Accessory <input type="checkbox"/> Other			
Is Lot located in 100 year Flood Plain Area (see Flood Insurance Rate Maps in Town Hall)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
What is the Flood Insurance Rate Map (FIRM) Community Panel Number: _____			
Is the <u>portion</u> of the property to be developed under a Current Land Use (CLU) Assessment? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Note: If yes, a new CLU map must accompany this application.			

APPLICANT/OWNER INFORMATION

Applicant's Name: margaret Kennedy	Owner's Name: Margaret Kennedy
Mailing Address: 1301 Bound Tree Rd.	Mailing Address: 1301 Bound Tree Rd.
City/State/Zip: contocook N.H. 03229	City/State/Zip: contocook N.H. 03279
Phone (days): 603-496-7871	Phone (days): 603-496-7871
Email: makennedy7871@gmail.com	Email: makennedy7871@gmail.com
Note: Please Indicate whether you would prefer your PERMIT <input checked="" type="checkbox"/> mailed or mailed (circle one).	

CONTRACTOR INFORMATION

	Name of Contractor/License #	Address/City/State/Zip	Telephone No.
Architect			
General Contractor			
Electrical (permit required)			
Plumbing (permit required)			
Sewer/Septic			
Mechanical			
Sprinkler			
Fire Alarm			

DESCRIPTION OF WORK/USE

Arena Rentals, Boarding, Horse Shows, Coaching, riding lessons

This is to certify that the information included with this application will be followed during construction and any changes shall be only after notifying the Selectmen's Office. That any permit issued based on inaccurate information is subject to immediate withdrawal. That the above referenced project meets the standards as printed and amended in the NH Code of Energy Conservation. That the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent and we agree to conform to all applicable laws of this jurisdiction. I further certify that I am aware of and will comply with, any deed restrictions or covenants, and any regulations or conditions imposed by the Selectmen, Zoning Board of Adjustment and/or Planning Board as it relates to this property and the proposed use.

* [Handwritten Signature]
Signature of Applicant

Margaret Kennedy
Print Name of Applicant

6-8-17
Date

No permit will be issued for projects involving new construction, additions to existing buildings, or other work without this information. Site plan showing (if not scaled, drawing must be accurate) location and dimensions of the property, existing and proposed structures or construction, driveways, signage or other special features. Construction drawing showing the size and type of construction materials to be used.

Setback distances from structures to all property lines. Please remember that the front setback is measured from your property line, not from the edge of the road.

Distance Rear

Distance Left

Distance Right

Distance Front

Name of Street: _____
Applicant: _____ Tax Map/Lot: _____

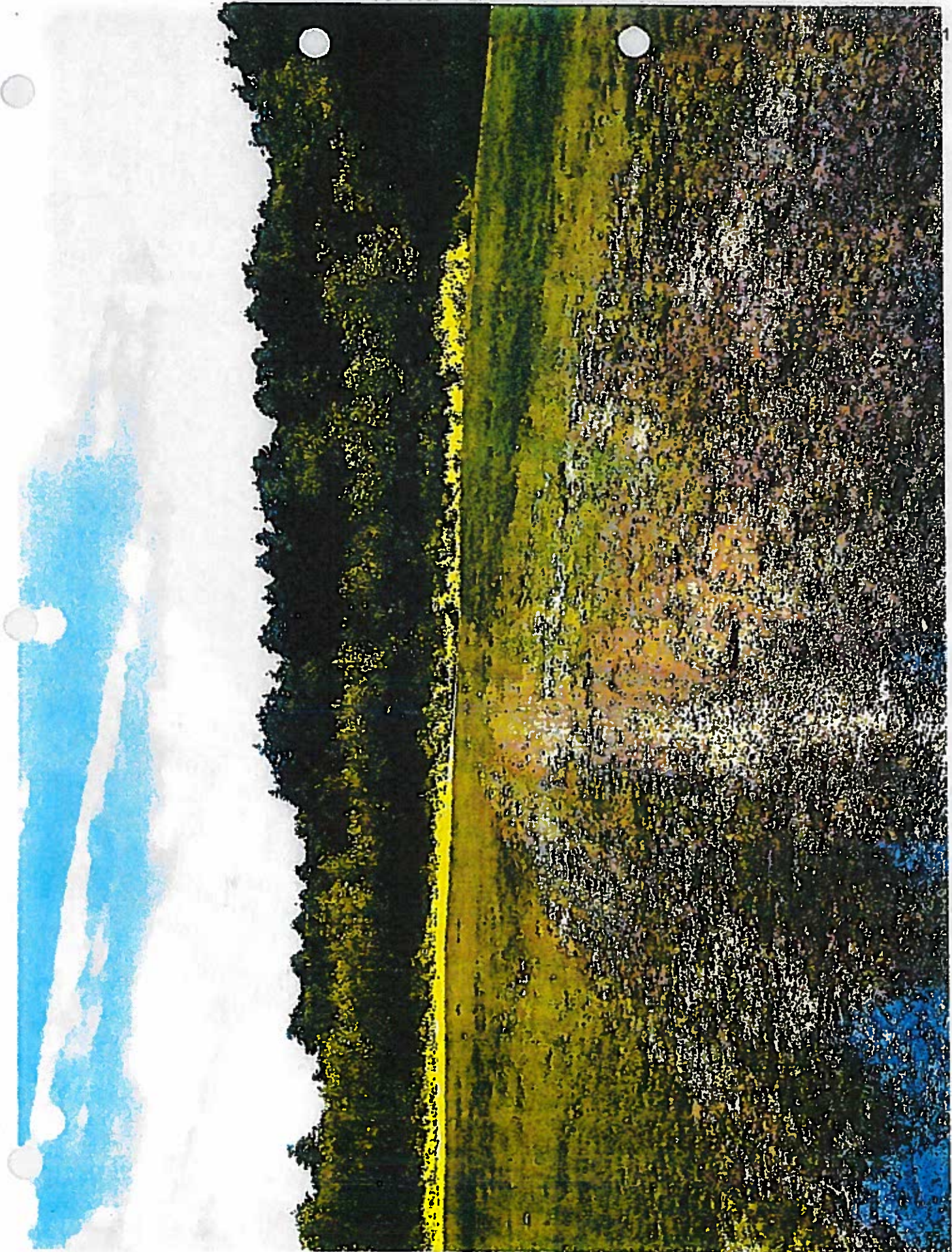
EXHIBIT 1

EXHIBIT 2

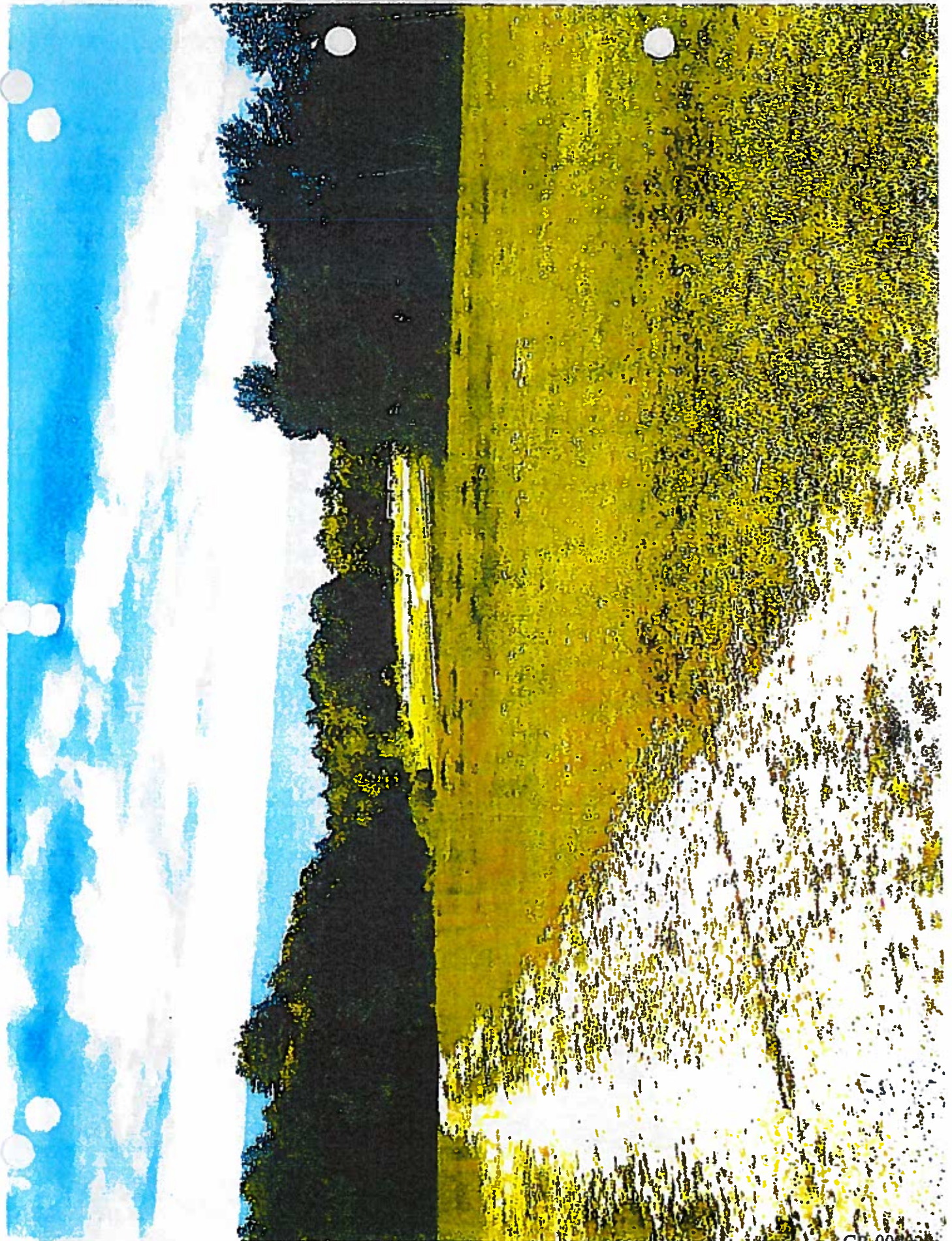




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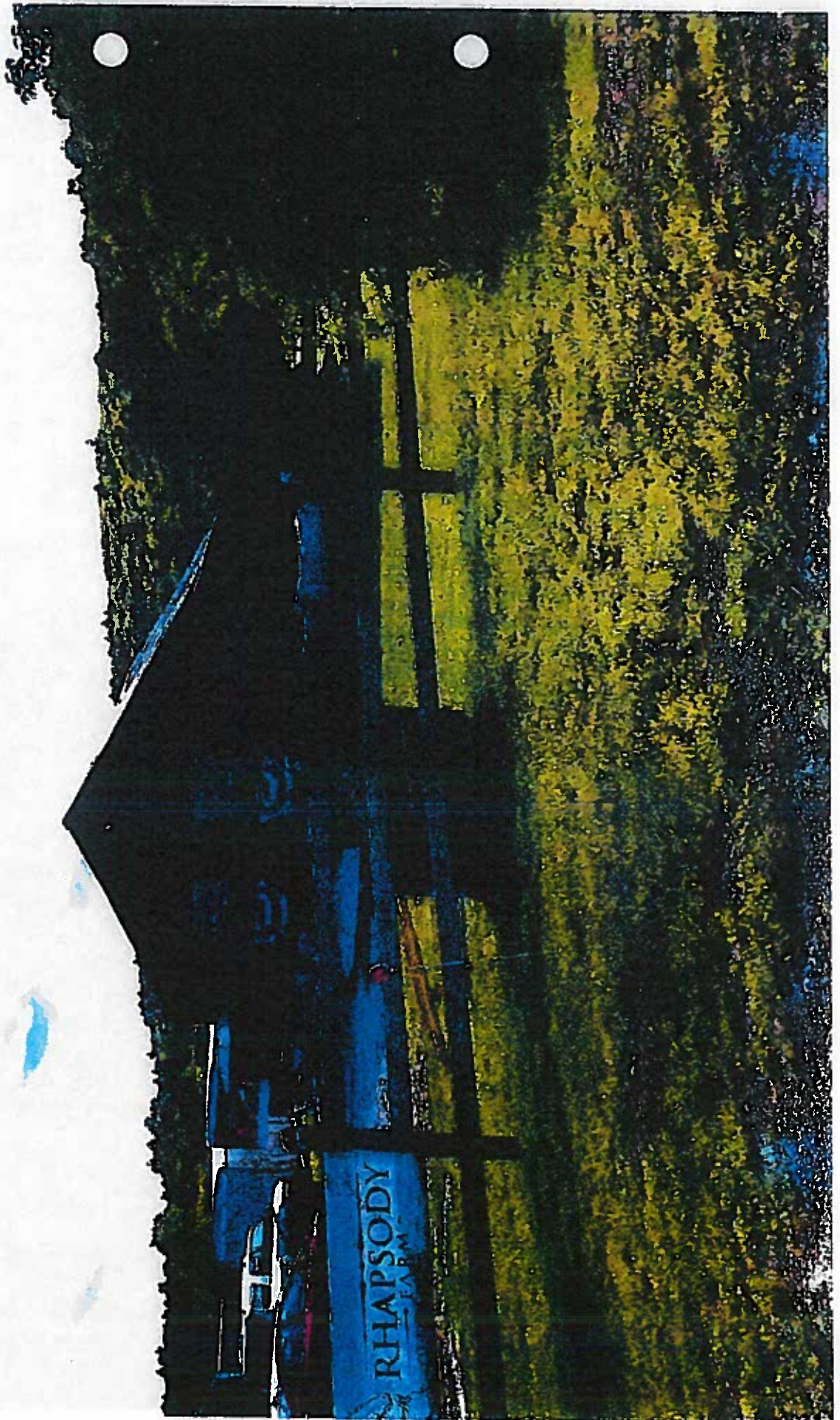
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CR 000031



CR 000032



CR 000035



CR 000034

EXHIBIT 3

McFall, Mary E.

From: Jeffrey Yale <firechief@hopkinton-nh.gov>
Sent: Friday, August 18, 2017 2:02 PM
To: Eggleton, Jeremy D.
Subject: RE: Rhapsody Farm, Kennedy

Hi Jeremy,

In response to your e-mail regarding our phone conversation back a few weeks ago, I am in agreement that the Rhapsody farm operation is generally a safe operation that will require no extra services of Fire and EMS operated by the Town of Hopkinton if granted her Special Exception than any other day.

Furthermore I approached Ms. Kennedy after I learned she was holding such events and walked the site with her and asked her to make just a couple of improvements regarding fire and public safety and she took care of them immediately, it's my opinion that safety and her reputation in having a first class operation is paramount to her.

In regards to the rest of the articles listed in your e-mail to my knowledge there are no public hazards in the form of toxic materials, explosives, or serious health risks that will be generated due to this operation.

If in the future I could be of any assistance to Ms. Kennedy in regards to Fire or Public Safety please don't hesitate to reach out, I look forward to working with her.

Thank you,

Jeff



Jeffrey Yale, Fire Chief
Hopkinton Fire Department
9 Pine Street, Hopkinton, NH 03229
o. 603.746.3181 | c. 603.731.9034 | f. 603.746.5134
www.hopkinton-nh.gov | firechief@hopkinton-nh.gov

From: Eggleton, Jeremy D. [mailto:JEggleton@orr-reno.com]
Sent: Monday, August 14, 2017 11:02 AM
To: 'firechief@hopkinton-nh.gov'
Subject: Rhapsody Farm, Kennedy

Hi Jeff,

I am following up on our telephone conversation from last month regarding Annie Kennedy's application for a Special Exception under the Town zoning ordinance (and her site plan application) to operate her horse ring at Rhapsody Farm.

As we discussed, she is required to show that there is no "hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials." My understanding from our conversation is that you toured the site and can confirm that no such risks exist from her proposed use of the property as a horse ring for shows.

In addition, she is required to show that there will not be any excessive demand on municipal services, including fire protection. My understanding from our conversation is that the proposed use does not present any excessive demand on fire protection (or related

EMS/Emergency services) because, while a given event (due to the number of people from out of town who may be attending) might create a higher risk that any given individual attendee may be injured or have a medical emergency, that demand is reasonable and not "excessive."

ally, she is required to show that the proposed use will not adversely affect the health and safety of the residents in the area. My understanding from our conversation is that the proposed use does not present any adverse health or safety effects that you are aware of.

Can you kindly confirm the above points in a brief email response so that I can include your input in our application and demonstrate that Annie has properly vetted her operation with your department?

Thanks,

Jeremy Eggleton

EXHIBIT 4



J. HAMPE
ASSOCIATES

33 ELIASAN STREET
CONCORD, NH 03301

OFFICE (603) 224-4422
FAX (603) 228-3851
www.jhampe.com

Attorney Jeremy D. Eggleton
Orr and Reno
45 South Main Street
Concord, NH 03301

RE: 1301 Bound Tree, Rhapsody Farm LLC

Dear Attorney Eggleton,

Several weeks ago, I visited the site noted above and drove the length of Bound tree Road and Pleasant Pond Road to Exit 7 and back in order to gain better insight of any impact on the neighborhood.

I believe that during any events, if traffic is directed by lead signs, and parking is amply provided by Ms. Kennedy there will be no traffic issues or deleterious effect upon property values.

In general, for the town, a well-run facility is a strong benefit. Many buyers ask frequently, "Where can I board a horse? Where can my family take riding lessons?" Such amenities provide incentive for buyers to locate in Hopkinton.

I have been involved with sales on Stumpfield Road, adjacent to Phoenix Stables located at 295 Stumpfield Road that sold for a premium. Sales at 310 Stumpfield, Tax map 230-008-000, and at 351 Stumpfield Road, Tax map 230-006-002(a previous purchase that was an arm's length transaction) sold for higher prices because of the positive impact of the stables. Buyers were horse owners and wanted to utilize the facility.

Sincerely yours,

Judith Hampe, Broker

CR 000039

EXHIBIT 5

Reuter Associates

10 Vaughan Mall, Suite 201A
Portsmouth, NH 03801
603-430-2081

August 14, 2017

Jeremy Eggleton
Orr & Reno
45 South Main Street
Concord, NH 03302

SUBJECT: Rhapsody Farm – Sound System Noise Study

Dear Jeremy,

At your request, I visited Rhapsody Farm in Hopkinton yesterday to measure sound levels generated by the loudspeaker system used during equestrian events.

Sound Sources

The system is used for both voice announcements and music playback, and consists of four loudspeakers mounted on a small building, located at the southern corner of the arena. Two of these loudspeakers face northeast and the others southwest.

The closest residential abutters are to the northeast of the arena, along Bound Tree Road. The closest residential abutter to the southwest is more than a mile away. Thus, the measurements were conducted at the northeast property boundary, at the facility's entrance driveway. The locations of the loudspeakers, abutters, and the measurement position are shown in the attached Figure 1.

Hopkinton Noise Ordinance

The Hopkinton Noise Ordinance provides three conditions for which noise may be considered objectionable, as measured at the property line of a facility:

1. The low frequency noise level in the 31.5 Hz octave band exceeds 65 dB.
2. The A-weighted noise level produced by a noise source exceeds by 10 dB or more the A-weighted residual ambient sound level that exists without the noise source operating.
3. The noise produced by a noise source contains one or more audible tonal components not masked by the residual ambient sound.

The ordinance requires measurement of the background sound level during hours when the facility typically operates. The ordinance defines the ambient sound level as that that is exceeded ninety percent of the time. This is an industry-standard metric known as the L90.

MEMBER FIRM, NATIONAL COUNCIL OF ACOUSTICAL CONSULTANTS

CR 000041

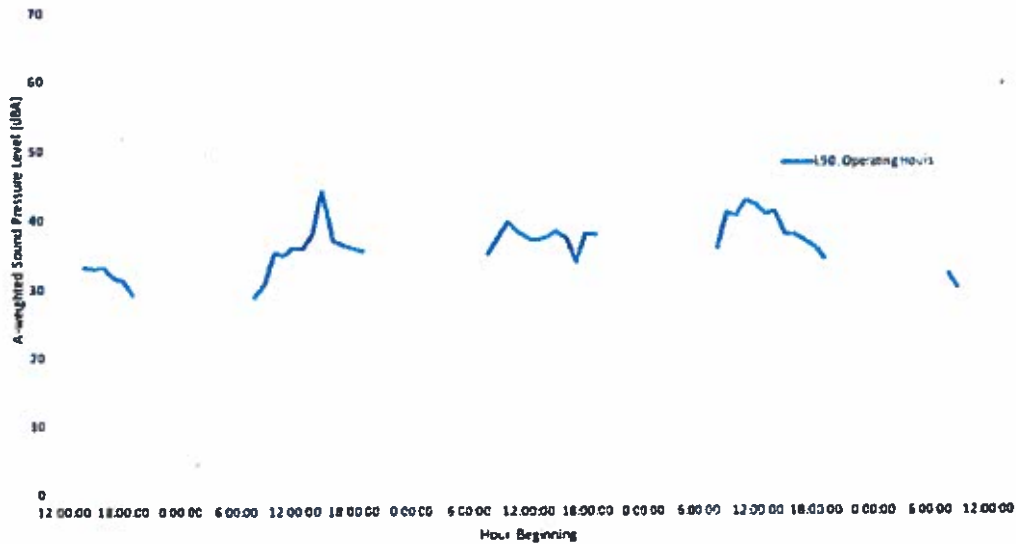
The ordinance clearly assumes that the noise sources associated with a commercial facility are continuous in nature, such as a fan or compressor. As sound levels from speech and music fluctuate rapidly, these sources are reported as energy-average levels over the course of several seconds. This represents the equivalent continuous sound level that would have the same energy, and thus noise impact, as the fluctuating sound of the actual source. This is known as the equivalent sound level, abbreviated Leq.

The third condition above, prohibiting tonal sound, is also a common concern associated with continuous noise generated by mechanical equipment, and not related to speech or music.

Measurements

Existing Ambient Level

Events at Rhapsody farm that utilize the sound system will be limited to the hours of 8 am and 8 pm. To assess the existing background sound levels during the hours of operation, a sound monitor was installed at the site, along the fence line at Bound Tree Road. The monitor gathered sound levels in one-hour intervals between Thursday, August 3, 2017 and Monday, August 7, 2017. Figure 2, below, presents the hourly ambient sound levels, shown in blue. Levels shown in gray are outside of the hours of operation, and are not relevant to this study.



The lowest L90 during the hours of operation was 29 dBA. The property-line sound level limit for the sound system is therefore 39 dBA.

Public Address System Levels

During my site visit on Monday, August 7, I worked with the owner of Rhapsody Farm to establish settings for various components of the sound system that would ensure compliance with the limit of 39 dBA at the Bound Tree Road property line. The output level of the loudspeakers that face northeast, toward Bound Tree Road, can be varied independently from those that face southwest. As the level in arena only needs to be loud enough for the riders to hear, these loudspeakers can be turned down significantly compared to those that face southwest.

The nearest point along Bound Tree Road is approximately 465 ft from the loudspeakers. However, as is usually the case during the day, ambient levels at this location exceeded 39 dBA during my site visit. As such, measurements were conducted at a location approximately 220 ft from the loudspeakers, and the contribution of the sound system to the overall property-line sound level was calculated based on a simple straight-line model. This is conservative, as there is significant shielding from the topography and buildings between the loudspeakers and the road.

Two conditions were measured: music only, and speech over music. When speaking, the operator reduces the level of the music temporarily. The settings on the amplifier and mixer components of the sound system were lowered until the corresponding property-line sound levels complied with the limit of 39 dBA.

The attached Figure 3 presents plots in 1/3-octave bands of the quietest ambient hour, music, and speech over music, all at the Bound Tree Road property line. Note that the town's reporting requirements specify 1-octave band measurements. 1/3-octave bands provide higher precision, and have superseded 1-octave bands as the preferred mode of measurement.

Settings

The sound system settings that the owner has agreed to use, to ensure continued compliance, are as follows:

- The power amplifier channel feeding the two loudspeakers facing northeast will remain at -14 dB or below.
- Music and microphone inputs will be adjusted such that the level meters on the mixer do not exceed -20 dB.

Instrumentation

The instruments used for the measurements described above were as follows:

- Unattended Monitor – NTi XL2 sound level analyzer
- Attended Measurements – Norsonic Nor140 sound level analyzer

Both instruments comply with the requirements of IEC 61672 for Class 1 instrumentation. Both have been laboratory calibrated in the last 12 months, and both were field calibrated immediately preceding use.

Summary

The sound system at Rhapsody farm has been adjusted such that levels at the nearest property line will comply with the three requirements set forth in the Town of Hopkinton's Noise Ordinance.

1. Sound levels in the 31 Hz octave band will not exceed 65 dB.
2. The A-weighted level of the sound system at the property line will not exceed 39 dBA, which is 10 dBA above the lowest ambient level measured during the proposed hours of operation.
3. The sound system will not produce a sustained pure-tone condition.

Sincerely,



Eric L. Reuter, INCE Bd. Cert.
Principal



Figure 1 – Site Plan

Rhapsody Farm



Figure 3 – 1/3-Octave Band Measurements

EXHIBIT 6

McFall, Mary E.

From: Chief Steve Pecora <police.chief@tds.net>
Sent: Monday, August 14, 2017 3:41 PM
To: Eggleton, Jeremy D.
Subject: RE: Rhapsody Farm, Kennedy [IWOV-iManage.FID419616]

Hi Jeremy,

Hard to speculate on the number of people that may attend an event there, so I can't say with certainty if there would be a substantial increase in traffic. Annie has put up signs and posted directions for people attending her events to use exit 7 in Warner. Since there is only about half of a mile distance (seven tenths to be exact) from the Warner town line to her property any traffic congestion would be in an extremely limited area of the town.

Hope that helps, take care.

Steve

From: Eggleton, Jeremy D. [mailto:JEggleton@orr-reno.com]
Sent: Monday, August 14, 2017 12:28 PM
To: 'Chief Steve Pecora'
Subject: RE: Rhapsody Farm, Kennedy [IWOV-iManage.FID419616]

Chief,

...ne more follow up. Do you view the inload and outload of vehicles for events (typically in the early morning and later afternoon or evening) would not create a traffic safety hazard or substantially increase the level of traffic congestion?

Thanks!

Jeremy Eggleton

From: Chief Steve Pecora [mailto:police.chief@tds.net]
Sent: Monday, August 14, 2017 11:49 AM
To: Eggleton, Jeremy D. <JEggleton@orr-reno.com>
Subject: RE: Rhapsody Farm, Kennedy [IWOV-iManage.FID419616]

Good morning Attorney Eggleton,

This email is in response to our conversation regarding the Kennedy Rhapsody Farm and the Town of Hopkinton's Special Exception under the Town's zoning ordinance.

After speaking with you I later spoke with your client Margaret Kennedy regarding the plans. I also had discussions about the venue with Hopkinton Fire Chief Jeffrey Yale. Based on the details and answers provided to me I do not foresee any excessive demand on police services. Furthermore, I am unaware of any adverse safety effects the proposed plans would present to the Town of Hopkinton. If at any time Ms. Kennedy believes the added presence of a police officer would be needed for one of the events she can contact the Hopkinton Police Department to request a special detail officer. Should you have further questions, please feel free to contact me.

Sincerely,

Chief Stephen Pecora
Hopkinton Police Department
1696 Hopkinton Road
Hopkinton, NH 03229
(603) 746-5151
F(603) 746-4166

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From: Eggleton, Jeremy D. [mailto:JEggleton@orr-reno.com]
Sent: Monday, August 14, 2017 11:18 AM
To: 'police.chief@tds.net'
Subject: Rhapsody Farm, Kennedy [IWOV-iManage.FID419616]

Hi Chief Pecora,

I am following up on our telephone conversation from last month regarding Annie Kennedy's application for a Special Exception under the Town zoning ordinance (and her site plan application) to operate her horse ring at Rhapsody Farm.

As we discussed, she is required to show that there will not be any excessive demand on municipal services, including police protection. My understanding from our conversation is that the proposed use does not present any excessive demand on police services as episodic events like the horse shows she proposes are something that is within your expectation as a department.

In addition, she is required to show that the proposed use will not adversely affect the health and safety of the residents in the area. My understanding from our conversation is that the proposed use does not present any adverse safety effects that you are aware of.

Can you kindly confirm the above points in a brief email response so that I can include your input in our application and demonstrate that Annie has properly vetted her operation with your department?

Thanks,

Jeremy Eggleton

EXHIBIT 7

McFall, Mary E.

From: Dan Blanchette <dpwdirector@hopkinton-nh.gov>
Sent: Monday, August 14, 2017 2:08 PM
To: Eggleton, Jeremy D.
Subject: RE: Rhapsody Farm [IWOV-iManage.FID419616]

Mr. Eggleton,

Per our conversation this morning and the following email I agree with the exception of traffic congestion. Being a gravel road and not as wide as they should be for two lanes of traffic, traffic incidents may occur. I had also explained that the increase in traffic will subsequently result in an increase in maintenance or grading of the road and will also cause issues with dust resulting in some sort of dust control. Also during the winter months the increase in traffic for events would entail an increase in ice control.

Dan Blanchette
Director of Public Works
330 Main St.
Hopkinton NH, 03229
603-746-5118
DPWDirector@hopkinton-nh.gov

From: Eggleton, Jeremy D. [mailto:JEggleton@orr-reno.com]
Sent: Monday, August 14, 2017 12:42 PM
To: 'DPWDirector@hopkinton-nh.gov'
Subject: Rhapsody Farm [IWOV-iManage.FID419616]

Hi Dan,

Thanks for the chat this morning concerning Rhapsody Farm.

As you know, Ms. Kennedy is seeking a special exception to allow her to run her horse ring. As part of her application, she needs to demonstrate that the proposed use, for events and otherwise, will not create a traffic safety hazard or lead to a substantial increase in the level of traffic congestion in the vicinity. We talked this over and you agreed that you did not see a traffic safety hazard or substantial increase in traffic congestion.

Your concerns related to the use of the road for inload and outload of vehicles on event days. My understanding is that you believed that generally any increase in traffic—which this would entail on specific event days—would have some additional impact on the road, and you proposed a few guidelines for what would make events more management from a public works perspective. You suggested that she recommend to people attending (understanding that she cannot guarantee compliance) that they come into Bound Tree Road from the Warner, N.H. side, as that would provide easier access from Rte. 89 and would allow travel on a paved surface to a point closer to Rhapsody Farm, mitigating the impact on gravel roads. You also suggested that events during cold season months were less impactful on the road, and your concerns about roadway impact would be limited to warm season months. I understand your viewpoint to be that while it is hard to define what constitutes "excessive" demand on your department's services, the more events that are held, the greater the impact on the condition of the road; and you have existing shortages and demands for your time and resources.

Let me know if you wish to discuss further.

Thanks,

Jeremy

EXHIBIT 8

August 17, 2017

Jeremy Eggleton
Orr & Reno, P.A.
P.O. Box 3550
45 South Main Street
Concord, NH 03302-3550
(603) 224-2381
JEggleton@orr-reno.com

Subject: Rhapsody Farm Stormwater Evaluation, Hopkinton, NH

Mr. Eggleton:

I have evaluated the likely effects on stormwater runoff from periodic vehicle and trailer parking in the grass fields at Rhapsody Farm at 1301 Bound Tree Road in Hopkinton. Our evaluation is based on observations and soil profiles made during a site visit on August 9, 2017 and other remote sensing information including NRCS soils mapping, LIDAR-derived topography, and 2016 aerial photography.

Site Description and Observations

The parking areas are located on a ridge of sandy soils southwest of the outdoor riding arena. Vehicles and trailers park primarily in two areas on this ridge – a smaller area about 250 southwest from the riding arena which, for the purposes of this report, we will refer to as the ‘north field parking area’ (see Figures 1 and 3) and a larger area about 500 feet southwest from the riding arena which we will refer to as the ‘south field parking area’ (see Figures 2 and 3). Both parking areas are accessed by a narrow gravel road running along the crest of the ridge. It is our understanding that vehicles and trailers park in these areas only periodically, typically on weekends when events are held in the outdoor riding arena.

The north field parking area is on the western flank of the ridge and slopes to the west-northwest at a grade of about 10%. The south field parking area is located on the top of the ridge with slopes generally less than 5%. Both parking areas support a cover of upland grasses as shown in Figures 1 and 2.



Figure 1 – View south at north field parking area (8/9/17)



Figure 2 – View south at south field parking area (8/9/17)

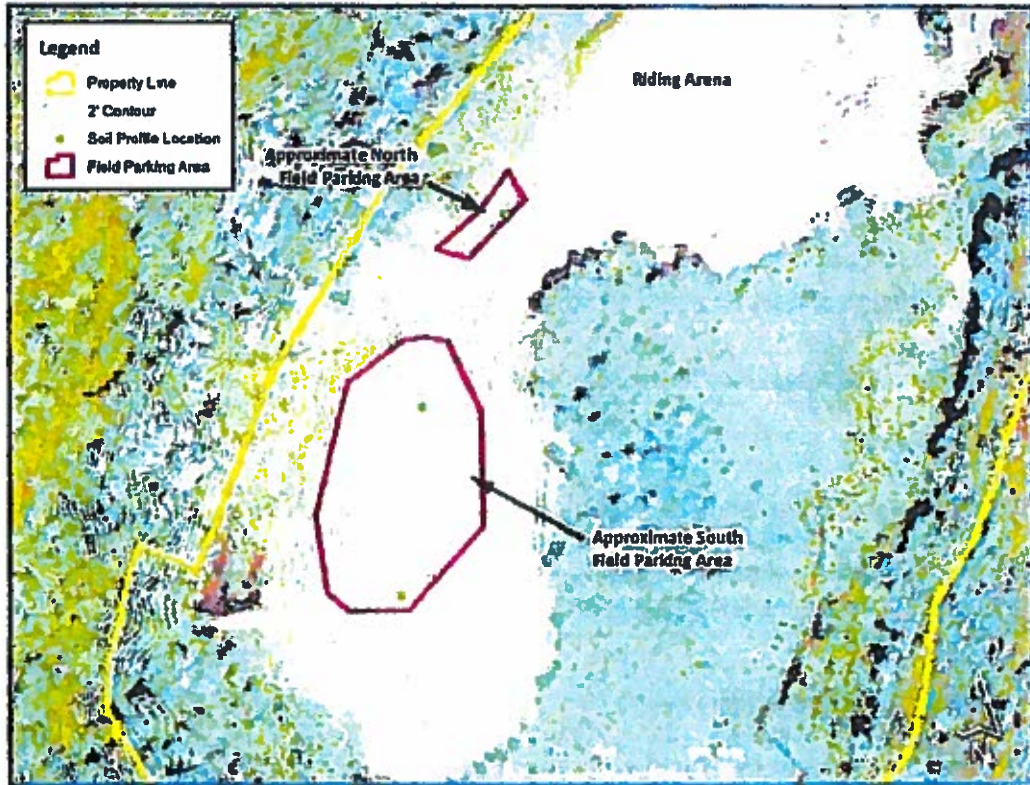


Figure 3 – Site map showing field parking areas. Property boundaries are from municipal tax mapping downloaded from NHGRANIT. Topography was created from 2015 LIDAR. Aerial photo is from USDA NAIP, 2016 collection.

Per the NRCS soil survey for Merrimack County, soils on the ridge are mapped as Boscowen fine sandy loam (see Figure 5). This is an excessively drained sandy soil developed in glacial outwash parent material. We excavated three shallow test pits along the ridge and our observations were consistent with the NRCS soils mapping (see Figure 4).

During our site visit we did not observe any wheel ruts, soil compaction, or evidence of concentrated flow (e.g. rills, gullies, etc.) within or adjacent to the parking areas.



Figure 4 – Gravelly sand excavated from a depth of approximately 10 inches at northerly soil profile location in south field parking area (8/9/17)

Conclusions

It is my professional opinion that periodic vehicular and trailer parking in the grass fields has not had, and is unlikely to have, a significant impact on the volume or rate of stormwater runoff or the manner in which it flows or infiltrates.

The sandy soils at the field parking areas are deep and excessively drained. The official NRCS soil series description for Boscaawen soils states:

DRAINAGE AND PERMEABILITY: Somewhat excessively and excessively drained. Runoff is negligible to medium. Saturated hydraulic conductivity is high or very high.

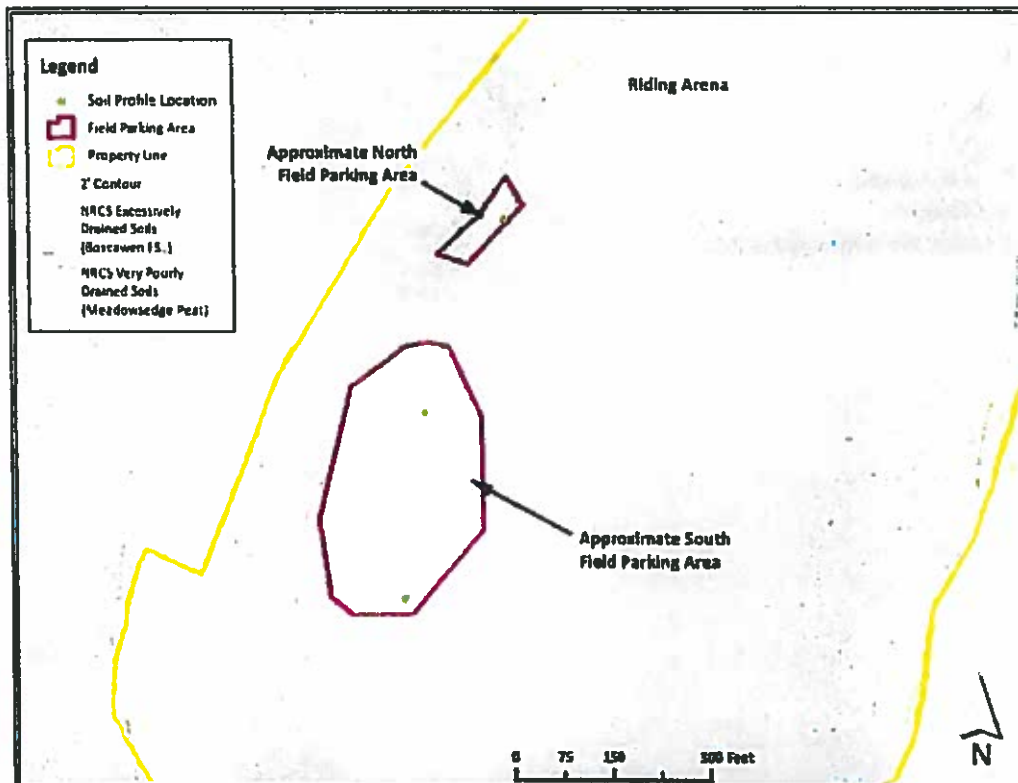


Figure 5 - Site map showing field parking areas and soil drainage classifications from the NRCS Soil Survey for Merrimack County. Property boundaries are from municipal tax mapping downloaded from NHGRANIT. Topography was created from 2015 LIDAR.


The Merrimack County Soil Survey also states that the depth to restrictive features and the water table are both in excess of 80 inches. Additionally, the convex shape of the ridge discourages the concentration or collection of stormwater and there is no drainage onto the parking areas from upslope areas. The only stormwater which enters the parking areas is that which falls directly on them as precipitation.

These characteristics, along with the absence of any evidence of concentrated flow, suggest that precipitation primarily infiltrates rather than running off as surface flow. Furthermore, the absence of compacted soils, ruts, or large unvegetated areas suggests that the past and ongoing vehicle and trailer parking has not reduced the soil infiltration capacity, caused stormwater to concentrate or flow in a manner which could cause soil erosion, or otherwise adversely affected the volume or rate of stormwater runoff or the manner in which it flows or infiltrates. Therefore, in my opinion, the proposed use of the grass fields for periodic vehicle and trailer

parking will not increase the rate or volume of stormwater flowing off the site or adversely impact neighboring properties.

I can be reached at (603) 444-2544 or via email at sean@headwatershydrology.com if you have any questions.

Respectfully submitted,


Sean P. Sweeney, P.E., QWS
Manager
Headwaters Hydrology, PLLC





Town of Hopkinton

330 Main Street • Hopkinton, New Hampshire 03229 • www.hopkinton-nh.gov

Tel: 603-746-3170

Fax: 603-746-3049

HOPKINTON ZONING BOARD OF ADJUSTMENT

MINUTES

SEPTEMBER 6, 2017

Members present: Chairman Daniel Rinden, Toni Gray, Charles Koontz, Gregory McLeod and Jessica Scheinman. Staff present: Planning Director Karen Robertson.

Note: The Zoning Board of Adjustment's Rules of Procedure was available during the application process and additional copies were available at the meeting for the public.

I. Call to Order. Chairman Rinden called the meeting to order at 5:30 PM in the Hopkinton Town Hall.

II. Application(s).

Special Exception (#2017-03) Rhapsody Farm, LLC on behalf of 1301 Bound Tree Road, LLC on property located at 1301 Bound Tree Road, Tax Map 204, Lot 002, R-3 District. Commercial riding stable/equestrian facility in accordance with Zoning Ordinance Table of Uses 3.6.C.3.

Attorney Jeremy Eggleton of Orr & Reno addressed the Board on behalf Rhapsody Farm, LLC, 1301 Bound Tree Road, LLC and Margaret Kennedy, advising that the property consists of 36.3 acres of which approximately 20 acres are open fields that slope away from Bound Tree Road. There is a barn and outdoor show ring. Ms. Kennedy utilizes the barn for her personal horses and to paying customers. The horse shows take place in the outdoor ring, which can attract between 25-50 visitors per show. Ms. Kennedy has held shows each month, not knowing at the time she had scheduled the shows that a permit would be required.

Each show is advertised/marketed in a way that directs those attending the shows to travel the least impacted distance (Exit 7, Pleasant Pond Road to Bound Tree Road) to property. Once at the property, those attending drive down Ms. Kennedy's driveway, which is approximately ¼ mile long to an open field where they park their vehicles/trailers. To ensure that dust along the ¼ mile drive is at a minimum, Ms. Kennedy puts down calcium.

Attorney Eggleton reviewed the location of the storage of animal waste and how it is removed from the property. He also discussed the use of the sound system at the announcing booth.

While it is Ms. Kennedy's goal to be able to, eventually, hold up to 50 shows per year, she realizes that the ultimate decision on the number of shows is that of the Board of Adjustment as part of the Special Exception.

Adopted: 10/03/2017.

CR 000058

Attorney Eggleton briefly referenced Hopkinton's history of agricultural uses, including commercial dairy farms and orchards, and their need to adapt to the 21st Century while continuing the historical agricultural character of the community. He noted that, in reviewing Town records, the Ms. Kennedy's property had been used in the 1970's and 1980's as a commercial riding stable. He suggested that the proposed commercial riding stable will restore the preexisting use and be consistent with the historical uses of the property.

The R-3 (low density) zoning district permits equestrian facilities by Special Exception per Table of Uses 3.6.C.3 (commercial riding stables and trails) of the Zoning Ordinance. Attorney Eggleton noted that, currently, there are three other commercial riding stables in Hopkinton. One stable is located off Hatfield Road and the other two stables are located off Stumpfield Road. Both locations are in the R-4 (residential/agricultural) zoning district.

For the record, the Applicant's written response to the criteria for a Special Exception as outlined in Section XV of the Zoning Ordinance was as follows:

- 1) *Standards provided by this Ordinance for the particular use permitted by Special Exception.* "The proposed commercial riding stable is contemplated in the R-3 Zoning District, and it fulfills the broader goals of the Zoning Ordinance because it conserves nearly all of the ca. 36.3 acre lot as 'open space... [with] some agricultural use... without major disruption of the natural terrain, vegetation, watercourses or surface drainage.' It also meets the standards that follow."
- 2) *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.* "Hopkinton Fire Chief Jeff Yale has visited the site and reviewed it in light of the contemplated use. As set forth in the attached email, Exhibit 3, he agrees that the commercial riding stable presents no particular risk of potential fire, explosion or release of toxic materials. Manure from horse activity is gathered daily in a concrete, open air crib, and taken for agricultural use by a local farmer."
- 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.* "Licensed N.H. Real Estate agent Judith Hampe has represented clients in the sale and purchase of Hopkinton property for many decades. She has reviewed the location of the property and driven the roads in the area specifically for the purpose of evaluating this question. In her view, the proposed commercial riding stable will not adversely affect property values in the vicinity or change the essential characteristics of the neighborhood. Exhibit 4. The neighborhood is a rural, wooded road with sporadic housing, and a riding stable is the kind of amenity one might expect in such a neighborhood. If anything, Ms. Hampe believes that the commercial stable could enhance property values because it represents an attractive amenity. Exhibit 4. It is worth noting that allowing the commercial riding stable would make it less likely that the large acreage of the property will be subdivided and redeveloped into tract housing for Concord area commuters.

With respect to noise, the Applicant does expect to play music and use a sound system for announcing horse shows, and occasionally will use fireworks. The applicant has used fireworks in this location and has been in compliance – and will remain in

Adopted: 10/03/2017.

compliance – with the Fire Department's restrictions, if any, with respect to fireworks.² Naturally, enforcement of any fireworks guideline is welcome and expected.

With regard to the sound system used by the Applicant for horse shows, licensed Acoustical Engineer Eric Reuter, investigated the site during a show and took observations using sound evaluation equipment. His full report is included as Exhibit 5. With the proper position of the sound system's speakers, which the Applicant is in the process of implementing, the Applicant meets all noise requirements of the Zoning Ordinance. §5.5. This letter constitutes written confirmation of the Applicant's intent to take all necessary steps to avoid producing objectionable noise. §5.5.4.

The Applicant notes that the summer camp on Clement Pond (Camp Ponderosa) has nightly sound system use, including for music, and occasional firework noise that is readily heard from her property and in the surrounding neighborhood. With regard to dust, the Applicant uses a calcium/magnesium overlay (typical for gravel roads) on the dirt road leading downhill from Bound Tree Road to the areas where visitors and guests may park. Those area are also almost entirely encircled by thick forest which prevents dust, sound and views from penetrating to neighboring properties."

- 4) *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.* "Chief Stephen Pecora of the Hopkinton Police Department has visited the site and been apprised of the potential for gathering of people at the property during the Applicant's horse show events. He does not believe that the proposed use would create a traffic safety hazard, or a substantial increase in the level of traffic congestion in the vicinity. Exhibit 6. As he points out, access to the property by attendees of any of the Applicant's horse shows would be primarily from the Warner, NH side of the property from Pleasant Pond Road, as that is the most direct access from Exit 7 of Interstate Route 89. Thus, attendees coming for a show would typically be on the roads of the Town of Hopkinton for only approximately ¼ of a mile, and for the brief load in and load out times associated with a day-long horse show, this would not result in a substantial increase in traffic congestion. Exhibit 6."
- 5) *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.* "Fire Chief Yale and Police Chief Pecora both confirm that the proposed use will not create an excessive demand on their respective departments' services. Exhibit 3, Exhibit 6. Of course, on occasional show days when there are more people on the property than on typical weekday, there is always a risk that a gathering of people might increase the likelihood of some EMS response for medical or injury issues. Still, Chief Yale does not view that potential increase in the possibility of a call as being 'excessive'. Regarding water, sewer and waste disposal, the site is not served by Town facilities and day-to-day operations will require no additional infrastructure other than the ordinary private septic and water services already existing. For show days, the Applicant uses removable porta potty-type toilet facilities, so there is no increase, temporary or permanent, in sewage outflow from the proposed use. With regard to schools, the proposed use does not present any increase in demand whatsoever.

² On information and belief, the Town of Hopkinton Fire Department allows N.H. Class C Fireworks – those typically sold for personal use on a retail basis – and does not restrict their use as to time or location."

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Town Public Works Director Dan Blanchette did confirm that there is no traffic safety hazard from the proposed horse shows. Exhibit 7. He has concerns about the condition of the ¼ mile of access road from the Warner line. This portion of the road (Pleasant Pond and Bound Tree) is gravel, and increased numbers of visitors may require additional grading than is currently applied to the stretch of road. He pointed out that his department is already substantially overburdened by the many demands of maintaining a largely rural road network. Although cold weather shows will have no impact on the roads (other than the need for salting and sanding), warm weather shows more than once per month may increase the need for grading on the ¼ mile stretch from the Warner line to the Applicant's property. As a mitigation measure, he does suggest that the Applicant guide visitors to the property from Pleasant Pond Road, so that only ¼ mile of Hopkinton roads are affected (and, in Warner, Pleasant Pond Road is paved). Furthermore, he suggests that the Applicant include specific slow driving instructions on public directions to the property. Finally, the load-in, load-out timing of show day visitation will limit actual traffic impact on the road to those specific, limited times of day.

Regarding Mr. Blanchette's comments, the Applicant – a lifetime citizen of Hopkinton whose family goes back generations – certainly appreciates the burdens on this Department. She is pleased to undertake any reasonable communication requirement to ensure that her guests follow all reasonable protocols for using the ¼ stretch of gravel road accessing the property. However, the mere possibility that some additional grading may be required is not the standard in this case. The Zoning Ordinance specifically forbids an 'excessive' impact on Town services, and whether a given impact is 'excessive' is a matter of the Board's discretion. The Applicant submits that if the standard for a given use were whether any additional resources were required to accommodate the new use, then no new development would be possible. This is particularly the case for an amenity such as a commercial riding stable, which – under Mr. Blanchette's analysis, may never be permitted on a gravel road. That is not a reasonable reading of the Zoning Ordinance.

The Applicant is willing to accept a limitation on the number of public events or shows annually, but she hopes to strike the maximum balance between the needs of her business and livelihood and those of the Town with respect to road maintenance."

- 6) *No significant increase of storm water runoff onto adjacent property or streets.* "The attached report of Sean Sweeney, PE, of Headwaters Hydrology, Littleton, N.H., confirms that the Applicant's proposed use of the project will not result in any significant increase at all of storm water runoff onto adjacent property or streets. Exhibit 8. The Board should note at the outset that virtually no storm water runoff flows off the property in the direction of Bound Tree Road, as the horse stable is at the height of land, and the land drops relatively steeply downward from there, away from the road. The road, in other words, is at the very top of the property. None of the parking areas used by the Applicant for horses and trailers are above that grade. As Mr. Sweeney notes, the proposed use contemplates occasional parking by visiting guests and horse trailers in existing open fields, with no improvement or hardening of ground surfaces. There will be no alteration of the landscape, therefore, that would affect storm water runoff. The unimproved field surfaces will absorb storm water, and to the extent there is excess, it runs into the wooded portions of the property at the base of the field. In short, virtually

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all the water that could be produced by a storm is successfully absorbed by the present configuration and that will not change with the proposed use. Exhibit 8."

- 7) *An appropriate location for the proposed use.* "The proposed use is appropriate for this location because it is at the outer edge of the Town of Hopkinton, in a very rural, wooded part of Town. The property was used as a commercial stable historically, and most recently was a commercial farm. Its proposed use is in keeping with this history, and with the broad norms and goals of the Town Zoning Ordinance, including its goals of preserving agricultural uses and promoting agritourism. ZO §3.5.2, §2.1.A.4."
- 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.* "The proposed use restores and continues a previous longstanding uses on this property. Those uses, commercial agriculture and equestrian services, have no inherent adverse effects on health and safety of residents and others in the area and will not present any detriment to the use or development of adjacent or neighboring properties. If any such detriment were likely or even possible, it would have been observed by now, as the property was used as a commercial riding stable in the past, and most recently as a commercial farm. This is not to say that there will be no impacts whatsoever on neighbors or adjacent properties. They may hear the music or commentary from a horse show; they may – if close enough – catch the scent of the barnyard once in a while. But these are not unhealthy or unsafe things, and far from being detrimental, the presence of a commercial stable may actually make adjacent or neighboring properties more desirable. See Exhibit 4."
- 9) *In the public interest and in the spirit of the ordinance.* "The Zoning Ordinance strikes the balance between the rural, agricultural Hopkinton of the last century and the wooded bedroom community it is becoming today. Uses like what the Applicant proposes are part of the fabric of Hopkinton's past and its present. The Zoning Ordinance expressly promotes agriculture and agritourism, and contemplates commercial stables in the zoning district in question. Thus, the special exception is in the spirit of the Zoning Ordinance. Granting the special exception would be in the public interest because it offers a new amenity for the public, and increases the Town's tax rolls by increasing the value of the property."

Exhibits submitted as part of the application were as follows:

1. Site Plan/Survey
2. Photographs (10)
3. Fire Chief Jeff Yale (Email)
4. Broker Judith Hampe (Letter)
5. Eric Reuter, INCE Bd. Cert. of Reuter Associates, LLC (Report)
6. Police Chief Steve Pecora (Email)
7. Public Works Director Dan Blanchette (Email)
8. Sean Sweeney, P.E., CWS of Headwaters Hydrology, PLLC (Report)

Mr. Koontz inquired about the timing of removal of the manure. In response, Ms. Kennedy explained that farmers collect the horse manure for use on their farms. When to remove the manure is usually dependent upon the number of horses on the property in any given

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time and the weather conditions. For example, the manure is usually removed from the site if rain is anticipated.

Ms. Schelman inquired about the total number of horses that are usually at the property. Ms. Kennedy estimated between 10 – 15 horses with some being boarded and others for personal use or for sale.

Brief discussion ensued concerning the types and lengths of horse shows that will occur at the property, such as hunt seat, barrel racing and championship shows. Participants register at 8 AM with the events slowing down at approximately 5:30 PM. While there may be 50 horses at the show, those horses come in trailers that hold more than one horse. Typically, Ms. Kennedy is on-site during the shows, but if unavailable Ms. Kennedy has an employee that is present and is very familiar with managing the shows.

In response to a Board member's inquiry concerning traffic congestion, Ms. Kennedy stated that there was traffic backed-up, for a short time, on Bound Tree Road when the first horse show was held. There hasn't been an issue since then as most everyone that attends the shows now understands the logistics of parking. Again, Attorney Eggleton noted that Ms. Kennedy's driveway is approximately ¼ mile long; therefore, there is adequate space for vehicles to exit the street.

In response to Mrs. Gray's inquiry as to how the Applicant arrived at the proposed 50 horse shows requested in the application, Attorney Eggleton noted that his client is a young entrepreneur who has great hopes; however, she understands that the determination of the number of shows will be a decision of the Board. Ms. Kennedy concurred, noting that during the summer months, when kids are on vacation, she may hold a show during a week night.

Mrs. Gray inquired about the method by which Ms. Kennedy directs people to the property. In response, Ms. Kennedy explained how she has advertised/marketed the shows, via social media, web site, and pamphlets, so that traffic will travel I-89, Exit 7 to Pleasant Pond Road. She also places temporary directional signs along the route. The signs are placed at the various locations the evening before and removed immediately following the shows. Ms. Kennedy did note that she would not be able to prevent everyone from traveling that route; especially, if those attending are coming from the direction of Keene. She assumed that they would most likely travel the shortest distance, which would be along Bound Tree Road.

Mr. McLeod assumed that the weather is a big factor when determining the number of shows that will take place. Ms. Kennedy agreed, stating that at the time of the third frost, or sooner, outside horse shows typically cease.

In response to Mr. Koontz's inquiry concerning a business plan, Ms. Kennedy noted that she has almost met her 5-year goals. What is now proposed is part of Ms. Kennedy's 10-year plan.

Ms. Scheinman inquired about the dust and its impact on properties in the area. Ms. Kennedy suggested that the dust created when traveling the ¾ mile of gravel road (Pleasant Pond Road) is no different from the dust created by campers that go to St. Methodios (Camp Merrimac Road) or Mile-A-Way Campground (Pine Street) by way of

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those gravel roads. Ms. Kennedy agreed to work with the Public Works Director concerning the matter.

Chairman Rinden opened the public hearing portion of the meeting to request comments from those in attendance that were in favor of the application.

Abutter Roxanne Ellis, 1314 Bound Tree Road, spoke in favor of the application. She noted that 17 trailers traveled past by her home for the most recent show and that there was no traffic congestion.

Abutter Brian Hall, 1327 Bound Tree Road, spoke in favor of Ms. Kennedy's application. While on occasion Mr. Hall can smell the farm, he indicated that the smell is not profound.

Abutter Karen Kennedy, owner of Clement Pond LLC, spoke in favor of the proposal. Ms. Kennedy noted that most of the perimeter of the property is woodland.

Abutter Sheri Courser, 1340 Bound Tree Road, spoke in favor of Ms. Kennedy's application. Ms. Courser suggested that the road being gravel will always cause a problem with dust. She did not believe that the horse shows made a difference in the dust being created as when there is not a show the other vehicles traveling the road cause dust. She suggested that it is a maintenance issue that needs to be addressed with the Town.

Chairman Rinden requested comments from those in attendance that were in opposition.

Abutters Valerie and Ken Aubry, 1369 Bound Tree Road, spoke in opposition to the application. Ms. Aubry presented in writing their concerns and opinion about the proposal. In addressing the Board, the Aubrys explained how their property abuts Ms. Kennedy's property for approximately ¼ mile. She requested that the Board take no action on the proposal, so that they may have more time to review the application. According to Ms. Aubry, a week prior to the meeting they received the public notice but did not have an opportunity to review the application until the Saturday before the meeting.

Mr. and Mrs. Aubry advised of the previous owners, the Millers, who owned the Kennedy property in the 1970's and 1980's. During that time, the Millers had a small farm in which they boarded horses and offered hay rides. The Aubrys stated that there were no horse shows at the property; therefore, they suggested that what Ms. Kennedy is proposing is not a continuation of a previous use. Ms. Aubry suggested that the horse shows are commercial entertainment. She stated that the announcements and music from the loud speakers can be heard from within her home with the windows closed. This was very concerning to the Aubrys as they believed that the use of the loud speakers and the traffic caused by the shows has a negative impact on their property value.

Ms. Aubry brought to the Board's attention comments on Ms. Kennedy's Facebook Page advertising the venue as a space for large horse shows. Furthermore, Ms. Aubry suggested that Ms. Kennedy's recent comments in the Concord Monitor gave the impression that she is more focused on horse shows than providing boarding services.

The Aubrys took exception with Attorney Eggleton's "mischaracterization" of the activities that previously occurred at the property. Ms. Aubry reiterated that the Millers, who

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previously owned the property, operated a very small farm in which they boarded a few horses and offered hay rides to the public.

Mr. Aubry informed the Board of a recent conversation that he had with a retired realtor who had indicated that a business will have a negative impact on their property value.

Mr. and Mrs. Aubry questioned why the noise wasn't measured from their home as it is downhill from the arena and adjacent to where the horse trailers are parked.

In conclusion, the Aubrys requested that the horse shows be prohibited or that the number and size of the horse shows be limited, and that the loud speakers be eliminated.

Mr. McLeod inquired with the Aubrys concerning the possibility that a sound buffer be installed between their properties. In response, Ms. Aubry indicated that the issue of traffic and the impact it has on the road will still need to be addressed. She suggested that due to the topography of their property (lower elevation) that it is not possible to alleviate the noise.

Chairman Rinden requested comments from those in attendance that were non-abutters.

Non-abutter Peter Debrusk, 1186 Bound Tree Road, spoke in opposition to the application. Mr. Debrusk concurred with the comments and concerns raised by the Aubrys; in particular, he agreed that the horse shows are not an agricultural use, but rather commercial entertainment. He, too, expressed concern with the noise from the loud speakers and the additional traffic along Bound Tree Road. He pointed out a conversation he had on August 24 with the sound engineer, who indicated that he had not measured the sound during a horse show.

Chairman Rinden inquired about the distance the Debrusk property is from the property in question. Mr. Debrusk estimated between 1,000 – 2,000 feet.

Non-abutter John Young, 1162 Bound Tree Road, provided the Board with a letter indicating he and his wife's concerns with the proposal. The letter mentions the Young's concern with the level of noise created during the horse shows as they can hear the announcements from their property.

Jeanne Kerr, 15 Pleasant Pond Road, explained that she is in a valley, across the street from the Aubrys. Now, instead of hearing the brook alongside her home, she hears the announcement and music from the loud speakers. Ms. Kerr expressed concern with the additional traffic and dust created. Directing traffic to Pleasant Pond Road means that the traffic will travel in front of Ms. Kerr's property.

MJ Debrusk, 1186 Bound Tree Road, addressed the Board in opposition to the application. She presented a letter in which she addressed the standards for a special exception and why she believed that the Applicant is unable to satisfy the standards.

David Smith, 173 Pleasant Pond Road, noted that he often walks Pleasant Pond Road and finds that those traveling with their horse trailers are very courteous and drive slower than others that typically travel the road.

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Steve Lux, Clement Hill Road, explained how he had designed and installed Ms. Kennedy's sound system so that riders can hear when it is time for their event. One speaker is directed towards the Aubrys house, but can be moved. In comparison with the sound system at the Hopkinton Fairgrounds, Mr. Lux stated that Ms. Kennedy's system is clearer.

Josh Kerin, Bound Tree Road, spoke in favor of the application. Mr. Kerin believed that the facility will give residents a place to ride and enjoy horses.

Greg Sagris, Granite Valley, spoke in favor of the application. Mr. Sagris is excited to bring his family to the shows and believes it is good for Hopkinton to have a family event that residents can enjoy.

Marsha Evans, Stumpfield Road, spoke in favor of the application. Ms. Evans manages the 4-H Club that has used Ms. Kennedy's property for shows, such as Special Olympics. Ms. Evans discussed the expense of using the fairgrounds.

During this time, Chairman Rinden provided Ms. Kennedy and Attorney Eggleton an opportunity for rebuttal.

Attorney Eggleton stated that the Town did not indicate that a Variance is required as a "place of entertainment", but rather a Special Exception is required as a "commercial riding stable/riding trails". He then reiterated that, historically, agricultural activities have taken place at the property, and that horse shows are not an uncommon activity at commercial riding stables. In effort to explain that horse shows are not uncommon in Hopkinton, Attorney Eggleton made reference to an abutter's letter to the Board that indicated that there are other riding stables in Hopkinton that hold horse shows with or without a speaker system.

In response to an abutter's statement about being told by a realtor that their property value would depreciate, Attorney Eggleton indicated that statement is "hear say". Attorney Eggleton reminded the Board that Ms. Kennedy presented a letter from Coldwell Banker – J. Hampe Associates indicating the benefits and positive impact horse facilities have had on the sale of homes in areas where these facilities are available.

Attorney Eggleton reiterated the fact that the Police Chief and Public Works Director had no concern with traffic safety because of the horse shows, and Ms. Kennedy's willingness to accept a limitation on the number of shows. Ms. Kennedy concurred, noting that if there is a limitation on the number of shows and it is determined, after some time, that there have been no issues, she will come back before the Board to request additional shows.

Ms. Schienman questioned the elevation difference from the Aubry house and the Kennedy property. Attorney Eggleton was unsure. Ms. Kennedy stated that when looking at the properties they appear to be at the same elevation.

Attorney Eggleton referred to horse shows as being similar to other agritourism activities that take place at farms, such as weddings. He suggested that if Ms. Kennedy is not able to balance the needs of her business and livelihood that she may need to develop her property to support the farm.

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Ms. Gray asked for clarification as to the number of horse shows that Ms. Kennedy anticipates could take place within a period of nine (9) months. Ms. Kennedy estimated three (3) shows per month, again, depending upon weather conditions.

Mr. Koontz asked whether on average 27 shows a year would be acceptable. Mrs. Kennedy replied yes. Ms. Kennedy, again, stated that there may be a month that one (1) show is held and the next month four (4) shows are held, depending upon the weather.

Mr. McLeod inquired about the time frame of the "traditional season". Ms. Kennedy responded, April – October. Mr. McLeod asked whether 27 shows from April – October would be acceptable. Ms. Kennedy replied yes.

Chairman Rinden provided the public with an opportunity to rebut what had been said by the Applicant.

Valerie Aubry readdressed the Board taking exception to Attorney Eggleton's reference to Ms. Aubry's letter concerning horse shows at other horse facilities. Ms. Aubry noted that there is a significant difference in three (3) horse shows per year without a sound system versus 50 horse shows that are broadcasted over four (4) loud speakers. Again, Ms. Aubry strongly object to the noise associated with the horse shows. She also noted that her husband had spoken with the Director of Public Works, who indicated that he is opposed to the proposal.

Ms. Aubry, again, requested that the Board continue the application so that she would have an opportunity to review the application and consult with her own attorney.

Dan Blanchette, Director of Public Works, stated that he is neither for nor against the proposal. Still Mr. Blanchette was concerned with the impact that 50-60 vehicles, four (4) times a month, would have on the gravel roads. He suggested that 10-20 vehicles, up to four (4) times per month, would be acceptable. While Mr. Blanchette's department works to keep the roads in a condition that they are suitable for travel, their resources are limited.

Ms. Schienman questioned whether Mr. Blanchette was concerned with the impact of the vehicles or the horse trailers. In response, Mr. Blanchette expressed concern with the weight of the trailers. Additionally, he stated that the impact of 20 vehicles versus 50-60 vehicles is a significant difference.

With no further comments from the public, Chairman Rinden declared the public hearing portion of the meeting closed.

Ms. Schienman wanted an opportunity to read the information submitted by the public. Mr. McLeod concurred, suggesting that the Board seek an opinion from counsel as the Ordinance does not clearly address the use of a commercial riding stable.

Mr. Koontz suggested that the Board continue the application, so to allow the Applicant an opportunity to work with the Aubrys in addressing their concerns.

During deliberation, Mrs. Gray stated that she wasn't sure that there is a need for the sound system.

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Toni Gray, seconded by Greg McLeod, motioned to **CONTINUE** the application for Special Exception (#2017-03) to the next regular scheduled meeting (October 3, 2017, 5:30 PM, Hopkinton Town Hall), so that the Board will have an opportunity to review the information submitted by the public and to seek an opinion from counsel concerning "horse shows". Motion carried in the affirmative (Gray, Koontz, McLeod, Schienman and Rinden).

Note: Chairman Rinden advised those in attendance that the public hearing portion of the meeting had been closed. The Board will not reopen public testimony or receive additional information, prior to or during the next meeting, except for the legal opinion from its counsel.

III. Review of the Zoning Board of Adjustment Minutes and Notice of Decision of June 6, 2017.

Toni Gray, seconded by Greg McLeod, motioned to **APPROVE** the Minutes and Notice of Decision of June 6, 2017 as presented. Motion carried in the affirmative.

IV. Adjournment.

Toni Gray, seconded by Charles Koontz, motioned to **ADJOURN** the meeting at 8:05 PM. Motion carried in the affirmative. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Tuesday, October 3, 2017, at the Hopkinton Town Hall.

Karen Robertson
Planning Director

Adopted: 10/03/2017.

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RECEIVED

**1369 Bound Tree
Contoocook, NH 03229**

SEP - 6 2017

September 6, 2017

Hopkinton Zoning Board of Adjustment
Hopkinton Town Hall
330 Main Street
Hopkinton, NH 03229

HOPKINTON
PLANNING DEPT

Dear Zoning Board Members:

We are testifying in opposition to the application for a Special Exception (#2017-03) on behalf of Rhapsody Farm, LLC, located at 1301 Bound Tree Road being considered at this September 6, 2017 meeting. We are resident home owners and abutters of forty (40) years to the Rhapsody Farm property in an R-3 Low Density Residential Zoning District, and we are here to voice our strong objections to this proposal.

I. Request to Table Application so that we have more time to prepare

Given that we as abutters have had only one week to prepare for this meeting of the Zoning Board and to respond to the application for Special Exception #2017-03 filed by Attorney Eggleton on August 21, 2017, we are requesting that any action on the proposal be tabled for at least a month. We have not had, for instance, the lengthy preparation time that Ms. Kennedy, owner of Rhapsody Farm, has had to retain Counsel, to have a sound study completed, and to research the effects on neighboring property values of a facility like that requested. As a result, in the interests of fairness and appropriateness, we would ask that action on this proposal be deferred until we have had more time to prepare.

II. Proposed use is not permitted by Special Exception

A. The proposed use does not fall within the meaning of a "commercial riding stable."

A Low Density Residential (R-3) zone is defined in Section 3.5.2 of the Hopkinton Zoning Ordinances as the following:

The intent of this district is to provide for open space conservation, some agricultural use, and predominantly very low density residential development on individual lots or in conservation subdivisions which can be accommodated on the land without major disruptions of the natural terrain, vegetation, watercourses or surface drainage and which would not customarily have Precinct water and sewer systems.

In the Hopkinton Zoning Ordinances Table of Uses, commercial riding stables and riding trails are permitted by Special Exception in an R-3 Low Density Residential zone [3.6 (C) (3)]. The phrase, "some agricultural use" provides the basis for such a request. Nowhere in the definition of an R-3 zone is there a statement that would seem to allow for a horse "show ring," however, nor is there any indication that large gatherings of people and/or animals for recreational or competitive reasons were intended in a low density residential zone. Rather, the focus of the definition seems to be the preservation of the natural environment to the greatest extent possible while providing the opportunity for residences.

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As a result, in reviewing the application for the Special Exception filed by Attorney Eggleton on August 21, 2017, we were struck by the mischaracterization of this proposal as requesting simply "commercial riding stables and riding trails." The evidence cited of precedent for a commercial riding stable at this location in the 1970s and 80s also misrepresents both the scale of the operation at the time and the various activities pursued there. We were residents in our home during the period when Kenny and Lucy Miller had a very small scale stable and riding facility where they also gave hay rides on occasion. At that time there was no impact from the presence of the stable on the neighborhood. Since that time, Ms. Kennedy, the owner of Rhapsody Farm, has expanded the scope of the horse farm considerably, clear cutting a large previously wooded area and bringing in innumerable truckloads of fill/dirt to provide space for the riding arena and facilities.

We have inquired about whether the other riding stables in town on Hatfield and Stumpfield Roads hold horse shows and, if so, how they are managed. One on Hatfield Road noted that they have about three (3) shows a year, but they have no PA system or loudspeakers. The owner also mentioned that no noise is evident on the road and they put only a small sign at the end of the driveway. The other stable whose owner provided information, this one on Stumpfield Rd, stated that their shows are very small, but that they do use one speaker on occasion. It was also noted that the stable is on a paved dead end road and they have never had complaints about noise. Because they have little area for competition and parking, however, they sometimes hold shows at the Hopkinton Fairgrounds. To our minds, the Hopkinton Fairgrounds would provide a much more appropriate venue for Ms. Kennedy's horse shows than our R-3 Low-Density Residential neighborhood.

Let us note here that the horse shows this summer at Rhapsody Farm took those of us in the neighborhood by complete surprise. Our first indication that such an event would be taking place was when two signs appeared on our property, without our consent, directing participants up the hill to Rhapsody Farm. Our second "notification" was constant, loud, intrusive sound echoing off our house and permeating our home for a full day. It is this level of blaring noise that constitutes our first and foremost objection to this proposal. During the horse shows we can provide a running commentary on the riders, who is "on deck," who is "in the hole," and what their times are. We can hear the crowd cheer for each rider in turn, as crowds do in *places of entertainment* or at the Hopkinton Fair. And we can hear the tractors periodically redoing the arena area. We have brought with us today some YouTube videos we believe represent the type of sounds one can expect from the Barrel Racing shows Ms. Kennedy has hosted on her property for the Board to listen to. We believe it is important to understand just how loud and continuously disruptive these shows are. It sounds like the sort of thing you would expect to hear at the Hopkinton Fair within the Fairgrounds, not in your own back or front yard. We only wish we had recorded the sounds from our deck a few weeks ago. Had we known then Ms. Kennedy's plans to continue to host these events, we would have.

As a horse show started early one morning this summer, for instance, I was upstairs in our house and thought that there were visitors walking and talking loudly on our front deck. It was, however, only the noisy barrage from Rhapsody Farm. Our son's family was visiting during the last horse show this summer on August 19th, and they were all shocked by level of sound emanating from our neighbor's horse show, which was audible even with closed windows and doors. It was not until we read Attorney Eggleton's application for the Special Exception that we understood that there were four (4) loudspeakers providing us with what seem like front row seats at our neighborhood fairgrounds.

In reading the application, we also became aware that Ms. Kennedy was intending to increase the number of shows to an ultimate goal of 50 per year. One show is too many. One loudspeaker is too many. This is a clear violation of zoning laws which exist to protect homeowners like us from living adjacent to a place of entertainment or a fairgrounds. Even the five (5) or six (6) shows that have been held so far have been

more than we can take in terms of noise and intrusion on our reasonable expectation for quiet enjoyment in our home of forty (40) years. Horse shows are generated by a commercial entertainment enterprise which does not belong in a Low-Density Residential part of town.

With this letter we are submitting copies of an article from the Concord Monitor dated Saturday, April 22, 2017, in which Ms. Kennedy, the owner of Rhapsody Farm, describes her intentions. It is clear throughout the article that her primary focus is shows, shows, and more shows. She noted in the article that she started in 2016 with one show, that she hoped to have many more in 2017, and that she planned to increase to other events, such as weddings, over time. Pictures that accompanied the article can be found at <http://www.concordmonitor.com/Rhapsody-Farm--Annie-Kennedy-9360201>. As neighbors whose property abuts Ms. Kennedy's for almost a quarter mile and whose home is in direct line to her four (4) loudspeakers, we can attest to the increased volume of traffic and noise due to these shows, and have lost sleep since receiving the documents from her attorney when considering the prospect of more shows and weddings which would bring an enormous amount of traffic and noise to our otherwise peaceful neighborhood.

Many more pictures and reviews can be found on the Rhapsody Farm Facebook website found at <https://www.facebook.com/RhapsodyFarmLLC>. On this website can be found photos of the large construction vehicles used in clearing the previously wooded farm and bringing in dump truck loads of fill. In addition, there are reviews from the many, many "guests" Ms. Kennedy has entertained at the "farm." We are including a screen shot of the opening Facebook page with this letter, and we would call the Zoning Board's attention to the review of August 20, 2017—one day prior to Attorney Eggleton's filing of the application for Special Exception #2017-03—stating, "The Hostess with the Mostest, Annie's place is a venue built to accommodate even the largest of shows! I highly recommend Rhapsody Farm!" Please also notice on this site the number of *Likes* the website has already received—353! We are also including the website link for the show dates of the New Hampshire National Barrel Horse Association, an organization for which Ms. Kennedy has used our neighborhood to host noisy barrel races. <http://www.nhnbha.com/2017-show-dates.html> We note that she hosted events this summer in clear violation of the town's zoning ordinances and in violation of our reasonable expectation of peace and quiet. She did so without any warning to us -- save for posting a sign in front of our field road entry without our consent -- and without any consideration of the noise level or traffic inflicted on the neighborhood.

Information regarding rental of the Rhapsody Farm facilities for other people's events is also promised on the website—an option inconsistent with the original statement of intent of the Rhapsody Farm business in the *About* blurb on the same site which reads:

Quiet growing horse boarding facility with miles of trails, a 200' x 170' outdoor riding arena.
Easy to find right off of exit seven on 89.

This statement was the one her neighbors assumed true prior to this summer. We now understand that this is no longer the case.

Because Rhapsody Farm's application for the horse shows does not fall within the definition of a "commercial riding stable," Rhapsody Farm should be required to apply not for a Special Exception, but for a Variance which carries with it a higher burden of proof to the applicant. Rhapsody Farm should be held to that higher standard because the horse shows fall under the Entertainment or Fair Use-type portions of zoning law and are not part of an agricultural undertaking. We do not believe Rhapsody Farm's request would meet that higher standard.

B. Proposed Use does not include basic protections that are applicable to comparable uses.

Our chief concern in this application is with Ms. Kennedy's proposed "show ring" and the horse shows that have already been held throughout the summer—apparently without application for a Special Exception—along with the proposal for up to 50 shows per year in the future. Horse shows involve large groups of people and animals engaged in competition and/or watching the competitors. Even a single show violates our reasonable expectation of quiet enjoyment of our property in an R-3 Low-Density Residential zone. Horse shows, particularly those broadcast over loudspeakers, are more consistent with entertainment than agriculture. As such, in a Low-Density Residential area like ours, *horse shows* would constitute a significant change in the use of the property. Horse shows are not a function of a riding stable and riding trails.

All the construction, including the clear-cutting of a previously largely wooded site, the bringing in a tremendous amounts of fill, and the installation of four (4) loudspeakers next to a horse show arena approximately 67 feet from our property line has taken place in the past two years. The large scale horse shows have taken place only this summer. All this has been done in an R-3 Low-Density Residential Zone with blatant disregard for the welfare of Rhapsody Farm neighbors, for the natural state of the environment prior to construction, for the condition of a narrow dirt road maintained by the Town of Hopkinton, and for the Zoning Ordinances of the Town of Hopkinton. By comparison, we have lived in peace and quiet in our home on sixteen (16) acres for forty (40) years.

A horse show ring used for competition would not, strictly speaking, meet the criteria for a *Place of Entertainment* as defined in the zoning ordinance as follows:

2.1.P.3 Place of Entertainment: Any hall, theater, lounge or restaurant which provides on-premises entertainment, except a Fair Use permitted in the Fair District. Hopkinton Zoning Ordinance Page Z-11.

It would, however, seem to share many of the same characteristics. Large groups of people congregate on the premises for the purpose of being entertained by competition. And entry fees are charged for participants in the horse shows.

More similarities may actually be evident in a review of the list of *Fair Uses* permitted at the Hopkinton Fairgrounds in accordance with Section 3.8.4 of the Zoning Ordinances. The inclusion of "harness racing" is likely the *Fair Use permitted* that is most similar to the "barrel racing" that has been taking place at Rhapsody Farm this summer and that is requested as part of Ms. Kennedy's application for a Special Exception. Hence the definition of a *Place of Entertainment* and the list of *Fair Uses* would seem to at least be more relevant to the discussion of a *horse ring* and *horse shows* at Rhapsody Farm than trying to consider horse shows as "some agricultural use" to fit in uses permitted in an R-3 zone.

The importance of this relevance is that in the Zoning Ordinances Table of Uses [3.6 (F)(8)], a *Place of Entertainment* is not permitted in an R-3 zone, even by Special Exception. If the board were to grant Rhapsody Farm a variance to allow the use of the horse ring for horse shows, the impression is that the requirements and standards would be even more restrictive than those outlined under *Place of Entertainment* listed in Section 3.7.9 in the Zoning Ordinances. Those requirements include (b) providing adequate sound insulation to minimize any noise impact to adjacent properties and (d) having the noise created contained within a walled structure. Clearly, there is no *walled structure* enclosing an outdoor horse ring while loud commentary and/or music blasts from multiple speakers. Hence, it is not possible to provide adequate sound insulation. The Hopkinton Fairgrounds, a more similar venue in terms of noise, is

restricted in many other ways, including by limitations on the number of Fair days. In both cases, the intent is to mitigate the impact of loud, disruptive activities on other residents.

III. Excessive Noise-Sound Study Is Inadequate

We have read Eric Reuter's report (Exhibit 5 in the application) of the sound levels at Rhapsody Farm. While we appreciate Mr. Reuter's efforts to have Ms. Kennedy adjust the loudspeakers to meet the absolute requirements of Zoning Ordinance 5.5, we have to point out that the findings in the report were insufficient in the following ways:

- He measured the sound at the road in front of the entrance to the farm, not in the direction of our home.
- We share a very long boundary with Rhapsody Farm, almost ¼ mile. The horse arena and loudspeakers are situated almost directly in front of our house and deck at the end of our field. The trees in between us are almost all deciduous and are on our property, few, if any, on the Rhapsody Farm property. Even with their leaves on this summer, the sound was not adequately mitigated by our trees. When the leaves are not on the trees, we would expect even louder, more intrusive sound.
- Mr. Reuter's measurements were taken when none of the horse shows were in progress, so the noise of the crowds and the various machines in operation during these events were not taken into account.

Further, places of entertainment are required to be fully enclosed, preventing sound from traveling to neighbors. In this case, the arena is outdoors and the loudspeakers are mounted outdoors as well, so the sound from the place of entertainment is not contained at all, but left to travel to our home. [Section 3.7.9(f)]

We have also read the Zoning Ordinances pertaining to the Fair District in Contoocook Village. Those ordinances are considerably more restrictive as to the number of days, listed as six (6), when the Hopkinton State Fair can operate at the volume we are experiencing in an R-3 Low Density Residential zone. The Rhapsody Farm proposal for Special Exception #2017-03 states that up to fifty (50) days per year would be the goal. In proscribing the hours during which a *Place of Entertainment* can operate, Section 3.7.9 (f) also notes that an activity "shall begin no earlier than 12:00 PM and conclude no later than 10:00 PM." In Mr. Reuter's sound report, he states that "Events at Rhapsody Farm that utilize the sound system will be limited to [between] the hours of 8 am and 8 pm." It is not even noted in the application, however, that these horse shows take place on weekends, with participants arriving before 8 am.

IV. Reduced Property Values

Another objection to the proposal for *horse shows* included inappropriately in the application for a Special Exception (#2017-03) for a riding stable and riding trails is in regards to the **diminishment of our property values due to frequent loud, constant noise from an entertainment-type facility—a neighborhood fairgrounds—next door, on weekends starting early morning and continuing until evening.** We believe that Rhapsody Farm should be required to apply for a variance, which carries with it a higher burden of proof of mitigation of community impact, in order to use her land for riding rodeo-like competitions, for entertainment/fair-type purposes.

We have reviewed Judith Hampe's letter regarding the likelihood of a riding stable increasing the incentive for buyers of homes nearby. In her letter, however, Ms. Hampe does not mention the proposed

fairgrounds Ms. Kennedy wishes to operate. To be sure, a quiet stable with a few horses and riding trails would add to the allure of a neighboring property, bestowing some degree of pastoral scenery on the neighborhood. But this is not what is proposed. Ms. Kennedy wants to operate a fairground next to our house, with rodco-style barrel races taking place on a weekly basis, year-round. Ms. Hampe fails to take into account the significant disincentive to prospective buyers that would be provided by loud, blaring commentary and general noise broadcast by four loudspeakers throughout the neighborhood for full weekend days up to fifty (50) days per year. She also fails to take into account how a variance for this activity would adversely impact potential buyers, who may be concerned that the R-3 Low-Density Residential Zone may be turning commercial because of such a variance.

We would never have chosen to move next to a fairgrounds. Based on our personal values and love of nature, we purchased sixteen (16) acres of field and hilly woodlands in an R-3 zone as our choice for a quiet and peaceful environment in which to establish our home and raise our family. We believe strongly that most buyers of country properties who share our values enough to live on a dirt road in the woods would not choose to purchase property next to a fairgrounds either. As a result, we believe that our property values would be diminished if Rhapsody Farm is permitted to continue and increase the number of horse shows.

V. Wear and tear on an already challenging dirt road

We object further to the horse shows at Rhapsody Farm based on the wear and tear on an already challenging dirt road. The road this summer was clearly affected by the increased volume of horse trailer and truck traffic for even a handful of shows. There were rutted or washed out areas and trenches across the road that could damage an axle, shock absorber, or tire if approached at what is normally a reasonable speed. Two of these areas were on the Hopkinton section of Pleasant Pond Road, one just where it meets Bound Tree Road. Another pitted, washed out area was directly across from the entrance to Rhapsody Farm.

We share Town Public Works Director Dan Blanchette's concerns about the condition of the ¼ mile of access road from the Warner line. Although Ms. Kennedy is "a lifetime citizen of Hopkinton," as described in Attorney Eggleton's application, she acquired the land and began building Rhapsody Farm only two+ years ago and has been an actual resident on the road for a very short time. Directing her horse show participants and the attending crowds to enter via Pleasant Pond Road is not an adequate solution to concerns about even that short section of road. If this Special Exception #2017-03 were to be approved, the many taxpayers on this road would certainly be looking to the town to maintain the road in much better condition than it was this summer. Although we know there are probably many factors of wear and tear other than Ms. Kennedy's horse shows, the current volume of large horse trailers expanded up to 50 days a year would play a very significant role in increasing maintenance demands and, in turn, the tax burden on the town residents.

Much of the difficulty with maintaining both Pleasant Pond and Bound Tree Roads in reasonable condition is that they are narrow dirt roads that suffer from runoff that creates ditches along the sides of the roads in hilly areas. This makes already narrow roads even more treacherous and brings us to our fourth objection to the horse shows at Rhapsody Farm—access for emergency vehicles. Early one Sunday morning, about 7:40 am to be precise, we were heading to church and drove out of our driveway and up Bound Tree Road toward Rhapsody Farm. Ahead of us was a line of trucks and trailers waiting to enter the horse farm. Because of the ditches on the side of the road, we were unable to go around the line of vehicles, so we had to wait until they had entered to continue on our way. Generally speaking, two cars can barely pass each other at many points on Pleasant Pond and Bound Tree Roads. Passing large trucks or trailers is impossible at those same points. The distance from the Fire Station in Contoocook

Village to our home and those of our neighbors is shorter via Pine Street and Bound Tree Road than it is via Pleasant Pond Road. With congestion on Bound Tree Road during hours of entrance and egress at Rhapsody Farm, an emergency vehicle such as an ambulance or fire truck would encounter difficulty progressing smoothly. Although they can force other vehicles off the road, if there is nowhere for these very large horse trucks and trailers to go due to the road, delays will be caused and any delay might be critical in an emergency.

VI. Conclusion

We purchased our land and built our home on sixteen (16) acres of pristine land forty (40) years ago and settled into a quiet life raising three children who grew up in this house and in the Hopkinton Schools. (Our son recently referred to this house as his "ancestral home.") For forty (40) years we have paid taxes on this property and have become a part of the fabric of this community. Valerie was an administrator for the Hopkinton School District for many years prior to her retirement in 2014 and continues to serve on the interagency Hopkinton Family Support Team. We have not complained about the condition of the road, even when we could have, because we knew it was a dirt road when we moved here. We have made significant improvements in our property over time, even recently installing solar panels in our field and upgrading the HVAC systems. We have retired in this home and intend to live here until we can no longer do so.

As a result, we voice our objections to this proposal for Special Exception #2017-03 for horse shows at Rhapsody Farm in the strongest terms possible. As discussed in this letter, our primary objections include the following:

- The loud, continuous noise from early morning until evening during horse shows, primarily on weekends;
- Diminishment of our property value due to frequent, loud, constant noise from an entertainment/fair-like facility next door;
- Wear and tear on an already challenging dirt road by large horse trailers;
- The difficulty that any emergency vehicle (including ambulances and fire trucks) would experience in reaching a residence in this area during the times that the horse trailers and trucks are arriving and departing Rhapsody Farm.

In an R-3 Low-Density Residential district, we should have the right to a reasonable expectation of quiet enjoyment in our own home. We should be able to spend time on our deck or in our house with the windows open without being assaulted by an unreasonable level of blaring noise. We should not have to experience the unreasonable diminishment of our property values. We should not have to struggle driving on a road overrun by horse trailers. We should have the security of knowing that emergency vehicles can make it to our homes as speedily as possible, without unreasonable delay and without being impeded by unnecessarily deteriorating road conditions.

Just so that we are not misunderstood, we would like to also state that we support small businesses and the growing economy of Hopkinton and Contoocook. But we believe there are places better suited to this type of commercial, entertainment enterprise than our front yard. We have no objection to a "riding stable and riding trails" as permitted in an R-3 District, but Ms. Kennedy should consider building a horse ring for shows on property zoned for entertainment or avail herself, as other horse farms in town do, of the space at the Fairgrounds.

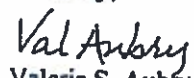
If the Zoning Board of Adjustment would like further information or documents to support our objections to the approval of Special Exception #2017-03 on behalf of the commercial enterprise Rhapsody Farm

which requests not only the establishment of "riding stables and riding trails" in our neighborhood, but also stipulates the hosting up to 50 horse shows a year, we would be happy to oblige on a more reasonable timeline than we have had this past week. To be clear, we received notice of a Zoning Board meeting on 9/6/17 by registered mail only midweek last week. With a three-day holiday weekend between then and now, we have been working nonstop to try to gather relevant materials. All indications from the Concord Monitor article last April and the postings on her website would indicate that Ms. Kennedy, owner of Rhapsody Farm, was well aware of her business plan at the very least a year or two ago. If she had filed with the Zoning Board for a Special Exception at that time, and the abutters and others in the neighborhood had been given fair notice then, we would have had time to give input that might have avoided this untenable situation. Perhaps her approach is to ask forgiveness rather than to ask permission. This, however, is unforgivable in terms of the burdens it places on all the residents in the neighborhood and on the taxpayers in Hopkinton to support a commercial enterprise on a Town-maintained dirt road.

As Hopkinton taxpayers and longtime (40 year) resident homeowners at 1369 Bound Tree Road, we are asking the Hopkinton Zoning Board of Adjustment for relief from this intrusion on our reasonable expectation of peace and quiet in an R-3 Low Density Residential zone and from the diminishment of our property values due to a commercial enterprise that makes us feel we are sitting front row at the fairgrounds.

Thank you for your careful attention to this matter.

Sincerely,

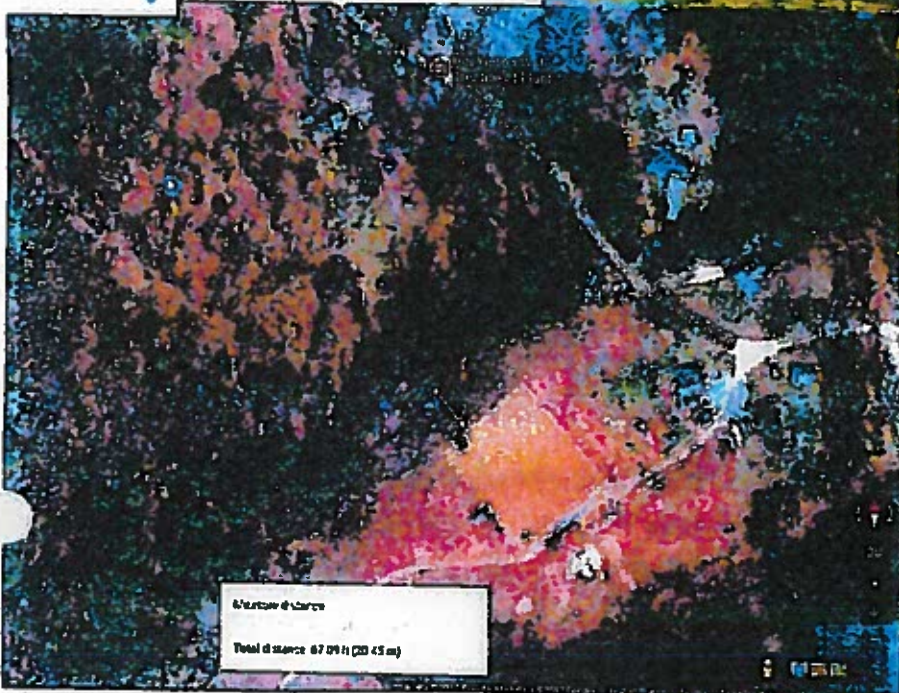

Valeric S. Aubry


Kenneth P. Aubry

Hopkinton Town Residents
1369 Bound Tree Rd.

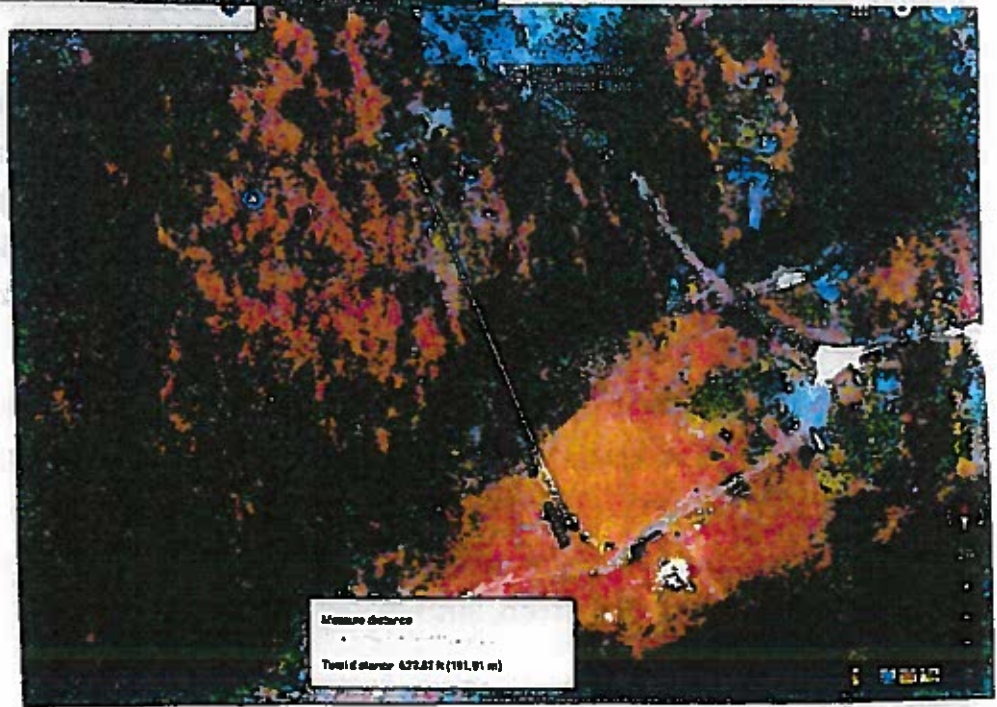
AUBRY HOME
from field

Aubry
residence



Distance from Aubry property line
to arena = ± 67 ft

Distance from
Aubry front of home
to loudspeakers
= ± 629 ft
to arena = ± 500 ft



News > Local (/News/Local/)

No horsing around readying farm for shows

By HANNAH SAMPADIAN
Monitor staff

Saturday, April 22, 2017

Sounds of horse whinnies and pig snorts break the silence as Annie Kennedy prepares for her morning routine at Rhapsody Farm in Contoocook.

"I try to get out here at six, but this morning, because I worked late last night I was having a slow start," Kennedy said. "But it's usually around six and eight I get out here, and then it's about four hours until everything gets done."

Kennedy, 25, is the sole owner of the 34-acre Rhapsody Farm, named in honor her favorite show mare, Champion Calloway Rhapsody in Blue, whom she says was the dream that made it all happen. She acquired the property after her father's death three years ago.

"After Dad died, Mom asked me if I wanted (the land), and I've just been going crazy getting it all ready since," Kennedy said.

Ready for the horse shows, that is. Kennedy has been hard at work preparing the facility for summer events that she hopes will draw crowds of horse-lovers. Last year, one 4-H show was hosted at the farm. So far this year, she has shows booked by the New Hampshire National Barrel Horse Association beginning in May, as well as the returning 4-H club events. Both groups of which she has been a member of, and helped to fuel her love for the sport.

"And I'm going to do a couple jackpot shows, fun shows on the weekend for people to come enjoy," Kennedy said. An entry fee will be charged, though the price will vary depending on who's hosting it.

"The horse shows are really going to be the bread and butter of it," said Kennedy. "That's really what I built it to do, kind of run itself."

In her young age, she has heard her fair share of doubts from people thinking she could never get the business up and running by herself.

"All (those people), they were like, 'you're insane' and 'it will never work,'" she said.

Kennedy simply responded with, "It will work, it's up here," she says, pointing to her brain. "Trial and error," she added.

And determined as she is, the labor hasn't been all that easy.

"I definitely cooked myself for a little while, I just got tired of people, had some bad trainers that I got me down the wrong road but, getting back on it, slowly," she said.

"You make a lot of mistakes, and you learn from all of your mistakes, I've tipped over excavators, I've done so much stupid stuff by myself," Kennedy said. "You break it, you fix it, and you put it back together again."

With the help of her mother, Karen, and support from her community, things seem to be moving forward at a steady pace. As of now, Kennedy has 11 horses at the barn, half of them boarders; as well as two pigs with another on its way; two cats, Ivy and Stella; a pet pot-belly pig, Miss Piggy; and a dog, Daisy. Not to mention three of the horses are foals, which is almost like taking care of a set of triplets.

"Sometimes I really look at myself and I think 'what did I get myself into?' but then you get little babies and all that and it's all worth it," Kennedy said.

Right now, Kennedy has three clients whom she teaches riding lessons, but lessons aren't her main focus.

"I'm more into the whole buying and selling and competing," Kennedy said. "The boarders are where you make your easy money; it's labor intensive but it pays for all their care and keeps the farm moving forward."

In the small village of Contoocook, Kennedy tends to meet her clients by word of mouth.

"That way you really get better quality people," she said. "I have cards and I leave them some places, but it's easier word of mouth because if you're talking to somebody I know, then you're usually a decent person, and I know a lot of people."

Kennedy began riding at the local 4-H club at age four, and since then, "the addiction never ended." She competed at the national level, traveling across the country to states such as Virginia, Kentucky and Texas. Having seen the excitement the sport brings, she wanted a place closer to home for that same excitement to be shared.

"That was the one thing, growing up and showing all over the place, in New England, there's just not that many good places that anyone can come in and have a horse show," Kennedy said.

Come this summer, though, she plans for Rhapsody Farm to change that, and for any horse-lover to come join in on the entertainment.

"I'm hoping this can become a heartbeat to a new show circuit," she said. "Just have successful horse shows; I want everyone to be able to come here and have fun."

And although riding competitively is a costly sport, she's not in it for the money.

"That's my thing, I want to cover costs. I want to make sure the business is doing okay at the end of the day like any good entrepreneur, but I'm not going to be that sheisty person that digs money out of people's pockets," she said. "I'm over seeing it happen to good people, getting walked over because someone is more worried about their pockets than the actual industry."

Kennedy also splits her time as a volunteer firefighter, and although she doesn't have as much free time anymore, she does what she can to help out for the Hopkinton Fire Department. With all this on her plate, Kennedy still has a five-year plan in mind, that includes events, such as weddings. But for now, it's one step at a time.

"It's growing. I'm excited for the horse shows, I think that's what this year is going to really entail, that's been my main focus," Kennedy said.

The horse boarding facility with trails and an outdoor riding arena is easy to find, located right off of Exit 7 on Interstate 89, at 1301 Bound Tree Road in Contoocook.

To hear more about upcoming show dates and events, you can contact Kennedy through the farm's webpage at facebook.com/RhapsodyFarmLLC.

1186 Bound Tree Rd.
Contoocook, NH 03229
September 6, 2017

RECEIVED

Hopkinton Zoning Board of Adjustment
330 Main St
Hopkinton, NH 03229

SEP - 6 2017

HOPKINTON
PLANNING DEPT

Dear Zoning Board of Adjustment Members,

We are writing in reference to the hearing for a special exception being applied for by Rhapsody Farm located at 1301 Bound Tree Rd. We object strongly to this proposal. We are not direct abutters, but we are close enough to hear all the noise and be inconvenienced by the noise and increased traffic on our little dirt road.

The commercial enterprise/home business that Ms. Kennedy is proposing is changing the nature of our once peaceful neighborhood. It is reasonable for the people in the neighborhood to expect peace and quiet because it is a R-3 zoned residential neighborhood. It is also reasonable for the tax payers in the town to expect the town to enforce the Zoning Ordinance. Allowing this special exception would not be upholding the Zoning Ordinance of the town for many reasons.

We have reviewed Ms. Kennedy's application and would like to comment on some inaccuracies. In the letter from Orr and Reno, it states that the property was used as a commercial riding stable in the 70s and 80s, and from that point to the present, the property was a commercial farm. This is not true - we moved here in 2007 and the property was abandoned, with two buildings that were falling down, and one that was used as a guest house about 5 times a year. Our neighborhood was peaceful and quiet then, which is why we chose to move here.

Orr and Reno state that Ms. Kennedy is restoring the property to its preexisting/historical use. Just because there was a stable/farm there in the past is not a valid argument for continuing the use of the property in this way. In addition, the historical use of this property did not involve horse shows using a four speaker PA system with music, fireworks and cheering crowds. We would have no problem with her boarding horses and teaching lessons or leading trail rides, which was how it was used historically. Her proposal however is a commercial/entertainment venture that interferes with the enjoyment of our property and changes the nature of the neighborhood. It is not appropriate for an R-3 zoned area.

In the R-3 zoning district, commercial riding stables and riding trails are permitted by special exception. We trust the zoning board of adjustment members to enforce the Zoning Ordinance and recognize that this proposal is not for a riding stable. This proposal is for a commercial/entertainment venture that will change the nature of our neighborhood, and the activities proposed in this application are not permitted based on the Zoning Ordinance. This proposed venture is for gatherings of people for the purpose of entertainment, which according to the Zoning Ordinance is not allowed in an R-3 zone EVEN by special exception.

The application states that her goal is to have 50 horse shows per year in addition to boarding horses and riding lessons. In an April article in the Concord Monitor, she is quoted as saying that holding weddings on her property is also part of her 5 year business plan. The article

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quotes her saying "I'm hoping this can become a heartbeat to a new show circuit" and she hopes to "draw crowds of horse lovers". Those statements describe a form of entertainment like the Hopkinton Fair, and they are not permitted in R-3 zoned areas. The shows are barrel riding competitions that are loud and rowdy, between the PA system and the cheering. We cannot imagine having this going on in our neighborhood 50 times a year.

Orr and Reno next list the Special Exception Standards that must be met in order for an exception to be granted. We disagree with their arguments for standards 1,3,4,5,7,8 and 9. Our objections to these standards are described below.

* 1) The proposed commercial stable is not "conserving open space" – it is using open space for profit and entertainment. As far as "some agricultural use", this is a commercial/entertainment venture in a residentially zoned neighborhood.

2) This standard relates to Hazards – We know the Fire chief looked at the property, but we wonder if there was a show going on when he visited. We find it hard to believe that all those people and vehicles could be evacuated quickly in the event of an emergency from that one little driveway exit, and then down the narrow dirt road.

3) This standard relates to property values and noise. Judy Hampe submitted a letter on behalf of Ms. Kennedy. We spoke with Judy Hampe on 8/24/17 and asked her if she went to the property when a show was being held, to which she replied no. She could not possibly know if Rhapsody Farm would affect the local property values if she did not visit the property while a show was being held! She has not experienced the noise coming from the property, the traffic and the size of the crowd.

In her letter, she states that a well run stable is an asset to the town. We would agree, but that is not what Ms. Kennedy is proposing. She is proposing a noisy commercial venture with horse shows, fireworks and possibly weddings. Maybe a quiet stable and farm with animals and a few pupils coming for lessons would be an attractive amenity to our rural neighborhood and positively affect our property values, but that is not what is being proposed.

The last paragraph in the letter states that a property on Stumpfield Rd next to Phoenix Stables sold for a premium price due to the positive impact of the stables. This statement is not accurate because one of those properties was re-purchased by a previous owner due to an emotional attachment to the house, and it sold for a premium because of that scenario. It had nothing to do with the stables. When asked to explain exactly how she calculated the positive impact on the selling price, she would not tell us and instead referred us to Orr and Reno.

Orr and Reno move on to address the noise issues. In the noise study that was conducted by Reuter Associates, it states that the PA system will be used between the hours of 8am-8pm. If there are multiple shows/weddings per week, that is an extreme amount of noise pollution!

We would like to point out that Orr and Reno stated inaccurately that the sound engineer performed his tests during a show. We called Eric Reuter on August 24th, and he told us he did not conduct any tests with an actual show in progress, so this is not an accurate measurement. When asked if the added cheering by the crowd would place the sound level over the Town's noise ordinance limits, he would not answer that question and referred us to the lawyer. The cheering is just as bothersome as the PA system – it is louder at times than the PA system. Add in the fireworks and we feel like the Hopkinton Fair is next door.

The last sentence in this section suggests that the thick forest prevents dust, sound and views from penetrating to neighboring properties. That is an inaccurate statement because of the prevailing winds and echoing nature of this area. The noise coming from her property at times sounds like it is taking place in our yard even with leaves on the trees.

4) Standard 4 – No creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity. 50 shows per year with 50 participants equals 2500 trips to and from her property. Our road is a narrow dirt road designed for residential traffic. It is not possible for a truck pulling a large horse trailer to go by an oncoming car without one or the other vehicles pulling over to almost a complete stop. The dirt road erodes away on the sides during downpours, making it even more treacherous to pass an oncoming horse trailer. This extra volume of traffic also affects the safety of pedestrians and bicyclists. We were behind 2 trailers recently that came south down Bound Tree and turned right on Clement Hill Rd after a show despite being directed down Pleasant Pond Rd. This means all the dirt roads in this corner of town will see increased traffic and wear and tear, which leads us to the next standard.

5) Standard 5 relates to excessive demand on municipal services. I spoke with Dan Blanchette, the public works director on August 24th and he does not endorse this proposal. The town highway department is already overburdened by the current demands of maintaining our rural road network. He also told us that our road is designed for residential traffic and that it won't be able to handle the traffic demands her shows will create – It will increase the amount of grading to keep it drivable, and increase dust. Dan told us it is not wide enough for two-way traffic and traffic incidents may occur. Adding additional grading requirements to an already overburdened department in town DOES constitute "excessive burden".

7) Standard 7 is regarding whether or not this is an appropriate location for the proposed use. The lawyer's opinion is that this location is appropriate because of it being at the outer edge of Hopkinton in a rural wooded part of town, and because it has been historically a farm. A nice quiet rural neighborhood IS NOT an appropriate location for a commercial/entertainment enterprise that is loud and causes traffic issues and increases the maintenance requirements of the road. The style of horse shows proposed here should be taking place on the Hopkinton Fairgrounds, which is what the Dawn Mar Ranch on Stumpfield Rd does on occasion. Ms. Kennedy inherited this land that is zoned R-3 and decided to start this entertainment business without consulting the town and neighbors and getting the appropriate permissions to do so. As a lifelong resident of the town, surely she is aware that this is a quiet rural town whose residents move here for its beauty and peace and quiet. Our reasonable expectation of peace and quiet in a residential neighborhood is being threatened. She is ruining our ability to enjoy the quiet and beauty of our property.

I have spoken to the owners of MRF Dressage Stables and Dawn Mar Ranch both of which are located in zoned R-4 areas of town. MDR Dressage owner Michele told us they have no more than 35 people per show, they had 3 non-rated schooling shows this summer, you cannot see or hear the show from the road, they have no PA system, they put out one small sign at end of driveway for show days and they are on a paved road.

Dawn Mar Ranch: We spoke to Marcia Evans the owner on 8/24/17. The ranch holds 4 shows per year, they have limited parking 10 cars fit in their lot, they have one small speaker, their one neighbor has never complained about noise, they have a few clinics, host 4H, veterans, Special

Olympics, act as a rescue farm, and they are also on a paved road. When they hold a big show, they use the Hopkinton Fairgrounds - it costs around \$400 to do so.

8) Standard 8 has to do with the health and safety of the residents and others in area. Fire and police looked at property, but Police Chief Pecora told us he did not do so not during a show or during the arrival and departure times. The lawyer states that any detriments to safety in the area would have been observed by now. We HAVE observed safety issues already, such as the horse trailers going too fast, and having to pull over to a stop when approaching one. The lawyer says that the commercial stable may actually make adjacent properties more desirable. Perhaps if this was to be a quiet boarding stable, but that is not what is being proposed. We called Attorney Eggleton to ask him if he has been to a show, and he has not returned our call.

9) Standard 9 - This proposal is not in the interest and spirit of the ordinance. It does not offer an amenity for the public. A synonym for amenity is "pleasant thing". This may be pleasant for the people attending the show, but is certainly not pleasant nor does it offer any kind of advantage for the neighbors in the area. Being located next to a property that is holding loud shows and entertainment will not increase our property value.

We are hoping the Zoning Board members will recognize that the proposal by Rhapsody Farm violates many of the zoning ordinances. In addition, the 9 Standards for granting an exception have clearly not been met. In our view, the Zoning Board of Adjustment cannot possibly allow this exception.

If this exception is granted, we will appeal the decision. We looked for a special place to move to when we moved to this area, and we found it here on Bound Tree Rd. We will defend our right to the quiet enjoyment of our property.

Respectfully submitted,


Mary Jo DeBrusk


Peter DeBrusk

RECEIVED

September 6, 2017

SEP -6 2017

Hopkinton Zoning Board of Adjustment members:

HOPKINTON
PLANNING DEPT.

I am writing this to offer my and my wife's feelings about the application for special exception submitted by Rhapsody Farms, LLC, in reference to their desire to operate a commercial riding stable at 1301 Bound Tree Road.

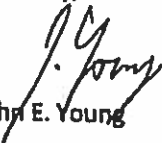
My wife Jeanette and I are concerned about the level of noise created by the announcements that are made during the horse shows at Rhapsody Farms, LLC. We have heard the announcer on two different dates in the recent past, and our understanding is that the rules governing the allowable level of noise is lower that which would reach our property at 1162 Bound Tree Road.

Our neighbor Peter Debrusk and I met with Ms. Annie Kennedy at Rhapsody Farms, LLC, on Friday September 1, 2017. Ms. Kennedy assured us that the noise level had been measured and that it had been within the limit under the Town Ordinance. Ms. Kennedy also stated that her intent is to remain in compliance with the rules governing what she does at her business.

Thank you for the opportunity to express my and my wife's concern.

If you have any questions for me, please do not hesitate to call me at 603-746-2330 or write me at my address.

Sincerely,



John E. Young

1162 Bound Tree Road
Hopkinton, NH 03229

CR 000085



Town of Hopkinton

330 Main Street • Hopkinton, New Hampshire 03229 • www.hopkinton-nh.gov
Tel. 603-746-3170 Fax 603-746-3049

HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES OCTOBER 3, 2017

Members present: Chairman Daniel Rinden, Toni Gray, Charles Koontz, Gregory McLeod and Jessica Scheinman. Staff present: Planning Director Karen Robertson.

I. **Call to Order.** Chairman Rinden called the meeting to order at 5:30 PM in the Hopkinton Town Hall.

II. **Application(s).**

Special Exception (#2017-03) Rhapsody Farm, LLC on behalf of 1301 Bound Tree Road, LLC on property located at 1301 Bound Tree Road, Tax Map 204, Lot 002, R-3 District. Commercial riding stable/equestrian facility in accordance with Zoning Ordinance Table of Uses 3.6.C.3. Review of the application is a continuation of the September 6, 2017 meeting.

The September 6, 2017, motion to continue the application was as follows:

"Toni Gray, seconded by Greg McLeod, motioned to CONTINUE the application for Special Exception (#2017-03) to the next regular scheduled meeting (October 3, 2017, 5:30 PM, Hopkinton Town Hall), so that the Board will have an opportunity to review the information submitted by the public and to seek an opinion from counsel concerning "horse shows". Motion carried in the affirmative (Gray, Koontz, McLeod, Scheinman and Rinden)."

At that same meeting, Chairman Rinden closed the public hearing portion of the meeting. Additionally, the Chairman informed those present that the Board would not reopen public testimony at their October 3, 2017 meeting; nor would the Board receive additional information, prior to or during the October meeting, except for the legal opinion from its counsel.

Chairman Rinden, seconded by Mr. Koontz, motioned to enter **NONPUBLIC SESSION** for consideration of legal advice provided by the Board's legal counsel, under the provisions of RSA 91-A: 3 II (L). Motion carried in the affirmative with a roll call vote: Koontz (yes), Gray (yes), Scheinman (yes), McLeod (yes), and Rinden (yes).

At 6:00 PM, Chairman Rinden announced the return to public session.

Adopted: 11/07/2017

CR 000088

Chairman Rinden, seconded by Mr. Koontz, motioned to **SEAL THE MINUTES** of the nonpublic session. Motion carried in the affirmative with a roll call vote: Koontz (yes), Gray (yes), Scheinman (yes), McLeod (yes), and Rinden (yes).

In considering whether the Applicant successfully addressed all criteria to be granted a Special Exception, the Board reviewed each criterion.

1) Standards provided by this Ordinance for the particular use permitted by Special Exception.

Mr. McLeod read into the record his findings in researching the use, "horse shows".

"Section III, Table of Uses, C. 3. allows, but does not define, 'Commercial riding stables and riding trails'. The Ordinance directs that definitions not specifically found defer to Webster's Unabridged Dictionary, Third Edition or to the standard Industrial Classifications Manual. Webster's is silent, but the following is found in SICM:

Sector 71 Arts, Entertainment, and Recreation, 7113 Promoters of Performing Arts, Sports, and Similar Events. This industry group comprises establishments primarily engaged in organizing, promoting, and/or managing live performing arts productions, sports events, and similar events, held in facilities that they manage and operate or in facilities that are managed and operated by others. Horse Shows are referenced in the 2107 NAICS under 711190.

The Ordinance provides a definition under SECTION II, 2.1.A.4 Agriculture (etc.), (II) (5) as 'The breeding, boarding, raising, training, riding instruction, and selling of equines.' The definition does not include horseshows. The Ordinance does provide a definition of 'Entertainment' under SECTION II, 2.1.E.1 that I believe applies, that being 'sporting event', a use prohibited under SECTION III, F.8.'

As a result of his findings, Mr. McLeod believed that the Applicant had failed to demonstrate that the intended use is within the allowable parameters of a Special Exception.

Chairman Rinden noted that the Zoning Ordinance permits by Special Exception "commercial riding stables and trails". He concurred with Mr. McLeod that horse shows are not a use listed in the Ordinance and therefore, are not permitted.

Ms. Scheinman stated that she, too, agreed with Mr. McLeod. She looked in the dictionary and found the definition of the word "stable" to be a traditional definition that did not mention horse shows. She noted that horse shows are specifically mentioned in the Fair Overlay District. Ms. Scheinman further stated that the Zoning Ordinance defines, "Entertainment" to include sporting events and exhibitions, which she believed to include horse shows. In the R-3 district, the Ordinance prohibits a "Place of Entertainment". Therefore, horse shows are not permitted.

Adopted: 11/07/2017.

- 2) No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.**

Chairman Rinden suggested that the manure might be the only toxic material. However, the Applicant had testified that she had made arrangements for storage and removal. Mrs. Gray concurred, stating that the Applicant has successfully addressed item 2, for the operation of a riding stable.

- 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.**

In response to item 3, Chairman Rinden stated that there are many farms, including farming equipment, in Hopkinton. Mrs. Gray agreed, suggesting that the Applicant had satisfied item 3, provided that the use excludes horse shows. Chairman Rinden concurred, stating that the Board had received testimony that the horse shows had changed the character of the neighborhood – noise, dust and traffic.

Ms. Scheinman believed that the Applicant had not sufficiently proven that there is no detriment to property values because the noise, traffic and dust from the horse shows. Without the horse shows, the riding stable did meet the criteria. The realtor's letter, submitted by the Applicant, did reference boarding horses and riding lessons.

- 4) No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.**

Mr. Koontz suggested that the Applicant's description on the number of vehicles and trailers and how vehicular and trailer traffic is handled does not satisfy the criteria in item 4. Chairman Rinden concurred, stating that the Board had received testimony concerning the increase in the number of vehicles/trailers that travel to the horse shows. Without the horse show component, the members believed that there would be no creation of a traffic safety hazard or substantial increase in traffic.

- 5) No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.**

Chairman Rinden stated that water, sewer and waste disposal will not require the use of municipal services. Furthermore, a subdivision is not being proposed; therefore, there would be no impact on schools.

Mr. McLeod suggested that the riding stable would have no excessive demand on municipal services based on the written testimony of the Fire Chief and Police Chief. Ms. Scheinman agreed, provided that the horse shows are not a factor being considered. Otherwise, Ms. Scheinman suggested that the vehicular traffic from the horse shows would create an excessive demand on roads.

Adopted: 11/07/2017.

Mr. Koontz expressed concern with the use of port-a-potties as represented by the Applicant. Mr. Koontz wanted to be sure that they are in place temporarily. Mrs. Gray responded that the port-a-potties were represented to be associated with the horse shows, not the riding stable.

6) *No significant increase of storm water runoff onto adjacent property or streets.*

Members agreed that the Applicant successfully addressed item 6.

7) *An appropriate location for the proposed use.*

Chairman Rinden believed that the property is appropriate for a riding stable, but that the location is not appropriate for horse shows. Mr. McLeod concurred, noting that entertainment venues are not allowed in the district (R-3). Ms. Scheinman concurred.

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.*

Chairman Rinden suggested that a commercial riding stable would have no adverse effect; however, he believed that horse shows with the associated vehicles/trailers would adversely affect the safety of others along the road.

Ms. Scheinman stated that without the horse shows, the Applicant had satisfied item 8. However, based on the information presented by the Applicant concerning the operation of horse shows, she agreed that item 8 had not been adequately met with respect to the horse show component. Mr. McLeod concurred.

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

Mr. McLeod indicated that the riding stable, which includes lessons, breeding, boarding and riding trails, is within the spirit of the ordinance. He reiterated that for the reasons previously stated horse shows are not permitted and therefore, the use is not in the spirit of the Ordinance. The property is in a low-density district. During testimony, reference had been made about the "business". The business aspect of a riding stable is limited. Furthermore, the horse show component does not meet the definition of a home occupation or a home business.

Mrs. Scheinman stated that the Applicant failed to show that horse shows are customarily and habitually associated with stables in our region.

Ms. Scheinman also stated that the horse shows are not subordinate or incidental to the riding stable, due to the size of the property that is being utilized for the horse shows, number of attendees and traffic. She suggested that based on the information presented that the space utilized for the horse shows exceeds the percent referenced

Adopted: 11/07/2017.

in the definition of "accessory use". She concluded the horse shows are not an accessory use.

Chairman Rinden then suggested that a motion be made with conditions. Mr. Koontz concurred, indicating that the motion may be to approve the application, except for horse shows.

Chairman Rinden assumed that if the horse shows were not taking place, then the loud speakers would not be used. Mrs. Gray concurred, assuming that there would be no loud speakers or a substantial increase in traffic.

Mr. McLeod recommended that the Board not include language in the motion concerning the use of loud speakers as many people have speakers outside their home, such as on their decks.

Mr. McLeod, seconded by Mr. Koontz, motioned to accept and APPROVE Application #2017-03, with the condition that "horse shows" be excluded from the approval. Motion carried in the affirmative (Koontz, Gray, Scheinman, McLeod, and Rinden).

Summary: *The Applicant successfully addressed all criteria to be granted a Special Exception, as outlined in Section XV of the Zoning Ordinance, for the operation of a commercial riding stable, excluding horse shows. The Applicant did not successfully address items 1, 3-5, and 7-9 of the criteria for a Special Exception to operate horse shows. Horse shows are not defined in the Zoning and are only referenced in the Fair Overlay District. Consideration was given to Webster's Unabridged Dictionary, Third Edition, the Standard Industrial Classification Manual, published by the U.S. Bureau of Census, and including but not limited to the Zoning Ordinance definition of "Entertainment", which includes "sporting events", and the definition of "Use, Accessory". In the R-3 district, entertainment venues are not permitted. Upon further review of the Zoning Ordinance and based on testimony of the Applicant, it was also determined that horse shows would not be incidental, subordinate or accessory to the Applicant's commercial riding stable, due to the area of property utilized by the horse shows, number of attendees and amount of associated vehicular traffic. Additionally, it was determined that the use would not qualify as a home business or home occupation in accordance with the provisions in the Ordinance. Zoning Ordinance provisions considered in reviewing the application: 2.1, 2.1.A.4 (II) (5), 2.1.E.1, 2.1.H.1, 2.1.H.2, 2.1.U.2, 3.5.2, 3.6.C.3, 3.6.F.8, and 3.8. Standard Industrial Classification Manual provisions considered in reviewing the application: Sector 71, 7113 and in the 2017 version 711190.*

III. Review of the Zoning Board of Adjustment Minutes and Notice of Decision of September 6, 2017.

Chairman Rinden, seconded by Mr. McLeod, moved to APPROVE the Minutes with grammatical corrections. Motion carried in the affirmative.

Mrs. Gray, seconded by Mr. Koontz, moved to APPROVE the Notice of Decision of September 6, 2017 as presented. Motion carried in the affirmative.

Adopted: 11/07/2017.

IV. Adjournment.

Toni Gray, seconded by Charles Koontz, motioned to **ADJOURN** the meeting at 6:43 PM. Motion carried in the affirmative. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Tuesday, November 7, 2017, at the Hopkinton Town Hall.

Karen Robertson
Planning Director

Adopted: 11/07/2017.

Orr&Reno

Jeremy D. Eggleton
jeggleton@orr-reno.com
Direct Dial 603.223.9122
Direct Fax 603.223.9122

RECEIVED

NOV 2 2017

HOPKINTON
PLANNING DEPT.

November 2, 2017

HAND-DELIVERED

Karen Robertson
Zoning and Planning Dept.
330 Main Street
Hopkinton, N.H. 03229

*Re: 1301 Bound Tree Road, LLC
1301 Bound Tree Road Commercial Stable
Tax Map 204, Lot 002
Rhapsody Farm, Application for Special Exception*

Dear Ms. Robertson:

Kindly accept this filing as a Motion for Reconsideration of the Zoning Board's October 3, 2017 decision.

We request that the Board reconsider its decision for good cause pursuant to RSA 677:2, based upon the following grounds:

1. The Board erred in defining the term "Commercial riding stable" as not including "horse shows."

The Zoning Ordinance permits the operation of a "Commercial riding stable" in an R-3 rural residential zoning district by Special Exception. In this case, the applicant operates such a stable and as part of her operations, hosts horse shows for participating riders. The Board sought to determine whether the definition of "Commercial riding stable" included horse shows of this nature. In doing so, it first turned to the Zoning Ordinance itself, which did not specifically define the term. Then the Board turned to Webster's Unabridged Dictionary, as called for by the Zoning Ordinance, and the Board found Webster's Unabridged Dictionary to be silent on the issue. Finally, the Zoning Ordinance required the Board to turn to the Standard Industrial Classification Manual (SICM) for guidance as called for by Zoning Ordinance §2.1.

After reviewing the SICM, the Board concluded that "horse shows" fall within Sector 71, Arts Entertainment and Recreation of that manual, which defines an industry group that "comprises establishments primarily engaged in organizing, promoting, and/or managing live performing arts productions, sports events, and similar events, held in facilities they manage and operate or in facilities that are managed and operated by others." This definition was, respectfully, not correct for several reasons.

First, the Board erred in limiting its analysis to the definition of "horse shows" because it focused the Board on a definitional framework grounded in the entertainment context. For example, some of the other activities that fall under this definition include circuses, ice skating companies, carnival traveling shows, magic shows and the like. *See* North American Industry Classification System ("NAICS") Section 711190 ("Other performing arts companies").¹ These are performances at which patrons typically purchase a ticket to attend. "Horse shows" in this context clearly exist, *e.g.*, Exhibit 1 hereto (ticket site for Lipizzaner Stallions show horses), but this is not the kind of horse show that a commercial stable sought by the Applicant runs. Rather, the type of horse show that the Applicant hosts is a recreational show in which the participants pay a fee to participate and there are only incidental spectators.

The kind of recreational horse show Applicant hosts is actually contemplated by the SICM Section 7999 "Amusement and Recreation Services, Not Elsewhere Defined." Exhibit 2. The definition for this "industrial sector" is directly on point and it clearly encompasses the Applicant's intended use of her "Commercial riding stable." It reads: "Establishments primarily engaged in the operation of sports, amusement, and recreation services, not elsewhere classified, such as bathing beaches, swimming pools, *riding academies and schools*, carnival operation, exposition operation, *horse shows*, picnic grounds operation, rental of rowboats and canoes, and shooting galleries." *Id.* (emphasis added). Under this industrial definition both "horse shows" and "riding stables" are offered as examples. *Id.* This is absolutely what the Applicant does. To the extent that the SICM is a required source for defining what activities are encompassed by a "Commercial riding stable" in the Hopkinton Zoning Ordinance, then the SICM Section 7999 very clearly applies and clearly includes "horse shows."

Moreover, the SICM Section 7999 definition of "Commercial riding stable" is consistent with the Zoning Ordinance itself, which places "Commercial riding stables and riding trails" under the broader category of "Outdoor/Recreational Uses." Zoning Ordinance §3.6(C), Table of Uses (emphasis added). Whereas, "place of entertainment" falls within §3.6(F) "Commercial Uses" section of the Table of Uses. This underscores the Board's error in defining "horse shows" under a broader "entertainment" category, *see* Notice of Decision of October 3, 2017, because that is inconsistent with the "recreational" nature of the use, as expressly defined within the Hopkinton Zoning Ordinance. Thus, the proper definition of both "horse shows" and

¹ For the record, the Board appears to have erroneously consulted a definitional source, the NAICS, that was not dictated as a reference in the Zoning Ordinance. This was error, particularly as the NAICS definition appears to have led the Board into a false assumption about the definition of Commercial riding stables.

"[Commercial] riding stables" under the Hopkinton Zoning Ordinance is best captured by SICM Section 7999.

Furthermore, the Section 7999 definition is the one most consistent with the actual practice of commercial riding stables in the Town of Hopkinton. There are at least three other riding stables in Hopkinton and they commonly offer horse shows. The Dawn-Mar Ranch regularly holds show events for local and regional riders who transport their horses there for activities similar to the ones proposed by the Applicant. Exhibit 3. They include loudspeaker announcements, judges' booths and other features very similar to the Applicant's proposed uses. *Id.* Similarly, MRF Dressage holds shows at their Hopkinton facility, including three in 2017. Exhibit 4. Finally Phoenix Stables, according to operator Keith Tomasko, has hosted shows in the past. These existing riding stables provided the Board with a practical, existing, local reference point for how to define "commercial riding stable" under the Zoning Ordinance. There was, therefore, no need to go searching for definitions that were not consistent with what is visible and in operation on the ground. The Board's reliance upon Section 71 of the SICM and Section 711190 of the NAICS was misplaced.

Finally the SICM Section 7990 definition and the manner in which actual, existing riding stables in Hopkinton operate is fully consistent with the nationwide norm for commercial stables. We have attached, as Exhibits hereto, a series of website home pages for insurance companies that insure riding stables. Exhibit 5 (Corinthian Insurance Agency); Exhibit 6 (Larry Viegas Insurance). Each example clearly contemplates "horse shows" as an ordinary, incidental use of a commercial riding stable. *Id.* In addition, horse show announcements from stable websites are included. Exhibit 7 (Birchtown Stables, PA). Finally, a number of state and local regulations that *do* specifically define "Commercial stables" include "horse shows" as part of the definition, exactly as contemplated by SCIM Section 7999. Exhibit 8 (Lee Count FL) ("Commercial stables may allow horse shows As ancillary uses[.]"); Exhibit 9 (Sonoma County CA) ("Commercial Stable-means housing for horses owned and used by someone other than the occupant or owner of the residence and including related shows, lessons, clinics and other similar activities.").

In sum, the weight of the evidence demonstrates that "Commercial riding stable" encompasses horse shows, in Hopkinton, in the specific references relied upon by the Hopkinton Zoning Ordinance, and nationally. For this reason, the Board erred in relying upon a definition of "Commercial riding stable" that excluded horse shows.

All Exhibits attached to this letter relate to the Board's definition of "Commercial riding stable," which did not manifest as a disputed issue until after the Board's decision on this matter. The applicant could not have foreseen at the time of her filing that the Board would define "Commercial riding stable" in the manner that it did. Hence, the inclusion of this new material into the record is proper.

2. The Board concurred that the Applicant met condition 2.

3. Regarding the effect of the proposed project on property values and character, the Board overlooked specific language in the Applicant's expert report regarding property values.

The Board overlooked significant facts in reviewing the letter of Judith Hampe, realtor, which attested that the presence of a commercial stable would not detract from property values but would instead likely increase them. The minutes suggest that the Board concluded that Ms. Hampe was not aware of the horse shows and their impact. This is incorrect. Ms. Hampe stated in her letter: "I believe that during events, if traffic is directed by lead signs, and parking is amply provided by Ms. Kennedy, there will be no traffic issues or deleterious effect on property values." On balance, Ms. Hampe believed that the presence of a commercial riding stable was a "strong benefit" that provided "incentive for buyers to locate in Hopkinton." She provided concrete examples of Hopkinton sales data (from Stumpfield Road, located in a similar R-4 zone) which showed that properties sold for higher prices due to the positive impact of stables. It is critical to note the only evidence concerning the Applicant's alleged negative impact on property values or the character of the neighborhood came from a pair of neighbors who disliked the operation personally. But these neighbors who opposed the application submitted no data, objective or otherwise, to support their conclusory assertions that property values would be negatively affected by the events that Rhapsody Farm planned to hold on the site. This is a classic example of the anecdotal logical fallacy, in which it becomes easier for people to believe subjective testimony as opposed to understanding complex data and variation across a continuum. But in this case, the only actual data available in this proceeding concerning property values suggested the exact opposite conclusion of the parties who spoke in opposition to this application. Ms. Hampe specifically discussed home sales in the area of three of Hopkinton's other Commercial riding stables, and noted that they in fact appreciated in value due to their location in proximity to those amenities.

It is for this reason that the New Hampshire Supreme Court has long held that it is error for a land use board to rely upon the personal, subjective opinions of witnesses—particularly those who will be directly affected by a project—over the supported opinions of qualified experts. As the Supreme Court noted in *Condos East Corp. v. Town of Conway*, 132 N.H. 431, 438 (1989), a case involving road safety in a site plan application, a board cannot ignore expert opinion that is uncontradicted. "[The Board's] plainly unsubstantiated, conclusory opinion regarding the safety of Ledgewood Road is wholly insufficient to justify the board's complete disregard of the uncontradicted testimony of the experts. The fact that the board was disappointed by the conclusion reached by the experts does not excuse ignoring it." *Id.* The same situation applies here. With due respect to the individuals who testified in opposition to the Applicant's proposed project, a decision concerning the application of the zoning ordinance must turn on something other than the dissatisfaction of one or two neighbors.

4. The Board overlooked expert opinion about traffic safety in favor of anecdotal testimony from an affected neighbor.

The same defect appears in the Board's reliance upon anecdotal information about traffic relating to horse shows to conclude that the horse shows will increase traffic congestion

substantially or create a traffic safety hazard. The applicant submitted the testimony of two experts, the Hopkinton Police Chief Pecora and both a letter and verbal testimony at the hearing from the Hopkinton Public Works Director, Mr. Blanchette. Mr. Blanchette opined at the hearing that 20-25 shows per year would not substantially increase traffic congestion or create a traffic safety hazard. Mr. Pecora opined that the proposed activity would not increase safety risks, and as to traffic, it was difficult to speculate but that if there were any increase it would be limited to a small section of road. These are objective, evidence-based analyses. Rather than crediting these analyses, the Board relied upon the emotional, anecdotal testimony of one neighboring household with an obvious interest in preventing the proposed project from going forward. The fact is that the proposed activity would result in an average increase in the number of vehicles of around 8 per day over the course of a week in which there was a show. While this movement would occur on one day, the movement would be limited to a load-in time and a load-out time; it would not be a day long parade of traffic moving back and forth on the road. It is error for the Board to take into account only the abutters when considering whether to approve a given project. See *Nestor v. Town of Meredith Zoning Board*, 138 N.H. 632, 636 (1994) (“[W]e reject the plaintiffs’ argument that ‘neighborhood’ should be narrowly defined to include only owners or occupants of adjacent property.”).

5. The Board overlooked objective expert evidence confirming that no excessive demand will be placed on town services and instead relied upon the anecdotal testimony of concerned abutters.

Regarding condition 5, the Board suggested that vehicular traffic from the horse shows would create an excessive demand on roads. This conclusion was directly contradicted by the Hopkinton Public Works director, Dan Blanchette, who spoke at the meeting in support of the application and stated that, at 20-25 shows annually (and less if so conditioned by the Board), any reservations he had about the condition of the roads under greater use would be fully satisfied. Regarding any concern voiced by the board about the use of porta-potties, this concern misconstrues the condition in the zoning ordinance. Specifically, the ordinance requires the Applicant to demonstrate that the project will not have an “excessive demand on *municipal services...*” Zoning Ordinance §XV. The use of porta-potties for events by definition eliminates any demand on municipal services. Accordingly, the Board’s concern about what kind of waste disposal should be employed on the site, once the question of municipal demand is satisfied, is beyond its authority.

6. This condition was deemed met.
7. Because the Board erred in defining the Commercial riding stable horse shows as “entertainment,” its conclusion that the location was inappropriate for the proposed use was error.

Insofar as the Board’s decision turned upon an incorrect characterization of the proposed show events as “entertainment” rather than “recreation,” as required by the SICM Section 7999, the Board erred in determining that the location was inappropriate for the proposed use. Under

the correct definition of “Commercial riding stable,” a rural road with substantial acreage, in an R-3 zoning district, is appropriate for an outdoor/recreational use.

8. The Board erred by overlooking objective, expert testimony that the Applicant’s project would not affect the health and safety of residents in favor of subjective, anecdotal testimony.

Once again, the only evidence in the record speaking to whether the proposed use affected the health and safety of residents and others in the area came from Chief Pecora and Chief Yale, of the Hopkinton Fire Department. Both concurred that the proposed use, including horse shows, would not adversely affect the health and safety of residents, including regarding the safety of users on the roads. As Chief Pecora noted, “Furthermore, I am unaware of *any adverse safety effects* the proposed plans would present to the Town of Hopkinton.” Exhibit 6 to Application for Special Exception (emphasis added). Thus, the suggestion that the traffic in question would affect safety on the roads was not supported by the objective evidence in the record. In addition, none of the opposition testimony raised any issue with the impact of the proposed project on the “use or development of adjacent or neighboring properties.” Essentially, one adjacent property owner and one other neighbor disliked the proposed project because they believed it too noisy and tumultuous—but they did not state any objective, tangible manner in which the use or development of their properties would be detrimentally affected.

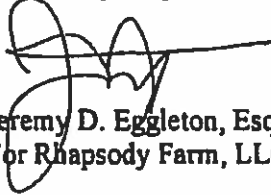
9. The Board’s determination that the proposed project was not within the spirit of the zoning ordinance was error because it was founded upon an incorrect definition of what activities are associated with a commercial riding stable.

Regarding the Board’s decision on the ninth factor, it suffers from the same defect that colors the entire decision: a misunderstanding of what a “Commercial riding stable” does. Horse shows are incidental to what a “Commercial riding stable” does, both by definition and in practice. It is noteworthy that the Board appeared to rely upon the fact that the area in question was a low density district to suggest that the proposed use was not in the spirit of the ordinance. Yet, it is difficult to imagine that a “Commercial riding stable” could operate in anything but a low density district. Indeed, that appears to be the very reason why a “Commercial riding stable,” with all that term entails, including horse shows, was permitted as a use in the SR-3 zoning district in question. With respect to the Hopkinton Zoning Ordinance’s noise restrictions, the Applicant submitted a competent, documented, substantiated report showing that the horse shows could be accomplished reasonably without violating the noise standards of the Zoning Ordinance. There was no evidence at all that the proposed activity did not meet these standards. Again, in lieu of expert evidence, the Board relied upon the anecdotal, personal opinions of neighbors who found the proposed activity bothersome and distasteful. But that is not enough to show noncompliance with the spirit of the ordinance or a threat to the public interest. For these reasons, the Board erred in finding that a Commercial riding stable with horse shows did not meet this condition of §XV of the Zoning Ordinance.

Karen Robertson
November 2, 2017
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For the foregoing reasons, the Applicant requests that the Board GRANT its request for rehearing and reconsider its decision in light of the correct definition for "Commercial riding stable." The applicant asks the Board to grant her special exception, and allow her to hold 7-15 events annually, subject to compliance with the Hopkinton Zoning Ordinance's noise restrictions and any other measures recommended by the Board to enhance public safety.

Yours very truly,



Jeremy D. Eggleton, Esq.
For Rhapsody Farm, LLC

JDE/mem
Attachments

1950753_1

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horse shows are not subordinate or incidental to the riding stable, due to the size of the property that is being utilized for the horse shows, number of attendees and traffic.

- Page 5, 1st paragraph – Add new sentence, “She concluded the horse shows are not an accessory use.”

Chairman Dan Rinden, seconded by Charles Koontz, moved to **APPROVE** the Notice of Decision of October 3, 2017 as presented. Motion carried in the affirmative.

IV. Other Business.

- a) **Motion for Reconsideration** – Chairman Rinden announced receipt of a Motion for Reconsideration for 1301 Bound Tree Road, LLC and Rhapsody Farm, LLC concerning the Board’s decision of October 3, 2017. The Motion is dated November 2, 2017, and was received on that same day.

Chairman Rinden asked members to review their calendars to determine when they would be available for a public meeting. Following review, Chairman Rinden announced that those present are possibly availability on Tuesday, November 14th at 5:00 PM and on Thursday, November 16th at 6:30 PM. Ms. Robertson is to confer with member Greg McLeod concerning his availability. Once determined, Mrs. Robertson inform members of the Board and representatives for the Applicant (Kennedy) and Abutter (Aubry).

- b) **Alternate Vacancy** – Chairman Rinden asked Board members if there are residents that they would like to recommend to the Select Board for consideration in filling the alternate vacancy. There were no names offered.

V. Adjournment.

Chairman Dan Rinden, seconded by Toni Gray, motioned to **ADJOURN** the meeting at 6:50 PM. Motion carried in the affirmative. The next regular scheduled meeting of the Hopkinton Zoning Board of Adjustment is at 5:30 PM on Tuesday, December 5, 2017, at the Hopkinton Town Hall.

Karen Robertson
Planning Director

Adopted: 01/02/2018

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Town of Hopkinton

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HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES NOVEMBER 16, 2017

Notice is hereby given that the Hopkinton Zoning Board of Adjustment met on Thursday, November 16, 2017, at 6:30 PM in the Hopkinton Town Hall, 330 Main Street, Hopkinton, and made the following decision:

I. Motion for Reconsideration

Motion for Reconsideration of Rhapsody Farm, LLC concerning the Zoning Board of Adjustment's decision of October 3, 2017, in which the Board granted the Applicant's request for a Special Exception (#2017-03) to operate a commercial riding stable, but excluded horse shows. The property is owned by 1301 Bound Tree Road, LLC and is located on property at 1301 Bound Tree Road, Tax Map 204, Lot 002, R-3 District.

Chairman Rinden read an excerpt from the Zoning Board of Adjustment's Notice of Decision, dated October 3, 2017.

"Special Exception (#2017-03) Rhapsody Farm, LLC on behalf of 1301 Bound Tree Road, LLC on property located at 1301 Bound Tree Road, Tax Map 204, Lot 002, R-3 District. Commercial riding stable/equestrian facility in accordance with Zoning Ordinance Table of Uses 3.6.C.3. Review of the application was a continuation of the September 6, 2017 meeting.

Greg McLeod, seconded by Charles Koontz, motioned to accept and APPROVE Application #2017-03, with the condition that "horse shows" be excluded from the approval. Motion carried in the affirmative (Koontz, Gray, Scheinman, McLeod, and Rinden)."

Mr. Greenblott noted that while he had not been present at the previous meetings, he had reviewed the record. He then asked if there were other reasons, that were not reflected in the record, for the exclusion and/or reliance on the definitions for "horse shows". Chairman Rinden replied no, stating that the information is reflected in the record of the meetings.

In considering whether to grant the Motion for Reconsideration, the Board considered each point raised by the Applicant.

- 1. "The Board erred in defining the term 'commercial riding stable' as not including 'horse shows'."**

Chairman Rinden stated that while the Board may have referenced an incorrect classification, when reviewing the Standard Industrial Classification Manual (SICM), it is not necessarily grounds for a rehearing. Ms. Scheinman concurred, stating that

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while there was reference made to the SICM, there were Board members that had referenced provisions of the Zoning Ordinance, without any reference to the SICM. These references included the lack of a definition in the Ordinance for a "Commercial Riding Stable" and the fact that there is a definition of "Entertainment".

Chairman Rinden believed that reference to another classification in the SICM would not have changed the Board's decision. Mr. Koontz concurred, stating that the information was available at the time of the hearing.

Mr. Greenblott suggested that if the Board had applied the incorrect definition, then there may be an argument that the Board made an error of law. In response, Mr. Koontz reiterated the fact that the Applicant and abutters had an opportunity at the hearing to present that information to the Board. Chairman Rinden concurred, noting that the Board did not consider one definition. In fact, the Board considered several definitions from several sources. The SICM was not a controlling factor when considering the use of the property. Again, whether the Board referenced an incorrect classification of the SICM would not have changed the Board's decision as the Applicant had not satisfied all other criteria to be granted a Special Exception.

Mr. Koontz asked Planning Director Karen Robertson whether the Applicant has an opportunity to apply to the Select Board to operate the horse shows. Mrs. Robertson was unsure. She suggested that it is a legal question.

Ms. Scheinman stated that the Board had also considered and determined that the Applicant's horse shows would not qualify as an accessory use based on the criteria in the Zoning Ordinance.

Mr. Koontz noted that in reading the Motion for Reconsideration, the Applicant had changed her request from 50 horse shows to 7-15 shows. Other Board members noticed the same.

Mr. Greenblott stated that if the Applicant can show good cause or that the decision was unlawful or unreasonable, then the Board can grant a rehearing. In response, Ms. Scheinman noted that the evidence that is being presented was available at the time of the original hearing; therefore, there is no ground for a rehearing. Mr. Greenblott agreed, stating that the Board is not obligated to grant a rehearing.

Ms. Scheinman suggested that point #1 is a question of law. She stated that she is comfortable with the Board's initial decision. Mrs. Gray and other members of the Board concurred.

3. *"Regarding the effect of the proposed project on property values and character, the Board overlooked specific language in the Applicant's expert report regarding property values."*

Ms. Gray disagreed, stating that it appeared that Realtor Judy Hampe had not been at the property during a horse show. Chairman Rinden concurred, indicating that the realtor's letter stated an opinion with little information to support it.

Ms. Scheinman noted that the realtor's letter had referenced a sale that is common knowledge in Town. Letters submitted by abutters had referenced the same transaction. The transaction involved a party that had a personal connection to the abutting riding stable, which is not considered a typical sale.

Mr. Greenblott stated that the burden is on the Applicant to prove that there would be no diminution in property values. In receiving subjective opinions, the Board can consider whether the opinions are useful. Mr. Koontz agreed, stating that the property values in the neighborhood was not the only factor considered. The Board also considered the change that the use would have on the characteristics of the residential neighborhood. Ms. Scheinman concurred, stating that the Board not only considered the realtor's opinion, but also considered the testimony of the residents in the neighborhood.

4. "The Board overlooked expert opinion about traffic safety in favor of anecdotal testimony from an affected abutter."

Chairman Rinden recalled the presentation by the Applicant. He did not believe that the Applicant had given the impression that there would only be 6-8 trailers going in and out of the property as a result of the horse shows.

While the increased traffic may be during the times of the horse shows, Chairman Rinden suggested that consideration had to be given to overall impact that the traffic may have on the neighborhood, including when emergency vehicles are trying to get to the facility.

Mr. Koontz noted that while the Applicant had made efforts to direct people the shortest distance to the facility, to lessen the impact on the neighbors and on the road, that did not solve the concerns of traffic safety. He understood that there was an expert opinion; however, that does not take away from the observed opinions of the residents in the neighborhood.

Ms. Scheinman suggested that there was sufficient evidence to support the Board's initial conclusion concerning item #4 of the criteria for Special Exception. The Board concurred.

5. "The Board overlooked objective expert evidence confirming that no excessive demand will be placed on town services and instead relied upon the anecdotal testimony of concerned abutters."

Chairman Rinden wasn't sure why the use of port-a-potties was a matter raised in the Motion for Reconsideration. Mr. Koontz agreed, suggesting that at the hearing he had raised the matter, but that it wasn't a matter that he had considered when determining whether there would be an excessive demand on services.

Ms. Scheinman asked Mr. Koontz if, when raising the issue, he was considering traffic and the impact on the roads. Mr. Koontz did not recall details of the discussion.

Mr. Koontz then noted that the topic had to do with waste disposal as it had been an issue at other locations in Town. Mrs. Gray agreed, but suggested that the Applicant had satisfied the issue of waste disposal. The concern of excessive demand on municipal services was because of the impact that the traffic from the horse shows would have on the condition of the roads. Chairman Rinden concurred, noting that, at the hearing, the Public Works Director did not appear confident in endorsing the proposal. Ms. Scheinman agreed, stating that the Public Works Director had represented that the additional traffic would cause additional wear and tear and the need for additional sanding and grading of the roads. As a result, the Board had

concluded that the proposal would cause an excessive demand on municipal services.

7. ***"Because the Board erred in defining the Commercial riding stable horse shows as 'entertainment', its conclusion that the location was inappropriate for the use was error."***

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. Mrs. Gray concurred, noting that the riding stable was approved. The decision was that the location (property and neighborhood) was inappropriate for horse shows.

Mr. Greenblott stated that the issue raised by the Applicant is that horse shows are part of the operations of a commercial riding stable. Ms. Scheinman understood, stating that she had considered the location of the use on the property, the noise created and the impact of traffic.

8. ***"The Board erred by overlooking objective, expert testimony that the Applicant's project would not affect the health and safety of residents in favor of subjective, anecdotal testimony."***

Mrs. Gray disagreed with the Applicant's assumption that the Board had overlooked the testimony of the Fire Chief and Police Chief.

Mr. Koontz stated that while the Board had weighed all testimony, including that of the Fire Chief and Police Chief, the Applicant had weighed the testimony differently from that of the Board.

Mrs. Gray noted that that the application is straight-forward when only considering the Applicant's use of the property as a riding stable, without horse shows.

Ms. Scheinman stated that the Special Exception criteria also includes a provision that the use not be detrimental to the use and development of adjacent properties. As the record shows, the Board determined that the horse shows would be detrimental.

Chairman Rinden explained how he had no issues with what was represented as statements made by Chief Pecora and Chief Yale. However, there were other issues that had to be considered, such as the noise and traffic created from the horse shows. Mr. Koontz concurred, noting the crowded conditions and congestion on the road were important factors. Mr. Greenblott agreed, stating that this area of Town is one of the most rural areas.

9. ***"The Board's determination that the proposed project was not within the spirit of the zoning ordinance was error because it was founded upon an incorrect definition of what activities are associated with a commercial riding stable."***

Mrs. Gray did not agree with the Applicant's findings concerning the Board's reason for deciding that the Applicant did not satisfy item #9 of the criteria for Special Exception.

Mr. Greenblott suggested that if a commercial riding stable were to include horse

shows, it would not have changed the Board's decision as the Applicant did not satisfy all other criteria for Special Exception. Ms. Scheinman concurred, noting that if one were to assume that the definition included horse shows, the use would not qualify as an accessory use as it is not incidental and subordinate to the riding stable based on the portion of the property being utilized and the requirement in the Zoning Ordinance. Furthermore, when reviewing the factors and circumstances that were considered during the meetings, there is ample evidence on the record that the Applicant did not meet the burden of the spirit of the Zoning Ordinance.

Finally, Mr. Koontz stated that the Zoning Ordinance includes provisions for "Commercial Riding Stables and Riding Trails", but not "horse shows".

Toni Gray, seconded by Charles Koontz, moved to DENY the Motion for Reconsideration. Motion carried in the affirmative to deny the Applicant's Motion for Reconsideration (Gray, Koontz, Scheinman, Greenblott and Rinden).

Reason for Decision:

- *The Board unanimously agreed that Sector 71 of the Standard Industrial Classification Manual (SICM) was not a controlling factor in deciding whether the Applicant successfully addressed all criteria for a Special Exception. Various other sources were reviewed for definitions of "Commercial Riding Stable", "Entertainment", "Sporting Events" and "Use, Accessory". Other sources included the Zoning Ordinance and Webster's Unabridged Dictionary, Third Addition. Reference to another provision of the SICM would not have changed the outcome of the Board's decision, which was to grant the Special Exception to operate a commercial riding stable, except for horse shows.*
- *The Board unanimously agreed that the letter from the Realtor stated an opinion of property values based on the Realtor's experience in selling a property abutting a riding stable. It was unclear as to whether the realtor had visited the property in question during a horse show.*

In deciding whether the Applicant successfully addressed item three of the criteria for a Special Exception, the Board must also consider the effect that the use will have on the character of the neighborhood. Since the Applicant had been operating the riding stable and horse shows, prior to coming before the Board, residents in the neighborhood had experienced the operations. During public testimony, residents spoke of the negative impact that the shows had as it related to noise, traffic and the condition of the road.

- *The Board considered the testimony of the Director of Public Works, who had indicated that he was neither for nor against the proposal, but expressed concern with the number of vehicles associated with the horse shows and the impact that they would have on the condition of the road.*

While the Board recognized the Applicant's efforts to direct traffic the shortest distance to the site, the Board agreed that there was sufficient evidence in the record to support their conclusion that the Applicant did not satisfy the requirements of item four of the criteria for Special Exception.

- *The Board unanimously agreed that the use of the port-a-potties was not a factor in deciding whether the Applicant had satisfied the requirement of item five of the criteria for Special Exception.*

Adopted: 01/02/2018

While the Board concluded that the traffic related to the commercial riding stable (September 6, 2017 meeting, Applicant estimated 10-15 horses usually at the property) would not create an excessive demand on municipal services, the Board concluded that the additional traffic from the operation of the horse shows would create an excessive demand. The Director of Public Works had provided testimony concerning the additional road maintenance that would be needed due to the additional vehicular traffic.

- *The Board unanimously agreed that the definition of a "commercial riding stable" was not a controlling factor in deciding whether the location was appropriate to operate "horse shows". Other factors considered included the noise, traffic, and location. Note: The Board had concluded that location is appropriate for a commercial riding stable.*
- *The Board did not overlook the written testimony of the Police Chief or Fire Chief in determining whether a commercial riding stable would affect the health and safety of residents in the area. However, in deciding whether the Applicant successfully addressed item eight of the criteria for a Special Exception, the Board must also consider whether the request to operate horse shows would be detrimental to the use or development of adjacent or neighboring properties. Since the Applicant had been operating the riding stable and horse shows, prior to coming before the Board, residents in the neighborhood had experienced the operations. After reviewing the testimony from the Applicant and residents, the Board concluded that the use would be detrimental due to the amount of vehicular/trailer traffic and noise created by the horse shows.*
- **The Board unanimously agreed that the determination as to whether the use (horse shows) was within the spirit of the Ordinance was not based solely on a definition.**

Whether a commercial riding stable includes horse shows is irrelevant as the Applicant could not meet all other aspects of the criteria for a Special Exception. Furthermore, if one were to conclude that horse shows are a subordinate or incidental use of a riding stable, the record reflects that the use did not meet the Zoning Ordinance definition of an "accessory use".

Mr. Koontz suggested that the Town consider whether horse shows should be allowed as it had been represented by the Applicant that many horse shows are taking place. In response, Mrs. Robertson noted that while other commercial riding stables and horse shows were referenced by the Applicant, it should not be assumed that these stables/horse shows have applied for or received permits to operate.

II. Adjournment.

Chairman Rinden declared the meeting adjourned at 7:12 PM. The next regular scheduled meeting of the Zoning Board of Adjustment is Tuesday, December 5, 2017, at 5:30 PM in the Town Hall.

Karen Robertson
Planning Director

Adopted: 01/02/2018