

**Minutes
Topsfield Planning Board
Virtual Meeting
January 23, 2024**

ZBA Board members present included Chairman Moriarty, Clerk David Merrill, Dave Moniz, Jody Clineff and Gregor Smith. Alternate Kristin Palace was not present. Planning Board members present included Chairman Morrison, Jennie Merrill and Clerk Steve Hall. Members Josh Rownd and Greg Mellinger were not present. Lynne Bermudez, Sr. Administrative Assistant, was present.

Visitors named on screen via zoom: Attorney Frank DiLuna, Attorney Adam Costa, Attorney Nancy McCann, Attorney James DeCoulos, Select Board Member Boyd Jackson, Bill Guinee, Paul Harder, Betsy Dempsey, Ray Lawton, Kevin Guinee, John Foulkes, John Putney, Tom Guidi and others listed with first names only were present as well as Boxford Cable Access TV.

GOVERNOR’S ORDER

Chairman Moriarty read the following:

Pursuant to Chapter 2 of the Acts of 2023, this meeting will be conducted via remote means. Members of the public who wish to access the meeting may do so via the Zoom meeting identification as listed on the agenda. No in-person attendance of members of the public will be available, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means. In the event that we are unable to do so, for reasons of economic hardship and despite best efforts, we will post on the Town website: www.topsfield-ma.gov an audio or video recording, transcript, or other comprehensive record of proceedings as soon as possible after the meeting.

CALL TO ORDER

Chairman Moriarty called the meeting to order at 7:02 pm.

ANNOUNCEMENTS

Chairman Moriarty read the following: “The meeting is being recorded via ZOOM in the event that the connection is lost at any time during the meeting. Is there anyone else present who wishes to record the meeting?” No one responded.

207 BOSTON STREET – Public Hearing Continuance

Chairman Moriarty informed the ZBA that the Board had received a request from the attorneys for the Essex Agricultural Society (EAS) at 207 Boston St. for a continuance of their public hearing to the Board’s 2/27/24 meeting and a continuance of the Board’s deadline for a decision to 3/19/24.

Gregor Smith made a motion to approve the requested continuance. Jody Clineff seconded the motion and it passed unanimously with a roll call vote as follows:

Chairman Bob Moriarty	yes
Clerk David Merrill	yes
Member Dave Moniz	yes
Member Jody Clineff	yes
Member Gregor Smith	yes

222/224 BOSTON ST.

Lynne Bermudez read the following legal notice that was published in the Salem News on January 8th and 15th, 2024:

Notice is hereby given that the Topsfield Zoning Board of Appeals will hold a public hearing during a ZOOM Zoning Board of Appeals Meeting Tuesday, January 23, 2024 at 7:00 PM (instructions will be on the posted agenda on how to join the meeting via ZOOM) to consider the application of Alliance Auto Center for premises located at 222 and 224 Boston Street requesting a Special Permit pursuant to Article III Section 3.02, Use 4.10 Retail Establishment Selling Motor Vehicles and Use 4.20 Automotive Repair or Service in the Business Highway District, to open a used car dealership and automotive repair.

*Robert J. Moriarty, Jr.
Chairman, Topsfield ZBA*

Chairman Moriarty recognized Ray Lawson, owner of the two properties. Mr. Lawson said Alliance Auto Center would like to lease his building/property at 222 Boston St. and property at 224 Boston St. to operate a used car dealership and service repair operation. The business is requesting 20 parking spaces to store cars for sale. Chairman Moriarty stated that the plan was not specific enough to allow the board to determine how many cars could fit on the two lots and that all of the parking spaces must be paved. He noted that the 10 parking spaces for the building at 222 Boston St. were for operation of the building, so cars for sale could not be parked in those spaces. Chairman Moriarty stated that a Site Plan would be needed to provide the Board with the information it needs (including number of parking spaces available and their layout) to make a determination on a special permit. As the owner of Alliance Auto Center was not present, he could not speak to his business plan. Chairman Moriarty suggested the public hearing be continued to allow a Site Plan to be developed and for the owner of Alliance Auto Center to be present to discuss details concerning operation of his business.

Dave Moniz made a motion to approve the request for a continuance of the public hearing to the February 27, 2024 meeting. Gregor Smith seconded the motion and it passed unanimously with a roll call vote as follows:

Chairman Bob Moriarty	yes
Clerk David Merrill	yes
Member Dave Moniz	yes
Member Jody Clineff	yes
Member Gregor Smith	yes

POSSIBLE BYLAW MODIFICATIONS - Discussion

Chairman Moriarty welcomed Planning Board members and asked Chairman Martha Morrison to review and discuss the most recent proposed zoning changes. Chair Morrison reviewed the Planning Board's suggested definition for Buildable Area. Chair Moriarty suggested that the word "contiguous" be removed from the definition as it does appear in 4.08A Minimum Buildable Area. Planning Board members concurred. Chairman Morrison then reviewed the changes for the Table of Use for the Business Park and the removal of the current cap of four on the number of dwelling units allowed in a mixed-use development. The ZBA concurred with both sets of changes. Chairman Moriarty did ask if the Planning Board might consider adding a dimensional standard regarding the distance between multiple buildings on a lot. Chairman Morrison agreed to look into this.

Chairman Morrison reviewed the Town Administrator's request to remove Article III section 4.10 Retail Establishment Selling Motor Vehicles as a permitted use in the Business Highway District. Discussion was held on the impact to current property owners (taking away option to lease their land)

and whether the town would be better served by having higher utilization on the Rt 1 lots. Discussion was also held on the impact of making the sale of motor vehicles non conforming for existing car dealerships, in effect giving them the ability (per the wording in our current bylaw) to move from one non-conforming use to another, as long as the ZBA finds it is not more detrimental to the town. The Planning Board will review and clarify the language in Section A of bylaw 3.05 Nonconforming Uses for next year's ATM. The ZBA did not object to the concept of making the sale of motor vehicles a non-conforming use.

Chair Morrison noted that the Town Administrator has asked the Select Board to consider having a zoning article for a Dark Sky bylaw on this year's Town Meeting warrant. She has not yet seen any proposal but if she does she will bring it to the ZBA. She stated that both the ZBA and Planning Boards do consider the town's Zoning Bylaw Rules and Regulations (under Nuisances) pertaining to dark sky (downward lighting, no lighting beyond the property line) when they evaluate lighting during Site Plan Reviews. Chair Moriarty concurred. The Planning Board would need time to investigate the various options across the state before determining what changes they might recommend.

252 ROWLEY BRIDGE RD.

Lynne Bermudez read the following legal notice that was published in the Salem News on January 8th and 15th, 2024:

Notice is hereby given that the Topsfield Zoning Board of Appeals will hold a public hearing during a ZOOM Zoning Board of Appeals Meeting Tuesday, January 23, 2024 at 7:00 PM (instructions will be on the posted agenda on how to join the meeting via ZOOM) to consider the application of Connemara House Farm LLC for premises located at 252 Rowley Bridge Road requesting a continuation of its Special Permit pursuant to Article II, Section 17, for a Conference and Event Facility.

*Robert J. Moriarty, Jr.
Chairman, Topsfield ZBA*

Chairman Moriarty opened by stating his concern that from the time the ZBA had issued its decision (9/2023) until this public hearing, he was not sure the Board had received sufficient data to make a permanent, definitive ruling. Since Connemara Farm's installation of sound equipment, only one event had taken place and decibel data collected.

Chairman Moriarty asked Attorney DiLuna (attorney for Connemara Farm) if he could update the Board on what had been done since the Board's decision last year to issue the Farm a special permit (i.e. installation of sound mitigation equipment, orientation of the sound equipment, providing the Zoning Enforcement Officer with weekly readings, etc.) and if he could share what the results had been. Attorney DiLuna stated that the Farm had had three weddings since the equipment was installed and had submitted those readings to the Board for this meeting. The Farm also conducted a sound test in January at the usual location of the tent, with decibel readings at 90 and then took readings at the property lines. The speakers were aimed at the southerly direction as required by the special permit.

John Foulkes from Cavanaugh Tocci, a consulting firm hired by Connemara Farm, specializing in acoustics and sound control, explained the decibel readings. Mr. Foulkes said that to analyze the decibel readings at the property line, it's necessary to also look at the readings inside the tent for reference and to correlate the two readings together. There are other sounds in the environment that contribute to sound level readings. He stated this report, and others previously done, show that the ambient sound at the property level exceeds 55 decibels even in the absence of an event at the Farm. He reviewed the readings from the 10-21-23 event. He noted that it was raining and that rain can make it difficult to understand what's causing the spike in decibel levels as rain can be very loud. He then

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reviewed the 10-22-23 event, which was a clear weather day. It was noted there was a spike in noise levels after the music stopped. Chairman Moriarty said that spike could be people screaming and yelling. Mr. Foulkes then reviewed a simulated test held 1-1-24 with no guests, but music without a tent.

Chairman Moriarty asked Mr. Foulkes, as an expert in sound, why there is an experiential difference between the readings Mr. Foulkes reviewed and what residents are hearing/feeling. Mr. Foulkes said sound is highly subjective and affects everyone differently. Chairman Moriarty asked if this analysis took into account the different types of sounds (such as bass or high treble sounds that might carry further or be felt further). Mr. Foulkes said the report did not but the Farm's equipment does limit overall sound and attenuates the lower frequencies more. Chairman Moriarty asked Mr. Folkes if, from his testimony, the Chairman could deduce that the flat 55 decibel-level requirement is not specific enough. Mr. Foulkes said other than specifying that it's an A-weighted reading, it doesn't need to be more specific. The Chairman noted that Mr. Foulkes will hear testimony from neighbors that the noise is insufferable so perhaps the standard of 55 decibels was insufficient or that it's simply not possible for the two uses to co-exist.

Chairman Moriarty recognized Attorney Nancy McCann (attorney for English Commons). Attorney McCann stated that for the Board to approve a special permit they must find, according to the Rules, Regulations and Town bylaw, that the use proposed (Conference and Event Facility) is not detrimental to the public convenience or welfare and will not impair the integrity or character of the District or be detrimental to the health, safety and welfare of the community. She walked through her reasons why she believed the Farm does not meet this standard:

- There were 9 events scheduled to occur after the date of the board's decision (9/18/24). Yet the Farm only measured and submitted sound reports (as required by the permit) for two of those events.
- The sound reports for the two events showed decibel levels of 65-70, higher than the max allowed of 55.
- She reminded the board that an increase in decibels is exponential.
- Attorney McCann referred to data received from the Topsfield Police Chief showing the number of noise complaints received for the Farm over the past five years. There were 20 during the 2023 season. Six of these were for events following the Board's 2023 decision, and on October 7th the police wrote a report and found the noise to be excessive.
- The ZBA has received written complaints from five English Common residents since the Board's decision in September of 2023.
- Two of the sounds reports reviewed by Mr. Foulke were "tests with no guests" and is not relevant or helpful since the disturbance from this operation is not just from the music but also the guests shouting, singing, cheering, all of which gets louder as the music gets louder. And the noise from guests continue after the music is turned off. This kind of noise is not one that you can get used to and is very disturbing.
- There is also vibration from the music that residents are feeling in their home which is not accounted for in a decibel level.
- Residents do not feel that Connemara Farm has been in compliance with the terms of the Board's September 18th decision. They appear to be unwilling or unable to operate in a manner that doesn't interfere with the residential abutters' quiet enjoyment of their homes.
- Connemara Farm stated it wishes to be treated the same as other conference and event facilities in Topsfield. All other event centers in Topsfield are enclosed.
- What Connemara Farm actually operates is an outdoor concert venue from May to October which is not compatible with a residential neighborhood.

Chairman Moriarty recognized Attorney James DeCoulos (abutting neighbor at 226 Rowley Bridge Rd). Attorney DeCoulos stated he is opposed to the special permit and the Farm is not meeting the conditions imposed by the Board to stay within 55 decibels. Sound is subjective. He stated he wanted to speak to the issue of rainfall. Rainfall is peaceful. The difference between ambient sound at 60 decibels and wedding music at 60 decibels is extremely different. He does not think it's possible for an outdoor wedding venue to co-exist with a residential neighborhood. The reports show that on October 21st Connemara Farm played music so that the decibel level at the property line was above 60 for a couple of hours. That is not something the neighbors should experience. He suggested the board move away from a set decibel level as this is a subjective analysis and use its own human experiences to recognize that the sound of wedding music is completely different than ambient noise and it interferes with the peace and harmony of the neighborhood.

Chairman Moriarty asked the Board for their input.

- Gregor Smith said background noise from rain is desirable, background noise from amplified music and announcements are not. He was hoping to hear there were no complaints from the fall events and is disappointed to hear there are. He said the board may need to come up with something other than a quantifiable numeric for sound as it's more about the character of the sound. Perhaps having a policy of no amplified music.
- Jody Clineff agreed with Gregor. If there's no possibility of building a structure to soundproof the events she's not sure what the solution would be. She feels there is insufficient data to make a decision. She felt part of the ambient noise was generated by traffic on Rt 95, so just looking at the graphs, it's hard to say how much of the decibel at the property level was music/attendees vs noise from traffic. She would like to find a way to work this situation out, but she is not hopeful at this point.
- David Merrill stated he'd like more information as to where the microphones are located to collect the data. He agrees the noise from traffic can be loud and can vary throughout the day. Noise from music is very different than the ongoing noise from traffic.
- Dave Moniz was in agreement with all that's been said. His issue is why wasn't more done over the past three years to address the sound issue. An overwhelming number of people are affected by the noise from these events. The Farm is a great venue but the outdoor amplification of music cannot peacefully co-exist with abutting residents. The only solution he can think of is to build a facility for the events that would contain the sound like all the other event venues in town. He just wonders why it took so long for action to be taken to try to mitigate the noise, and what the Farm did do wasn't enough.

Chairman Moriarty summarized that the board, in its 9/18/23 decision, stated that Connemara Farm's wedding activities could not negatively impact the neighborhood. That's a low bar. The Board tried to come up with a numeric decibel at the property lines that they thought would allow the operation of the wedding events to not be more detrimental. With so little decibel data available (other than the two events in October) the Chairman is not sure the board has sufficient data/experience to determine, on a permanent basis, whether or not the Farm can operate in a manner that will not be detrimental to the neighborhood. He agreed there is a qualitative difference between the music and noise produced at wedding events and the ambient noise of Rt 95, Rt 1, crickets, birds or rain. He is not sure if there is a point at which the music/noise will not be detrimental to the neighborhood, but he's also reluctant at this point to conclude that the noise cannot be mitigated without at least attempting a longer period of time to evaluate the willingness of Connemara to comply with the special permit conditions.

Chairman Moriarty then took testimony from residents. Tom Guidi was recognized.

- Mr. Guidi reminded people that 55 decibel levels was selected by the Board as a condition based, in part, upon the study provided by the sound consultant hired by Connemara Farm that showed that during most of the season (May-October) ambient sound at the property lines was in the 40-50 range. What is being ignored by the most recent sound studies is how late in the year they were conducted. By the time those studies were done the leaves were off the trees so the ambient sound from the highway is much louder reaching the property lines than it was during the spring, summer and fall when there were leaves on the trees, creating much more of a sound barrier from the highway. Mr. Guidi does not believe the studies done in late October and January are valid and should have been done in September and October. The Farm was on notice and weren't planning to appeal, so to say they waited until there were only two events was on them.
- Mr. Guidi pointed out that the special permit conditions focus on the music, but a large portion of the noise is from the crowd yelling, screaming and singing and it gets louder as the night goes on. He asked if the residents are going to have to wait another whole year.
- Every other event facility in town had to make an investment in infrastructure. Connemara Farm just put up a tent even though it is generating enough revenue to build a barn to hold the events. Mr. Guidi recommended the Board give the Farm a deadline by which it needs to build a barn. Connemara Farm has not used all possible means of mitigation such as putting sides on the tent or building a fence or trees to block the noise.

The Chairman recognized Paul Harder. Mr. Harder read a letter he had sent to Select Board member Lynne Bermudez on June 3, 2021 to highlight that English Commons residents have been dealing with the noise from the Farm for more than three years. He stated this issue does not require more study. The Farm had three years to address the noise. They have proven it cannot be done right without constructing a building for the events. It may be inconvenient for the Farm, but it's been extremely inconvenient for the people at English Commons.

Attorney McCann stated that even assuming Connemara Farm is acting in compliance with the board's conditions, this use, operated in an open-air tent, is not compatible with a residential neighborhood. It is not reasonable or fair for the residents to have to wait for further study. It is beyond disruptive. They cannot occupy their home from May to October the way everyone else in town does – enjoying their deck or just enjoying the inside of their home without vibration.

The Chairman reiterated he is not sure the Board has enough information after the issuance of the special permit with the conditions that were imposed. His inclination would be to grant a special permit for six months to determine if it's possible for the Farm to operate in a manner that is appropriate. He said he believes at this point a numeric is helpful but not able to determine the effect on neighbors. The Chairman asked for comments from the Board.

- Gregor Smith agreed with the Chair but said if after six months the Board does not see a marked improvement he is changing his mind to side with the neighbors to close the events down.
- Jody Clineff agreed with the Chairman. She will feel more comfortable with more time to make a definitive decision.
- David Merrill asked the Chair when the six months would start. The Chairman responded it would start now and run until the end of June. David said he is not opposed to giving the Farm a little more time, but it does not seem to be working.
- Dave Moniz said the Board has given the Farm additional time to fix the noise issue and it has not worked. He cannot see how the Board can subject the neighbors to another six months. If the six months ends at the end of June, then the Farm has two months of events to demonstrate

it can mediate the noise. What happens if they don't? Do they notify the brides their weddings are cancelled for the remainder of the 2024 season? He doesn't see how that works for either party. It makes no business sense for it to stop at June. If the Board were to give them any runway, it should be that the Board asks Connemara to come back to them in two months with a concrete plan on how it will mitigate the noise. We can't think the problem will magically go away. The Board can't keep kicking the can down the road.

Chair Moriarty shared everyone's concerns. His problem is that there was one event following the effective date of the decision (post appeal period). The Board does not have a lot of data following that date to establish a pattern. The one event held after the effective date did not receive any complaints according to the police log. Attorney McCann stated while no complaint was filed, the sound reports show that on that one date decibels between 3-6 pm ranged from 65-70. Also, the Farm should have been turning down on the sound on the nine events that followed the Board's decision on 9-18-24, until it could install the equipment that would automatically turn the music down. It did not. Connemara Farm operates a loud, commercial use which isn't compatible in a residential neighborhood. If the special permit is denied, they can modify their mode of operation and reapply. Tom Guidi said that if the board allows more time, they are in essence rewarding the Farm for not trying hard enough during the nine events following the decision to prove they could mitigate the sound from their events. They waited until the last minute and provided minimal data. It's the residents who are being punished.

The Chairman noted that the police logs show one complaint in 2019, zero in 2020 (understandably a covid year), 23 in 2021, 25 in 2022 and 20 in 2023. It appears that for two years the operation was tolerable to neighbors, but now has a noise problem. That's the balancing act of the board. The Farm does not have a plan in place to build a barn or a structure to mitigate the sound. The Board has not been presented with an application that has any of those elements. He does not believe it would be enforceable for the Board to condition a special permit on Connemara building a barn.

Mr. Harder was recognized. He stated no events were held in 2020. In 2021 English Commons met with Kevin Guinee and Mr. Guinee said that if the noise was too loud they should call the police. The residents were very uncomfortable dialing 911 for a noise complaint as it wasn't a medical emergency or any other kind of emergency. It was a major nuisance, but many didn't call. In 2022 a lot of residents started leaving for long weekends to avoid having to deal with the noise from Thursday to Sunday. He asked the Board that if on June 30th they decide the Farm cannot mitigate the noise, will the Board tell the bride with a 4th of July wedding that the wedding is cancelled? It seems worse than just having the Board make up its mind now.

Attorney DiLuna asked that the six-month period begin in May when events begin. The Farm will work it out during the wedding season as the test analysis needs to be done during the wedding events.

Gregor Smith made a motion to close the hearing. Jody Clineff seconded the motion and it passed unanimously with a roll call vote as follows:

Chairman Bob Moriarty	yes
Clerk David Merrill	yes
Member Dave Moniz	yes
Member Jody Clineff	yes
Member Gregor Smith	yes

Jody Clineff made a motion to continue the hearing to February 27, 2024. Chairman Moriarty seconded the motion and it passed unanimously with a roll call vote as follows:

Chairman Bob Moriarty	yes
Clerk David Merrill	yes
Member Dave Moniz	yes
Member Jody Clineff	yes
Member Gregor Smith	yes

MINUTES of 11/28/23 – Discussion/Vote

Jody Clineff made a motion to approve the minutes of 11-28-24 as amended. Gregor Smith seconded the motion and it passed unanimously with a roll call vote as follows:

Chairman Bob Moriarty	yes
Clerk David Merrill	yes
Member Dave Moniz	yes
Member Jody Clineff	yes
Member Gregor Smith	yes

ADJOURN

At 10:05 pm Jody Clineff made a motion to adjourn. Gregor Smith seconded the motion and it passed unanimously with a roll call vote as follows:

Chairman Bob Moriarty	yes
Clerk David Merrill	yes
Member Dave Moniz	yes
Member Jody Clineff	yes
Member Gregor Smith	yes

Respectfully submitted,

Lynne Bermudez
Sr. Administrative Assistant

DOCUMENTS

Per the Open Meeting Law, documents that were either distributed to the Zoning Board of Appeals before the meeting or discussed at the meeting were:

1. Agenda
2. Special Permit Application – 222/224 Boston St.
3. Special Permit Application/supporting materials – 252 Rowley Bridge Rd.
4. Proposed zoning bylaw modifications 1-21-24
5. Request from Mead, Talerman & Costa LLC for a continuance for 207 Boston St. 2-27-24
6. Draft Meeting Minutes 11-28-23

Approved at the 3-6-24 Planning Board Meeting.

Pursuant to the 'Open Meeting Law,' G.L. 39, § 23B, the approval of these minutes by the Committee constitutes a certification of the date, time and place of the meeting, the members present and absent, and the actions taken at the meeting. Any other description of statements made by any person, or the summary of the discussion of any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Committee as to the completeness or accuracy of such statements.