



TOWN OF TOPSFIELD

ZONING BOARD OF APPEALS

8 West Common Street, Topsfield, Massachusetts 01983

Certificate of Decision **Finding and Decision of an Appeal Pursuant to G.L.c.40A s. 3** **of the Topsfield Zoning By-Law**

Property Address: 252 Rowley Bridge Rd, Topsfield, Massachusetts

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, December 27, 2022 at 7:00 PM (instructions will be on the posted agenda on how to join the meeting via ZOOM) to consider an appeal pursuant to G.L. c. 40A s. 15 by James Decoulos of the Building Inspector and Zoning Enforcement Officer's decision not to disturb the prior Zoning Enforcement Officer's determination that the use of the premises at 252 Rowley Bridge Road for wedding events and like events is an agricultural related use and thus permitted under G.L. c. 40A, §3.

Applicant: James N. Decoulos

1. The Application

An application was filed on November 29, 2022 with the Topsfield Town Clerk by James N. Decoulos of 226 Rowley Bridge Road to consider an appeal pursuant to G.L. c 40A s. 15 to overturn the Building Inspector's decision permitting the use of the premises at 252 Rowley Bridge Road for wedding and like events.

2. The Hearing

Notice was published in the Salem News on December 12 and December 19, 2022, mailed postage prepaid to all interested parties, including all abutters on the List of Abutters certified by the Assessor's Office and posted in a conspicuous place in the Town Hall for a period of not less than fourteen days before the day of such hearing. Pursuant to the notices, a public hearing was opened on December 27, 2022 continued to January 24, 2023 and closed on January 24, 2023 via ZOOM, due to Chapter 20 of the Acts of 2021, as stated at the beginning of the meeting.

Present at the hearing from the Zoning Board of Appeals was Robert Moriarty, Chairman; David Merrill, Clerk; Jody Clineff, Member; David Moniz, Member; Gregor Smith, Member. and Kristin Palace, Alternate. Senior Administrative Assistant Lynne Bermudez read the Legal Notice to open the Public Hearing.

Chairman Moriarty asked Attorney Decoulos to speak to the substance and background of his appeal. Attorney Decoulos introduced himself and related that events were first held at Connemara Farm May-October in 2021. He stated that in the summer of 2022 the number of events significantly increased in frequency and volume. He asked the current Building Inspector, Ray Chesley, to overturn the ruling made by the previous Building Inspector (Glenn Clohecy) in a letter to Connemara Farm on September 9, 2020 that weddings and other events were Agritourism and could be held on the farm. Attorney Decoulos asked the Building Inspector to issue Connemara Farm a cease and desist order. Attorney Decoulos stated that it is his belief that there is no connection between the products produced and sold at the farm and the wedding events being held. Attorney Decoulos cited a number of cases in support of his position.

Attorney Frank DiLuna representing Connemara Farm spoke next in support of the decision by the Building Inspector. Attorney DiLuna stated the wedding events served as a retail arm and marketing tool for farm products. The farm's apples are made into cider and it is a requirement of caterers at its events to use cider produced by Connemara Farm. Attorney DiLuna also argued that Connemara Farm requires caterers to use Massachusetts grown and raised farm products and that the wedding events are related to and integral to the farm operations. He stated that Connemara Farm complies with standard in Massachusetts relating to agricultural uses in that not less than 25% of the farm's revenue are obtained through sale of its products at these or 50% of the revenue is obtained through sale of Massachusetts farm products. Attorney DiLuna reviewed the decisions that Attorney Decoulos had raised and also cited several additional cases that he argued supported the proposition that the wedding events are agriculture related and as such may not be prohibited by the Town under G.L. c. 40A, §3 nor may a special permit be required for such activities.

Board members questioned Attorney Decoulos and Attorney DiLuna with questions directed at understanding the relationship between the farm operations and the wedding event. Board members asked how the farm products were integrated into the wedding events, about revenues from the sale of farm products at such events and how the wedding events advanced the interest of the farm, relating anecdotally personal experiences with the sale of farm products or advancement of farm interests and questioning how a wedding event was related.

Chairman Moriarty asked members of the public if they would like to speak. Chairman Moriarty recognized Nancy McCann who was present at the Attorney for English Commons, a condominium development that abuts Connemara Farm. Attorney McCann spoke to the hardships the weddings and other events have had on English Common residents. She stated her belief that these events are not agritourism or agriculturally related as they have no connection to the marketing or sale of Connemara Farm products. She referenced the farm's website and the fact the farm lists itself as a wedding venue with no reference to any farm products being required during the events. She argued that wedding events are now the primary activity at Connemara Farm and farming is incidental, at best. Thomas Guidi, a member of the Board of Directors of English Commons and the closest abutter, also spoke to the negative impact to English Common residents and stated the events are not agriculturally related as the events are not open to the public, but rather are private events. Mr. Guidi argued that the Connemara Farm was operating as an Event Facility and that it requires a special permit which would allow the Zoning Board of Appeals to impose reasonable conditions on the events to mitigate harm to neighbors.

After discussion Board members agreed additional information was required and requested that Attorney DiLuna submit documentation showing the revenues from Massachusetts farm products by the wedding events and the proportionality to the overall revenues generated by the wedding events and information related to his assertion of use of Massachusetts farm products by caterers. The Board also indicated that it would request an advisory opinion from Town Counsel regarding this matter.

The public hearing was continued until January 24, 2023. The Chairman opened the January 24, 2023 meeting by introducing the advisory opinion from Attorney George Pucci of KP Law, Town Counsel, that had been provided to the Board, a copy of which had been made available to all interested parties on the Board's website. He also introduced certain letters that had been provided by Connemara Farm from its vendors regarding use of Massachusetts farm products.

Attorney Decoulos made the following points:

- The letters from local farms, provided to the board by Connemara Farm do not provide any volume of products these farms used for Connemara Farm events.
- Connemara Farm wedding events do not serve the general public. He argued that in order for an event to be agriculturally related, it must serve the general public.
- Connemara Farm had not provided any support for its assertion that caterers are required to use Massachusetts farm products, and argued that even if it were so, the agriculture must be related to Connemara Farm, and not other farms.
- Agritourism events must be related to the farming activities of Connemara Farms, not other farms. The farm cannot be just a consolidator of products.

Attorney DiLuna argued that the cases referred to in Attorney Pucci's advisory letter were not dispositive of the issue of farming as it relates to Connemara Farm. He referred back to G.L. c. 40A §§ 3 and 128 defining agriculture as an activity, on a farm, incident to or in conjunction with the farming operation. He argued that this farm does produce fruit and vegetables for the weddings, which he analogized to a farm-to-table events. He argued that a very small portion of the farm is devoted to the wedding events, the majority of which is used for the 2,000+ apple and peach trees on the site. Finally, he argued that the weddings are farm to table events with music, and as such are appropriate agricultural events.

Discussion followed between the Board, Attorney Decoulos, Attorney DiLuna and Attorney McCann relating to the advice in Attorney Pucci's letter that that events held on a farm must be incidental to the farming and connected to the farming operation as the Board members attempted to understand the relationship between the farm operations and the wedding events as opposed to more traditionally understood farm activities such as a farm stand or the sale of products actually produced at the farm.

3. The Findings

Upon conclusion of the public hearing, and following discussion by the Members, the Board made the following findings.

- Connemara Farm is a farm located on Rowley Bridge Road in Topsfield. Its principal farm activity is the growing of apples, peaches and other farm products.
- Connemara Farm conducts approximately 2-3 weddings per week for a period of seven months from April-October.
- Connemara Farm has asserted that it requires that cider produced at the farm must be served at all wedding events and that it requires all caterers to use Massachusetts farm raised and grown products to the extent available. It has asserted that it is a Massachusetts farm product to table operation, and, as such, the wedding events are agricultural activities.
- Connemara Farm, however, has not presented the Board sufficient facts to make a determination as to the amount of either product produced on the farm or on other farms in Massachusetts are used at the wedding events.
- The Board has made a determination based upon the information presented to it that the wedding events are not sufficiently related to the farm activities so as to be characterized as either integral to or subsidiary to the farm activities. The wedding events are standalone activities that do not depend upon the existence of the farm or the products that are produced there.
- The requirement that cider be served and that Massachusetts farm products be used by caterers, when available, appear to be perfunctory attempts to provide a gloss of farm activity, without any real substance.
- Based upon the information available to the Board, it has determined that the wedding events that are conducted at Connemara Farm are not sufficiently related to the farming operations to constitute an agricultural use that would be protected under G.L. c. 40A §3.

4. The Decision

Chairman Moriarty moved that the Board sustain the appeal by Attorney Decoulos overturning the decision of the Building Inspector that the operation of weddings at Connemara Farm is an agricultural use. He further moved that the Board stay any attempt to enforce this decision for a period of ninety (90) days from the date of its decision to allow for Connemara Farm to file a request for a special permit to operate as a Conference or Event Facility under the Zoning By-law (and such additional time as it might take to render a decision on such application if Connemara Farm files an application).

The motion was seconded by Gregor Smith and passed unanimously on a roll call vote as follows:

| | | | | | | |
|--------------------|-------------------------------------|-----|--------------------------|----|--------------------------|----------------|
| Moriarty, Chairman | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Absent/Abstain |
| Merrill, Clerk | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Absent/Abstain |
| Clineff, Member | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Absent/Abstain |
| Moniz, Member | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Absent/Abstain |
| Smith, Member | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Absent/Abstain |

5. Appeals

Appeals of the above decision shall be filed pursuant to M.G.L. 40A, § 17 within 20 days of the date of filing of this certificate with the Topsfield Town Clerk.

Dated: February 21, 2023

Respectfully submitted:

A handwritten signature in blue ink, appearing to read "RJM", with a stylized flourish extending from the end.

Robert J. Moriarty, Jr.
Chairman