

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

SUFFOLK, ss

MISCELLANEOUS CASE
NO. 23 MISC 000103 (RBF)

JAMES N. DECOULOS,

Plaintiff,

v.

TOPSFIELD ZONING BOARD OF APPEALS,

ROBERT MORIARTY, DAVID MERRILL, JODY

CLINEFF, GREGOR SMITH, DAVID MONIZ, as)

they are members of the Topsfield Zoning Board of)

Appeals, and KEVIN J. GUINEE, Trustee of the)

Rowley Bridge Road Realty Trust, CONNEMARA)

HOUSE FARM, LLC,)

Defendants.)

**MEMORANDUM AND ORDER DENYING MOTION TO AMEND PRELIMINARY
INJUNCTION AND ENTERING FURTHER ORDER**

In his Complaint filed on March 23, 2023 (Complaint), plaintiff James N. Decoulos (Decoulos) brought an action under G.L. c. 40A, § 17 (§ 17), naming as defendants the Topsfield Zoning Board of Appeals (ZBA) and individuals in their capacity as members of the ZBA, and Kevin J. Guinee as trustee of the Rowley Bridge Road Trust and Connemara House Farm LLC (collectively, Connemara Farm). The Complaint is an appeal of the decision of the ZBA filed with the Topsfield Town Clerk on February 21, 2023, overturning the decision of the Topsfield Building Inspector's denial of Decoulos's zoning enforcement complaint to prohibit Connemara Farm from operating a conference and event facility at 252 Rowley Bridge Road (Connemara

property) without a special permit (ZBA Decision). Decoulos appeals so much of the ZBA Decision that stayed enforcement of the Topsfield Zoning Bylaw (bylaw).

On March 28, 2023, Decoulos filed Plaintiff's Motion for Preliminary Injunction, seeking to enjoin Connemara Farm from operating a venue for weddings and private events without a special permit, or, in the alternative, from emitting noise of a sound level that exceeds that specified in the bylaw, specifically ZA:3.7 Nuisances of the Topsfield Zoning Guidelines and Performance Standards (guidelines). After hearing, on May 19, 2023, the court issued the Preliminary Injunction. The Preliminary Injunction ordered Connemara Farm

to commission a sound study, to be completed within 14 days of the date of this Preliminary Injunction, and submit an affidavit by a sound engineer, to be submitted to the court within seven days after the completion of the sound study, measuring the ambient broadband sound level and the broadband sound level of wedding activities at Connemara Farm, as measured at the shared boundary between the Decoulos property and the Connemara Farm property. Upon receipt of the affidavit, the court will enter a further order limiting the noise from Connemara Farm to a level at or below an increase of broadband sound level of 10 decibels (dB) above ambient as measured at the shared boundary between the Decoulos property and the Connemara Farm property.¹

Connemara Farm filed the Affidavit and Professional Opinion of John T. Foulks CTS (Foulks sound study) on June 13, 2023. The Foulks sound study concluded that the noise from Connemara Farm was at a level at or below an increase of broadband sound level of 10 decibels (dB) above ambient as measured at the shared boundary. Decoulos has objected to the Foulks sound study. Decoulos filed Plaintiff's Motion to Modify Preliminary Injunction (Motion to Modify) with supporting memorandum of law and James N. Decoulas Second Affidavit on July 14, 2023. Connemara Farm filed Private Defendants' Opposition to Plaintiff's Motion to Modify Preliminary Injunction on July 24, 2023. Pursuant to Land Court Rule 6, the Motion to Modify is decided without hearing.

¹ Connemara Farm's Motion to Amend Injunction was allowed on May 26, 2023, and the date for submitting the sound study to the court was extended.

In the Preliminary Injunction, the court recognized that Decoulos had demonstrated a likelihood of success on the merits of his appeal of the ZBA decision and that he faced a risk of irreparable harm from noise from weddings at Connemara Farm. The purpose of the specific injunction was to set an appropriate acceptable noise limit, determine what the level of noise was from the weddings at the farm, and find if it exceeded the acceptable noise limit. Connemara Farm complied with the Preliminary Injunction and submitted the Foulks sound study that concluded that the noise from the weddings did not exceed the acceptable noise limit.

Decoulos disagrees. First, he challenges the noise limit set by the court based on DEP regulations, specifically that noise in violation of 310 CMR 7.10 includes any sound that increases broadband sound level by more than 10 decibels (dB) above ambient as measured at the boundary. DEP Policy 90-001 (Jan. 16, 1990). He points to various provisions of the bylaw that discuss noise. However, those provisions concern specific uses, and none of them is applicable to Connemara Farm's activities. In the absence of an applicable noise standard in the bylaw, it is reasonable to apply statewide DEP regulations. Second, in his affidavit, he states that he can hear sound from the weddings at Connemara Farm from his yard and home. The question, though, is not whether he can hear the weddings. Rather, the question is whether the sound from the weddings exceeds the acceptable noise limit. This cannot be determined without a sound study from a sound engineer, and Decoulos has not submitted any such sound study. The only sound study before the court is the Foulks sound study, and that sound study finds that Connemara Farm complies with the noise limit.

The remaining matter is whether any further order or relief is required. While Connemara Farm demonstrated that its noise level currently complies with the DEP standard, there is no order in place that it continue to do so. The Preliminary Injunction provided that "[u]pon receipt

of the affidavit [from the sound engineer], the court will enter a further order limiting the noise from Connemara Farm to a level at or below an increase of broadband sound level of 10 decibels (dB) above ambient as measured at the shared boundary between the Decoulos property and the Connemara Farm property.” Such an order is now appropriate.

For the foregoing reasons, the Motion to Modify is **DENIED** without prejudice to renewal upon provision of an appropriate sound study. Until further order of the court, Connemara Farm and their employees, tenants, agents, contractors, licensees, or invitees are hereby **ORDERED** to limit the ambient broadband sound level and the broadband sound level of wedding activities at Connemara Farm to a level at or below an increase of broadband sound level of 10 decibels (dB) above ambient as measured at the shared boundary between the Decoulos property and the Connemara Farm property.

The findings and rulings contained herein are necessarily preliminary in nature. Thus, these findings and rulings are neither intended, nor should they be construed, as having any precedential weight or effect in further proceedings in this case, all of which shall be determined in the light of the evidence offered and admitted on those occasions. Should further-developed evidence or circumstances warrant, any party may move for the modification or dissolution of this order at any time.

SO ORDERED.

By the Court (Foster, J.) /s/ Robert B. Foster

Attest:

/s/ Deborah J. Patterson
Deborah J. Patterson, Recorder

Dated: August 10, 2023