



TOWN OF TOPSFIELD

ZONING BOARD OF APPEALS

8 West Common Street, Topsfield, Massachusetts 01983

Certificate of Decision

Finding and Decision of an Application for a Conference and Event Facility Special Permit

pursuant to Article II s. 17 of the Topsfield Zoning By-Law

Property Address: 252 Rowley Bridge Road, Topsfield, Massachusetts

Applicant:

1. The Application

An application was filed on April 18, 2023 with the Topsfield Town Clerk by Connemara House Farm LLC ("Connemara Farm") of 252 Rowley Bridge Road for a Special Permit pursuant to Article II, Section 17 of the Topsfield Zoning By-Law for a Conference and Event Facility.

2. The Hearing

Notice was published in the Salem News on May 8 and May 15, 2023, 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 May 23, 2023, continued on June 27, 2023 and closed on July 25, 2023 via ZOOM, due to Chapter 2 of the Acts of 2023, 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. Member Smith was not present at the July 25, 2023 meeting and Member Palace acted as the fifth member having been present for all portions of the public hearing, however Member Smith subsequently watched the video of the proceeding on the Topsfield Cable television feed and submitted a statement to that effect, and participated in the August, 2023 hearing and decision. Senior Administrative Assistant Lynne Bermudez read the Legal Notice to open the Public Hearing for a Special Permit pursuant to Article II, Section 17 of the Zoning Bylaw for a Conference and Event Facility.

Chairman Moriarty gave an overview of the activities which have occurred following the Board's decision upholding Attorney Decoulos's appeal of the building inspector's decision that Connemara Farm was an exempt agricultural. Attorney Decoulos appealed the decision to Land

Court, which action is still pending. Connemara Farm has filed an application for a special permit for a Conference and Event Facility, which is allowed in the Zoning District in which it is situated, with a special permit. Chairman Moriarty then reviewed the conditions under which the ZBA could grant a special permit.

Attorney DiLuna represented the Applicant in the proceeding. He provided background on how Connemara Farm began holding events, current operations, and activities the Farm has taken to date to mitigate noise. He stated the Farm is asking for no more than what the ZBA granted to Peirce Farm, a similarly situated business.

The Chairman recognized Attorney Decoulos who explained the proximity of his property to the Farm and urged that while it may be an appropriate use of the Connemara Farm property to conduct events, the manner in which the Farm proposes to do so under an open tent is not. A wedding with 200 people under a tent generates a lot of noise for neighbors and for that reason he is opposed. He referred to the 4-page response he provided to the board for proposed conditions for a special permit. He disagreed with Attorney DiLuna's statement that Peirce Farm is similar in use since their wedding receptions are held in their carriage house – a closed facility in which sound can be controlled. By contrast Connemara Farm conducts theirs under an open tent and has not been able to control the sound. He noted that Connemara Farm's application does not contain any information on equipment to control sound, training of employees on use of the equipment, any mention of the ambient sound level or the sound level at which they intend to play music, the direction of microphones or speakers, and no sound study was attached. Chairman Moriarty asked Attorney Decoulos if he agreed that, but for noise, the Farm could be run as a Conference and Event Facility without being a nuisance to the neighborhood. Attorney Decoulos agreed it could.

The Chairman recognized Attorney McCann representing English Commons Condominium Association, an abutter to the facility. She stressed the negative impact to the quality of life for English Common residents from May to October on weekend evenings when people are home enjoying their families and their homes. She stated now there is an opportunity, with a special permit, to mitigate the noise through conditions in the permit. She stated the noise level at the property line should be the ambient noise level. She proposed very specific conditions be included (including lighting) in the special permit addressing current and future situations that may arise. She also mentioned the importance of specifying how conditions will be enforced. She stated that the residents of English Commons should not be the enforcers. Chairman Moriarty asked Attorney McCann if she agreed that, but for noise, the Farm could be run as a Conference and Event Facility without being a nuisance to English Commons. Attorney McCann agreed it could.

A discussion followed concerning the 10-decibel over ambient noise level that had been established by the Land Court judge in the injunction that it had issued. Attorney Decoulos stated his expectation that it was a maximum and that there are arguments in support of a lower level including a reference in the Topsfield Bylaw Appendix that fixed appliances should not exceed 3 decibels above ambient noise. The Chairman then asked Board members if they had questions. Discussion was held on the previous sound study conducted in 2022 and the fact the same engineers will be conducting another study in the next few weeks while a wedding event is taking place and results will be provided to the Court and to the ZBA. The Chairman asked that the sound study cover all abutters, not just Attorney Decoulos's property. A motion was made to continue the public hearing to June 27, 2023.

At the June 27, 2023 meeting Chairman Moriarty asked Attorney Decoulos if he could provide an update on Land Court proceedings. Attorney Decoulos stated that the affidavit with the sound study results was filed with the court but no further order has been entered. The next court hearing is Friday, June 30, 2023.

Extensive discussion was held regarding sound levels on the property and impact on the abutters and neighbors. The Board reviewed a letter from Cavanaugh Tocci dated March 31, 2022, and a Field Report from Pro Sound Service regarding a service visit performed on June 2, 2023, both of which are on file with the Board and have been made available on the Board's public website. The discussion focused on the appropriate decibel level, over ambient noise, that should be allowed at the boundary lines of surrounding resident properties. Attorney Decoulos stated he believed a maximum of 10 decibels over ambient is too loud given the persistent and intrusive nature of music which can be more disruptive than random loud sounds. He also noted that the 3-decibel limit in the Topsfield Bylaw Appendix and requested that the noise from Connemara Farm events be no louder than the 3-decibel guideline in the bylaw. Attorney McMann stated a maximum of 10 decibels over ambient was acceptable to English Common residents. Discussion was also held on the difference in decibels between live bands and DJs and how to control the noise level from a live band. Board members expressed concern about their ability to appreciate the level of impact on abutters as the number of decibels over ambient noise rose.

Discussion was then held on the direction speakers should face to minimize noise to neighbors and whether speakers should only be allowed outside of a tented area, such as in the field, for wedding ceremonies.

The public hearing was continued to July 25, 2023 to allow Attorney DiLuna to obtain and provide the Board with the information about decibel levels inside the tent that will not generate excessive noise levels at the property boundaries; for all parties to consider if there are appropriate conditions that they would request the Board to impose; and to consider any additional information that may come before the Board

At the continued public hearing on July 25, 2023, the Board accepted extensive comments from the Applicant other interested parties with respect to the draft decision that had been circulated. Having concluded hearing from all interested parties, the Board voted 5 to 0 to close the public hearing and to continue the matter until the meeting of August 22, 2023 at which time the Board would finalize its decision.

The Board notes that the following materials have been submitted by various parties and form a part of the public record of the hearing:

Applications to ZBA	Application by Connemara Farm for a Special Permit for Conference & Event Facility
Applications to ZBA	J. Decoulos response to Connemara Farm Special Permit Application
Complaints	Noise Complaints
Complaints	Resident Letter M. Rose
Complaints	Resident Letter T. Kilduff

Complaints	Police Report for evening of 7-8-23
Complaints	Resident Letter M. Rose
Dept Comments	Fire Dept memo to ZBA
Dept Comments	Police Dept memo to ZBA
Draft Decision & Attorney Responses	Draft Decision from ZBA
Draft Decision & Attorney Responses	Attorney McCann responses
Draft Decision & Attorney Responses	Attorney DiLuna responses
Land Court Materials	Preliminary Injunction Response by the Court
Land Court Materials	Affidavit to Land Court and Sound Study
Land Court Materials	Plaintiff's Memo in Support of Preliminary Injunction
Land Court Materials	J. Decoulos Second Affidavit
Materials from Attorney DiLuna	Pro Sound Service System Proposal
Materials from Attorney DiLuna	Field Report Sound Study
Materials from Attorney DiLuna	Event Booking Chart
Materials from Attorney DiLuna	Performance Standards/Criteria for Special Permit
Materials from Attorney DiLuna	Aerial Phot of Connemara House Farm
Materials from Attorney DiLuna	Permits Held by Connemara Farm
Materials from Attorney DiLuna	Decibel Response - Cavanaugh Tocci
Materials from Attorney McCann	Letter to ZBA

At the August 22, 2023 meeting Chairman Moriarty provided a review of activities to date including the posting of an updated draft decision for 252 Rowley Bridge Rd. on the ZBA website on August 21, 2023. He reminded those present that since the public hearing was closed no comments would be taken from anyone other than the Board. He noted this case was very complex with significant impacts to all involved which the Board has attempted to balance. He expressed his gratitude for the representation provided by the attorneys for the abutters and the applicant.

Chairman Moriarty polled the Board to assess whether members were inclined to deny a special permit for the applicant or to grant the special permit with conditions. Member Moniz stated he was inclined to deny while other members stated they were inclined to grant with conditions.

Chairman Moriarty then proceeded to poll members on the special permit conditions listed in the draft decision and discussion was held.

3. The Findings

After considering the testimony and reports and additional information that has been provided to the Board, the Board has determined that the operation of the wedding facility to date has caused disturbance to the abutters and has interfered with the quiet enjoyment of their homes. Other than issues of the noise levels, there have been no complaints regarding the operation of the facility

concerning traffic, public safety or other concerns. Testimony has presented a condition in which the abutters are unable to use their decks and other outside areas because of the sound level of music, announcements and other sound that have originated at the wedding facility. At times the level of noise has disturbed the quiet enjoyment of abutters within their homes, with doors and windows closed. Factors such as the venue being a tent with minimal noise deadening, the rural nature of the surroundings and existing low ambient noise levels, and the penetrating nature of the sound of music, particularly low-frequency sounds, such as bass sounds, dictate that the standard to be applied is not one of nuisance, which would be guided by the 10-decibel standard set by DEP. A determination of detriment to convenience or welfare requires a more stringent standard than nuisance. The Board determined that abutters should not be required to hear music and other venue noises at and within their homes that is in excess of normal ambient sound levels and approaches nuisance levels on a regular basis to accommodate the operation of a wedding or event facility by the Applicant. However, the Board determined that, considering the requirements of Section 5.04 of the bylaw, and all of the factors involved with the operation of the wedding and event facility by the Applicant, granting of a special permit to Connemara House Farm LLC for a conference and event facility

- would not be detrimental to the public convenience or welfare
 - would not create undue traffic congestion or impair pedestrian safety
 - would not overload any municipal system
 - would not impair the integrity or character of the district or adjoining zones
 - would not be detrimental to health, safety or welfare, provided the following conditions are imposed, and are complied with:
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- The facility shall be permitted to operate seven days a week. Events at the facility with music are limited to Friday, Saturday and Sunday from May 1 through October 31st in each year. All music must end by 10:00 P.M. and the event itself shall end by 10:30 PM with all participants having left the facility.
 - For events that are held Monday through Thursday, no music shall be permitted and the events must end by 9:00 PM.
 - For events at which there will be music, the tent facility must be set up in a way such that the direction the speakers are pointed shall be a southerly direction towards the orchards and not directed towards residential abutters.
 - Use of an amplified speaker during a wedding ceremony held outside of the tented area is limited to days on which music is permitted and may be allowed no later than 7:00 PM. A single amplified speaker may be used, which shall be set up in a way such that the speaker is pointed in a southerly direction towards the orchards and not directed towards residents.
 - All music that is played at the facility within the tent must be directed through a sound board or other electronic device that will have the capability to limit the output sound level such that it cannot exceed 55 decibels at the Connemara Farm property lines. While this condition does not strictly adhere to the variable DEP nuisance level of 10 decibels relative to surroundings, it recognizes it as a benchmark in light of testimony by abutters that the ambient decibel levels of sound at night are typically in the low to middle forties.
 - Connemara Farm shall purchase and install sound monitoring equipment that will automatically read decibel levels at the property lines. The results will be recorded, logged and forwarded to the Town Building Department for review by the Wednesday following any weekend at which events with music are held.

- No live music shall be permitted until such time as the Applicant has presented documentation to the building inspector that equipment required in the preceding two conditions have been installed and are in working condition.
- Any lighting must be shielded, dark-sky compliant and faced away from and shall not cast light upon any abutting residential properties.
- This finding and special permit shall only be valid through November 30, 2023, the remainder of the 2023 operation of the facility. The Applicant shall be required to reapply for the finding and special permit for the 2024 season and following seasons at which time the Board will have information on the actual impact of the facility on its neighbors with the conditions in place.
- The special Permit is personal to Connemara House Farm LLC and members of the Guinee family. The Permit shall cease upon sale of the membership in the limited liability company, or control thereof, and/or sale of the real estate or upon a substantial change in use of the facility without prior notification to and approval by the Board.

4. The Decision

Gregor Smith made a motion to grant a special permit for a Conference and Event Facility to the applicant subject to the conditions enumerated in the draft decision as modified by the Board's discussion this evening. The motion was seconded by Jody Clineff and it passed unanimously with 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
Palace, Alternate	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input checked="" 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.

6. Validation

This Decision shall be recorded at the Essex Southern District Registry of Deeds and shall not be effective until such time as evidence thereof shall be submitted to the Topsfield Town Clerk, the Building Inspector and the Zoning Board of Appeals.

Dated: September 18, 2023

Respectfully submitted:



Robert J. Moriarty, Jr.
Chairman