



**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, July 22, 2014 at 6:30 p.m.
Town Hall, 231 Atlantic Avenue
North Hampton, NH 03862**

These Minutes were prepared as a reasonable summary of the essential content of the Meeting, not as a transcription. All exhibits mentioned, or incorporated by reference, in these Minutes are a part of the official Case Record and available for inspection at the Town Offices.

Attendance:

Members present: David Buber, Chair; Phelps Fullerton, Vice Chair, George Lagassa and Robert Landman. (4)

Members absent: Charles Gordon, and Alternate Member Lisa Wilson (2)

Alternates present: Dennis Williams and Jonathan Pinette. (2)

Administrative Staff present: Wendy Chase, Recording Secretary.

**Preliminary Matters; Procedure; Swearing in of Witnesses (RSA 673:14 and 15);
Recording Secretary Report**

Chair Buber Called the Meeting to Order at 6:30 p.m.

Pledge of Allegiance -Chair Buber invited the Board Members and those in attendance to rise for a Pledge of Allegiance and noted that reciting the Pledge of Allegiance is solely for those who choose to do so and failure, neglect or inability to do so will have no bearing on the decision making of the Board or the rights of an individual to appear before, and request relief from, the Board.

Introduction of Members and Alternates - Chair Buber introduced Members of the Board and the Alternates who were present (as identified above).

Chair Buber explained that Primary Member Chuck Gordon, and Alternate Member Lisa Wilson were not in attendance, and were recused from this case on their own accord.

Recording Secretary Report - Ms. Chase reported that the July 22, 2014 Meeting Agenda was properly posted at the Library, Town Clerk's Office, Town Office and on the Town's website.

Swearing In Of Witnesses – Pursuant to RSA 673: 14 and 15, Chair Buber swore in all those who were present and who intended to act as witnesses and/or offer evidence to the Board in connection with any Case or matter to be heard at the Meeting.

Minutes

June 24, 2014 – A typographical error was corrected. Chair Buber moved and Mr. Lagassa seconded the motion to approve June 24, 2014 meeting minutes as adjusted. The vote passed in favor of the motion (3 in favor, 0 opposed and 1 abstention). Mr. Landman abstained because he was not in attendance at the June 24, 2014 meeting.

Chair Buber noted for the record that the Zoning Board was in receipt of a letter from Mr. Timothy Harned, Vice Chair of the Planning Board, dated July 21, 2014 that reflects his opinion of the Runnymede Case before the Board tonight. He states in the letter that he wrote it was an individual member of the Planning Board, and not on behalf of the entire Board. Chair Buber offered copies of the letter to the Lawyers present, and added it to the record.

Chair Buber seated Mr. Pinette for Mr. Gordon.

Mr. Fullerton read the Case description into the record:

I. Unfinished Business:

- 1. Case #2014:04 – Historic Runnymede Farm, LLC, PO Box 250 Rye Beach, NH 03871. Applicant: Same as Owner; Property location: 68 Atlantic Avenue, North Hampton, NH; M/L: 006-002—001 (including 006-003-000 merged to 006-002-001 on 03/20/2014); Zoning District R-2 – Residential Medium Density.** The Applicant requests an Appeal of a Decision of an Administrative Officer to reverse the April 1, 2014 Decision of the Planning Board, that the proposed arena is a “riding stable”, and that the proposed arena requires a Site Plan Review. This Case is continued from the May 27, 2014 meeting.

In attendance for this application:

Attorney Thomas Hildreth, Counsel to Historic Runnymede Farm, LLC (HRF)
Blythe Brown, Historic Runnymede Farm, LLC, (HRF) Manager
Attorney Michael Donovan, Counsel to Virginia Weldon, Abutter to the subject property.

Chair Buber explained the Board’s operating procedure for this case as follows:

1. The presentation by the Appellant’s Attorney , Thomas Hildreth, McLane, Graf, Raulerson & Middleton, followed by any questions or comments from the Board.
2. Presentation from the Chair of the Planning Board, Shep Kroner if he chooses to do so.
3. Presentation from Attorney Michael Donovan, representing Virginia Weldon, direct abutter to the subject property, followed by questions or comments from the Board.
4. A brief rebuttal of Attorney Donovan’s presentation will be afforded to Attorney Hildreth.
5. Public Hearing; abutters and members of the public allotted time for brief comments and questions, then close the public hearing.
6. Board will go into deliberations and make its decision.

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Chair Buber requested Board consideration of the following issues:

Chair Buber had three issues regarding Case # 2014:04 that he asked the Board for their consideration, as follows:

1. The "Motion to Exclude Irrelevant Testimony" submitted to the Board by Attorney Hildreth on May 19, 2014.
2. Adopt a procedure of "time management" as an alternative to the Motion suggested above, and in the words of Attorney Hildreth: "...to prevent the hearing from becoming unduly protracted and confused by extraneous information and testimony".
3. Attorney Douglas' potential presentation to the Board of an ongoing civil litigation regarding title questions between "Fat Bullies Farm, LLC v. Bret and Lori Devenport, Alan and Donna Perkins Case No. 218-2011-CV-00598".

Chair Buber went on to state that, regarding the "Motion to Exclude Irrelevant Testimony", he personally concurs with many, if not most of the points made by Attorney Hildreth, but he cannot support the Motion's adoption. The North Hampton Zoning Board of Adjustment functions as an autonomous, quasi-judicial land use Board. It does not function as a Superior Court; a Criminal Court or a Supreme Court. We hold Public Hearings and encourage public participation. We do not suppress evidence or testimony.

Chair Buber referred to, and read into the record RSA 674:33 titled "Powers of Zoning Board of Adjustment", Para. I "The zoning board of adjustment shall have the power to: (a) Hear and decide appeals if it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16". He further stated that, Case # 2014:04 before the Board tonight, is what he categorizes as a straight forward "Appeal of a Decision of an Administrative Officer". It is very narrow in scope and requests relief for, "Reversal of decision of Planning Board that proposed arena is a 'riding stable' and proposed arena requires site plan review". He said that is all the Board is considering; nothing more, nothing less.

Accordingly, any testimony or presentation given this evening should also be equally narrow in scope and should only address the specific issue at hand, namely the above referenced Appeal. Therefore, if the Board concurs, he will make a motion to deny the "Motion to Exclude Irrelevant Testimony" submitted by the Applicant and as an alternative, adopt a method of "time management" which will govern tonight's hearing in the following manner:

- * Attorney Hildreth will be allowed up to 45 minutes for his presentation to the Board.
- * The North Hampton Planning Board will be allowed up to 25 minutes for its presentation. Mr. Kroner, Chair of the North Hampton Planning Board was present in the audience and stated that he didn't plan on testifying, but if he were asked to answer any questions, he would.
- * Attorney Donovan will be allowed up to 45 minutes to address the Board.
- * Attorney Hildreth will be allowed up to 5 minutes for any rebuttal.
- * Abutters and affected parties of the case will be allowed up to 5 minutes each to address the Board.

Chair Buber noted for the record that the above Motion has been discussed with, and approved by, Town Counsel.

Chair Buber asked what the sense of the Board was regarding these two proposals.

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Mr. Landman said that the proposals are appropriate; there is a lot of material that is not directly related to what the Board is deciding on.

Chair Buber said that he was convinced the Zoning Board has a pretty good understanding of where they are regarding Historic Runnymede Farm. He stated again that the only thing before the Board is an Appeal of an Administrative Decision; not to approve an arena, discuss an arena, proposed commercial operations or “behind the mask” operations.

Mr. Lagassa said he concurred with Chair Buber’s analysis and supports it.

Mr. Fullerton said he agreed with it also, it will expedite the process and keep the discussion on point.

Mr. Pinette said he agreed also.

**Chair Buber moved and Mr. Landman seconded the motion to deny the motion to exclude irrelevant testimony submitted by the Applicant, and as an alternative, adopt a method of time management, as previously stated, which will govern tonight’s Hearing.
The vote was unanimous in favor of the motion (5-0-0).**

Chair Buber commented that, regarding Attorney Douglas’ presentation to the Board pertaining to the ongoing litigation between Fat Bullies Farm, LLC and the Devenports and the Perkins he had asked Ms. Chase to contact Attorney Douglas’ office to see if he was going to come to tonight’s meeting, and she was informed that he would not be in attendance tonight; therefore that aspect of the issues regarding this case will not be presented, so the Board doesn’t have to take that into consideration.

Chair Buber brought up points he brought up at the May 27, 2014 meeting regarding the confusion between the Planning Board’s April 1, 2014 Decision, the actual motion made and the Applicant’s relief request.

Chair Buber said that he viewed the DVD recordings of all three (3) Planning Board meetings; the minutes of each meeting and the entire Planning Board case record filed at the Town Office. He commented that there was a discrepancy between the Planning Board’s Decision Letter signed by Chair Kroner; the actual motion made at the meeting, and the relief requested by Attorney Hildreth on behalf of his client, Runnymede Farm, LLC. Chair Buber said that the word “arena” was not mentioned in the Planning Board’s Decision Letter or the motion, and wondered why it was mentioned in the request for relief. He asked Attorney Hildreth what exactly his client was requesting.

Below are the written actions that transpired.

The motion voted on at the April 1, 2014 Planning Board Meeting:

Ms. Monaghan moved to deny this application as incomplete because the Board believes it requires an Exception as an expansion of the property as a Riding Stable; therefore would need to go to the Zoning Board for such an Exception.

Mr. Harned made a friendly amendment to refer to the Exception as a Special Exception.

Ms. Monaghan accepted the friendly amendment.

The vote was unanimous in favor of the motion (6-0).

The Decision Letter, signed by Chair Kroner:

On a vote of 6 in favor, 0 opposed and no abstentions, the Planning Board, at their April 1, 2014 Meeting, denied the Site Plan Review Application, without prejudice, as incomplete, so that the Applicant may seek a Special Exception for a Riding Stable.

The relief sought by Virginia Weldon:

Reversal of decision of Planning Board that proposed arena is a “riding stable” and the proposed arena requires site plan review.

Attorney Hildreth began by objecting to the “time management proposal” set by the Board. He said he had requested, in the notice of appeal, 90 minutes to present. He also opined that it was unfair and unprecedented to allow equal time to the Appellant as to the Applicant.

Chair Buber commented that the Board had a new appeal last month that lasted a little over an hour and said that he feels the Board is as knowledgeable about the Runnymede Farm case as everyone else that is involved.

Attorney Hildreth went over the relationship between the Planning Board’s motion, the Planning Board’s Decision and to HRF’s appeal. The Planning Board Decision doesn’t mention “expansion” or “riding stable”; it doesn’t specify whether the “Special Exception” for a riding stable was required for the existing operation or the arena or some other basis. The Decision implies that the current operation is a “riding stable” and they seek to expand it by the proposed arena. The appeal is for the riding arena because that is what got them to the Planning Board in the first place.

Attorney Hildreth referred to opinions made by members of the Planning Board at their April 1, 2014 meeting: “Chair Kroner said the proposed arena is in relationship to the existing stable and the Architects of the Zoning Ordinances encourages agriculture; it is important, but for some reason they made a distinction for “riding stable”. The distinction was put in there because they probably anticipated the potential of a large structure and assumed the Zoning Board was better suited to deal with it.” “Mr. Harned said the current stable at Runnymede Farm is a “riding stable” and agrees the “riding arena” is necessary and that it is an arena not a “stable”, but he believes the arena is an extension of the “riding stable”. He referred to the December 3, 2013 Planning Board meeting, Jennifer Rowden, the Town’s Circuit Rider from Rockingham Planning Commission said, “the indoor riding arena is an acceptable use under the Agricultural Ordinance.” He referred to the January 21, 2014 Work Session minutes when the Planning Board was discussing “riding stables”, this was a generic discussion and not specifically about the Runnymede Case. He read portions of the minutes, “Mr. Wilson said that it is up to the Code Enforcement Officer to interpret the Zoning Ordinance. Mr. Wilson said that it is the role of the Zoning Board to interpret the zoning ordinances not the Planning Board and if the Planning Board cannot come to a consensus on how to act on it then the Planning Board should send it to the ZBA.” Ms. Rowden said that “there was not a clear enough distance between a “riding arena” and a “riding stable” and feels it would be prudent to send an applicant to the Zoning Board for clarification”. She added that she did not see why a Special Exception would not be granted for a “riding arena” in Town. Mr. Wilson said that he understands why a “riding stable” would require a Special Exception, because in his opinion, a “riding stable” is for a commercial operation where horses are housed, bred and where people are invited to come in for pay to ride the horses that are housed there, and if you put this type of commercial operation in a residential zone then it makes sense to require a Special

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Exception. Discussion ensued on the definition of “riding stable”. Mr. Wilson said that if the Board could not come to a consensus then an Applicant should be directed to go to the Zoning Board for an interpretation of the ordinance.”

Attorney Hildreth said that that was three (3) Planning Board members’ opinions on what a “riding stable” is.

He further read from the January 21, 2014 minutes, “The Board came to a general consensus to let the Code Enforcement Officer make the decision of whether or not to send an Applicant to the Zoning Board; that is the proper chain of command.”

Attorney Hildreth commented that both, the Circuit Rider, Jennifer Rowden and the Code Enforcement Officer, Kevin Kelley opined that the “riding arena” is not a “riding stable” and did not require a Special Exception from the ZBA. The Planning Board did not abide by their decision.

Attorney Hildreth said that even though the decision and motion wasn’t written this way it is not unfair to read the Planning Board decision as to say to the Zoning Board, “Hey, fellow board, we’re confused about what to do about this, what do you think?”

Attorney Hildreth said his office looked at every town in Rockingham County and other surrounding towns and came up with just one definition of “riding stable” from the Town of Wilmont, NH. “Riding Stable – a structure and/or land use in or on which equines are kept on for sale or hire to the public; breeding, training of equines may also be conducted.”

Attorney Hildreth said that his “team” searched the North Hampton records and there has never been an application submitted for a “riding stable” since it first appeared in the Zoning Ordinances in 1968. He went over the evolution of the town ordinances.

- The entire Zoning Ordinances were repealed and replaced with a new ordinance based on the Town’s first Master Plan. This is where “riding stable” first appears in the ordinance under the Special Exception table. There is no legislative background or definition of “riding stable” it appears that the Ordinance was compiled by a Consultant for the Town that did the first Master Plan.
- A new Section 508 was added in 1968 dealing only with Agriculture and was very brief.
- 2004 “Prohibited uses” was added - Commercial Animal Husbandry - that does not include, “veterinary clinics, kennels and other facilities for boarding domesticated animals, equestrian stables for recreational riding, or horse-breeding stables that stable 20 or fewer animals.
- 2011 the Agricultural Ordinance was substantially overhauled and it replaced the Agriculture Ordinance approved in 1968.

Attorney Hildreth referred to Section 508 – Agricultural Ordinance and noted that Agriculture is the first listed permitted use in all zoning districts. Specifically permitted under Section 508.4.2.b – Animal Husbandry including the breeding, boarding, raising, training, riding instruction, and the selling of equines.

He noted that there was a brief period when Runnymede Farm was non-conforming in lot size, but they have since purchased the adjacent lot and merged them so that it is now conforming.

Attorney Hildreth went over the five (5) Affidavits he submitted electronically to the Board the day before.

1. Peter Fuller Jr. –

- Gives an historical account of Runnymede Farm.
- Horses have been ridden at Runnymede Farm since 1923, 40 or 50 horses were kept at there at one time.
- Horses would be taken back and forth from the farm to other locations for racing purposes.
- The owners have always shared the property and invited people on the property for limited and appropriate purposes.
- The property had two major subdivisions, 1978 and 1997.

Attorney Hildreth interviewed Lori Devenport, the previous owner and she said that while she owned the property they were in the business of training, boarding and exercising horses. The boarded horses were frequently at other locations on the weekends for competitions and horse shows. She said the Hampton Police Department was a boarding customer of theirs. (She did not do an Affidavit due to the ongoing litigation with Fat Bullies, LLC).

2. Blythe Brown

- Explains the history of Friesian horses
- How she and the Perkins and the farm managers developed a plan to keep the horses there and explains how it is not a commercial operation.
- Details on how the farm operates today.
- They have 12 stalls and only 11 horses.
- There are covenants on the lot from the 1997 subdivision.
- Explains her interest in having clinics 4 times per year by invitation only, 30-40 people.
- Explains “dressage” and high level horse performances.
- Importance of the indoor arena for the on goings of the operation.
- Statements that there is no money made there and no expectations that there will be money made there.
- Questions if it should be believed that any property that has a horse is a “riding stable”.

3. Shelley Seward – Blythe Brown’s financial adviser

- States that the purpose of the venture was a lifestyle choice. There was no business plan developed because it has never been considered a business venture.
- None of the LLC members anticipate or require a “return on their investment”.

4. Arnaldo Silva – explains the nature of “Behind the Mask”.

5. Attorney Patricia Morris – Equine Specialist – the affidavit includes examples of other farms in the state and exhibits of those websites. After walking the site and interviewing and meeting the people involved she gave the expert opinion that Runnymede Farm is a Gentlemen’s Farm, it is not a “Riding Stable”.

Attorney Hildreth concluded by saying that they believe Historic Runnymede Farm is a permitted animal husbandry operation, it does not require a Special Exception, and it is not a riding stable. He said the constitutionality of a landowner being able to reasonably predict from reading an ordinance what is or isn’t permitted and with the absence of a definition or “riding stable” or evidence of

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enforcement, is it fair to say after all these years that HRF is something that no one has ever thought it was before? He said the definition of animal husbandry in the ordinance is what they do, and what they are; they are a Gentlemen's Farm.

Chair Buber said that he did read all the affidavits and appreciated their submission. He commended Attorney Hildreth on his presentation. He and his wife live on Maple Road in the house his wife grew up in and she has 56 years of experience of the transitioning of Runnymede farm.

Mr. Landman said that he toured the farm and read the State laws and town ordinances pertaining to the case and commended Attorney Hildreth on his presentation.

Mr. Lagassa commented that the proposed arena will be constructed on the former site of a home that was not part of Runnymede Farm and wondered if Attorney Hildreth felt that that had any bearing at all.

Attorney Hildreth said that agriculture is permitted in all zoning districts, and if it is permitted on HRF it is also permitted to the surrounding lots.

Mr. Lagassa referred to the definition of accessory structure, meaning a building or structure detached from but located on the same lot, and although the two lots have been merged, he wondered if the ordinance applied to the lots existing at the time that the ordinance was enacted.

Attorney Hildreth confirmed that the lots were merged so that the proposed building will be on the same lot as HRF.

Mr. Pinette said the presentation was very well done.

Mr. Landman commented on the word "arena" and said some people consider them places to have public performances and contain grandstands.

Attorney Hildreth agreed, but it is common language with "horse people".

Mr. Kroner, Planning Board Chair, was asked if he wanted to speak, and he declined.

Attorney Donovan informed the Board that his presentation involved three (3) speakers and a PowerPoint presentation.

Mary Caron, Mrs. Weldon's daughter, said that her mother has lived in her home since 1960. She said her family has enjoyed the farm over the years and have no problem with an outdoor arena for the horses, but a structure of the proposed size will block the sea breezes and southeastern sun that her mother has always had.

Chair Buber called for a five (5) minute recess so that Mr. Weldon could set up his PowerPoint presentation.

Chair Buber reconvened at 8:05 p.m.

Mr. Jim Weldon went through his PowerPoint presentation that illustrated what the propose arena would look like from Mrs. Weldon's property. He said his family has no objections to Runnymede Farm, agriculture, Friesian horses or dressage; they do object to the integration of a 25,000 square-foot structure 70-feet from their home.

Attorney Donovan began his presentation by telling the Board that the motion the Planning Board made at the April 1st meeting governs what the decision was, and that is what is being challenged tonight. He said that the operation was a nonconforming riding stable before 1968, and the reason it now needs a special exception is because of the significant expansion the riding arena will have to it.

Attorney Donovan referred to his May 20, 2014 memorandum. He pointed out that the Zoning Board has no authority to determine whether a site plan review is required. Everyone agreed. Attorney Hildreth withdrew his request that the Zoning Board reverse that portion of the relief request, that the proposed arena requires a Site Plan Review.

Attorney Donovan went over the Exhibits package (A through N) he distributed to the Board members tonight. It included excerpts of what transpired over the year at different Public Hearings. He commented on the business of "behind the mask" and talked about commercial operations.

Chair Buber said that he explained at the beginning of the meeting that he did not want to discuss "behind the mask" or Vanguard; it does not fall under the issue at hand of, this appeal of an administrative decision.

Attorney Donovan said that the issue at hand is whether it is a riding stable and the Friesian horses are there for the purpose of being boarded and ridden there. The horses are still being trained and ridden for riding purposes, and that is why it is a "riding stable".

Chair Buber said the Board received an affidavit from Blythe Brown that it would not be a commercial operation.

Attorney Donovan said that it is their opinion that it is a riding stable and it doesn't matter if they make a profit or not.

Attorney Hildreth said that they will stipulate for the record that the horses are ridden at Runnymede Farm.

Attorney Donovan said that the important facts are that the horses are still there, the managers are still there, they train the horses on maneuvers used in their performances, and six of the eleven horses are owned and ridden by others not living at Runnymede Farm. They need a riding arena to train the horses; the farm itself is being used as a riding stable.

Attorney Donovan referred to Attorney Regan's letter regarding the affidavit of Patricia Morris submitted to the Board tonight. She writes that the Town regulations do not distinguish between "public" and "private" riding stables. He referred to his exhibit "N" where Ms. Regan cites a court decision that basically says that Gentlemen Farmers who have a riding farm are a riding stable. Wallack v. Zoning Board of Review of the Town of Little Compton, 2003 WL 22803492.

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Attorney Donovan quoted Attorney Loughlin in regards to “special exceptions”, “a special exception is a technique for providing for types of land uses which are necessary and desirable but which are potentially incompatible with uses usually allowed in a particular district. These uses are not permissible as a matter of right because in some situations they may pose serious problems.” He said that is what is being done at Runnymede Farm. The fundamental purpose of a special exception review process is to assure that the use is compatible with the neighborhood. He said that the Planning Board, at their April 1st meeting, gave considerable weight to the concept of what the reason is for “special exceptions”.

Attorney Donovan said the Zoning Board should affirm the Planning Board’s decision and deny the appeal. The reasons that guided the Planning Board in making their decision should be the same reasons to guide the Zoning Board.

Attorney Donovan read from an email communication from Jennifer Lerner. Ms. Lerner is a property owner and a past member of the ZBA. The gist of the email was that the Zoning Board has always been protective of the R-2 district and due to the enormity of the proposed structure in the R-2 zone; they should have to go through the Special Exception review process.

Attorney Donovan said there is a big expansion proposed at Runnymede Farm and that expansion is required because they need a place to ride and train the horses for their performances and that is why they should be required to go through the “special exception” process.

There were no questions of Attorney Donovan from the Board.

Chair Buber opened the Public Hearing.

Michele Peckham, 82 Atlantic Avenue – said that she is not a direct abutter, but lives close to the property. She referred to the Zoning Ordinance under the Agriculture section 508 and said that the Runnymede proposal does not fit within the definition of agricultural. She said the operation has moved from agriculture to horse raising. She quoted from Blyth Brown’s affidavit on page 3, “Historic Runnymede Farm is used to breed, board, raise, train ride and occasionally sell horses”. She said that does not fit within the definition of agriculture in how it exists in the Ordinance and if it doesn’t exist in the definition it must be considered a special exception of a non-permitted use. She also referred to Ms. Brown’s affidavit where she explains that she would like to host 3 or 4 clinics per year and would invite 30 to 40 guests. She said that that did not fall within the definition of agriculture. She said their proposal for a “Gentlemen’s farm” would fall under the prohibited use section of the ordinance. She said the Board cannot *read* more into a definition that is not written.

Chair Buber directed Ms. Peckham to Section 508.4.2.b – under permitted uses the *breeding, boarding, raising, training, riding instruction, and selling of equines*. He also referred to RSA 21:34-a *the word “farm” means any land, buildings or structures....the words “agriculture” and “farming” mean all the operations of a farm, including breeding, boarding, raising, training.....*he said the ordinance mimics RSA 21:34-a.

Ms. Peckham said the Agriculture Ordinance does not include the language from RSA 21:34-a concerning the structure, and that the board cannot read anymore into the ordinance than what is actually there.

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465 Dr. Joseph Arena, Jr., 8 Dancers Image – said he is a direct abutter to Runnymede Farm and is a current
466 member of the Planning Board and has been for many years. He recused himself from the Runnymede
467 Farm Case because he is an abutter. He said he was speaking as a citizen. He said that the remnants of
468 Runnymede Farm includes everything from lot 1 to lot 5 on Atlantic Avenue; lot 1 is where the barn is,
469 he owns lot 2, Mrs. Jellinick owns lot 3 and Mr. Perkins owns lots 4 and 5. He said they knew when they
470 purchased the property that they would have to allow grazing rights on part of their land; they pay full
471 taxes on the entire lot. He said that Runnymede Farm is under an obligation through Best Management
472 Practices to train and exercise the horses and they must provide safe environments to do that. They
473 have an outdoor arena, but must have an indoor arena for the winter months. He said the barn is
474 where the horses are domiciled, where they sleep and eat; and an arena is an accessory structure
475 where the horses are exercised. The proposed building needs to be built to fulfill the requirements
476 under Best Management Practices. He said that lots 1 through 5 are a part of Runnymede Farm
477 because each owner has given their land for grazing of the horses, and the owners met with everyone
478 and presented their proposal to expand lot one and they were all in favor of it. The proposed building is
479 an indoor riding arena; not an indoor riding stable.

480
481 Cindy Jenkins, 93 Exeter Road – said she's had a farm at 93 Exeter Road since 1968. Runnymede Farm is
482 doing what she has been doing, so if they need a Special Exception, then I should have had to have one
483 since 1968. She said the current Agricultural Zoning Ordinance was drafted by the Rockingham Planning
484 Commission; the Select Board; the Conservation Commission and the Agricultural Commission. She said
485 horses are livestock like cattle is livestock; they are a food source.

486
487 Tom McCarthy, 76 Atlantic Avenue – said that one of the primary drivers when deciding to buy his
488 house in 2000 was the view of the horse farm, and up until recently, he could see it. They have planted
489 trees so he can no longer see it. He said that riding stables are by special exception because primarily it
490 is a residential area and the Zoning Board looks to protect the rights of the residential area and
491 determine if it fits within the neighborhood. He said he reviewed the proposed plans and they show
492 several stables within the building.

493
494 Dr. Arena commented that the proposal is not an expansion of an existing business; it is a permitted
495 use; if they added more horses then it would be an expansion. He said it is just for an area for these
496 animals to meet the requirements of the State (BMP) so they can be handled in a safe and humane
497 way.

498
499 Attorney Donovan said that it is not the structure, it is the expansion of Runnymede Farm's operations,
500 and the Planning Board is correct that it requires a Special Exception for a substantial expansion.

501
502 Attorney Hildreth said that there is no intensification of the use; it is a lessening of the use. There are
503 no stables in the proposed structure. The entire structure will not be as high as the allowed 35-feet. He
504 said that the abutters that can no longer see the farm is because they planted trees to address the
505 Weldon's concerns. All of the setback and height requirements are met by the zoning ordinance. They
506 never intended to hold events here like in Kentucky.

507
508 Attorney Hildreth said for the record that he is withdrawing the request that the Site Plan Review is not
509 required; he agrees that the Zoning Board has no authority to determine that. He was asked to put the
510 requested withdrawal in writing. He said that they expect to go back to the Planning Board for a Site
511 Plan Review.

Blythe Brown, Historic Runnymede Farm, LLC – said that there is no expansion of their operation. The building will have a tack up stall and a wash stall. They are exercising the horses on the outdoor arena and they need the indoor arena to exercise them in the winter months. There are no boarding stalls.

Chair Buber closed the Public Hearing at 9:33 p.m., and called for a five (5) minute recess.

Chair Buber reconvened the meeting at 9:38 p.m.

Mr. Pinette confirmed that the application would be going before the Planning Board for Site Plan Review. He said that, in his opinion, there is no change in use, and that they would not need a Special Exception.

Mr. Landman said that he has studied the State and local ordinances and although he believes it will require site plan review, he believes it to be animal husbandry which is allowed under agriculture. He said that he has learned about constitutional rights over the years and no one owns the right to a view in perpetuity. He said that he was sorry Mrs. Weldon is losing her view but they don't have the authority to approve it. He said he agrees that it should go before the Planning Board, and that it is not a riding stable.

Mr. Lagassa said that there is no question that the proposed arena is not a riding stable but there was a house on that property that was torn down, and now there will be an enormous building on the property. He said he believes that the existing barn is a stable and the purpose of this proposal is an expansion to that. He said the current barn was there before zoning, so essentially, it is a "grandfathered" use, and now it is a substantial expansion that triggers further review. He questioned if a special exception would impose more stringent conditions than a site plan review. He said that they have a current use that can be interpreted as a riding stable and that use can be interpreted as an expansion by virtue of acquisition of the property next door; it is a nonconforming use because it never was required to get a special exception, but he believes that it probably should. He said that he supports the Planning Board's decision and the Zoning Board should keep their decision in place.

Mr. Fullerton referred to the December 3, 2013 Planning Board meeting where the RPC Circuit Rider, Jennifer Rowden stated that the indoor riding arena is an acceptable use under the Agricultural Ordinance, but with the size of the proposed arena she recommended that the Board require a Site Plan Review. Chair Kroner also believed it required a Site Plan Review. Subsequently at the March 4, 2014 meeting both, the Circuit Rider, and Kevin Kelley, Building Inspector agreed that the proposed arena is allowed in the R-2 Zoning District and does not require a Special Exception. At the April 1, 2014 Planning Board meeting the Circuit Rider continued to believe that a Site Plan Review was required but up to the Planning Board. He said that the Zoning Ordinances need to be updated to include precise definitions of the terms addressed within. The Zoning Ordinance doesn't have a definition of riding stable but it requires a special exception in the R-2 Zoning district. He agrees that it is sketchy to require a special exception for something that doesn't have a clear definition. He said, in his opinion, Historic Runnymede Farm, taken collectively, has been an equestrian facility and horse stable for many years. He said he feels that the construction of an accessory riding arena is a permitted use under the town's agricultural ordinance. He said that he believes, under the agriculture ordinance and state RSAs, that a wide variety of farm related activities are allowed, but doesn't allow equestrian theatrical productions open to the public on a commercial basis, nor does he believe it is their intent. He said that he disagrees with the Planning Board that Historic Runnymede Farm needs a special exception for the construction of an accessory riding arena.

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Mr. Fullerton also stated that he took a site walk on the property and everyone involved in the renovation process has done a remarkable job and deserve recognition, particularly the G.C. on the job, Ben Auger. The dedication of the owners to restore the original interior and exterior is quite an extraordinary accomplishment.

Chair Buber said that the Planning Board has asked the Appellant to go to the Zoning Board to ask for a Special Exception. It is unfortunate that there is no definition of "riding stable" with the Ordinance but when a definition is lacking in a statute or ordinance one looks to the doctrine of statutory construction. He said on the online Merriam Dictionary the meaning of "riding" is "related to or used for riding especially for riding a horse". The definition of "stable" is "a building in which horses are kept, fed and cared for"; that those two words together gives an adequate definition of what a "riding stable" is. There are both private riding stables and public riding stables. He said that Runnymede Farm has been in continuous operation as a horse farm since 1923, and over 75 years the Fullers used it as a horse farm where they bred, trained and rode horses and thoroughbred horses. In later years retired thoroughbreds were put out to pasture to be cared for, and the farm operated for 45 years prior to the adoption of the special exception for a "riding stable", and continued to operate for another 30 years without having to obtain a special exception for a "riding stable". He said that the Devenports owned the farm from 1998 to 2011 and operated it as a public riding stable as a commercial operation; they sold to the Perkins in 2011. He said that under sworn testimony and sworn affidavits, the farm operates as a private equestrian facility, or a "Gentlemen's Farm", and they have stated that it will continue that way into the future as a private facility. He questioned why after 75 years as a horse farm, then 11 years as a riding stable, and 4 years as a gentlemen's farm, they now have to seek a special exception for a riding stable. He said that based on the agriculture ordinance adopted by the legislative body in 2011 section 508.4.2.b the Applicant should not be required to seek a special exception for a "riding stable" as it does not pertain to this case. He said the second part of the relief requested is to reverse the Planning Board's decision that the arena is a "riding stable".

Chair Buber moved and Mr. Pinette seconded the motion that the Planning Board erred in requesting Historic Runnymede Farm, LLC to seek a Special Exception as a Riding Stable and no such Special Exception is required.

Mr. Lagassa said he was intrigued by the approach the Board is taking with members coming in with prepared statements in advance of the meeting, and the decision prejudged.

Chair Buber said he felt there was nothing wrong with having prepared notes, and he could have just as easily not made a motion this evening.

Mr. Fullerton said he had five pages of notes depending on the testimony provided this evening. He said he put together what he had in his notes after listening to all of the presentations.

Mr. Lagassa said that he agrees the arena is not a "riding stable" but when you look at the property as a whole being used, he believes as a "riding stable", its previous "grandfathering" expires by virtue of substantial expansion and modification, and because of that he believes it should come back to the Zoning Board.

Chair Buber said that through the affidavits submitted it is demonstrated that there were once 40 to 50 horses stabled at Runnymede Farm and today there are 11, so if anything it hasn't expanded it has contracted.

Mr. Landman pointed out that there is nothing in the ordinance that has criteria for a special exception for a riding stable.

Mr. Lagassa said that in instances where standards for a listed special exception are not defined in the zoning ordinance the Zoning Board shall apply the standards under Section 405.2 – Special Exceptions.

Mr. Fullerton said that the new Agriculture Ordinance was completely overhauled and many people are not aware of it.

Mr. Lagassa said that he thought the theme of the Agricultural Ordinance was to promote farms using local sources, and there is a section on farm stands. He said he didn't think people were anticipating 25,000 square-foot buildings.

The vote passed in favor of the motion (4 in favor, 1 opposed and 0 abstention). Mr. Lagassa voted against.

Mr. Landman moved and Mr. Pinette seconded the motion that the proposed arena is not a "riding stable".

The vote passed in favor of the motion (4 in favor, 0 opposed and 1 abstention). Mr. Lagassa abstained.

Chair Buber reminded everyone of the 30-day appeal period.

IV. Other Business:

There was no other business to come before the Board.

Mr. Lagassa moved and Mr. Landman seconded the motion to adjourn the meeting at 10:23 p.m. The vote was unanimous in favor of the motion (5-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved August 26, 2014