

From: susan mooney <spmoooney10@hotmail.com>

Date: Wednesday, July 21, 2021 at 11:47 AM

To: Mary Colvard <mpcolvard@icloud.com>, samueldemeritt@aol.com <samueldemeritt@aol.com>

Cc: Bonnie Winona-Mackinnon <moderator@nottingham-nh.gov>, Dirk Grontenhuis PB Chair <Dirk.Grotenhuis@aecom.com>, ed viel <edviel@comcast.net>, Jen Czysz <jczysz@strafford.org>, susan mooney <spmoooney10@hotmail.com>

Subject: Re: Watercross

Ms. Colvard, Yes, the Commission is definitely concerned about these issues.

I will forward this communication to the ZBA, Planning Board and staff (Strafford Regional Planning Commission).

Thank you.

Susan

From: Mary Colvard <mpcolvard@icloud.com>

Sent: Monday, July 19, 2021 4:37 PM

To: samueldemeritt@aol.com <samueldemeritt@aol.com>; spmoooney10@hotmail.com <spmoooney10@hotmail.com>

Subject: Watercross

Dear Mr. Demeritt and Ms. Mooney,

My husband, John Bartsch and I live at 14 Indian Run in Nottingham. It is our contention that the proposed Northeast Watercross events will negatively affect the people and wildlife living in the surrounding area. The noise from last summer's events carried for miles.

The noise created by the Northeast Watercross machines is much more than a nuisance! There is overwhelming evidence that exposure to environmental noise has adverse effects on the health of humans. Noise pollution is ranked second among environmental threats to public health (the first being air pollution).

Just as noise pollution negatively impacts human health, it also affects wildlife. It can interfere with animal communication, hinder their foraging abilities and impact where they live. In general, a growing number of studies indicate that animals, like humans, are stressed by noisy environments (Shannon et al. 2015). Animals cannot leave town for the weekend during Watercross!

"A recent study published in "Biology Letters" found that human-created noise is affecting a wide range of animals — from birds, fish, mammals and amphibians, to arthropods, mollusks and reptiles. Noise pollution, also known as anthropogenic noise, is caused by cars, trucks, airplanes, ships, oil extraction, factories, industrial activities and sounds from cities, among others. Researchers found that wildlife in many different land- and aquatic-based ecosystems showed significant responses to human-created noise." Source: <https://www.natureconservancy.ca/en/blog/human-created-noise-pollution.html#.YHMIjeYpDdp> Further References: <https://www.nps.gov/subjects/sound/resources.htm>

Noise pollution is a serious health concern worthy of our attention...so why generate more when it is not necessary?

If you are not concerned about noise pollution and the impact of these events on wildlife, what about the potential for the contamination of the aquifer that provides water for many Nottingham residents? Also, without a ready source of potable water and flush toilets, there is great potential for serious health impact on the participants and those whose source of water is the aquifer. Is the following what it will take to get people to realize that this location is not appropriate for the proposed Watercross events. Two people died as a result of an E. coli infection. About 1,000 became ill. E. coli occurs naturally in animal feces, including human.

"...In this rolling dairy country between the Hudson River and Vermont, the farmers are fiercely protective of the Washington County Fair.

Their fair has never lost its "agricultural integrity," they like to boast, which is a polite way of saying that it has not been allowed to degenerate into another boozy tractor pull.

The organizers -- third-generation farmers, prominent businessmen, a few key politicians -- have zealously guarded the fair's status as the region's social event of the year, where farmers can caress the latest John Deere, skinny 4-H teen-agers can still dream of glory for prized heifers, and the local volunteer fire departments can raise money for new boots and hoses by selling fabulously greasy barbecue chicken.

No alcohol or bare feet allowed.

This year's fair seemed no different, only bigger and better with the addition of a new milking parlor. And then the children started getting sick.

One after another, then by the dozens, they went to local hospitals and doctors' offices, howling with stomach cramps, weakened by diarrhea and nausea, some near death. Parents and grandparents got sick, too, baffled that something that had seemed so wholesome could turn out this badly.

The authorities suspect that about 1,000 people -- roughly a third of them children -- were infected at the fair with a particularly vicious strain of the E. coli bacteria that can swiftly escalate from diarrhea to dementia to brain death. With a little girl and an elderly man already dead, and with several children still in serious condition, the E. coli outbreak at the Washington County Fair now ranks among the nation's worst....

... The fair organizers had planned to supply most or all of the water from a chlorinated 120,000-gallon storage tank that is fed by a network of wells. But the dry summer made it hard to fill the tank. ...

... Although Well No. 6 is not chlorinated, several previous tests, including one in June, showed that its water met state standards..."

Source: <https://www.nytimes.com/1999/09/20/nyregion/deadly-germ-taints-tradition-e-coli-devastates-families-leaves-fair-doubt.html>

Please communicate these concerns to the Planning and Zoning Boards.

Sincerely,
Mary Colvard

To: Planning Board, Nottingham NH

Re: Case 21-008-VA

Re: Permit to allow a Zoning variance for Watercross events with incidental camping (i.e. "commercial use") three weekends per year.

Dear Planning Board,

In the June 15th 2021 meeting the Zoning Board approved the Zoning Variance as listed above. We respectfully disagree with this decision and wish to let the Planning Board know that as residents, taxpayers and concerned citizens that we strongly object to the passage of this variance. We further contend that the applicant has presented not a single shred of evidence to support their claim that this event will not cause environmental damage.

Kelly LaPointe	212 Raymond Rd Apt 3,
Grace LaPointe	212 Raymond Rd Apt 3,
Carol Reed	212 Raymond Rd Apt 2
Kathie Morris	212 Raymond Rd
Gary Leblanc	212 Raymond Road Unit #1
Gina Rayeski	212 Raymond Rd. Apt 1, Nottingham
Keith Rayeski	212 Raymond Rd. Apt. 1, Nottingham
Mary Colvard	14 Indian Run, Nottingham
John Bartsch	14 Indian Run, Nottingham
Michael St. Laurent	12 Indian Run, Nottingham
Linda St. Laurent	12 Indian Run, Nottingham
Sandra Koski	40 Old Chester Road, Derry, NH
Mark Lefebvre	18 Indian Run, Nottingham
Michelle Lefebvre	18 Indian Run, Nottingham
Pam Kelly	35 Sachs Rd, Nottingham
Jim Kelly	35 Sachs Rd, Nottingham
Richard Wheeler	212 Raymond Rd Apt 3,
Lauren Chaurette	21 Brustle Road, Nottingham
Carl Mun	111 Nottingham Rd, Raymond
Julie McLean	111 Nottingham Rd, Raymond
Joyce Dales	85 Lakeview dr
Karyn Quinn	26 Tuckaway Shores Rd.
Ty Quinn	26 Tuckaway Shores Rd.
Janine Dunphy	
Barry Dunphy	
Cindy and Thomas Coffey	16 Brustle Rd, Nottingham

Summary:

We believe that the Zoning board acted unreasonably and unlawfully, and furthermore violated procedural standards that influenced the board's decision.

We strongly urge the Planning Board to vote against accepting this event on this extremely sensitive piece of property.

Here are the issues.

For every commercial variance that has ever come before the town's board, they have had a duty to present evidence that their request will not adversely affect their neighbor's ground water.

An applicant cannot simply say. "Oh my neighbor has a 3 bedroom septic, so I should be able to have one." No, they have to prove with a specific test, by a certified Soil engineer that they will not adversely affect their neighbor's water supply.

From the simple two bedroom home to the most complicated subdivisions, experts have dug test pits, Hydrologists have done studies, and soil engineers have been involved. While we understand that this particular event is different from those standard applications, it does not in any way excuse them from their duty.

This is especially important and required when doing anything within the Aquifer District. The Aquifer District requires that something as simple as a three home subdivision requires a Hydrogeologic Study (See section 5.) As citizens and residents we are extremely concerned that for an event of this magnitude, not a single study or expert or analysis has been presented.

Burden of Proof:

The burden of proof rests with the property owner seeking an equitable waiver according to the State of NH Zoning Variance laws.

This "Burden of Proof" applies to every variance. We further state that under the State of NH zoning variance laws that the burden of proof for the applicant to show that no adverse effects to the ground water have not been provided in any respect, and to anyone's satisfaction.

NO SIZE RESTRAINTS

For every subdivision, or home, or commercial enterprise, what is presented and approved contain the basic facts and restraints on the property.

- One does not submit an application for a subdivision and not list the number of lots?
- One does not submit an application for a home septic system and not state the number of bedrooms.

Yet, that is exactly what this variance that passed the Zoning Board is missing.

This is a blank slate.

Nothing in the Variance presents any limits whatsoever.

- Number of spectators
- Duration of event
- Number of cars
- Number of competitors
- Number of heats
- Start and finish time

A similar event in Epping/Freemont has 2000 spectators and hundreds of competitors. And it lasts well into the night.

There is nothing in the current variance to stop this applicant from having three huge events. For this fact alone, this application should be denied.

Pollution Concerns:

Have we not learned any lessons about pollution from our use of DDT, leaded gas, Asbestos, MTBE, Round Up, Arsenic, Benzene, Beryllium, Vinyl chloride, even Talcum powder and lead sinkers.

The Nottingham Planning board presented to the town its guiding Goals in the Master Plan and Zoning Ordinances.

“To maintain these qualities for our community now and in the future, Nottingham will strive to:

Number 4: Protect Nottingham’s natural environment and rural landscape that provides open space and wildlife habitat, and preserves clean water through well-managed growth that directs **development away from sensitive resource areas.** “

The Planning board made more stringent rules to follow regarding the Aquifer District.

Town of Nottingham: Aquifer Protection District

Roads: Raymond Road - Rivers: Pawtuckaway River

1. Authority: The Aquifer Protection District is an Innovative Land Use Control adopted pursuant to RSA 674:21, I (j)
2. Purpose

The intent of this Ordinance is to provide for the protection of the water resources from contamination by polluting, hazardous or toxic materials. The objectives for establishing an Aquifer Protection District are:

- a) To protect the public health and general welfare of the citizens of Nottingham and adjacent

affected towns.

- b) **To prevent development and land use practices that would contaminate or reduce the recharge of the identified aquifers; including primary and secondary recharge areas.**
- c) To provide for future growth and development of the Town, in accordance with the Master Plan, by insuring the future availability of adequate public and private water supplies.

Question to the Planning Board

How will this town approve a site plan that is direct contradiction to these ordinances?

Will there be a means to measure, monitor and mitigate the cumulative effect of gas and oil from these multiple weekends? Isn't it the duty of the Planning Board to raise these concerns?

How does one get around the specific rule of 4C Section 2 in the Aquifer Zone?

Clearly, this application is for a new event, it has nothing to do with their existing gravel business. There will be a hundred or more gas tanks with toxic materials stored. A hundred competitors will be trying to pour gas out from a 5 gallon dispenser into a tiny 1 gallon tank. All on the most porous soil you can imagine, all just a few feet above the water table.

*Prohibited Uses - The following uses are prohibited in the Aquifer Protection Zone except where permitted to continue as non-conforming uses. **Prohibited uses** shall include, but not be limited to:*

(2) On-site disposal, storage, processing or recycling of toxic or hazardous materials or wastes.

Clearly, this event violates that section of the Zoning ordinance.

CUMULATIVE EFFECT:

The issue for water pollution is the long term **cumulative effect**. That is why the zoning ordinances in Nottingham specifically limits and bans any new commercial development in sensitive areas. This event is in direct contradiction to this ordinance. This event is in complete contradiction to the Master plan, and the zoning ordinance for non-conforming businesses in the Aquifer zone. In particular, this area is particularly unique and sensitive as the soil content is extremely porous.

The property under review may be one of the most sensitive in all of Nottingham.

The pond sits a short 75 feet away from the protected Pawtuckaway river.

Here are the relevant factors:

First, the man made pond has natural springs in it, as so described by the owners in the site walk. This fact makes it clear that this area has a high water table.

Second: The pond is surrounded by acres of sand and very porous gravel. This land is one huge sponge. Whatever goes into this sand goes directly into the water table.

Third: Pollution from the proposed event comes in many forms.

- Hundreds of cars which will leak gas, oil, transmission fluid and radiator fluid.

- A hundred or more competitors who refill the tanks on their machines multiple times who may spill some gas and oil mixture.
- Gas and oil discharge from the exhaust of the machines, of which we estimate over 50 gallons per weekend. (if 100 competitors using 2.5 gallons each)
- The snowmobiles operate on **the land** as well as the water. They warm up on that porous soil. They start and finish on that porous soil. All of the contaminants they spew out go into the soil and atmosphere.
- This gas plume does not simply disappear into the air. This plume of small particles of gas and cancer causing ingredients settle onto the surrounding porous sand where they are absorbed into the ground and go directly into the water table.

Facts about Water Pollution

- A gallon of paint or a quart of motor oil can seep into the earth and pollute 250,000 gallons of drinking water.
- A spilled gallon of gasoline can pollute 750,000 gallons of water.

(<https://www.usbr.gov/mp/arwec/water-facts-ww-water-sup.html>)

Not a single expert on ground water contamination gave advice to the Zoning Board.
No Hydrologist were called or presented.

What arguments will the Planning Board accept regarding pollution?

We dispute in their entirety the arguments made before the Zoning Board regarding pollution.

A) The Fish and Game approved their event so it must be ok.

The Fish and Game Department does not monitor ground water contamination.
What does the Fish and Game Department do?

As the guardian of the state's fish, wildlife, and marine resources, the New Hampshire Fish and Game Department works in partnership with the public to:

- *Conserve, manage and protect these resources and their habitats;*
- *Inform and educate the public about these resources;*
- *Provide the public with opportunities to use and appreciate these resources.*

B) "Pollution by two stroke engines is allowed on Pawtuckaway lake, therefore it should be ok on a small pond.

The applicant's argument has no merit and is a rationalization.

Example: We contend that there were at least 100 snow machines on a 5-6 acre pond.

Fact: Pawtuckaway Lake is almost 1000 acres or about 200 times bigger.

For their argument of "Apples to Oranges" to be accurate, an event like this would need to be 200 times bigger if held on Pawtuckaway Pond.

An event 200 times bigger would suggest that there are 20,000 two stroke engines on Lake Pawtuckaway. (200 times larger size times 100 competitors.)

No one would ever condone 20,000 two stroke two stroke engines on Pawtuckaway Lake.

Question to the Planning Board:

Shouldn't this board and all official boards require the applicant to provide an expert witness regarding water pollution? Should we not be safe and have a hydrogeologic study as recommended by our zoning laws?

If these events continue for year after year, what is the cumulative effect of the gas and oil discharged? Gas can poison wells and make property unusable. Who will pay the abutters when their wells are polluted?

Size Issues:

The town of Epping and Freemont have a similar event. It attracts 2,000 spectators and hundreds of competitors. What is to prevent this applicant from holding much larger events?

The applicant failed to provide to the board a number for how many heats would be held or how many competitors. The answer was vague at best. "5 – 10, maybe 100"

The Zoning Board failed to set a limit to the number of competitors, number of heats, number of cars, or number of spectators.

Will the Planning board set limits for this event?

Shouldn't these limits reflect the current zoning for small business?

Events could have 10 competitors and 100 spectators?

Air Pollution:

What are the air pollution affects? Should large numbers of people be inhaling a known carcinogen, Benzene that is prevalent in gasoline?

According to the EPA, for every hour a snowmobile operates, it creates 1,050 hours of air pollution. Assuming these machines use 2.5 gallons of gas, and assuming that they run for about an hour with warmups and testing and competition, then as much as 100,500 hours of air pollution will be expelled into our clear air on three weekends. With the crisis looming of Climate Change is this a reasonable thing? Should we subject unsuspecting residents to carcinogens like Benzene for hours on end?

Two-stroke engines emit many carcinogens and pose a danger to human health (Eriksson et al. 2003, Reimann et al. 2009). Two-stroke engines emit dangerous levels of airborne toxins including nitrogen

oxides, carbon monoxide, ozone, aldehydes, butadiene, benzenes, and extremely persistent polycyclic aromatic hydrocarbons (PAH). Several of these compounds are listed as "known" or "probable" human carcinogens by the EPA. Benzene, for instance, is a "known" human carcinogen and several aldehydes including butadiene are classified as "probable human carcinogens." All are believed to cause deleterious health effects in humans and animals well short of fatal doses (EPA 1993).

Understanding the facts about two stroke snowmobiles

Each rider of a snowmobile may burn up to three gallons of gas in a weekend of races. Of that gas and oil mixture, depending on the machine 15% to 30% is discharged into the air and the water. Where does this gas and oil go? Droplets of the gas in the air don't simply disappear. They settle on the sand surrounding the pond and then enter the groundwater.

For 100 riders that use 2.5 gallons each, about 50+ gallons of gas and oil are released in the air, on the pond and in the porous gravel. The pond has 10-15 acres of porous sand surrounding it. This setting is completely different from Pawtuckaway Lake. The gas in the soil does not biodegrade, it works its way into the groundwater. This is an issue that is documented at many gas station sites. Should a variance be passed where 150 gallons of gas and oil are discharged on a sensitive piece of property? What are the environmental impacts of hundreds of cars leaking gas and oil?

We urge this board to take a strong stance against this event which clearly is in a sensitive area and clearly presents a potential danger to the water table. One which not a single test, or expert has come forward to show reliable information that does not dispute the claims above.



Joanna Arendarczyk

From: kay oftheshire <nhksequeira@yahoo.com>
Sent: Thursday, July 15, 2021 2:07 AM
To: Joanna Arendarczyk
Subject: Watercross

Follow Up Flag: Follow up
Flag Status: Flagged

My name is Karen Sequeira I live at 32 Mccrillis rd. I am in favor of continuing water cross. I moved to Nottingham roughly 20 years ago to live in a small community were people are free to enjoy life the way they like not to conform to everyone's complaints. What is happening to our town? I think water cross should continue and be a part of our community. If water cross goes then the Lee race way should go too. My family calls these "noises " the sound of summer. Should we ban motor cycles too?

[Sent from Yahoo Mail on Android](#)

To: Planning Board

Nottingham NH

Re: Case 21-008-VA

Re: Permit to allow a Zoning variance for Watercross events with incidental camping (i.e. "commercial use") three weekends per year.

Dear Planning Board,

In the June 15th 2021 meeting the Zoning Board approved the Zoning Variance as listed above. We respectfully disagree with this decision wish to let the Planning Board that as residents, taxpayers and concerned citizens that we strongly object to the passage of this variance.

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Jim Kelly	35 Sachs Rd, Nottingham
Richard Wheeler	212 Raymond Rd Apt 3,
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Julie McLean	111 Nottingham Rd, Raymond
Joyce Dales	85 Lakeview dr
Karyn Quinn	26 Tuckaway Shores Rd.
Ty Quinn	26 Tuckaway Shores Rd.
Janine Dunphy	
Barry Dunphy	
Cindy and Thomas Coffey	16 Brustle Rd, Nottingham

Summary:

We believe that the board acted unreasonably and unlawfully, and furthermore violated procedural standards that influenced the board's decision.

Unlawful Meeting:

- 1) On Friday, June 11th the Governor of NH ended the State of Emergency order. At that point the Town of Nottingham did not have the legal right to conduct a Zoning Variance meeting by Zoom.

Procedural Issues:

- 1) The letter from the applicant's attorney was not placed on the web site for review before the meeting. The 10 day rule that allows the opposition to view documents and prepare a rebuttal was a procedural violation and unduly influenced the board, as no rebuttal was able to be prepared in advance for an opposing view.

We also strongly object to the inclusion of sound testing evidence- also produced at last minute.

2) Issues relating to the sound testing evidence.

- A) No listing of the device type, brand or qualification or calibration listed
- B) Devices that were side by side had widely ranging results
- C) Testing was for a very limited duration
- D) Testing did not include frequency or pitch or duration
- E) Testing on Indian Run was done far in the wood and not near the water
- F) No independent verification on the 5 snowmobiles:
 - What brand/ model
 - Stock 600, Stock 800, Modified 600, Modified 800, Super Modified
- G) Different machines can vary widely with respect to noise levels.

This testing was done by two very biased individuals who have every reason to downplay the effects of the noise. The sound test was amateur and wrongfully conducted –

3) The board did not get a firm answer regarding the number of heats or competitors. The board failed to list a specific limit on the number of participants or spectators.

4) The board failed to provide any reasons for its decision. They stated no facts supporting their decision.

Unreasonable Decisions:

Nuisance Noise.

The board heard many arguments about what constitutes nuisance noise. However, they failed to reach the correct decision, primarily because they did not use any set government standard. In doing so, they unjustly, unreasonably and unlawfully rendered the wrong decision.

The standard for nuisance noise is 55 DB by the EPA, (report attached). The standard for nuisance noise is 50 DB according to the WHO, World Health Organization. The limited and amateur testing by the applicants at the homes adjacent to the property did show the values to be well above the EPA standard. Other criteria by the EPA suggest that random intermittent noise and high pitched noise present themselves as being more of a nuisance.

The Zoning in the Nottingham Master plan clearly states that no business, conforming or non-conforming, nor any activities can produce nuisance noise beyond their boundary, or beyond a public road.

We submit to the board that the actual noises emit levels of noise far greater than the EPA limits and that is in direct violation of the Towns Zoning ordinances. Further that the presence of this nuisance is in direct violation of the several criteria for granting a variance.

Unlawful Issues:

The board lacked any legal or evidentiary basis for their conclusion that the permit should be approved.

We submit the following argument:

This is not an exceptional instance of a property owner being denied the use of their property. They have reasonable usage of their property which includes a very nice residence, fully operational gravel pit and an accessory apartment. This is a matter of convenience that they will be allowed to make more money on a property that they already have a reasonable use of.

the "authority granted to [an] owner to use his property in a manner forbidden by zoning regulations." (Internal quotation marks omitted.) *Reid v. Zoning Board of Appeals*, [235 Conn. 850, 857, 670 A.2d 1271](#) (1996). Our Supreme Court has cautioned that "the power to grant variances from the strict application of zoning ordinances should be carefully and sparingly exercised. . . . The power to authorize a variance is only granted for relief in specific and exceptional instances." (Citations omitted; internal quotation marks omitted.) *Pleasant View Farms Development, Inc. v. Zoning Board of Appeals*, [218 Conn. 265, 270-71, 588 A.2d 1372](#) (1991); see also *Jaser v. Zoning Board of Appeals*, [43 Conn. App. 545, 548, 684 A.2d 735](#) (1996).

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The board has unlawfully and unreasonably approved this variance as it has disregarded the intent and purpose of its own towns master plan and is contrary to multiple Supreme Court decisions. The arguments for each criteria are described below.

Zoning Variance Criteria # 1

This variance is contrary to the public interest

The public interest is defined by the Supreme Court as the spirit and the objectives outlined in the Towns Master Plan and towns zoning ordinances.

It violates to a marked degree the spirit and objectives of the zoning ordinance.

This event is completely different from any and all commercial activities in the area. It is completely inconsistent with the homes and businesses in the area.

Town Master Plan.

Nottingham will be a desirable place to live and work by retaining its rural landscape, historic villages and values of community. Nottingham will also preserve its rural **character through preservation of its natural resources** as well as its cultural and architectural heritage for current and future generations.

Nottingham will be a vibrant and diverse community by promoting social, cultural, and recreational opportunities for all age groups. Nottingham will maintain the high quality of community facilities and services at a reasonable cost. Nottingham will provide opportunities for **small-scale businesses** and agricultural enterprises that are consistent with our rural landscape and community.

The following definitions describe the characteristics associated with use of these words—rural character, village and sustainable community.

Rural Character—A community with some or all of the following characteristics:

- Open farm fields; farm buildings/barns
- Unfragmented forests • Stone walls • Tree-lined, scenic roadways
- Dark Skies • Slopes and hilly terrain • Ponds, streams and **waterways of high water** quality for fishing and boating • Small, historic villages and crossroads • Historic homes in the New England vernacular

Sustainable Community—A community that:

- Engages in stewardship of natural resources—farmlands, forests, water and wildlife.
- Provides opportunity for economic well being.
- Fosters opportunity for inter- and intra-generational social interaction and fulfillment.

Guiding Goals to maintain these qualities for our community now and in the future, Nottingham will strive to:

1. Preserve the town's rural, small town character by promoting **patterns of development that respect and reinforce the natural landscape** and the traditional New England style of its villages.
2. Provide opportunity for small business activity that is consistent with the rural and village qualities that the town values.

3. Provide a variety of transportation modes that meet the full range of our citizen's needs with well-maintained public roadways while encouraging opportunities for pedestrians, bicyclists and recreational users.

4. **Protect Nottingham's natural environment and rural landscape that provides open space and wildlife habitat, and preserves clean water through well-managed growth that directs development away from sensitive resource areas.**

5. Provide housing choice opportunity for age and income diversity.

6. Support, in a cost effective manner, quality municipal services and facilities.

7. Encourage and support recreational opportunities for all ages.

8. Foster a community that retains its rural qualities and values the long-term sustainability of our social, economic and natural resources.

9. Preserve and protect Nottingham's historic resources.

END Master Plan

Argument:

This is a residential and agricultural neighborhood – as well as a vacation area neighborhood. We disagree strongly with the attorney who stated that because there are other commercial activities that this event would not be foreign to this district.

This event is completely different from any and all commercial activities in the area. It is completely inconsistent with the homes and businesses in the area.

The inclusion of yard sales does not change the district from residential to commercial. That assertion is clearly false.

This is a residential and agricultural district period.

This event will alter the essential character of the neighborhood.

This event will forever negatively affect residents and lake front owners.

With Noise pollution. Air Pollution, Water pollution and a devaluation of property

The Zoning ordinances allow for very small home-based businesses.

These businesses attract very few people, very little traffic and make very little if any noise.

This commercial business is the exact opposite.

No other commercial businesses are allowed – except if grandfathered in.

Zoning Variance Criteria

2 The spirit of the Ordinance is observed

Section G of the General Provisions of the Zoning in Nottingham is very specific about the use of property in the Residential and Agricultural district. (1)

“The purpose of Zoning in this district is to prevent adverse impacts of activities associated with home occupations.” The same intent applies to grandfathered businesses,
The Spirit of the Ordinance for non-conforming businesses on the Aquifer was also violated.

The spirit of the ordinance leaves no room for confusion. This is an event or activity that adversely impacts 150 homes during the best months of the year.

Any event with thousands of people is in no way compatible or consistent with the intent of the Master Plan for this area. Haphazard camping is also not compatible with or incidental to Home Business as defined by the Zoning.

Restricting this property from having a race track is a necessary purpose of this ordinance as it clearly violates the spirit of the ordinance. If property owners can have large loud noisy events that disturb their neighbors, poison the air, soil and water and reduce property values, the purpose of the ordinance and the spirit of the ordinance will be diminished. The neighborhood will be changed substantially in a negative way.

Variance Criteria:

3) Substantial Justice will be done.

This variance fails in section A and C of the criteria.

The general public will be harmed by the nuisance noise and the threat of water pollution to the groundwater and their wells.

The present use of this area is homes, farms and small businesses that have at most 1 employee. This event with 700 spectators, an announcer with a loud PS system, Ambulance, Police, camping, a food truck, judges and timers and other multiple workers is complete inconsistent with the surrounding area.

- A) Substantial justice is done if granting the variance would not cause a harm to the general public that outweighs the benefit to the property owner.
- B) If the proposed use would provide incidental public benefits, that may be considered as well.
- C) Granting a variance may also achieve substantial justice if the proposed use is consistent with the present use of the surrounding area.

~ ~ ~ ~ ~

- A) Significant harm will come to the general public most specifically the abutters on Raymond road and to the lake front properties.
 - Property Value Reduction (See diminished value letter)
 - Nuisance for three weekends – during important vacation months

- Reduced usage or property by lake front owners.
- Potential pollution to ground water.
- Reduced tax revenue for the town

The benefit to the property owner is minimal. They will earn some extra money, above and beyond what they earn with their gravel business. The cost to the community far outweighs the benefit to the property owner. The incidental benefits to the community are very small.

B) The incidental public benefits to the community are very small.

- Economic: There are few if any lodging business in Nottingham, and few if any restaurants. 99% of the economic benefit will go to Raymond, with all the costs born by Nottingham residents.
- There are many other racing events that are within an easy drive of Nottingham. The ability to see racing events is still an option for any one in town with only a minor inconvenience.

C) The proposed use would not be contrary to the spirit of the ordinance. And contrary to the spirit of the towns master plan.

The new use is not at all consistent with the residential nature of the neighborhood. This is a race track, a drag way. This property is surrounded by single family homes and condos. There are no other businesses in the adjacent area. There is no place in the town where this use is consistent.

The zoning for residential currently prohibits Auto repair shops and anything related to a noisy business nature. An argument has been made that since the property already has a noisy Gravel pit, that a different noisy business should be allowed. This is an illogical argument and a rationalization.

Example: You live on a dead end street that is somewhat busy as it has 100 homes on it. A developer wants to put 20 houses at the end of the street, but this opens up the road to be a cut through for everyone in town. Someone states, there are already 100 cars on this road daily, you are used to the traffic, therefore we should open up the road to make more traffic. This reasoning is simply a rationalization that since you are used to one bad thing . . . you should adjust to more of a bad thing.

Is the proposed use a consistent one?

- For any other event or business in town, is the noise so loud that you can hear it in your home with the windows closed?
- For any other event or home business in town – do they have 700 people at one time?
- For any other event or home business in town would you suggest people to leave their homes if they don't like it.

Granting the variance would do substantial **in justice**.

The granting of the variance would do an injustice to the residents surrounding the property.

They already enjoy an exception to operate a noisy business, one that pollutes on environmentally sensitive land. Is that not enough? There is no case for the property owner to seek justice. No injustice for them exists. They can operate the non-conforming gravel pit and earn a living. They can enjoy living on their property. They can enjoy improving the property within the current zoning limits. They can rent their apartment. They can seek to develop the property on a beautiful small lake.

On the other hand, Why should residents put up with this nuisance and have a reduction in their quality of life and a reduction in their property values.

Variance Criteria #4

No diminution in value of surrounding properties would occur;

Quote from the former Appraisal Institute President:

"I've seen situations where living near a known nuisance can lower property values by as much as five to ten percent," said former Appraisal Institute president Richard Borges.

Yes, according to the Appraisal Institute, a "Bad Neighbor" that included one who makes nuisance noise can reduce property values by up to 10% - See PDF attached

(<https://www.appraisalinstitute.org/bad-neighbors-can-reduce-property-values-appraisal-institute-warns/>)

The criteria is very clear - No diminution in value

So even if the abutters on Raymond Road are the only properties that have a diminished value, then this variance should not be allowed..

Granting the variance would diminish the value of the abutting properties as well as the lake front properties. Lake front properties are taxed according to the value of their lake front property. Any diminishing of this enjoyment of the property diminishes the value of the lakefront residence or vacation home. Additionally, all appraisers consider and take into account noise factors when making an evaluation of a property.

A race track for three weekends of a year that is just down the street will be a factor in anyone's price consideration for purchasing a property. The contention that this is "Just three weekends" will most certainly cause concern for potential buyers. The analysis that three weekends will not cause issues is inaccurate and misleading.

The applicant argues the following

- A) That it is "only" three weekends of the year.
 - B) That the berm somehow mitigates the noise as a natural barrier
 - C) That the large parcel of land is a factor
 - D) That neighbors are already used to inherent excavation noise.
 - E) That the noise is not enough of a nuisance to bother anyone.
-
- A) The events now proposed are three very nice weekends in the year. There are a limited number of good weekends to enjoy the lake. From late May to September. The event takes away three weekends out of

- 15 which equates to 20%. The event producer with no thought or concern for the lake residents moved his May event to the third weekend in August – a key vacation weekend.
- B) The Berm does little or nothing to attenuate the noise. The Lawyer who stated it did has no first-hand knowledge of the noise level and the event producers have never produced any specific data regarding the noise level from any location.
 - C) The large land factor is not a factor as the event itself is quite close to the road.
 - D) Yes, the neighbors may be used to the excavation noise, however you will not find a single noise complaint relating to the Gravel pit from lake homeowners. AND you have abutters that say the noise from the event is 10 times worse than the gravel pit noise.
 - E) Many lake residents and abutters will speak to this point. This noise for some is just a small nuisance, but to others it is a major nuisance. One comment was that if the noise bothers you – “Just Leave For the DAY.” So is it reasonable to ask residents on the lake who pay \$10,000 a year in taxes – to leave for the day? To leave for 7 and a half days?
 - F) Some property owners on the lake only get to use their property one or two weeks of the year. Is it fair and reasonable for an event like this to disturb you for your only opportunity to use your camp?

How loud is the noise from Pawtuckawy Lake?

Owing to the circumstances of the proximity of the property, the argument from the lawyer does not take into account the factors relating to noise over water.

From our property on Indian Run we can hear the startup of the machines. Then the actual announcer speaking and then we can hear the race itself. The noise is bothersome for a whole Friday afternoon, ALL day Saturday, and ALL day Sunday.

How far away does the noise travel?

We have a camper from Pawtuckaway that complained about the noise.
The events are a short 4 tenths of a mile from the lake.

There is a valid concern that these events will diminish the enjoyment of lake front properties. The board should be very careful about this issue.

If I had a potential buyer of my camp visit on any of the event weekends – they would see this as a disturbance which would reduce their estimated value of the property. Yes, the noise IS LOUD ENOUGH for many people to not want to put up with it. Yes, many people, in considering to buy a camp, would look elsewhere. This attrition of buyers would reduce the number of potential buyers and negatively affect the sales price.

Yes, property values would diminish to the immediate neighbors on Raymond Road and just as importantly to the lake front owners. The noise factor would certainly be a nuisance that would inhibit the rights of the lake property owners to enjoy peace and quiet on the lake.

How does the town value Lake Front property?

Additionally, the town of Nottingham has just adopted a new tax basis to figure a way to equitably charge lot owners by the amount of frontage and the quality of the frontage. (1)

“For waterfront, private access to the water is the most valuable, but even that may be adjusted for size, topography, usefulness of the waterfront, as well as depth in some areas.”

So the town has in essence found a way to tax our ability to enjoy (our usefulness) of the property, based on our lake front property and water frontage. The better your waterfront, the better your beach, the longer your shore frontage, the more you can sell your property for and the higher are your taxes. The converse is true also.

If you cannot enjoy the property for 3 weekends in the summer months, if you cannot sell our property for as much money, then you have the rights to apply for a tax abatement.

How many properties are we talking about?

Properties all the way from Sachs Road, Jampsa, Moors, Lamprey, Indian Run, Tuckaway Shores Rd and more. These are in the same geographic area of the lake where the sound will be prominent. For lake front properties that would be affected by the noise, you can count at least 100 camps or summer homes. With camps ranging in value from 400K to 800K what would a small 5% reduction in value be?

100 camps \$500K average = \$50 Million in property Value
Taxes = \$18.76 per thousand
Taxes paid by Lake front property = \$938,000
5% reduction = \$46,900

It is reasonable to assume that your vacation lake front property value will go down by 5% if you cannot reasonably enjoy it for three summer or early fall weekends? That is a conservative estimate.

There would also be a larger percentage basis for those homes directly abutting the property. This tax loss would raise all the other property taxes in town.

Estimate

25 properties - Average valuation: \$300,000 = 7.5 million
Taxes = 5400 per home.
Reduction 10% in value
Loss of tax revenue: \$540 per home = \$13,500

So by allowing this event, the town stands to lose \$60,000 a year in taxes.

Who would pay for the reduction in taxes?

Everyone else in town that pays taxes will pay more and make up the difference.

1) Valuation of waterfront by Avitar

Avitar 2020 Evaluation of the Town of Nottingham
April 1, 2020
Cyclical Re Evaluation

F. Basic Mass Appraisal Process While the supervisor is analyzing and developing neighborhoods and local values, building data collectors, approved by New Hampshire Department of Revenue Administration (NH DRA) are going parcel by parcel, door to door measuring all buildings and attempting to complete an interior inspection of each principal building to collect the needed physical data, age and condition of the building. With the land values developed, we now review improved sales, sales that have been developed and improved with buildings or other features, such as well and septic. By deducting the base land value previously established, adjusted by the neighborhood and topography, as well as any other features, such as sheds and barns, a building residual value is estimated. After adjusting for grade and condition, we divide by the effective area of each building to arrive at an indicated square foot cost. This may then be compared to a cost manual, like Marshall & Swift and/or local contractor information to determine if this established square foot cost is reasonable. The effective area of a building is computed by considering all areas of all floors and additions of the building and then adjusting each area by its relative cost. If living space is estimated to be \$98.00/SF, the basement area of the house is not worth \$98.00/SF, but rather some predictable fraction. As such, each section of the building has an actual area and an effective area which is the actual area times a cost adjustment factor. Each assessment property record card shows the actual area, cost factor and effective area of each section/floor of the building. The cost factor adjustments are consistent through the town.

This is where, using all the previous cost data developed, we begin to extract the value of views and waterfront in the community. Both vary greatly due to personal likes and dislikes of the market, but both have general features that the market clearly values.

For waterfront, private access to the water is the most valuable, but even that may be adjusted for size, topography, usefulness of the waterfront, as well as depth in some areas.

The challenge here is to develop a base value for the average or most common waterfront site and then grade each site in relation to the average based on available sales data. If lacking specific sales data, the search may be expanded to include other bodies of water in other towns. Views are a bit more difficult, as they vary widely as does the value that the market places on them. However, the process is much the same.

Using sales, we extract a range of value the market places on different views by first accounting for the basic land value and improvements.

What value remains is attributed to the view. Views are classified by type, subject matter, closeup versus distant and width of the view. The adjustments for the influence of view are then systematically applied to all other properties in town with views. Also, a view picture catalog is prepared to show the various views. Once the cost tables are developed, they are used to calculate all values across the municipality. Then the job supervisor and assistant do a parcel by parcel field review to compare what is on each assessment card to what they see in the field and make adjustments to ensure quality an

Criteria: Unnecessary Hardship

5 Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

There are many issues with the applicants argument

First: The property is not that unique or special

Second: There is no hardship – as they already have reasonable use.

Third: We argue that applying for one specific use is a misconception of the function of a variance. A Variance cannot be granted to use the land for one particular purpose. – See No 78-232

119 N.H. 292 (1979) EDWARD OUIMETTE v. CITY OF SOMERSWORTH AND AGWAY PETROLEUM CORP.

No. 78-232. Supreme Court of New Hampshire. May 9, 1979.

The hardship alleged by the defendants is that Agway cannot expand its business if barred from moving to this lot because of the zoning ordinance. Reliance on these factors to support a variance reflects a fundamental misconception of the function of a variance in a comprehensive zoning scheme. Agway's inability to move cannot support a variance from a comprehensive 295*295 zoning scheme. The inability to use land for one particular purpose is irrelevant to whether a variance should be granted.

The applicant's arguments are made as follows:

- 3 The property is Large
- 4 No other property has a pond and gravel pit
- 5 The property has a gravel pit.
- 6 No other properties can support a large event.
- 7 The pre-existing gravel pit already makes noise, thus it's a commercial-like use
- 8 Watercross events would not be possible on other properties in the area.
- 9 The property is uniquely suited for such events – no other sites.
- 10 The applicant wants "only" three weekends of the year.

However the applicant argues, the law and Master Plan and Zoning ordinances very clearly demonstrate the opposite conclusion. The applicant neglects to point out many important aspects of the property which are important to the discussion. There is no unnecessary hardship, just the normal hardship that every other resident lives with due to the zoning regulations.

The applicant has failed to demonstrate that the restriction in the zoning ordinance imposed more of a burden on their subject property than on other properties. That is – there are many large lots in Nottingham and many with ponds. ALL of them have the same burden. Additionally we contest the statement that there is ANY burden on the property as it now stands as it has a fully functioning gravel pit that is already a non-conforming business grandfathered in, and a highly valued residence.

Additionally, these events that will be made permanent by this variance will adversely affect the neighborhood, and a wide area within at least a mile of the events. We will be known as that part of the Lake with those dam races. This property with the proposed variance is only 4 tenths of a mile from the Lake. Within a 1 mile radius on the lake you have residents who pay a million dollars in property taxes. The noise disturbance is a significant nuisance which will cause a devaluation in property values. The

variance will result in lost tax revenue for the town, will result in property owners being forced to go away for long weekends to avoid the noise, and will cause physical distress for those that stay. Residents will forgo having family and friends over, due to the nuisance. All of these things will occur so that a non-resident, non-tax payer can make a profit out of polluting the air, water and soil, at an event that can damage hearing and discharges carcinogenic gases.

Is this property really that special?

The applicant has failed to demonstrate the "special conditions" of the land that distinguished it from other properties, so that the restriction in the zoning ordinance imposed more of a burden on the subject property than on other properties.

Point 1: The property is large, 88 acres, 63 in lot 10, plus the 25 acres of Lot 8.
This statement misleads the argument.

When reviewing the property you will notice it is shaped like a twisted kite. The tail end of the kite is the right-of-way leading out to Raymond Road. These lots (8 & 10) are both "Back Lots." The pond and area where the event takes place is at the narrow bottom section of the kite shape. The area used for the event is as close to the road as possible.

One would be led to believe that this event is in the middle of a huge 88 acre lot. It is not by any means or fashion. The beach part of the pond where the event takes place is a short distance, approximately 369 feet from the road. The statement of the applicant would lead you to believe that a substantially large section of the lot is being used for the event. In fact, we estimate that maybe 10 -12 acres of the lot which is close to the road is being used. This is a far cry from the 88 acres suggested and more in line with many lots in Nottingham.

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**Point 2) No other property has a pond and a gravel pit.**

Granted it is a gravel pit, however events like this happen in other towns in the state on other ponds that are not gravel pits. There are many water crossings. Not all of them are on gravel pits.

Granted the gravel pit is different and unique from its immediate neighbors, but that alone does not qualify it to meet the all the criteria of unnecessary hardship. There are many mitigating factors. Neither does the fact that just because a Gravel Pit has been grandfathered in does not make the property part of a commercial (like) zone. In fact just the opposite is true. Efforts should be made to contain the business that exists not expand it to a MORE commercial like zone. That is the intent of the Master Plan, and that is what is specifically outlined in the scope of the zoning ordinance.

The property has a pond. How many other properties have a pond? Too many to count. How many towns have gravel pits with ponds? Almost every town. Does the property owner disclose that this pond in fact is used in the production of its gravel as a sieve? That this pond already has a business purpose? Does the property owner suggest that if this variance is not approved, that they could not put a six unit condo complex overlooking a spectacular private pond with a beach and they could not sell those properties at a substantial financial gain?



The applicant states: "Watercross events would simply not be possible on other properties in the area." That is not true as mentioned above and – if this particular series of events don't happen, so what? The operator states he has nine other events planned in other towns. To say that if this event does not happen in Nottingham, then somehow race fans will be left out is not true. There are many race venues within easy driving distance of Nottingham in Epping and Lee most notably and Freemont. This would be a minor inconvenience for race fans.

But the statement opens up the question about the history and use of the gravel pit. The Gravel pit is in full operation. In fact, the Nottingham Gravel Pit has been grandfathered as a business for at least 41 years since the adoption of Zoning in March of 1980.

So for 41 years or four decades the Gravel pit has enjoyed this status of a non-conforming business on a non-conforming back lot. They have conducted a commercial, somewhat noisy business that no other property in the residential area is allowed to conduct. They have made a profit by digging up sand and soil and selling it to the community. They have had more than "reasonable" use of the property for decades.

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What other benefits does the property have?

Both properties are in what is called "Current Use" for tax valuation. What this means – is that this property has a significantly reduced tax bill from the town of Nottingham. The reduced taxes for this property, who pays them? Everyone in town pays more for their taxes. Would it be fair for a company to receive reduced taxes so that they can have a race track on their property that nets half a million dollars? This goes against the ideals of open land and current use.

The applicant would make you believe that this land is special, it is ideally suited for large events - that can bring in up to half a million dollars in revenue. So if that case is to be made, then the town will certainly need to re-assess the property. The owners of the property will need to pay their fair share of taxes this year and every other year, including a large 10% penalty on the re-assessment.

41 Years or More – What changed?

Through the years the neighbors have put up with the noise and the smells and the large truck traffic. For 41 years, the use has been a reasonable one, without any other race-track business to support it. So all of a sudden, it's 2021 and the use is not reasonable? All of a sudden now after 41 years we are led to believe that the Zoning enforced on this lot makes for an unnecessary hardship? That suddenly the best and only reasonable use is a noisy, polluting series of races?

This claim is especially hard to justify considering the current real estate market. The Gravel pit being close to the Raymond line serves much of Nottingham, Raymond and Epping. In surveying the current building market for new homes and additions one will find that there is a huge boom in building going on in every town on the Seacoast. The Gravel Pit has a ready market for its products. The usage of the land as it stands now as a gravel pit could never be better. Is this a reasonable use of the property? There can be no doubt, it is. Is there an unnecessary hardship when the owner has full use of the land, for a very nice home, for a rental apartment AND a business that is booming and has been around for 41 years?

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**What type of lot is the subject property on?**

One aspect not mentioned in the variance request. This property is classified as a "Back Lot." That specifically means a lot of record that does not have the required road frontage specified in zoning.

The current lots in the variance request (#8 and #10) fall into a category called "Back Lots". By the ordinance they can have single family homes on them. However there are some restrictions as in Section U-B. Allowing a second business such as this variance requests violates both parts a) and b) of the ordinance.

**U Nonconformance**

1. Non-conforming uses

Any non-conforming use existing on the effective date of these ordinances may be continued indefinitely provided that such use shall not be:

- a) Expanded, enlarged, extended or moved to any other portion of the lot (except as provided for in Section 2 below).
- b) Changed to another non-conforming use.

The applicant has failed to demonstrate the "special conditions" of the land that distinguished it from other properties, so that the restriction in the zoning ordinance imposed more of a burden on the subject property than on other properties. Zoning prohibits any changes on back lots. The lots already enjoy a substantial reasonable use by any measure: A nice home, a thriving business, and a rental apartment.

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# The Relationship Test:

Legal criteria as defined by the State of NH Zoning laws.

- (1) there is no substantial relationship between the purpose of the ordinance and the specific application of the ordinance as applied to the property;

**What is the purpose of the Zoning Ordinance provision for this area?**

Section G of the General Provisions of the Zoning in Nottingham is very specific about the use of property in the Residential and Agricultural district. (1)

Specifically, the zoning says: **The purpose of Zoning in this district is to prevent adverse impacts of activities associated with home occupations.** One would surmise that the same intent of protection applies to events and adjunct businesses in grandfathered lots. The applicant states that this new race business is part of their "home business".

Additionally, "The purpose of this provision is to allow home occupations that are **compatible with residential areas.** A Race track, or drag way which is what the Water Cross is, is in no way compatible with residential areas. Events with thousands of people are in no way compatible with the intent of the

Master Plan for this area. Haphazard camping is also not compatible with or incidental to Home Business as defined by the Zoning.

Restricting this property from having a race track is a necessary purpose of this ordinance. If property owners can have large loud noisy events that disturb their neighbors, poison the air, soil and water and reduce property values, the purpose of the ordinance will be diminished. The neighborhood will be changed in a substantially bad way.

The Property owner has in no way established that there is a "public good" that outweighs the potential harm. This is a necessary hardship. (See other sections on noise pollution and reduction in home property values)

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What other zoning rules apply?

The events are asking to be permitted on lot 10 as part of a home business.

There is no home located on lot 10. There is only a rental apartment.

Section 3 of Home Occupation in the Zoning ordinances states the following:

- c) A Home Occupation shall be carried on by the occupant only within a dwelling or accessory structures and shall be **incidental and secondary** to the use of the property as a dwelling.

The key words here are incidental and secondary.

Is a race track **incidental** to their Home Business, that business being excavation and a gravel pit.

What does incidental mean legally?

"Contingent upon or pertaining to something that is more important; that which is necessary, appertaining to, or depending upon another known as the principal."

One can qualify if one type of business is incidental to another by reviewing the Standard Industrial Codes or SIC. All businesses fall under one classification or another. This business and these events have no correlation to one another. They are not incidental to the home occupation in any way. One is grandfathered in – the gravel pit, the other is in no way related to the gravel pit or a home occupation by any stretch of the imagination.

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