

Joanna Arendarczyk

From: Carl Mun <cmun7190@yahoo.com>
Sent: Friday, May 7, 2021 9:17 AM
To: Joanna Arendarczyk
Subject: Objection to Application for Watercross Event Case 21-008-VA
Attachments: Dangers of Watercross Events in Residential Area.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Nottingham Zoning Board Members,

I would like to formally object to the application for Watercross racing in a lake just across the Nottingham/Raymond's boarder, approximately 800 feet from our home at 111 Nottingham Road, Raymond, NH. Case 21-008-VA

Last year they had races which were extremely loud to a point where we could not enjoy time outside in our yard. These are high performance modified race snowmobiles produce noise levels of 140 dB. Normally the gravel pit runs large diesel engine equipment, back hoes and dump trucks, that we do not notice, producing noise levels of 100 dB. Please note sound levels are logarithmic and 140 dB is 10^4 or 10,000 times louder than 100 dB. Any statement made that the noise level will be similar to the gravel pit operations is absolutely false, please see attached report. There are many homes within an area which will be subjected to dangerous noise levels due to this event. Pawtuckaway State Park and lake are important attractions to the area. During the Planning Board meetings people visiting the lake and residents around the lake have complained of the noise from this event.

We strongly feel this should not be allowed so close to residential homes, families and Pawtuckaway Lake.

Thank you,
Carl Mun
111 Nottingham Rd.
Raymond, NH 03077

Effects of Watercross Noise in Residential Area

Carl Mun

March 1, 2021

Abstract

The Nottingham Planning Board in the state of New Hampshire is reviewing an application for approval of a Watercross event to be held three (3) times a year starting in 2021, (Case #21-003-SIT). Noise levels from the event are estimated at 140 dB which far exceeds safe levels recommended by both OSHA and NIOSH. Any noise level above 90 dB are considered unsafe and may result in hearing loss. For safety, events should be located at least 1,000 feet from any residence. This distance would bring the attenuated noise level to 80 dB. The proposed location has a number of homes located less than 1,000 feet from the event, as such this application if approved would endanger those residents.

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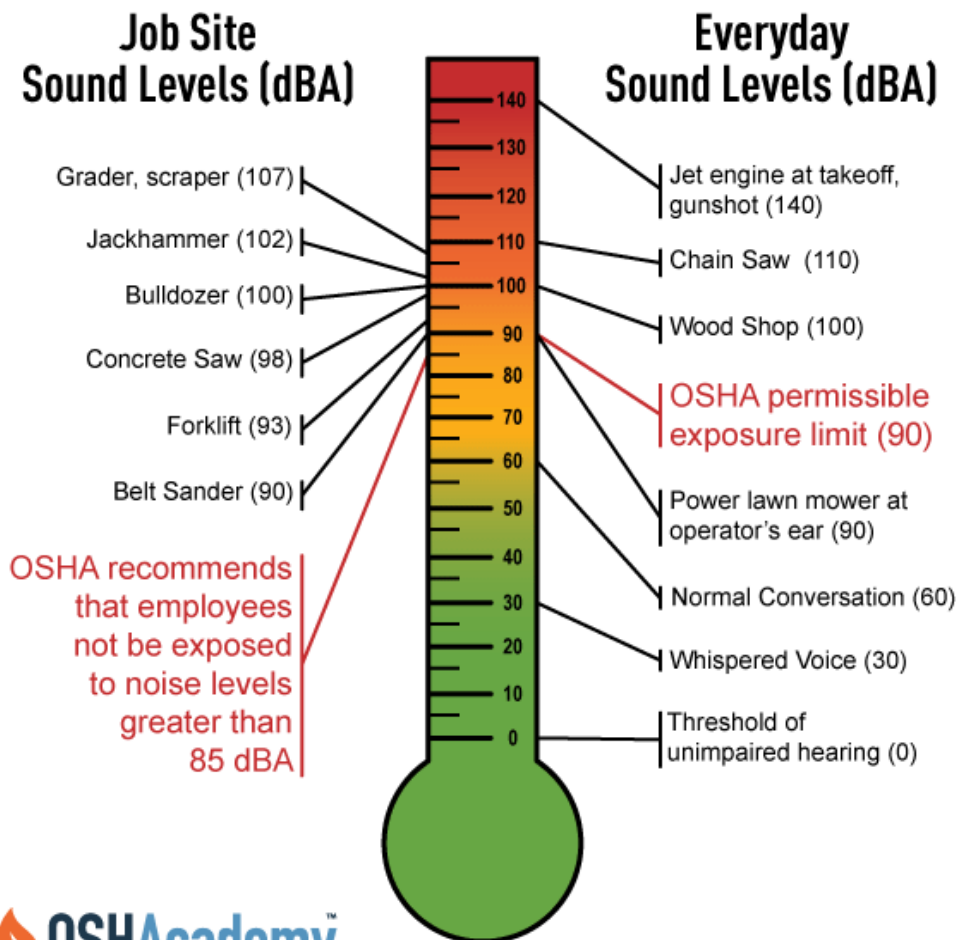
Introduction

Watercross events utilize modified snowmobiles to race across water. These snowmobiles are high performance machines built for speed and do not conform to any type of emission standards or required noise level suppression. This report reviews noise level standards, snowmobile noise levels, effects and attenuation to establish effects of residence located next to the proposed event pulling data and information from references listed at the end of this report.

Methods

I.) Safe Noise levels

As shown in the charts below, noise levels above 90 dBA are harmful. Noise levels have an additive effect when there is more than one noise source of similar intensity. This compounds the intensity of the sound pressure which both carries the noise level further and intensifies the noise level exponentially as noise is measured by sound pressure expressed in decibels on a logarithmic scale. A decibel (dB) is defined as 0.1-Del. The increase in sound pressure from 80 dB (8-Del) to 140 dB (14-Del) is 10^6 or 1,000,000 times the sound pressure. The maximum sound pressure on earth is estimated at 194 dB based at sea level 0 degrees C. This level would result in death.



From an article by Sengpiel Audio providing comparable government standards illustrating the safe time duration a person should be limited to at a given sound level.

Exchange Rates of NIOSH and OSHA Standards - National Institute for Occupational Safety and Health 1998; Occupational Safety and Health Administration 2009. According to each governing body, a person can safely be exposed to each decibel level for its corresponding time without risk of NIHL. For example, according to the OSHA standard, a person can withstand an environment with sound levels at 95 dBA for four hours. After four hours they are at risk for NIHL. NIOSH maintains that a person is safe in a 95 dBA environment for less than one hour.

NIOSH Standard	
Sound level (dBA)	Duration (Hours: Minutes: Seconds)
82	16:00:00
85	8:00:00
88	4:00:00
91	2:00:00
94	1:00:00
97	0:30:00
100	0:15:00
103	0:07:30
106	0:03:45
109	0:01:53
112	0:00:56
115	0:00:28
118	0:00:14
121	0:00:07
124	0:00:03
127	0:00:01

OSHA Standard	
Sound level (dBA)	Duration (Hours: Minutes: Seconds)
85	16:00:00
90	8:00:00
95	4:00:00
100	2:00:00
105	1:00:00
110	0:30:00
115	0:15:00
120	0:07:30
125	0:03:45
130	0:01:53
135	0:00:56
140	0:00:28
145	0:00:14
150	0:00:07
155	0:00:03
160	0:00:01

A graduate paper by Kiera Lynn Moore – University of Northern Colorado stated the problem of noise exposures of recreational snowmobiles very well. Please note racing snowmobile produce exponentially higher noise levels.

Statement of the problem

Noise induced hearing loss (NIHL) is a preventable health risk that affects many individuals on a daily basis. Of the 28 million Americans who have some degree of hearing loss, as many as 10 million individuals in America suffer from hearing loss caused from hazardous noise exposure in the workplace or recreational activities (Rabinowitz, 2000). Hazardous sound levels damage fragile structures of the inner ear and can cause permanent hearing loss over time. Temporary auditory damage can occur but repeated exposure to dangerous levels of sound can cause cell death which leads to irreversible permanent hearing threshold shifts, also known as noise induced permanent threshold shifts.

There are numerous articles outlining the dangers of excessive noise levels and how increased levels dramatically reduce safe exposure limits.

General Health & Wellness 5-22-18

“The Science of Sound

The roar of the racetrack comes with a price.

"The damage comes to the ear from the volume of the sound," explains Matt Provenzano, MD, an otolaryngologist with Franciscan Physician Network in Michigan City. "The louder the volume, the higher energy of the sound. The more energy the ears deal with, the more potential for damage.

"Studies show the peak level in the pit exceeds 140 decibels," Dr. Provenzano said.

"Even out in the stands and infield, you're still exposed to significantly high levels of noise."

For every 5 decibel increase in noise, the recommended time of exposure is cut in half.

You can have eight hours of exposure at 90 decibels (think, the sound of a passing motorcycle), but only four hours at 95 decibels (think, the sound of a kitchen blender).

Headed to Carb Day? That concert will likely rate over 112 decibels. Continued exposure is considered dangerous to hearing.

II.) Snowmobile Noise Levels

Below is the Abstract from an article on racing snowmobiles and hearing loss by Authors Fred H. Bess of Vanderbilt University and Robert E. Poynor. They measured racing snowmobiles as high as 137 dBA which far exceeds the standards set by OSHA and NIOSH. This level is even higher than a race car track noise level. At these levels OSHA's standard is less than one minute of exposure, NIOSH is less than one second exposure. Any longer exposure may result in hearing loss.

Snowmobile Engine Noise Level and hearing

Temporary threshold shifts (TTSs) were measured in 17 subjects (12 drivers and five riders) following 120 minutes of snowmobile noise exposure. All subjects were found to exhibit marked TTS at frequencies above 1,000 hertz. Predictably, the greatest amount of TTS occurred at 4,000 Hz. An acoustic analysis of the snowmobiles represented in this study revealed that the noise levels exceeded damage risk criteria for two hours exposure. One snowmobile was found to produce as much as 136 dBA at full throttle.

Do not let the size of the vehicle force you to assumptions on noise, Hypersports and other manufactures are producing 2- and 4-cylinder performance engines exceeding 600 hp at 9,400 rpm closing in on the much larger V8 NASCAR engines. Note: snowmobiles have much shorter exhaust systems which add to the noise levels as well as many are two-cycle engines instead of the four-cycle NASCAR, which due to the exhaust at the end of the ignition cycle, produce a much louder "pop". People who operate chain saws or two-cycle gas trimmers understand how loud small two-cycle engines can be. Also, NASCAR and INDY machines race on much longer tracks, proposed Watercorss will compete on a very small lake or pond concentrating the noise.

Noise Exposures of Recreation Snowmobilers – Kiera Lynn Moore 5-1-2015

“Engine types.

Snowmobile engines come in two types, two-stroke and fourstroke. A stroke is the movement of a piston in an engine. A two-stroke engine has a single piston stroke in each direction. A four-stroke engine has one exhaust stroke and one compression stroke followed by returning strokes. Two-stroke engines give the snowmobile significant power, less weight, and cost less, however four-stroke engines produce less air and noise pollution. Krause (2003) reported that four-stroke engines had shown lower sound levels at a distance than two-stroke engines. Since four-stroke engines have to exert less energy for the same revolutions per minute (RPM), which is how many times the piston goes up and down in one minute, the noise exposures from four-stroke engines is often less.”

III.) Attenuation of Noise – Danger Zone

Noise levels of racing snowmobiles have been measured at 135+ dB. With the additive effect of multiple machines racing sound pressure levels can easily reach 140 dB. Given the distance attenuation, at 1,000 feet the noise level would be 80 dB.

Geluid Lawaai - www.hoevelakenbereifbarr.nl 1-29-2012

“How do you add noise levels?

Sound pressure levels are expressed in decibels, which is a logarithmic scale. Therefore, we cannot simply arithmetically add noise levels. For example, 35 dB plus 35 dB does not equal 70 dB.

To add two or more noise levels, if the difference between the highest and next highest noise level is:

0–1 dB then add 3 dB to the higher level to give the total noise level

2–3 dB then add 2 dB to the higher level to give the total noise level

4–9 dB then add 1 dB to the higher level to give the total noise level

10 dB and over, then the noise level is unchanged (i.e. the higher level is the total level)

So, 35 dB plus 35 dB equals 38 dB.”

Distance Attenuation Calculator – Bogna Szyk – 2-22-19

“The sound attenuation formula is as follows:

$$SPL_2 = SPL_1 - 20 * \log (R_2 / R_1)$$

where:

- **SPL₁** is the Sound Pressure Level at point 1,
- **SPL₂** is the Sound Pressure Level at point 2,
- **R₁** is the distance from the sound source to point 1
- **R₂** is the distance from the sound source to point 2.”

IV.) Conclusion

Any type of racing activity, car, motorcycle or snowmobile should not be allowed in a residential area and provide adequate distance to any home due the excessive and dangerous noise levels emitted from these events. Minimum safe distance should be at least 1,000 feet with recommendations of one quarter of a mile to assure noise levels are far below dangerous limits.

Abbreviations

dB – Decibel

dBA – Decibel A – Weighted

OSHA – Occupational Safety and Health Administration

NIOSH – National Institute for Occupational Safety and Health

NIHL – Noise Induced Hearing Loss

TTS – Temporary Threshold Shift

References

Tontechnik–Rechner, Sengpiel Audio - Exchange Rates of NIOSH and OSHA Standards,
<http://www.sengpielaudio.com/PermissibleExposureTime.htm>

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Recreational Snowmobilers

General Health & Wellness (5-22-18) - The Science of Sound,
<https://www.franciscanhealth.org/community/blog/hearing-indy-500>

Fred H. Bess of Vanderbilt University and Robert E. Poynor (3-1972) - Snowmobile Engine
Noise Level and hearing

Geluid Lawaai – (2012) How do you add noise levels?
https://www.hoevelakenbereikbaar.nl/www2/MilieuZaken/Geluid_lawaai/Noise%20level%20calculations.pdf

Bogna Szyk (2-22-2019) – Distance Attenuation Calculator,
<https://www.omnicalculator.com/physics/distance-attenuation>

Snowmobile technical committee. (2009). Measurement of exhaust sound levels of stationary
snowmobiles (J2567_200901). Retrieved November 2, 2001, From:
http://standards.sae.org/j2567_200401/

Occupational Safety and Health Administration (1983)- Occupational noise exposure; Hearing
conservation amendment: Final rule. 29 CFR 1910.95 Fed. Reg., 48(46), 9738-9785.

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standard: Occupational noise exposure. U.S. Department of Health and Human Services,
Centers for Disease Control and Prevention.

Krause, B. (2003) - Field analysis of snowmobile sounds pressure levels measured in
Yellowstone National levels. Wild Sanctuary. 1-2

About the Author

Carl Mun – Bachelors of Science in Mechanical Engineering, Purdue University 1984

Started career in the Consulting Engineering field, obtaining Professional Engineering License (PE) in 1998. Later switching to the automotive industry OEM design, prototype, testing and manufacture of exterior vehicle lighting then continuing into the engine and transmissions systems. Responsibilities included working with manufacturing machines and equipment to assure OSHA noise levels were meet. Currently working on power modular cooling of next generation electric vehicles.

Additional Information

Additional informative articles of Watercross events and effect on wildlife and nature:

<https://www.turtleguardians.com/2020/02/effects-of-watercross-on-wildlife-and-turtles/>

International Snowmobile Racing (ISR) Watercross rules require mandatory hearing protection.

<http://www.isrracing.org/tempPDF/Watercross%20Competition.pdf>

“5. Hearing protection is mandatory in all non-stock classes in all types of competition. Recommended for all stock class competition”

Joanna Arendarczyk

From: Julie McLean <jhuang61@gmail.com>
Sent: Saturday, May 8, 2021 1:33 PM
To: Joanna Arendarczyk
Subject: Objection to Watercross event Case 21-008-VA

Dear Madam or Sir,

I would like to voice our objection to the proposed Watercross event in Nottingham NH.

I enjoy kayaking on Pawtuckaway Lake which has a very beautiful and peaceful surrounding. Last year we were greatly disturbed by the noise only to find out later that it came from the Watercross event they held nearby. In New England there is a very limited number of nice summer weekends, probably only 10 to 12, and to have those weekends destroyed by the noise of this event would be devastating to people like us who are driving north to enjoy the beauty and peace of this area. I am sure if it were to rain during one of their scheduled weekends, they will postpone the event to the next nice weekend. Losing 3 nice summer weekends would deter us from visiting the area as the odds are too great that this may be during a Watercross event. Very sad indeed.

Please do not approve this request.

Sincerely,

Julie and Mika McLean

[279 Oakland Ave.](#)

[Methuen, MA 01844](#)

To: Nottingham Zoning Board

Re: Kubota Trust application for a variance for three Water Cross events

Dear Zoning and Planning Boards,

The variance you are considering, or will be soon, is contentious and complicated in so many ways. Let me first begin by thanking you for your service to the town, as whatever you decide you can bet someone is going to be upset.

Both boards are in the unenviable position of having to make a decision regarding an event that is quite popular. With that said, may I ask everyone who is involved on both sides to try to be civil, to recognize that we are neighbors in this beautiful town of Nottingham, and that accepting or denying this variance is not the end of the world. Also to respect the decisions of the board and realize that they are volunteers in this position and they are doing their best within a very complicated series of laws, rules and ordinances.

To those of you unfamiliar with Zoning variances, let me point out a very important fact. This is not a popularity contest. You may express your thoughts, concerns and opinions and they are all acceptable and valued. However, even if 1000 people want this event or 1000 people do not want this event or variance to pass, the boards must consider many details from a legal perspective. These deliberations are carefully defined by the Zoning laws of NH and they are very specific in nature with many Superior and Supreme court rulings that influence the interpretation.

I am not a lawyer, I have never applied for a variance. So for those that care to understand the process, to understand the how and why a decision is reached, please read the following.

One could equate an application for a variance as a test. In this test there are five questions or criteria that have to be met. In this test you have to meet all five criteria to pass. You don't get to pass if you fail any ONE of these questions. If you cannot meet the criteria posed by the questions below – and I mean every single one, then the board has to legally deny the variance, no matter how much they like or dislike the idea. Again, this is no matter how popular the event or variance is.

The Zoning board may approve a Variance if and only if the following five criteria are met. This means if the land owner fails to provide sufficient evidence for any ONE of these rules A – E below, then the board is instructed by RSA 674:33 to deny the variance.

VARIANCES

RSA 674:33 Powers of Zoning Board of Adjustment

(a) The zoning board of adjustment shall have the power to:

(1)

(2) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

(A) The variance will not be contrary to the public interest;

(B) The spirit of the ordinance is observed;

(C) Substantial justice is done;

(D) The values of surrounding properties are not diminished; and

(E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

I will elaborate on all five of these questions in further documents to the boards.

For this document to the Board of Zoning and to the Planning Board I have these questions regarding the role of "Current Use" with respect to this variance.

CHAPTER 79-A CURRENT USE TAXATION

79-A:1 Declaration of Public Interest. – It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources. It is further declared to be in the public interest to prevent the loss of open space due to property taxation at values incompatible with open space usage. Open space land imposes few if any costs on local government and is therefore an economic benefit to its citizens. The means for encouraging preservation of open space authorized by this chapter is the assessment of land value for property taxation on the basis of current use. It is the intent of this chapter to encourage but not to require management practices on open space lands under current use assessment.

Source. 1973, 372:1. 1991, 281:2. 1996, 176:2, eff. Aug. 2, 1996.

CHAPTER 79-A CURRENT USE TAXATION

Section 79-A:2

V. "Current use value" means the assessed valuation per acre of open space land based upon the income-producing capability of the land in its current use solely for growing forest or agricultural crops, and not its real estate market value. This valuation shall be determined by the assessor in accordance with the range of current use values established by the board and in accordance with the class, type, grade and location of land.

Question:

This property has a considerable amount of land in current use. This means they the land owners pay a much reduced tax bill to the Town of Nottingham. This means, the taxpayers of Nottingham, each and every one of us pay more taxes to support this "Current Use."

Motorized racing vehicles race against each other and win or lose based on time. They either do this in a dragway fashion or in a circle. Let us agree to call it what it is, Water crossing is just too nebulous a word.

I argue that the passing of this variance will put into question the existing classification of "Current Use". The variance will allow a race track/dragway business on this property. Section V above describes the "Current Use Value" **"Based upon the income producing value of the land it its current use solely for growing forest or agricultural crops.**

I don't see much wiggle room in the law. Fact: This is a race track business that estimated can net over half a million dollars. How should this property be taxed? Is it really one producing forest or agricultural products? Or let's be honest about it. This is a new business use.

The concept of Open Space and Current Use are fully documented by the State of NH. They do allow open space as a condition, but that condition is predicated upon usage of the property by others for free, not paid events. The listed things include agriculture and forestry and yes recreation that is access for fishing and hunting. What is a fair thing for all the residents of Nottingham? What is the intent of current use? This is just one of many burning legal questions that the board must consider.

I also question the concept that this is a Special Event. The allowing of three long weekends for events on the property begs a question. Is this not a side business for the property? Especially since the owners and their lawyers are going to argue that this property is special. This property is unique and that is why they want the variance. If this property is so unique that it can support a race business that can net \$500K a year, then as tax payers, we insist that it be taxed as a business, call it what it is, tax it what it is. You can't have it both ways. This is a catch 22.

Should the owners carefully and artfully prove that this land is unique, that it is perfect for a race track, a dragway, than the current use designation no longer is applicable to the property. A new analysis is needed.

We also insist that a careful review of the property be made to assess what penalty for switching the land from current use to a new business designation. Is that not fair to the tax payers of Nottingham? A land owner is receiving the benefit – of lower taxes -which they have for 41 YEARS. Now they want to add a new business to their land in the form of a "Special Permit" which will net hundreds of thousands of dollars in income, and retain the same low tax status.

Yes, we realize this is a murky grey area. Yes, we realize some lawyer may poke holes in this. But as regular person, and to the board members, let us look at the intent of the law for Current Use.

The reasoning behind the Current Use law is to give the owners of large tracks of land the opportunity to hold onto these lands with a lower burden of town property taxes. Not to find a loophole to hold large money making events.

This begs the question – If the property owner is using the property to hold events that create a significant windfall for the land owner, why should all the town's tax payers foot the bill in the form of increased taxes.

To answer those who wonder what the assessment is of these acres under current use, I have attached the official tax card. What you will see, is this:

The land and buildings listed as residence is only two acres. \$256,500

The land under Current use – as I understand it 61 acres is only \$48,297 – which includes the gravel pits Of which the actual gravel pits is listed as \$43,200.

The current plots of land in this application are Map 69, lots 8 and 10

Lot 8 = 25 acres

- The Net Assessment was \$338,212 at the latest bill.

Feature Type	Units	Length x Width	Size Adj	Rate	Cond	Market Value	Notes
SHED-WOOD	120	10 x 12	193	10.00	60	1,390	
DECK	205	1 x 205	138	7.00	50	990	EST SHAPE
						2,400	

TOWN OF NOTTINGHAM NEW HAMPSHIRE			
PARCEL TOTAL TAXABLE VALUE			
Year	Building	Features	Land
2019	\$ 172,200	\$ 2,000	\$ 93,645
			Parcel Total: \$ 267,845
2020	\$ 193,900	\$ 2,400	\$ 141,912
			Parcel Total: \$ 338,212
2021	\$ 193,900	\$ 2,400	\$ 142,038
			Parcel Total: \$ 338,338

LAND VALUATION													LAST REVALUATION: 2020	
Zone: R-AG RES/AGR DIST Minimum Acreage: 2.00 Minimum Frontage: 200													Site: AVERAGE Driveway: PAVED Road: PAVED	
Land Type	Units	Base Rate	NC	Adj	Site	Road	DWay	Topography	Cond	Ad Valorem	SPI	R	Tax Value	Notes
IF RES	2.000 ac	135,000	E	100	100	100	100	100 -- LEVEL	100	135,000	0	N	135,000	ROW ACC
IF RES	1.650 ac	x 2,500	X	100				95 -- MILD	100	3,900	0	N	3,900	
WETLANDS	5.000 ac	x 2,500	X	100					100	12,500	100	N	120	
UNMNGD PINE	16.460 ac	x 2,500	X	100					100	41,200	100	N	3,018	
										192,600		142,038		

The total taxable value of the land is \$142,038 for 25 acres

Of that the residence is \$135,000 for 2 acres. So only \$7,038 for the other 21 acres.

Lot 10 –

EXTRA FEATURES VALUATION								MUNICIPAL SOFTWARE BY AVITAR					
Feature Type	Units	Length x Width	Size Adj	Rate	Cond	Market Value	Notes	TOWN OF NOTTINGHAM NEW HAMPSHIRE					
LEAN-TO	200	20 x 10	140	4.00	50	560		PARCEL TOTAL TAXABLE VALUE					
SHED-WOOD	128	8 x 16	185	10.00	100	2,368		Year	Building	Features	Land		
						2,900		2019	\$ 72,700	\$ 2,200	\$ 294,039		
										Parcel Total: \$ 368,939			
										2020	\$ 86,800	\$ 2,900	\$ 304,642
										Parcel Total: \$ 394,342			
										2021	\$ 86,800	\$ 2,900	\$ 304,797
										Parcel Total: \$ 394,497			

LAND VALUATION													LAST REVALUATION: 2020	
Zone: R-AG RES/AGR DIST Minimum Acreage: 2.00 Minimum Frontage: 200													Site: AVERAGE Driveway: DIRT/GRAVEL Road: PAVED	
Land Type	Units	Base Rate	NC	Adj	Site	Road	DWay	Topography	Cond	Ad Valorem	SPI	R	Tax Value	Notes
IF RES	2.000 ac	135,000	E	100	100	100	95	100 -- LEVEL	200	256,500	0	N	256,500	GP SITE/ACC
UNMNGD HARDWD	20.000 ac	x 2,500	X	80				100 -- LEVEL	100	40,000	100	Y	1,379	
UNMNGD OTHER	4.700 ac	x 2,500	X	80				95 -- MILD	100	8,900	100	Y	226	
UNMNGD PINE	18.130 ac	x 2,500	X	80				95 -- MILD	300	103,300	100	N	3,324	
IF RES	5.770 ac	x 2,500	X	80				95 -- MILD	300	32,900	0	N	32,900	GP ACTIVE
WETLANDS	7.000 ac	x 2,500	X	80					100	14,000	100	N	168	
IF RES	5.440 ac	x 2,500	X	80				95 -- MILD	100	10,300	0	N	10,300	GP ACTIVE 2016
										465,900		304,797		

The Current use is a Gravel Pit and forested land.

Lot 10 = 63 acres

Net Assessment is \$394,497

The total assessed value for the Land is \$304,797

However, the 2 Acres Gravel pit \$256,500

61 Acres Balance \$48,297 (Current Use)

Building barn / apartment is: \$86,800

In summary, I have concerns about the status of Current Use with respect to the property involved with the application of this variance. With all due respect, we ask that the planning board include a healthy discussion about Current Use in its deliberations.

Sincerely,

Michael St. Laurent
12 Indian Run

TOO MUCH OF A GOOD THING

To: Nottingham Zoning Board,

Re: Kubota Trust application for a variance for three Water Cross events.

Dear Zoning Board,

The Water Cross events are a good thing. They are fun, exciting, and bring the community together. From an economic view they bring a very small limited benefit to one tax payer and a few businesses. Yet, they bring large costs to the overall community that need to be examined, weighed and balanced against the rights of the property owner.

Within the realm of our current politically charged win-at-all-costs environment, our wish is that we can disagree without being disagreeable, that we can enjoy civil discourse and polite discussions.

However good the events may seem, there are many issues that need to be considered before they are allowed to become a permanent fixture in the community. The application for this variance is a highly contentious article, which will adversely affect a large number of tax paying residents in Nottingham. Even though this event is very popular, I ask that the Board do its best to be considerate and understanding in its deliberations and pay careful attention to the very specific legal issues which are detailed below. Please note that as regular residents reviewing the laws and ordinances we are looking at this variance request from a common sense approach. We believe that the laws and ordinances are written for regular people to understand them and grasp their significance and their meaning.

TOO MUCH OF A GOOD THING:

Three weekends or 63 hours of a very noisy race event with thousands of people is too much especially when the events are planned during the nicest weekends of the year. The planned events are in the wrong place, at the wrong time and constitute a nuisance to over 150 homes, all of whom pay taxes, all who may see a reduction in the value of their property and all that have a right to enjoy their property.

Event Issues:

- No limit on the number of spectators or competitors in the variance.
- No restriction on how noisy the event can become. No method to measure the noise, or police it.
- No restriction or rules that say these machines cannot come and practice at other times.
- No accurate measurement of the pollution to the soil, air and water.
- No limitation to which weekends they can have the event.

Wrong Place:

- The gravel pit location with permeable soil sits on the Pawtuckaway River, a protected watershed.
- The event is only 369 feet from the public road and the noise travels significantly past that legal line
- The noise radius extends up to 1.5 miles away to many summer residents and campers.
- The context of how properties are used and taxed is an important factor to be considered.
- The entire property is directly in the middle of a protected Nottingham aquifer protection district.

Wrong Time:

Mid-May through mid-September is a limited time for people to enjoy being outside on their property. Of the 15 or so good weekends in those nice months, these events take away 3 of those weekends.

PART 1:

Zoning Issues:

(E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

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.

- The actual property used is about 12-14 acres, not 88.
- Many other properties exist that are this size and many have a pond on them.
- The event location is as close as possible to the road, the fact that they own 88 acres is insignificant.
- There is no burden as the property in its current usage is a fully functioning gravel pit

Point 2:

The property is uniquely suited for this event. We agree that it is ideal for this purpose. However the property itself is **also** ideally suited for another purpose, a current use of a fully functional Gravel Pit. And the wash pond – the man-made pond also can serve a purpose for the gravel pit in washing sand and gravel, or for quiet recreation.

The board should take particular note that both properties are designated Back Lots. They should note also that the property is ideal because of a non-conforming use that is grandfathered in – Gravel pit.

Lots #8 and #10 are “Back Lots.” By the ordinance they can have single family home 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.

- Issue: The use is being enlarged by allowing race events.
- Issue: The allowance of another non-conforming use is not allowed.

Section 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.**

Section G - Home Occupation

The variance in multiple ways does not comply with the Zoning ordinances of Home Occupation.

Issues:

- 1) 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.
- 2) The events are not incidental and secondary to the use of the property, or the Gravel Pit
- 3) The noise and pollution violate Home Occupation - section 3 g) by being noticeable way beyond the property line and the public street.

Home Occupation Section 3:

- a) 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.

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

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

The principal business is a gravel pit. SIC - 1442 Construction Sand and Gravel

The secondary event business is: Spectator Sports/ Other – SIC Code 711219

- The race events do not qualify as being incidental.
- The noise goes beyond noticeable – it is a nuisance
- The interference goes significantly past the property line and the public street

Home Occupation - Section 3 g:

General nuisances – No activity shall be allowed that would interfere with radio or television transmission or become a nuisance by way of traffic, **noise, odor, smoke**, dust, fumes, gas, vibrations, light or electrical **interference noticeable at or beyond the property line or a public street.**

Section H: Earth Excavation

The Gravel pit with adjunct race track business events will violate the terms of its gravel permit.

The Gravel Pit or excavation license under Section H of the zoning is quite specific.

- 3 Conditions for granting a permit include assurance that:
 - c) the operation will not constitute a nuisance because of noise, fumes, or other objectionable features.

Taxation Issues: Current Use

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What is Current Use? Current use is a taxing strategy aimed at making it easier for landowners to keep their open space undeveloped. Instead of being taxed at its real estate market value, **land is taxed on its income-producing capability**. In other words, land is taxed as a woodlot, or a farm, not as a potential site for houses. Current use keeps property taxes at a lower rate.

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 taxes are reduced for this property, who pays them? Everyone in town pays more for their taxes. Is it fair for a company to receive reduced taxes so they can have race events on their property, events that net an estimated half a million dollars? This goes against the ideals of open land and current use.

Income producing capability:

The applicant would make you believe that this land is special, it is ideally suited for large events. 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.

- The income producing capability is greatly increased.

Aquifer Protection District

Potential Pollution Issues:

Both properties lie within the towns specifically designated Aquifer Protection District. (See map in Attachment B) As such, the board should be especially careful when allowing additional sources of pollutants such as gas and oil.

The applicant will have you believe that because the gravel pit already has equipment that can discharge pollution that they should be allowed to contribute more to the environment.

Faulty Logic and Rationalization:

The permit for the gravel pit is grandfathered in this sensitive region. If it were not, then no industrial or excavation would be allowed. The permit is for excavation of material, the fact that they already create noise and pollution is a byproduct of their business. The excavation is allowed DESPITE them creating pollution. They don't have a permit to create more pollution.

The event producer will confirm that he believes that 100 percent of the snow machines have a two stroke design. He cannot confirm how many of them have stock engines and how many are modified. Two stroke engines are notorious for their pollution issues.

I encourage the board to seek professional guidance on this issue to make an informed decision.

DES:

**Reporting Oil Spills, Hazardous Waste Spills
and Groundwater Contamination**

- Duty To Report, N.H. Hazardous Waste Management Act RSA 147-A:11,
- Notification, “Contaminated Sites Management” Env-Or 604.06
- The threshold for reporting is 25 gallons.

This author is not an expert by any means on pollution. Nevertheless, here are some concerns.

In a stock two-stroke engine, fuel enters the combustion chamber at the same time that exhaust gases are expelled from it. As a result, as much as one-third of the fuel passes through the engine without being combusted. This causes poor fuel economy and high levels of emissions, particularly hydrocarbons and carbon monoxide.

NO ONE KNOWS how much gas might be discharged over the course of three weekends.

In a modified snow mobile, from comments made by associates of the race director, they state that the percentage of gas used can be as high as 86%. The race director also when questioned on the site walk estimated that racers might use 2.5 to 3 gallons of a gas/oil mixture. That may mean that 14% of the gas and oil mixture is expelled through the exhaust pipe – directly into the environment.

I request that the board do its due diligence to elicit accurate information on this subject.

What might all this mean?

Some percentage of gas and oil from 750 gallons used will be discharged into an area that is specifically protected in the designated Aquifer Protection District. It is beyond the scope of knowledge of this writer to make anything more than an educated guess. However significant penalties by the DES should be a concern to both the land owner and the event producer.

Summary: Part 1

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 or more 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 1.5 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.

Finally, the applicant does not make any reference to the relationship they have with the event producer. To be clear, we assume that the event producer is Northeast WaterCross Championship, Business ID 806548 registered in the state of NH to Steven Reynolds and the business address is 56B Trinity Circle, Rochester, NH, 03839. As far as we can see, this company and individual who are neither a resident of Nottingham, nor a taxpayer are the principal financial stakeholder in these events.

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But the statement about hardship and using the open land created by the Gravel pit 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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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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PART 2

Variance Criteria:

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

The Relationship Test:

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

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 or “consistent” with residential areas. Events with thousands of people are 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. 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 substantially in a negative 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 does the Master plan say?

The State of NH Zoning handbook tells Zoning boards to refer back to their master plan for guidance when they have doubts.

Here are the exact words of the master plan.

Please keep this in mind when making your final decision. Does a race track fit in with these ideals?

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.

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The Reasonable Use Test.

The Proposed use is a reasonable one.

The applicant has failed to establish that the proposed use is reasonable. This property can be reasonably used in a number of ways by staying in conformance with the ordinance. These include an existing business, an existing home and an existing rental apartment.

See Attachment A

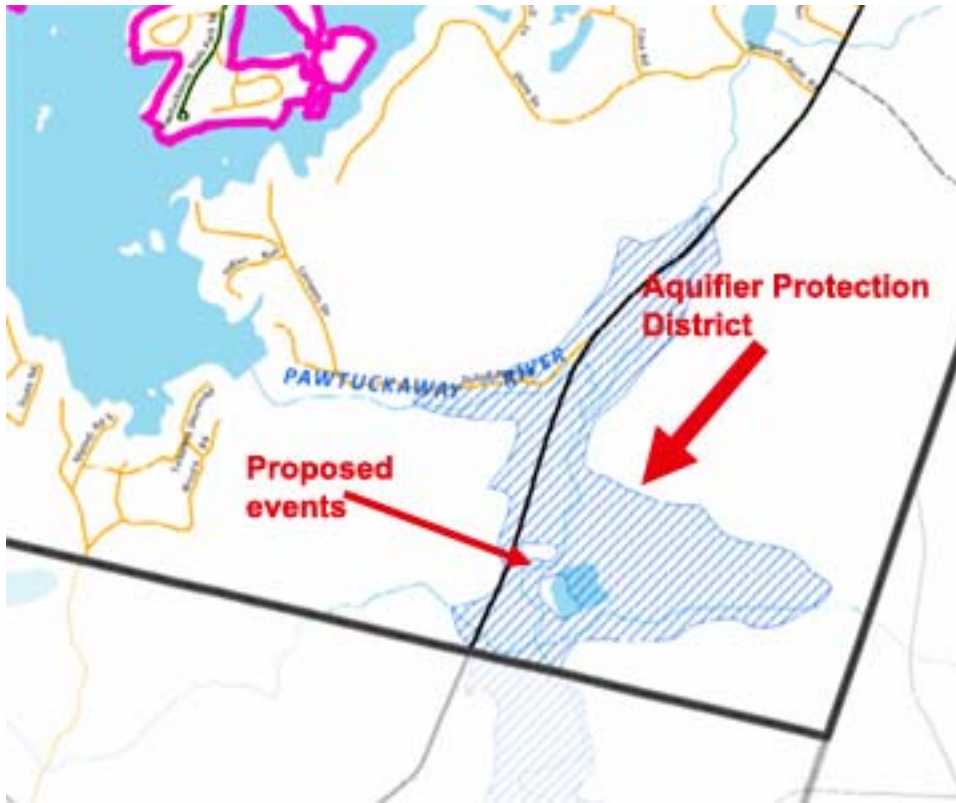
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### Attachment A

II-10 THE BOARD OF ADJUSTMENT IN NH 2020 – NH OSI (2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the **property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** (3) The definition of “unnecessary hardship” set forth in subparagraphs (1) and (2) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance. (c) The board shall use one voting method consistently for all applications until it formally votes to change the method.

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### Attachment B



To: Nottingham Zoning Board

Re: Kubota Trust application for a variance for three Water Cross events.

Dear Zoning Board,

#### VARIANCES

RSA 674:33 Powers of Zoning Board of Adjustment

(A) The variance will not be contrary to the public interest;

For the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?

For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance's basic zoning objectives. The relevant tests are:

(1) whether the proposal will alter the essential character of the neighborhood; and

(2) whether it threatens the public health, safety or welfare. Because it is in the public's interest to uphold the spirit of the ordinance, the Supreme Court has held that these two criteria are related. If you meet one test you almost certainly meet the other. See Farrar v. City of Keene, 158 N.H, 684 (2009). As such, the Applicant addresses these two criteria together.

- 1) The events are held in an area with regular homes and lake front properties. The essential character of the lake front properties will be forever changed by this ordinance. Lake front properties character is predominantly vacation use. Yes, some are year round, but the main reason residents live there year round is so they can enjoy the summer months. They did not buy a vacation property and choose to live there year round – so they could stay indoors.
- 2) The busiest times of year are late May through September. The busiest times of the week are the weekends. It is the essential character of these homes to spend time OUTSIDE!
- 3) The character of these homes is a combined use of quiet activities and yes some noisy ones. The quiet activities are just as predominant as the noisy ones: Swimming, sunbathing, fishing, camping, kayaking, canoeing, eating outdoors and basically reading by the water. More noisy ones include boats of all kind. There are no noisy activities that last for 8 hours straight. There are no noisy activities that last for the entire weekend. The noises are tolerable for a reasonable short duration. The noise from these events is anything but tolerable.

The application states that "only" three weekends will be affected. Imagine that you pay \$10,000 a year in taxes and you only get to use your camp only on the weekends. Suppose that the weekends you can get away are the exact weekends of this event. It is not in the public's interest for multiple events that last the entire weekend, events that last all day for two and a half days. Bothersome, persistent noise that for some make it impossible for tax paying residents to enjoy their property outside. Noise so bad, residents feel the need to leave their property for the sake of their own sanity.

**Zoning Variance Criteria**

**2 The spirit of the Ordinance is observed**

**What is the spirit 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".

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.

Additionally, "The purpose of this provision is to allow home occupations that are **compatible with residential areas.** The spirit of the zoning is to prevent disturbance all year round. The spirit of the ordinance is to allow "small-scale" business. (See Master Plan) A Race track, or drag way with 700 people is in no way compatible with the spirit of the ordinance.

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.

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**(2) Whether it threatens the public health, safety or welfare**

Granting the variance presents has the potential to jeopardize public health, safety and welfare of the general public.

**Noise:**

Noise levels at this event can cause hearing problems in young people. (See information from abutter Carl Mun. He does an excellent job of describing this in his letter.) So, imagine you are the parents of two young children. What a fun day you have planned. Let's all go to that Water Cross event. You do not know how loud it is going to be, but you put up with it. You get a headache after a few hours and you head home. Exposure to loud noises in young people can cause permanent hearing loss.

## **Aquifer Protection District**

### **Potential Pollution Issues:**

Both properties lie within the towns specifically designated Aquifer Protection District. (See map in Attachment B) As such, the board should be especially careful when allowing additional sources of pollutants such as gas and oil.

See "Summary Section on Gas and oil pollution"

Besides gas and oil discharged into the water, the snowmobiles produce a significant amount of air pollution. According to the website EveryCRSReport.com, a Washington watch dog group. Snowmobiles that comply with the latest EPA environmental standards emit a significant amount of CO2 and other carcinogenic pollutants.

According to this one report, one hour of snowmobile riding produces the same amount of pollution as a 2008 car driving 1050 miles. Assuming these snowmobiles combined drive several hundreds of hours. That is a considerable amount of pollution released on the attendees and into the atmosphere.

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.

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The variance is contrary to the public interest. To a marked degree it violates in many ways the basic zoning objectives of the zoning ordinance. The variance threatens the very essential character of the neighborhood and threatens the health, safety, and general welfare of the public.

Re: Kubota Trust – Variance for Water Cross events.

2) No diminution in value of surrounding properties would occur;

Criteria: Granting the variances will not diminish the value of surrounding properties.

The applicant's argument is as follows:

The Applicant has not proposed any permanent changes to the Property in connection with these variance requests. For example, the Applicant is not requesting to build structures within the setbacks closer to abutting properties than is otherwise allowed under the Zoning Ordinance such that the value of surrounding properties could potentially be compromised. The events are proposed to occur on only three weekends per year and, after they conclude, the use of the Property reverts back to its existing permitted residential and gravel pit uses for the overwhelming majority of the year. Moreover, as discussed below, the Property is much larger than most other properties in the area and can support the events. While there is an inherent level of noise associated with the races, they are proposed to occur on the existing and active excavation operation which also involves an inherent level of noise on a much more regular basis. As shown on the plan, there is also an existing berm on the southerly and easterly side of the pond where the events will occur that will serve as a natural barrier to contain some of the noise from the events. Therefore, granting the variances will not diminish the value of surrounding properties

We challenge this argument:

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 cannot pass.

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?

More on the noise factors:

The three events constitute 63 HOURS of noise nuisance.

Some residents have written that it's the same as fireworks. Would the board approve 63 hours of fireworks? Or that the noise is the same as a jet ski going by. The argument works against itself. So now you will have a very bothersome noise all day long, and then you will have bothersome fireworks noise at night? That argument is illogical.

Major Fireworks are two or three times a year. Some smaller ones happen many other nights when people are inside. No one is suggesting that these stop.

- Major difference: You get to enjoy the fireworks, or go inside
- The noise is not constant for 8 hours at a time
- The noise is largely at night.
- No one is making money from the fireworks, the races are making a profit at our inconvenience.
- The noise from the races is completely different and much more irritating.

Fireworks do not last for 63 hours and not 8 hours at a time, not for an entire weekend.

How loud is the noise from Pawtuckaway 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.

You know the term: Sound travels!

The noise easily travels across Raymond road, through the woods and onto the lake.

We know IMMEDIATELY when they start. We hear each and every beat.

Sound travels over water. You can hear sounds more easily.

Everyone on the lake has experienced this.

You cannot hear your neighbor next door through the woods talking on their deck, but you can hear your neighbor clearly from half mile away across the lake.

The science behind sound over water is clear. Air nearest the water is cooler than air farther above the water. As sound travels slower in cool air, if sound waves from warmer air enter the cooler layer they are [refracted downward](#) toward the ear of someone in a boat or on shore.

If the water is calm, its flat surface allows sound waves to travel unobstructed and to reflect from the surface. Instead of dissipating in tall grasses and other obstructions on land, sound waves retain their coherence for longer distances over calm water. Sound waves also may reflect from calm water's surface, bouncing up to the ear.

How many tax paying camps are affected by this?

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

Page 84

F. Basic Mass Appraisal Process

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

To: Nottingham Zoning Board,
Re: Kubota Trust application for a variance for three Water Cross events.

Variance Criteria:

3) Substantial Justice will be done.

This criteria can best be described in a three part question

- 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.

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- 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 town's 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.

A BOS member gave this advice to someone complaining about the event. "If you don't like it, just leave town for the weekend, I don't see the big deal?" Is it reasonable to ask a resident to leave town for three weekends of the year - during the best summer months?

Is the use reasonable or consistent in an area of single homes to allow events with up to 1500 people - who not only create noise all day, but then hundreds camp out?

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 an 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.

Understanding the law:

The applicant quoted the Simplex decision.
Here is an analysis of that decision.

This element also is not changed by the new law, and it is probably the most subjective of all the requirements. The limited case law that exists on this factor indicates that granting a variance will be deemed to achieve substantial justice if,

In the absence of the variance, there would be a loss to the property owner that is not outweighed by a gain to the general public;²³ stated differently, 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.

If the proposed use would provide incidental public benefits, that may be considered as well.

24 Granting a variance may also achieve substantial justice if the proposed use is consistent with the present use of the surrounding area.

25 Although the Court has not expressly stated this, it seems appropriate in this inquiry to weigh the benefit of the variance to the applicant not only against the harm to the general public, but against any harm to other individuals.

If the variance would have a significant adverse impact on an individual neighbor, even though the public in general is not harmed, that would seem to raise a significant doubt about the justice of the action. This view is consistent with the Court's stated intent to prevent "injury to the private rights of others," part of the third prong of Simplex. The Court subsequently folded that factor into the public interest/spirit of the ordinance criterion,

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.

Joanna Arendarczyk

From: Contact form at Town of Nottingham NH <cmsmailer@civicplus.com>
Sent: Friday, May 7, 2021 2:23 PM
To: Joanna Arendarczyk
Subject: [Town of Nottingham NH] Objection to Kubota trust request for Variance (Sent by Pamela Kelly, pdkelly@comcast.net)

Hello jarendarczyk,

Pamela Kelly (pdkelly@comcast.net) has sent you a message via your contact form (<https://www.nottingham-nh.gov/user/91/contact>) at Town of Nottingham NH.

If you don't want to receive such e-mails, you can change your settings at <https://www.nottingham-nh.gov/user/91/edit>.

Message:

Date: May 7, 2021
To: Nottingham Zoning Board of Adjustment
Re: Application of Tami Lee DeFrancesco and James George,
Trustee of Kubota Trust, # 21-008-va
Gentlepersons:

I write as a resident of Nottingham who owns a home within hearing distance of the property being proposed for a variance to allow motor cross races to be held there. Having reviewed the applicable State statues and local rules for the granting of a variance, I am persuaded that the application must be denied because it fails to meet the necessary criteria.

First of all, the property in question is already the site of a business that constitutes a non-conforming use. That means that this business use is permitted because the landowner was using the land or building for that use before the zoning ordinance became effective. In this case, that means the operation of a gravel pit. This business has coexisted peacefully within the neighborhood for decades. Its operation, while contrary to the zoning of its location, is legal and long-standing. That doesn't mean an unrelated business is permitted, however.

The problem with the property owners' request for a variance is that any circumstances unique to their property; namely, that it is a gravel pit, have been well incorporated into its use for decades. The owners cannot therefore argue that this "unique" character of their land warrants consideration for a variance. It is already operating outside the zoning regulations as a successful business.

Second, these applicants cannot demonstrate that they need a variance in order to operate a new business. It is not a hardship to them that they are not permitted this new use of their property. They may "want" a new use for their property, but that is far from showing that existing zoning regulations present a practical difficulty in making use of the property, since they are already doing so.

Third, examining Nottingham's requirement for granting a variance reveals that the property owners must demonstrate that literal enforcement of the zoning regulation "would result in an unnecessary hardship." That term is defined as, "owing to special conditions of the property that distinguish it from other properties in the area...No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property." In this case, the fact that a gravel pit is already permitted as a nonconforming use deprives the owners of any cause to complain about the zoning of their property. They already have a de facto variance for the business they run there.

Nottingham's zoning rules also provide that, if the above condition cannot be met, "an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the

area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.”

What special conditions have the applicants alleged? None that I have seen. They have demonstrated that operating a gravel pit is a reasonable use of the property, and because of its long-standing existence, it is a permitted use.

I submit that no assertions have been made, and no evidence offered, that would establish any unnecessary hardship if this land were to continue to be used as a gravel pit and its owners not allowed to conduct a new business, namely, motor cross races, on the property. Continuing to conduct business as usual is not considered a hardship. Not being allowed to expand that use to an unrelated one is merely a consequence of the law. The motor cross races are not incidental, or in any way related, to the business of the gravel pit. “Because I want to and I can’t do it somewhere else” is not a legally sufficient basis for a variance.

I respectfully urge the Board to deny the application for a variance.

Very truly yours;

Pamela D. Kelly
35 Sachs Road
Nottingham, NH 03290