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February 9, 2021

Town of Nottingham Planning Board
139 Stage Road
Nottingham, NH 03290

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**RE: Kubota Trust; Tami Defrancesco, Trustee
214 Raymond Road; Tax Map 69, Lots 8 & 10
Case #21-003-SIT**

Dear Chairman and Members of the Board:

This office represents the Kubota Trust – Tami Defrancesco, Trustee (the “Applicant”), owner of the above-stated property and applicant for site plan review approval in the above-stated case to allow Watercross events to be held on the property three times per year starting in 2021. We are in receipt of a letter to this Board dated February 1, 2021 from Carl Mun of 111 Nottingham Road, Raymond, NH (the “Abutter”) requesting that site plan approval be denied on the basis that such events are “detrimental” to “health and safety” because they cause “excessive and dangerous noise levels.” In that regard, the Applicant submits the within response.

As a threshold matter, the Town of Nottingham has not adopted a noise ordinance. To the extent that the Abutter’s request for denial suggests that the Applicant’s proposal violates any noise ordinance or other similar type of ordinance, it lacks any basis in the Town’s controlling regulations. The proposal does not run afoul of any noise ordinance or similar type of ordinance.

Article 2 of the Town’s Site Plan Review Regulations does provide that one purpose of the Regulations are to “guard against such conditions as would involve danger or injury to health, safety, or welfare by reason of . . . undesirable and preventable elements of pollution such as noise . . .”. However, the Applicant’s proposal will not cause any such danger or injury by way of noise. While there is an inherent level of noise associated with Watercross events, the Applicant is only proposing to hold events on three weekends per year. This is not a situation where regular year-round events are proposed on a week-to-week or even month-to-month basis. There is no genuine danger or injury

to the Abutter or the public by way of noise where the events will only be held on three weekends per year due to the limited nature of the Applicant's request.

Moreover, the Abutter has indicated that his house is "only 800 feet from the lake", and the general theme of the letter is that allowing these events as proposed will cause him to incur temporary or permanent hearing loss or damage. However, even accepting as true the measurement from the house to the pond for the sake of argument, it cannot be genuinely argued that a Watercross event held on three weekends per year will cause the Abutter, and by the same logic, anyone else within 800 feet of the event, to incur irreparable hearing loss or damage. This type of personal opinion is vague, unsubstantiated, conclusory, and cannot form the basis for denial of a site plan review application under New Hampshire law. See Trustees of Dartmouth Coll. v. Town of Hanover, 171 N.H. 497, 513 (2018) (planning board's decision on site plan review must be based on more than mere personal opinions and the board cannot deny approval on an *ad hoc* basis because of vague concerns).

Further, as shown on the site plan, there is an existing berm ranging from 2-8 feet in height running along the westerly side of the pond. This berm should serve as a natural barrier to contain some of the noise generated by the events.

For the foregoing reasons, and because the Applicant has complied with all requirements of site plan review approval, the Applicant requests that the Board approve the site plan application. The Applicant thanks the board for its time in this regard and looks forward to discussing this matter further at the upcoming February 10, 2021 public hearing.

Sincerely,

/s/ Brett W. Allard

Brett W. Allard, Esq.