

STATE OF NEW HAMPSHIRE

MERRIMACK, ss.

SUPERIOR COURT

Arnold Alpert
1 Mudgett Hill Road, Canterbury, NH 03224

Judith Elliott
1 Mudget Hill Road, Canterbury, NH 03224

James Snyder
115 Asby Road, Canterbury, NH 03224

v.

New Hampshire Motor Speedway, Inc.
1122 US Route 106N, Loudon, NH 03307

Town of Loudon
55 South Village Road
Loudon, NH 03307

**VERIFIED COMPLAINT TO ENFORCE SETTLEMENT AGREEMENT AND
REQUEST FOR PERMANENT INJUNCTIVE RELIEF**

Petitioners, Arnold Alpert, Judith Elliott and James Snyder ("Mr. Alpert", "Ms. Elliott", and "Mr. Snyder", and collectively, "Petitioners") by and through their attorneys, Shaheen & Gordon, P.A., file this Verified Complaint to Enforce Settlement Agreement and Request For a Permanent Injunction against New Hampshire Motor Speedway, Inc. ("NHMS"), and the Town of Loudon ("Town" and, collectively with NHMS "Respondents") In support thereof, Petitioners state as follows:

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SUPERIOR COURT

2017 DEC 11 PM 1 13

INTRODUCTION

1. This case concerns the expanded usage of NHMS' operations at its Loudon racetrack ("NHMS Premises") as a host site for musical concerts – an expansion that violates a twenty-eight (28) year old written Settlement Agreement prohibiting musical events at the venue. The Settlement Agreement ended earlier litigation brought by local concerned citizens and allowed NHMS to construct and expand its racetrack without Petitioners opposition. *See* Settlement Agreement, attached as Exhibit A ("Agreement").

2. When Petitioners negotiated the terms of the Settlement Agreement, a primary concern was the noise that would emanate from the NHMS venue, as well as the hours of operation. These issues were addressed in the Settlement Agreement. Of critical importance to the Petitioners was the hosting of musical concerts; this was addressed in the first paragraph of the Settlement Agreement as follows:

“New Hampshire Speedway covenants that it shall not permit any musical concerts of any type or description to be held on the premises currently known as New Hampshire International Speedway (“Premises”) except in conjunction with racing events.” Exhibit A at ¶1.

3. The Settlement Agreement is binding on NHMS and any successor in interest “so long as the land is used as a racetrack.” *Id.* at ¶17. The Settlement Agreement was signed by the NHMS, Concerned Racetrack Neighbors individually which included Petitioners Arnold Alpert, Judith Elliott and James Snyder, and the Town. It was recorded in the Merrimack County Registry of Deeds. Ex. A - BK1839 PG 1512.

4. In response to a corporate decision to relocate a NASCAR race from New Hampshire to Las Vegas, Respondents now seek to violate the Settlement Agreement that bought peace between the Town, NHMS and Petitioners for the past twenty-eight (28) years and allowed NHMS to grow into the largest sporting venue in New England. Now because of a corporate decision to shift profit centers, Respondents seek to violate the Settlement Agreement.

5. Petitioners request this Court enforce the twenty-eight year old Settlement Agreement.

PARTIES

6. Petitioner Arnold Alpert is an individual residing at 1 Mudgett Hill Road, Canterbury, NH 03224 and is a signatory to the Settlement Agreement.

7. Petitioner Judith Elliott is an individual residing at 1 Mudgett Hill Road, Canterbury, NH 03224 and is a signatory to the Settlement Agreement..

8. Petitioner James Snyder is an individual residing at 115 Asby Road, Canterbury, NH 03224 and was a Plaintiff in *Snyder et. al v. Planning Board of the Town of Loudon and New Hampshire Speedway, Inc.* 89-E-00021-B. (Merrimack County Superior Court) and is a signatory to the Settlement Agreement.

9. Respondent NHMS is a corporation with a principal office address of 1122 US Route 106N, Loudon, NH 03307, NH and a service address of 9 Capitol Street, Concord, NH 03301. New Hampshire Motor Speedway, Inc. is a subsidiary of Speedway Motorsports, Inc.

10. Respondent Town is a municipal corporation with a place of business at 55 South Village Road, Loudon, NH 03307.

JURISDICTION

11. This Court has jurisdiction over this matter pursuant to RSA 491:22 and RSA 498:1.

12. Venue is proper in this Court because Respondent NHMS's principal place of business is in Loudon, New Hampshire and the subject premises are located in Loudon, New Hampshire.

13. The 1989 Agreement specifies that actions for enforcement may be brought in Merrimack County Superior Court. Ex. A at ¶14.

FACTS

A. Proposed Expansion Leads to Litigation.

14. In 1988 Bob Bahre had a dream. He would purchase the sleepy Bryar Motorsport Park that held annual motorcycle races and turn it into a world-class facility that would "attract four annual races sanctioned by the National Association of Stock Car Auto Racing (NASCAR)." See Concord Monitor Article dated December 21, 1988, attached as Ex. B.¹

15. Bahre's dream was others' nightmares, creating significant local concern that noise and traffic from the expanded racetrack would detrimentally affect local properties and the surrounding rural community.

16. Prior to NHMS' opening, concerned residents of Loudon, including Mr. Snyder, filed suit against the Loudon Planning Board and NHMS's predecessor, New Hampshire Speedway, Inc. See *Amended Petition for Review of Planning Board Decision Under RSA 677:15*, attached as Ex. C.

¹ The original expansion increased expansion to a seating capacity of 55,000. Expansion continued over the years. The current capacity is in excess of 88,000. Over 100,000 persons attend the NASCAR races. www.nhms.com/about/headlines/nascar/traffic-control-plans-for-july-cup-race.html

17. For Mr. Snyder, the *Snyder Petition* set forth in detail the facts giving rise to his claim that the proposed expansion of the racetrack would “adversely affect the Snyders’ safety and their use and enjoyment of their property....” Ex. C at ¶2(n). The Petition specifically identified increased traffic and noise arising from the expanded track operations as cause for their harm. *See also* Ex. C at 2(h) and (g) related to noise studies attached as exhibits to the Petition. Through the *Snyder Petition*, Petitioners sought to prohibit NHMS’s expansion.

18. All parties were represented by sophisticated counsel. New Hampshire Speedway, Inc. was represented by Richard Wiebusch who was then practicing law with Sulloway, Hollis and Soden. Plaintiffs were represented by Attorney Peter Marsh. The Town was represented by Michael Donovan.

19. The litigation was contentious. NHMS subpoenaed Ms. Elliott and Mr. Alpert (both Petitioners here) for depositions, although neither was a party to the *Snyder* litigation. Ms. Elliott’s deposition was detailed in 252 pages. Based on the wide ranging and abusive nature of the questions asked of Ms. Elliott, Mr. Alpert filed a Motion to Quash the subpoena for his deposition. *See* Motion to Quash Subpoena attached as Ex. D.

20. After a flurry of motions for summary judgment and prior to a ruling on Alpert’s Motion to Quash the parties negotiated a Settlement Agreement. *See* Docket Sheet attached as Ex. E; *see also* Stipulation attached as Ex. F. The Settlement Agreement ended the litigation and imposed covenants concerning the use of the property. Petitioners’ opposition was silenced and the expansion occurred.

*B. 1989 Settlement Agreement: Covenants Agreed to –
Opposition to Expansion Silenced*

21. The 1989 Agreement was the product of a bargained negotiation, by which Mr. Snyder and the other signatories – including Mr. Alpert and Ms. Elliott – agreed to cease their

objection to racetrack expansion in exchange for a number of covenants which would restrict the usage of NHMS Premises.

22. The negotiations were conducted by the parties face to face and guided by counsel.

23. The 1989 Agreement contains the following relevant provisions:

- “New Hampshire Speedway covenants that it shall not permit any musical concerts of any type or description to be held on the premises currently known as New Hampshire International Speedway (“premises”) except in conjunction with racing events.” Ex. A at ¶ 1.
- “New Hampshire Speedway covenants that it shall not permit” any racing activities “after 7:30 PM.” Ex.A at ¶2.
- “The parties agree that they have entered into this Settlement Agreement after consultation with counsel, that this Settlement Agreement shall be governed by New Hampshire law and that it may be specifically enforced by any party in an action brought forward in Merrimack County Superior Court.” Ex. A at ¶ 14.
- “The Plaintiffs in Snyder v. Town of Loudon and the Concerned Racetrack Neighbors agree to cease all opposition to the racetrack expansion, either by public statements or contacts with any federal, state or local agency.” Ex. A at ¶ 16.
- “This agreement shall be binding on New Hampshire Speedway, Inc. and its successors so long as **the land is used as a racetrack**. The provisions of Paragraphs 1, 2 and 3 hereof shall be recorded in the Merrimack County Registry

of Deeds to apply so long as the track is used as a racetrack.” Ex. A at ¶ 17 (emphasis added).

24. The 1989 Agreement was recorded in the Merrimack County Registry of Deeds at Book 1839, Page 1512.

25. Petitioners’ initial settlement proposal was that NHMS would covenant “that it shall not permit any musical concerts of any type or description to be held on the premises currently known as the New Hampshire International Speedway (“premises”). See Proposed Settlement Agreement attached as Ex. G.

26. This term was negotiated and it was agreed that musical events could be held only “in conjunction with racing events.” Agreement at ¶1.

27. When negotiating and executing the Agreement, it was intended and understood that the Agreement would prevent the holding of any free standing musical events on any land or property owned by New Hampshire Speedway no matter when that property was acquired.

28. As demonstrated by twenty-eight years of joint and complementary conduct, there was never any effort to conduct free standing musical concerts on the Premises until the sale to Speedway Motorsports, Inc. (“Speedway”) and the subsequent transfer of a NASCAR race.

C. The Racetrack Expands

29. Bahre’s dream came true. As a result of the Settlement Agreement he expanded the park, renamed it New Hampshire International Speedway (“NHIS”) and advertised it as the largest sports facility in New England.

30. NHMS' expansions included adding additional tracts of land, constructing further seating and concessions stands, and creating overnight camping facilities. To facilitate these expansions, NHMS submitted approximately 51 major and/or minor site plan review applications and/or variances to the Town for approval. In almost every instance, NHMS treated the Premises as one unified tract of land, submitting and obtaining land use approvals through the submission of one site plan, with each expansion simply being added to the constant site plan.

31. Pursuant to their obligations under the Agreement, Petitioners did not publicly object to the expansions occurring at NHMS. Each NHMS application was approved, with almost every approval being granted within two weeks of submission.

32. Relying on the Settlement Agreement and because the expansions did not include free standing musical concerts, Petitioners did not object to the expansions occurring at the Premises. Other citizens were not as sanguine.

33. In 1998, various individuals filed suit against NHMS and the Town of Loudon seeking review of the town's approval of further expansion of NHMS. The litigation sought judicial intervention to prevent the building of an additional 9,000 seats in the track's stadium. Hillary Nelson et al vs. The Town of Loudon et al, 217-1998-EQ-00033, Merrimack County Superior Court ("1998 Litigation").

34. Petitioners were not parties to the 1998 Litigation and did not participate in the litigation.

D. Post-Bahre Expansion

35. Speedway Motorsports, Inc. (“Speedway”) purchased NHMS in 2007 for \$340 million cash. In addition to NHMS, Speedway owns seven other racing facilities through multiple wholly-owned subsidiaries, including the Las Vegas Motor Speedway (“LVMS”).

36. At the time of the sale, the 1989 Agreement had been recorded in the Merrimack County Registry of Deeds for nearly 20 years.

37. It was widely reported at the time of the sale that Speedway was likely to transfer at least one of the NASCAR races held at NHMS to one of Speedway’s other venues.

38. In December 2016 it was announced that Speedway would be moving one of the NASCAR races to an alternative venue, and NHMS began to publicly work on plans to bring a country music concert to NHMS.

39. Ten years after its purchase it was reported in March 2017 that the September NASCAR race would be transferred to Las Vegas beginning in 2018, allowing LVMS to benefit from a double header weekend.

40. During the March 16, 2017 meeting of the Loudon Planning Board, NHMS announced plans to hold a three day country music festival at NHMS. NHMS anticipated selling 20,000 tickets per day for the three-day event. NHMS also planned to allow concert goers to camp at NHMS for the duration of the festival. *See* March 16, 2017 Town of Loudon Planning Board Minutes, attached as Ex. H.

41. The stated purpose behind the concert is to make up for the “lost revenue” that Speedway has simply shifted from its New Hampshire venue to an alternative location in Las Vegas.

42. During the March 16, 2017 meeting, NHMS’s representative threatened the Planning Board with litigation if its requests for variances and permits were not approved.

Exhibit H (“Mr. Glahn said that if Loudon tries to fight this then NHMS will bring them to court.”)

43. NHMS was also stated during that meeting that while only one concert is presently contemplated for 2018, NHMS would move forward with additional concerts if the 2018 event proves to be financially lucrative.

44. On April 27, 2017, NHMS filed a Site Plan Review Application and a Change of Use Application with the Town of Loudon Planning Board (collectively, “Planning Board Applications”). *See* Site Plan Review Application and Change of Use Application, attached as Exhibit I.

45. On May 10, 2017, NHMS filed a Variance Application and an Application for a Special Exception (collectively, “ZBA Applications”) with the ZBA. *See* Variance Application and an Application for Special Exception, attached as attached as Exhibit J.

46. Collectively, the Planning Board Applications and the ZBA Applications, as written, requested unlimited music concerts at the NHMS Premises. This was more a series of festivals than a singular concert. NHMS did admit in its ZBA Applications that it was requesting overnight camping and tenting in relation to the music concerts of up to twenty-one days.

47. The Loudon Zoning Board of Adjustment conducted two evidentiary public meetings on August 24, 2017 and September 28, 2017. When asked during the ZBA meeting if NHMS would limit the concerts to three events, Mr. McGrath responded that he didn’t want to set a limit on the number of concerts. *See* August 24, 2017 Town of Loudon Zoning Board of Adjustment Minutes (“Mr. McGrath said he doesn’t see them doing more than 2,3 events would stretch it but he doesn’t want to set a limit to 3 events”), attached as Ex. K.

48. Mr. McGrath further indicated that 4-6 bands will play each day between 2:00 pm and 10:30 pm for a three day event. He anticipated that attendance would be 20,000 people per day. *See* September 28, 2017 Town of Loudon Zoning Board of Adjustment Minutes (“Mr. McGrath said 4-6 bands will play per day from 2:00 pm until 10:30 pm.”), attached as Ex. L.

49. When questioned by the public and ZBA members regarding the anticipated noise, NHMS submitted testing which had been conducted without notice to abutters and during the daytime hours. Even though NHMS’ testing was flawed, the ZBA refused a request to have an independent expert evaluate NHMS’ claims.

50. Mr. McGrath’s representations were consistent with NHMS’s prior representations that it would consider holding additional concerts, if the currently planned country music festival was financially successful.

51. During public hearings, the ZBA refused to consider the Settlement Agreement. At the conclusion of the September 28, 2017 ZBA meeting, the ZBA granted the special exception and variance, upon the condition that “there will only be 1 event held annually, 2:00 pm until 10:30 pm, 3 day event, must take place between June 1st and September 1st”. *See* Exhibit L.

52. The Loudon Planning Board conducted a public meeting on October 19, 2017, where NHMS reiterated much of what had been said during the ZBA meeting. However, in response to a direct question from Mr. Snyder, Mr. Glahn recognized that portions of the property owned in 1989 would be used in conjunction the proposed music concerts. *See* October 19, 2017, 2017 Town of Loudon Planning Board Minutes, attached as Exhibit M at 2 (“Mr. Glahn said it depends if your position is power coming from power lines or ticket sales being sold from the main office than that is irrelevant. Mr. Glahn said if your position is, is the concert

itself being held on the property from the 1989 agreement the answer is no. Mr. Glahn spoke about the bathrooms that are located on the property from the 1989 settlement stating that these bathrooms if needed will be locked but from a sanitation point of view it would be wise to use them. Vice Chairman read minutes from the Planning Board meeting of March 2017 and Mr. McGrath was quoted they would bring phone, electricity and whatever they may need from the property from the 1989 agreement.”).

53. NHMS has stated that it intends to conduct music festivals on a permanent basis, and that it intends to seek additional music concerts in the future if the 2018 concert is successful. If NHMS is consistent with its prior practices, it will seek incremental changes, thus avoiding the cumulative effect of its expansions.

54. On November 16, 2017, the Loudon Planning Board conducted a public meeting at which it granted change of use and site plan approval to allow a musical concert in 2018.

55. Petitioners seek to enforce the Settlement Agreement and to permanently enjoin Respondents from hosting “musical concerts of any type or description ... as long as the land is used as a racetrack.” Ex. A at ¶¶1 and 17. There is no dispute that the land is still being used as a racetrack and that concerts will be held on the Premises.

*E. The Terms of the Agreement Must Be Enforced
Consistent with Legal Principles Applicable to the Enforcement of Settlement Agreements*

56. Settlement agreements are governed in New Hampshire by principles of contract law. Poland v. Twomey, 156 N.H. 412, 414 (2007) (affirming an order requiring specific performance of a previously agreed-to promise contained in a settlement agreement as within the discretion of the trial court).

57. Whether a settlement agreement will be enforced in equity “will be determined by equitable principles in the Superior Court.” Burtman v. Burtman, 94 N.H. 412, 417 (1947) (overruling demurrer to bill in equity for specific performance of settlement agreement).

58. A court’s equitable order enforcing a settlement agreement should “provide[] the parties with exactly what they bargained for under the settlement agreement.” Poland v. Twomey, 156 N.H. at 416.

59. Courts will enforce an affirmative obligation set forth in a settlement agreement through an order for specific performance. See Ducey v. Corey, 116 N.H. 163, 164–65 (1976) (“The motion to enforce the settlement sought a remedy in the nature of specific performance which is governed by equitable principles.”) (emphasis added).

60. If a settlement agreement requires one party’s forbearance, principles of equity suggest that the court may properly enforce such forbearance though the issuance of an injunction. See Restatement (Second) of Contracts § 357(2) (“Subject to the rules stated in §§ 359-69, an injunction against breach of a contract duty will be granted in the discretion of the court against a party who has committed or is threatening to commit a breach of the duty if . . . the duty is one of forbearance . . .”).

61. “The suitability of affording equitable relief rests in the sound discretion of the trial court to be exercised according to the circumstances and exigencies of the case. . . . [and] [w]e will uphold the trial court’s equitable order unless its decision constitutes an unsustainable exercise of discretion.” Poland v. Twomey, 156 N.H. at 415–16 (citing Gutbier v. Hannaford Bros. Co., 150 N.H. 540, 541 (2004)).

*F. The Restrictive Covenant is Binding on After Acquired Property
Consistent with the Equitable Reciprocal Servitude Doctrine*

62. At all times pertinent to this action, Respondents had knowledge of the Agreement which had been filed in the Registry of Deeds and was binding on any successor.

63. For twenty-eight years the terms of the Agreement were complied with for the benefit of the parties.

64. NHMS has unilaterally sought to breach the Agreement.

65. The covenants provided for an orderly and general scheme of development of the land: a racetrack and camping area that would attract and host over 100,000 guests.

66. As part of this development, the NHMS agreed to certain restrictions in order to promote and achieve the development of the Premises.

67. “If an owner of a tract of land has adopted a general scheme for the development of his lots, and has inserted in his deeds uniform restrictions intended for the benefit of all the lots, equitable reciprocal servitudes are thereby created on the lots.” *Gauthier v. Robinson*, 122 N.H. 365, 368 (1982) (citation omitted).

68. “Promises imposing restrictions on the use of land may be enforced at law and in equity between the original parties and their successors depending on the nature of the promise itself and on the type of relief requested.” *Traficante v. Pope*, 115 N.H. 356, 358 (1975)

69. “The rationale for enforcing promises restricting the use of land as equitable servitudes is that ‘he who takes land with notice of a restriction upon it will not in equity and good conscience be permitted to act in violation of the terms of these restrictions.’” *Id.* at 359 (citing C. Clark, *Real Covenants and Other Interests Which ‘Run With the Land’* 170 (1947)); *Abington Ltd. Partnership v. Heublein*, 717 A.2d 1232 (Conn.1998) (whether after-acquired property is included in dominant estate is a question of the intent of the parties when the easement was created; to determine intent, court may take into account the proposed use and

likely development of the dominant estate.); *Valley Properties, Inc. v. King's Dep't Stores*, 505 F.Supp. 92 (D.Mass.1981) (Shopping-center-lease covenant prohibiting landlord from leasing any of its property within a 3-mile radius to another discount store would be interpreted to apply to after-acquired property because otherwise the covenant would not provide realistic protection to the lessee.)

COUNT I
MOTION TO ENFORCE SETTLEMENT AGREEMENT

70. The allegations set forth in Paragraphs 1 through 69 are hereby incorporated by reference as if fully set forth herein.

71. The Settlement Agreement was negotiated in good faith by parties and their counsel.

72. For twenty-eight years the Petitioners have fully complied with the settlement terms.

73. For twenty-eight years, NHMS received the full benefit of its settlement.

74. During these twenty-eight years, NHMS was allowed to expand the racetrack allowing it to become the largest sporting facility in New England.

75. This is a self-created hardship. Speedway knew of the Settlement Agreement and its covenants at the time of its purchase of NHMS.

76. At the time of its purchase by Speedway, it was reported that NHMS was contemplating the transfer of one of its NASCAR races to another Speedway venue.

77. After receiving the full of its bargain NHMS now seeks to breach the Settlement Agreement in order to address "lost profits" that are not lost at all. To the contrary, it is expected that the Las Vegas racetrack will have a dramatic increase in profits due to the transfer of the NASCAR races.

78. The terms of the Settlement Agreement are unambiguous. NHMS covenanted that it shall not permit any musical concerts of any type or description to be held on the premises currently known as New Hampshire International Speedway (“premises”) except in conjunction with racing events.” Ex. A at ¶ 1. There was no formal books and page definition of the term “premises” but the language is forward thinking as it contains the phrase “currently known as New Hampshire International Speedway.”

79. The contours of the covenant are further highlighted in ¶17 of the Settlement Agreement. The covenant not to “permit any musical concerts of any type or description” is binding on any successor “so long as **the land is used as a racetrack.**” Thus as long as the land is being used as a racetrack, musical concerts are not allowed on any of the land owned by NHMS or any successor in interest.

80. To address the “noise” issue, the terms of the Settlement Agreement made clear that certain sponsored night-time activities would conclude at 7:30 pm. Ex. A at ¶3. Sponsoring night-time musical events till 10:30 pm violates this covenant.

81. In exchange for these covenants the Petition For Review of Planning Board Decision was dismissed and Petitioners agreed to “cease all opposition to racetrack expansion...” Ex. A at ¶ 16. As Petitioners bargained away certain of their rights and interests, NHMS bargained away certain uses of the property, including the ability to hold “any musical concerts” or other night time events. This is binding on its successor.

82. Now, after receiving the full benefit of that bargain, Respondents intend to breach the clear terms of the 1989 Agreement to remedy an alleged “financial loss” which it initiated itself and is accounting loss at best.

83. Accordingly, legal and equitable principles mandate the enforcement of the Settlement Agreement and the entry of a permanent injunction.

Count II

84. The allegations set forth in Paragraphs 1 through 83 are hereby incorporated by reference as if fully set forth herein.

85. Respondents had notice of the restrictive covenant on the land.

86. Respondents knew that this restrictive covenant was part of a Settlement Agreement and was binding on any successor.

87. Respondents knew that the restrictive covenant was part of the development of the racetrack that it allowed the expansion to occur.

88. Respondents knew or should have known that the restrictive covenant applied to after acquired property within the development of the raceway.

89. Without the restrictive covenant being applicable to after acquired property within the development of the raceway then the covenants would have been illusory and failed to provide the protections agreed to in the Settlement Agreement.

90. Equitable principles require that after acquired property within the contiguous development of the raceway are subject to the restrictive covenants set forth in the Agreement.

COUNT III

REQUEST FOR INJUNCTIVE RELIEF

91. The allegations set forth in Paragraphs 1 through 89 are hereby incorporated by reference as if fully set forth herein.

92. By the facts alleged herein, Respondents' plan to utilize NHMS as a stand-alone concert venue is a violation of the 1989 Agreement.

93. Respondents are to be enjoined from utilizing NHMS as a concert venue "as long as the land is used as a racetrack" in accordance with the terms of the 1989 Agreement.

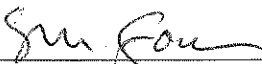
REQUESTS FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Honorable Court:

- a. Schedule a hearing at the Court's earliest convenience on this controversy between the parties;
- b. Enforce the Settlement Agreement to prohibit New Hampshire Speedway from holding "any musical concerts of any type or description to be held" on its land in Loudon New Hampshire "except in conjunction with racing events";
- c. Find and order that equitable principles require that after acquired property within the contiguous development of the raceway are subject to the restrictive covenants set forth in the Agreement.
- d. Enjoin NHMS from holding the country music festival on its land in Loudon, New Hampshire consistent with the Settlement Agreement;
- e. Grant such other and further relief as this Court deems just;
- f. Award Petitioners Attorney's fees related to this action.

Respectfully submitted,
Arnold Alpert
Judith Elliott
James Snyder
By their attorneys,
SHAHEEN & GORDON, P.A.

Date: December 11, 2017



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BR 1839 PG 1512

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT
#89-E-00021-B

James and Susan Snyder,
Stephen and Laurie Webster-Booth,
and
Erwin Lange

v.

Planning Board of the Town of Loudon
and
New Hampshire Speedway, Inc.

A TRUE COPY ATTEST:
Marshall C. Lathrop
CLERK

SETTLEMENT AGREEMENT

NOW COME James Snyder, Susan Snyder, Steven Booth, Laurie Webster-Booth, and Erwin Lange ("Plaintiffs"); New Hampshire Speedway, Inc. ("New Hampshire Speedway"); Planning Board of the Town of Loudon; and Concerned Racetrack Neighbors, an unincorporated association; and, in settlement of all claims arising from the case of James and Susan Snyder, Steven and Laurie Webster-Booth and Erwin Lange v. Planning Board of the Town of Loudon and New Hampshire Speedway, Inc., Docket # 89-E-00021-B (Merrimack County Superior Court) and all other objections to New Hampshire Speedway's proposed racetrack project, agree and covenant as follows:

1. New Hampshire Speedway covenants that it shall not permit any musical concerts of any type or description to be held on the premises currently known as New Hampshire International Speedway ("premises") except in conjunction with racing events.
2. New Hampshire Speedway covenants that it shall not permit any drag racing, tractor pulls, mud runs, demolition derbies, or jet cars on the premises.
3. New Hampshire Speedway covenants that it shall not permit any motor vehicle racing on the premises, including but not limited to trial runs, practice runs or competition events, on any day before 8:00 A.M. (Eastern Standard Time or Eastern Daylight Time, as applicable) or after 7:30 P.M. (Eastern Standard Time or Eastern Daylight Time, as applicable). Plaintiffs understand that from time to time circumstances may delay the planned starting time, running time, or completion of an event scheduled and reasonably expected to be completed before 7:30 P.M. and agree that, in such circumstances, this covenant shall not prevent the holding of said events, although their completion may occur later than 7:30 P.M.

Settlement Agreement Approved
Order in Accordance Therewith

Date *May 26 1989* *Charles P. [Signature]* P.J.

see page 5

RECEIVED

1989 JUN -5 AM 10:50

MERRIMACK COUNTY
REGISTRY OF DEEDS

129406

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4. New Hampshire Speedway covenants that it shall establish a policy that patrons are permitted to bring alcoholic beverages on the premises only in containers measuring approximately sixteen inches per side and shall take reasonable steps to notify patrons of that policy.

5. New Hampshire Speedway covenants that it shall not offer any alcoholic beverages for sale on the premises except as provided in the following sentence. Plaintiffs agree that this covenant shall not prevent New Hampshire Speedway from offering beer for sale on the premises or prevent the use or serving of alcoholic beverages in corporate or press boxes. New Hampshire Speedway covenants that it shall limit each sale of beer to no more than two (2) containers, of which each container shall be no larger than twelve (12) fluid ounces. Should New Hampshire Speedway offer beer for sale at an event, it agrees to establish a policy of ending said sales a reasonable time prior to the scheduled completion of the day's events.

6. New Hampshire Speedway covenants that it shall establish and make reasonable efforts to notify patrons of policies prohibiting patrons from discharging fireworks or building fires on the premises without a permit and shall cooperate with efforts to enforce all public laws applicable to fireworks and fire control on the premises.

7. New Hampshire Speedway covenants that if the land currently owned by E.J. Prescott, Inc. shown as Map 61, Lot 3, on the Town of Loudon Tax Maps is used in conjunction with the premises, it shall not have a means of ingress or egress on Asby Road or any other roadway other than the state highway known as Route 106.

8. New Hampshire Speedway covenants that during periods when it holds races which are expected to draw more than fifteen thousand patrons to the premises, it will arrange with the Town for traffic control personnel at the following locations and will reimburse the Town to the extent it requires: at the intersections of Route 106 and Asby Road, Clough Hill Road, Shaker Road, and at any other locations required by the Town or the State. In an emergency or during a bona fide shortage of personnel, it is understood that the Loudon Police Chief has the authority to control the assignment of police personnel.

9. New Hampshire Speedway covenants that it shall, at its expense, install man-made barriers totalling twenty (20) feet high at each end of the 1.02 mile track to be constructed on the premises beginning thirty (30) feet from the end of the grandstands and construct the grandstands to eight-four (84) feet to serve as sound barriers approximately as indicated in the acoustic analysis of BBN Systems and Technologies Corporation.

attached hereto as Exhibit A. It is understood that the construction of the grandstands higher than thirty-five (35) feet will require a variance from the Loudon Board of Adjustment. New Hampshire Speedway covenants that it will make reasonable efforts to maintain, preserve and foster the growth of trees existing on the premises, consistent with responsible forestry practices, to encourage the natural sound barriers on the premises.

10. If necessary, in order to protect Wetlands on the premises, the Site Plan approval of December 15, 1988, will be amended to move the racetrack closer to Route 106 by approximately forty (40) feet if required by the New Hampshire Wetlands Board and to relocate the infield garage further north if required by the New Hampshire Wetlands Board.

11. New Hampshire Speedway covenants that it shall reduce the use by motor vehicles without mufflers on the 1.6 mile road course on the premises as follows: during April, May, September and October, three days a week will be reserved for racing only with mufflers and during June, July, and August, two days a week will be reserved for racing only with mufflers; with the exception that when a "no muffler" day is rained out, the race may be rescheduled contrary to this schedule. New Hampshire Speedway covenants that if vehicles used in C.A.R.T. sanctioned races generate a source level of noise greater than that of "stock" racing cars, it shall hold only one race of C.A.R.T. vehicles in a calendar year. The Plaintiffs agree that this covenant shall not prevent New Hampshire Speedway from rescheduling a C.A.R.T. race which has not been completed for completion later in a calendar year.

12. Any payments to be made will be made and the obligations imposed on New Hampshire Speedway, Inc. by this Agreement shall take effect only after all permits and approvals for the track have been obtained and all possibility of challenge has expired.

13. The parties agree that the limitations on use of the premises identified in Paragraphs of 7, 8, 9 and 10 of this Settlement Agreement shall be incorporated in an amendment to the Site Plan approval dated December 15, 1988, and further agrees that it shall record the amended site plan in the Merrimack County Registry of Deeds.

14. The parties agree that they have entered into this Settlement Agreement after consultation with counsel, that this Settlement Agreement shall be governed by New Hampshire law and that it may be specifically enforced by either party in an action brought forward in Merrimack County Superior Court.

PJM
MLD

15. The parties agree that the court may enter a final order and mark the docket of this case as follows: "Case settled according to the terms of the attached Settlement Agreement. The Site Plan approval dated December 15, 1988 is hereby modified to conform to Paragraphs 7, 8, 9 and 10 of the Settlement Agreement."

16. The Plaintiffs in Snyder v. Town of Loudon and the Concerned Racetrack Neighbors agree to cease all opposition to the racetrack expansion, either by public statements or contacts with any federal, state or local agency.

17. This agreement shall be binding on New Hampshire Speedway, Inc. and its successors so long as the land is used as a racetrack. The provisions of Paragraphs 1, 2, and 3 hereof shall be recorded in the Merrimack County Registry of Deeds to apply so long as the track is used as a racetrack.

WITNESS the parties signatures this 17TH day of May, 1989.

NEW HAMPSHIRE SPEEDWAY, INC.

WITNESS:

Dustin A. Roberts

BY: *Chris Beale*
its duly authorized PRESIDENT

CONCERNED RACETRACK NEIGHBORS

Jerry Elliott

Judy Elliott
Judy Elliott

Arnold Alpert

Arnold Alpert
Arnold Alpert

Galen Beale

Galen Beale
Galen Beale

James Snyder

James Snyder
James Snyder

Peter and

Susan Snyder
Susan Snyder

Peter and

Steven Booth
Steven Booth

Peter and

Laurie Webster-Booth
Laurie Webster-Booth

Peter and

Erwin Lange
Erwin Lange

TOWN OF LOUDON

Michael Dawson

By: Mary Anne Steele
Selectman

Michael Dawson

By: Raymond Cummings
Selectman

Michael Dawson

By: Michael Post
Selectman

Michael Dawson

By: John E. McQuinn
Chairman, Planning Board

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, E. J. Prescott, Inc. hereby joins in this Agreement for the sole purpose of agreeing to the provisions of Paragraph 7 of this Agreement.

E. J. Prescott, Inc.

By: Peter E. Prescott
Its duly authorized President

May 26 1989

Approved:
Charles P. Pintos
Presiding Justice

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EXHIBIT A



Bryar Owl Details Vision Of Loudon 500

By JOHN OUDENS
Assistant Sports Editor

You've probably heard of the Daytona 500. Maybe you've heard of the Talladega 500, the Firecracker 400. Get ready for the Loudon 500 and for 50,000 people jamming the track next to Route 100.

Maine businessman Bob Bahre, the new owner of the Bryar Motorsport Park, made it clear yesterday that he wants no less than a top-flight stock car race in Loudon, and he wants it as early as 1986.



Bob Bahre

Passaconaway Club in Concord. "I think we've got a pretty good shot."

Bahre bought the park from Keith Bryar, who opened it in 1965. Bahre wouldn't give his price. Bahre said he is considering renaming the park the New Hampshire International Speedway.

From the early '60s until 1986, Bahre owned the Oxford Plains Speedway, site of the Oxford 250 race. He's 60 years old, his shoulders are hunched and his voice is soft, but he's not at all shy about his master plan. He wants a track that would dwarf Oxford and, he said, every other track in New England.

Last week the Loudon Planning Board approved his plans to expand the park's seating to 55,000 and to lengthen the main racing oval from five-eighths of a mile to a one-mile superspeedway. Yesterday, Bahre said the changes would make the park good enough to attract four annual races sanctioned by the National Association for Stock Car Auto Racing (NASCAR).

The biggest of the four would be a Winston Cup race. Bahre said the race purse would be about \$500,000 — sufficient, he said, to persuade big-name drivers to trek up from the Southeast, where most of the Winston Cup races are held.

Bahre said a Winston Cup race would draw 55,000 or 60,000 people. That's 25,000 more than the usual crowd that shows up for the Loudon Classic motorcycle races at the track each June. Bahre said a Winston Cup race would attract fans from all over New England, New York and perhaps the Southeast, where most of the races are held.

Winston Cup races lately have been won by drivers like Dale Earnhardt, Bill Elliott and Davey Allison. The Winston Cup series kicks off in February with the circuit's biggest event, the Daytona 500 and continues with races most weekends into mid-October. Last year, Bahre said, the series comprised 29 races, and it could squeeze in as many as 32.

Bahre's other three stock car races would be Busch Grand Nationals. The Busch circuit is NASCAR's second tier, one step below the Winston Cup. Bahre said a Busch race would get a crowd of about 30,000.

In his grand plan, Bahre would stage one Busch race in the spring, one in midsummer — the Saturday before the Winston Cup Sunday race — and one later in the season.

He said he'd also like to land an Indy-car race, which would be sanctioned by Championship Auto Racing Teams. The purse for such a race would be about \$400,000. Bahre said, though he insisted that was a guess. An Indy event at Loudon apparently would be more significant than a Busch stock car race but less so than a Winston Cup.

Bahre said construction would begin about April 1; his target date for completion is Aug. 1. So his first goal is a Busch race that month.

The park won't look the same by then. Bahre plans an aluminum grandstand for 55,000 people. The park's current capacity is about 20,000. A press box and private luxury boxes will sit atop the grandstand.

The main oval, to grow from five-eighths of a mile to a mile, will share a straightaway with the outer 1.6-mile motorcycle road course. The motocross track, mud run, one-third-mile track and one-fifth mile track will be

The big race would be the highlight of the track's season, along with three lesser stock car races, an Indy-car event and the current Loudon Classic motorcycle races, which are held every June.

At the moment, Bahre hasn't lined up a single auto race. All he has are his plans to expand the track — and his confidence.

"We're laying the odds by building," Bahre said yesterday, announcing his purchase officially at a news conference in the

cleared out for parking spaces. Overall, Bahre said, there will be room for 17,000 cars.

He said he plans to make room for shrubs, flowers and such niceties.

"We want to dress it up, have a showplace," he said. "... It's going to be something the area's going to be proud of."

Bahre said the track wouldn't compare to Daytona or Talladega, which are built up around 2½-mile ovals. He said he sees something more similar to Richmond, Va., or Dover, Del., both sites of Winston Cup races.

Though construction won't begin until April, Bahre said the Loudon Classic motorcycle races will be held as planned June 16-18. The rest of next summer's schedule isn't clear.

"With construction going on, this first year is going to be kind of sketchy," said Don Brymer, a long-time Bryar regular who will stay on as — in Bahre's words — "the motorcycle man."

When all the changes are done, Bahre said, the park's racing schedule won't change much. Club car racing and motorcycle racing will continue, though Bahre's proposed weekend stock car races would knock out a few current events. Losing the smaller tracks means losing a few races, such as the mud bogs.

but Brymer said most of the motorcycle racing takes place on the long road course.

Bahre said he will have no night racing. That means he'll eliminate an annual night-time auto race and a few weeknight club races.

The track will remain available for testing, riders' schools and some of the other activities that keep the track busy four and five days a week through the summer.

Bahre sold the Oxford speedway in 1986 because, he said, after 25 years he was getting tired of having to run the show every weekend from spring to fall. Even then, though, he was talking about attracting a Winston Cup race, and he had no hope of doing that in Oxford. Oxford's track, at a third of a mile long, is too short to be considered for a Winston Cup race — the minimum requirement is a half-mile. Whether or not Bahre might have lengthened the track, he couldn't do anything about the 26-mile, two-lane winding road that serves as the only access to the speedway.

Bahre said he thinks Route 100 is much more suited to handling the traffic. It's only a two-lane, but it's nine miles from I-93, and it's fairly straight.

Whether Bahre gets a Winston Cup race will be up to NASCAR President Bill France, whom Bahre said

he has known for 25 years. Bahre entered cheerfully that France won't consider decision on Loudon until renovations are done, but he is certain that Loudon merited a big race.

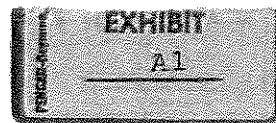
Apparently Bahre was not going to the trouble of re-asking the track if he wouldn't all be answer.

"If we get a Winston Cup race, it will be worth the money. If we don't get a date, it won't be worth anything."

Bahre introduced Bahre as his president, and a later prospect, as his vice president. Bahre is designated the track, now official Hampshire Speedway Co.

Bahre, who sold it to Bahre, said he has known more than 20 years, at early days at the Oxford. Asked if he thinks Bahre has the races he wants, Bahre said he will. "... He's the only one in the whole New England area who can get NASCAR."

CONCORD MONITOR, Wednesday, December 21, 1988



STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

James and Susan Snyder,
Stephen and Laurie Webster-Booth,
and
Erwin Lange,

v.

Planning Board of the Town of Loudon
and
106 Midway Raceway, Inc.

AMENDED PETITION FOR REVIEW OF
PLANNING BOARD DECISION
UNDER R.S.A. 677:15

I. PRELIMINARY STATEMENT

(1). This is an action pursuant to R.S.A. 677:15 for Superior Court review of the December 15, 1988 decision of the Loudon Planning Board granting final site development approval of an application by 106 Midway Raceway, Inc. to construct a high-speed raceway at the present site of Bryar Motorsport Park in Loudon, New Hampshire and to undertake related construction at that site.

II. PARTIES

(2). James and Susan Snyder (RFD 8, Box 309-A, Concord, N.H. 03301) are owners of a parcel of land in Loudon. Their family homestead is on an abutting parcel in Canterbury. Their safety and the enjoyment of their property would be directly effected by the site development as a result of the noise, traffic, and other adverse effects which the development would produce and a diminution in the value of their property which would result.

(2a). The Snyders' homestead is located on Asby Road, directly across from Defendant New Hampshire Speedway Inc.'s (hereinafter

IN SENIOR COURT
MERRIMACK COUNTY
CONCORD, N.H.

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"Speedway's") site development, approximately 500 yards from the track entrance.

(2b). The Snyders live close enough to the track that the noise from its past operation has substantially interfered with their use and enjoyment of their property.

(2c). On the weekend of the Loudon Classic Motorcycle Race, the increased traffic has made it substantially more difficult for them to gain access to their property by vehicle.

(2d). Defendant Speedway's site development will involve more than doubling the capacity of the site to approximately 55,000 seats.

(2e). Past owners of Bryar Motorsport Park, 106 Midway Raceway, Inc., scheduled only one major race a year, The Loudon Classic Motorcycle Race, at which the average attendance was approximately 35,000 persons.

(2f). After its site development is completed, in addition to retaining the Loudon Classic, Defendant Speedway plans a Winston Cup stock car race (expected attendance: 55,000 to 60,000), three Busch Grand Nationals stock car races (expected attendance at each: 30,000) and a Championship Auto Racing race (see Exhibit A1 "Bryar Owner Details Vision of Loudon 500" - 12/21/88 Concord Monitor).

(2g). Defendant Speedway's site development involves the construction of a one-mile long high-speed oval track for its stock car races; the existing road course is approximately 1.5 miles long.

(2h). A sound study commissioned by Defendant Speedway indicated that while the peak sound level on the new track will likely be approximately 5 decibels lower than that of the existing road course, because the new track will be shorter and cars will pass by an observer more frequently than on the old track, the equivalent level of noise generated by the new track will increase as will the annoyance suffered by those who hear that noise (See Page 2 of Defendant Speedway's sound study attached hereto as Exhibit A2).

(2i). According to Speedway's sound study, the decibel level resulting from the new track at a

LAW OFFICES OF PETER MARSH CARRIAGE HOUSES 233 NO MAIN ST CONCORD N. H. 03301

receptor one half mile west of the track (well beyond the site of the Snyders' homestead) will be 75 decibels, only 10 decibels lower than the noise level inside the track itself (Exhibit A2 at p. 3).

(2j). Peter Prescott, a shareholder in Defendant Speedway, has purchased property at the intersection of Route 106 and Asby Road (the road on which the Snyder's homestead is located).

(2k). Prescott has cleared a large area of this parcel immediately adjacent to Asby Road, which Speedway plans to use as a parking area.

(2l). The Snyders' primary access to their homestead is by way of Asby Road, presently a lightly traveled country road.

(2m). The Snyders' family includes a two year old child.

(2n). Defendant Speedway's site development will adversely affect the Snyders' safety and their use and enjoyment of their property in the following ways:

(1). It will substantially increase traffic along Route 106, the major access road to the Snyders' homestead and the only access road to the track, at least five weekends per year;

(2). It will substantially increase traffic on Asby Road, the only access to the Snyders' homestead, at least five weekends per year;

(3). It will increase the equivalent level of noise from the track and the annoyance the Snyders will experience as a result of track operations;

(4) The value of their property will be reduced due to increased noise and traffic and other adverse impact from the site development.

(3). Erwin Lange (RFD 8, Box 293, Concord, N.H. 03301) is the owner of a parcel of land in Loudon. His family homestead is on that parcel. His safety and the enjoyment of his property would be directly effected by the site development as a result of the noise, traffic, and other adverse effects that the development would

produce and the diminution in the value of his property which would result.

(3a). Lange's property is located on Loudon Ridge approximately 1500 yards east of Defendant Speedway's proposed site development.

(3b). The primary access to his property is along Route 106 by way of Clough Hill Road, which crosses Route 106 approximately one mile south of Defendant's proposed site development.

(3c). Lange lives close enough to the track that the noise from its past operation has substantially interfered with his use and enjoyment of his property.

(3d). On the weekend of the Loudon Classic Motorcycle Race, the increased traffic has made it substantially more difficult for him to gain access to his property by vehicle.

(3e). The primary access to Lange's property by ambulance service, police, and the fire department is along Route 106.

(3f). Defendant Speedway's site development will adversely affect Lange's safety and the use and enjoyment of his property in the following ways:

(1). It will substantially increase traffic along Route 106, the primary access to his homestead and the only access road to the track, at least five weekends per year;

(2). It will substantially decrease accessibility of fire, ambulance, and police services to his homestead during major parts of at least five weekends per year;

(3). It will increase the equivalent level of noise from the track and the annoyance he will suffer as a result of track operations;

(4). The value of his property will be reduced due to increased noise and traffic and other adverse impact from the site development;

(4). Stephen and Laurie Webster-Booth (RFD 8, Box 375-AA, Concord, N.H. 03301) are owners of a parcel of land in Loudon. Their family homestead is on that parcel. Their safety and the enjoyment of their property would be directly effected by the site development as a result of the noise, traffic and other adverse effects which the development would produce and the diminution in the value of their property which would result.

(4a). The Webster-Booth's homestead is located on Beck Road, approximately two miles south of Defendant Speedway's proposed site development.

(4b). The only practical access to the Webster-Booth's homestead is along Route 106, as Beck Road is a dead-end road which does not connect with any other road.

(4c). The Webster-Booths live close enough to the track that the noise from its past operation has substantially interfered with their use and enjoyment of their property.

(4d). On the weekend of the Loudon Classic Motorcycle Race, the increased traffic has made it substantially more difficult for them to have access to their property by vehicle.

(4e). The only access to the Webster-Booth's property by ambulance, police, or fire service is along Route 106.

(4f). Defendant Speedway's proposed site development will adversely affect the Webster-Booth's safety and their use and enjoyment of their property in the following ways:

(1). It will substantially increase traffic along Route 106, the only access road to their homestead and the track, at least five weekends per year;

(2). It will substantially decrease accessibility of fire, ambulance, and police service to their homestead during major portions of at least five weekends per year;

(3). It will increase the equivalent level of noise from the track and the annoyance they will suffer as a result of track operations;

(4). The value of their property will be reduced due to increased noise and traffic and other adverse impact from the site development.

(5). The Loudon Planning Board (Town Offices, Loudon Village, Loudon, N.H. 03301) (hereinafter "Planning Board") is the local governmental body empowered to review site plans in the Town of Loudon by R.S.A. 674:43 and the Loudon Zoning Ordinance (§206.6).

(6). 106 Midway Raceway, Inc. (P. O. Box 11, Loudon, N. H. 03301) (hereinafter "106 Raceway") is a corporation organized under the laws of the State of New Hampshire.

III. JURISDICTION

(7). This Court has jurisdiction over this Petition pursuant to R.S.A. 491:7 and R.S.A. 677:15 in that plaintiffs claim to be aggrieved by a decision of the Planning Board.

IV. VENUE

(8). Original venue lies with this Court in that the land development at issue is located in Merrimack County.

V. PROCEDURAL HISTORY

(9). In October of 1988, representatives of 106 Raceway contacted the Loudon Board of Selectmen seeking approval for a site development.

(10). The Selectmen advised 106 Raceway to seek Planning Board approval of their site development proposal and in an undated letter, marked "Confidential", the Selectmen wrote to the Chairman of the Planning Board, Arthur McNeil, requesting that "(t)he Planning Board take whatever steps it may practically and legally take to greatly reduce the normal application and review process" for the 106 Raceway site development application. (This letter is attached hereto as Exhibit A.)

(11). On October 20, 1988, representatives of 106 Raceway wrote to the Chairman of the Planning Board "requesting permission to repair, upgrade and add to

existing spectator grandstands and viewing areas." (This letter is attached as Exhibit B.)

(12). On October 20, 1988, the Planning Board advised representatives of 106 Raceway that it would be necessary to secure approval of their proposed land development as a Major Site Development under Planning Board Regulations. (Minutes of the October 20, 1988 meeting of the Planning Board are attached hereto as Exhibit C.)

(13). On November 17, 1988, the Planning Board granted preliminary approval for 106 Raceway's Major Site Development application. (Minutes of the November 17, 1988 meeting of the Planning Board are attached hereto as Exhibit D.)

(14). On December 15, 1988, the Planning Board granted final approval of 106 Raceway's application to undertake a Major Site Development. (Minutes of the December 15, 1988 meeting of the Planning Board are attached hereto as Exhibit E.)

VI. LEGAL CLAIMS

COUNT ONE--THE PLANNING BOARD, IN ITS CONSIDERATION OF 106 RACEWAY'S APPLICATION FOR A SITE DEVELOPMENT, UNREASONABLY AND UNLAWFULLY DEPRIVED PERSONS EFFECTED BY THE DEVELOPMENT OF ADEQUATE NOTICE OF A PUBLIC HEARING ON THE APPLICATION AND OF A MEANINGFUL OPPORTUNITY TO BE HEARD AT SAID PUBLIC HEARING.

(15). State law [R.S.A. 676:4 I(d)] and Loudon Planning Board Land Development Regulations (§303.4[A] and §501.1)(hereinafter "Board Regulations") require that the Planning Board provide abutters with written notice of the public hearing on all applications for final site development approval at least ten (10) days prior to the hearing.

(16). The Planning Board sent no written notice to abutters of the December 15, 1988 public hearing on 106 Raceway's application for final site development approval.

(17). No abutters attended the hearing.

(18). State law [R.S.A. 676:4 I(d)] and Board Regulations [§303.4(A) and §501.2] require that the Planning Board give the general public notice of all public hearings at least ten (10) days prior to the hearing.

LAN, CIVIL OF PETER MARSH, CARRIGAN, CIVIL OF, TELING, MARSH, ST, CIVIL OF, N. H. STATE

(19) The only notice given to the general public of the December 15, 1988 hearing on 106 Raceway's application for final site development approval was publication in the Concord Monitor on December 7, 1988 eight days before the scheduled public hearing.

COUNT TWO--THE PLANNING BOARD, IN EXPEDITING ITS REVIEW OF 106 RACEWAY'S REQUEST FOR SITE DEVELOPMENT APPROVAL, UNREASONABLY AND UNLAWFULLY GRANTED FINAL SITE DEVELOPMENT APPROVAL TO 106 RACEWAY ALTHOUGH IT HAD NOT SECURED APPROVALS FROM STATE AGENCIES AND OTHER LOCAL GOVERNMENTAL BODIES AS REQUIRED BY THE BOARD'S OWN REGULATIONS.

(20). The Board's Regulations require that, prior to the Planning Board's granting approval of a site development, an applicant must secure all permits required by other governmental agencies (§601.2) and further require that the Board disapprove any land development application which is not accompanied by such approvals (§600).

(21). Although 106 Raceway's proposed site development would be a non-conforming use under the Loudon Zoning Ordinance, which may be permitted (if at all) only by special exception or a variance granted by the Loudon Zoning Board of Adjustment, 106 Raceway has not secured such approval from the Loudon Zoning Board of Adjustment for this site development nor was Planning Board approval conditioned on its securing such Zoning Board of Adjustment approval (See letter of the Planning Board to 106 Raceway President Keith Bryar attached hereto as Exhibit F).

(22). 106 Raceway's proposed site development involves the construction of a paved race track through a portion of a wetland yet it has not secured a dredge and fill permit from the New Hampshire Wetlands Board as required by state law (R.S.A. 483-a:1[Supp. 1988]) nor was Planning Board approval made contingent on its securing said permit.

(23). The parcel which 106 Raceway seeks to develop is partly located in the Town of Canterbury yet 106 Raceway has not secured approval from authorized governmental bodies of the Town of Canterbury for its site development nor was Planning Board approval made contingent on its securing Town of Canterbury approval.

(24). 106 Raceway's proposed site development involves the construction of a new sewage disposal system to serve the 50,000 spectators expected to

attend races at the newly constructed race track, yet 106 Raceway has not secured construction approval from the New Hampshire Water Supply and Pollution Control Commission for the construction of a sewage or waste disposal system as required by state law (R.S.A. 149-e:3[Supp. 1988]) nor was Planning Board approval made contingent on its securing said Water Supply and Pollution Control Commission approval.

(25). 106 Raceway's proposed site development involves the excavation of more than 100,000 square feet of land yet 106 Raceway has not secured a site specific permit from the Water Supply and Pollution Control Commission for said excavation as is required by state law (R.S.A. 149:8-a[Supp. 1988]) nor was Planning Board approval made contingent on its securing said permit.

(26). Planning Board Regulations (§609.7) require that all site plans be approved by the Loudon Fire Chief prior to the Planning Board granting site development approval (§609.7), yet 106 Raceway has not secured said approval nor was Planning Board approval made contingent on its securing the Loudon Fire Chief's approval.

(27). Although Planning Board Regulations (§703) require that, prior to approval, all applicants for site developments must submit a performance bond covering the costs of all site improvements, which bond must have been approved by the Town Counsel, the Planning Board did not require 106 Raceway to submit a performance bond prior to, or as a condition of, securing final site development approval.

COUNT THREE--THE PLANNING BOARD IN EXPEDITING ITS REVIEW OF 106 RACEWAY'S REQUEST FOR SITE DEVELOPMENT APPROVAL, UNREASONABLY AND UNLAWFULLY FAILED TO SECURE INFORMATION NECESSARY TO DETERMINE IF THE PROPOSED SITE DEVELOPMENT COMPLIES WITH STANDARDS REQUIRED FOR APPROVAL BY THE BOARD'S OWN REGULATIONS.

(28). Planning Board Regulations set forth land development standards (Article IV) and require the Board to disapprove any land development application which does not comply with these standards (§600).

(29). Among the standards applicable to site developments are septic system standards (§604.2), surface water management standards (§605), erosion and sediment control standards (§606) and site planning standards (§609).

(30). Board Regulations require that an applicant for final site development approval submit the following documents with its application in order to allow the Board to determine if the standards referenced in the preceding paragraph have been complied with:

- (i). Final Topographic and Soils Plan (§405.3 A);
- (ii). Final Surface Water Drainage Management Plan (§405.3 B);
- (iii) Erosion and Sediment Control Plan (§405.3 C);
- (iv). On-Site Waste Disposal Plan (§405.3 D);
- (v). Building Elevations (§405.3 E) and;
- (vi). Use Intensity Statement (405.3 F).

(31). 106 Raceway did not submit any of the plans or information listed in the preceding paragraph with its application for final site development approval - its "application" consisted of a two page drawing of the site, brochures from two manufacturers of metal grandstands, a list of abutters, a six page acoustic analysis, and a two sentence "site improvement proposal" (which is attached hereto as Exhibit B).

(32). Under Planning Board Regulations, the Planning Board has the legal duty to enforce the standards promulgated in Article IV (§801).

(33). Although the scope of the proposed development - involving the paving of a sixty-five (65) foot wide strip 1.02 miles long, the construction of parking areas for approximately 17,000 vehicles (which must be paved under land development regulations), and the potential attendance of 50,000 persons on the site - clearly raises substantial issues regarding septic system construction, surface water management, erosion control and site planning, the Board's failure to require 106 Raceway to submit plans and information required by its own regulations made it impossible for the Board to determine whether 106 Raceway's proposed site development complies with the standards necessary for approval.

COUNT FOUR--THE PLANNING BOARD UNREASONABLY AND UNLAWFULLY GRANTED FINAL SITE DEVELOPMENT APPROVAL FOR A SITE DEVELOPMENT APPLICATION WHICH DID NOT COMPLY WITH APPLICABLE STANDARDS AND BOARD REGULATIONS.

(34). Although Planning Board regulations require that applicants for major site development approval submit a Topographic and Soils Plan, a Surface Water Drainage Management Plan, an Erosion and Sediment Control Plan, an On-Site Waste Disposal Plan, Building Elevations and a Use Intensity Statement and although 106 Raceway's application included none of these plans and none of this information, the Planning Board approved the application.

(35). Although Planning Board Regulations require all parking areas in a site development to be paved (§609.5 E) and although representatives of 106 Raceway indicated that it did not intend to pave parking areas as part of its site development (see minutes of November 17, 1988 Planning Board meeting attached hereto as Exhibit D), the Planning Board approved its application for site development.

(36). Although Planning Board Regulations require that an applicant for land development approval secure all permits required by other governmental agencies prior to receiving site development approval and although the Planning Board knew or should have known that 106 Raceway had not secured necessary approvals from the Loudon Zoning Board of Adjustment, New Hampshire Wetlands Board, Town of Canterbury, Loudon Fire Chief and New Hampshire Water Supply and Pollution Control Commission, the Planning Board approved its application for site development.

VII. RELIEF REQUESTED

(37). Plaintiffs respectfully request that this Court:

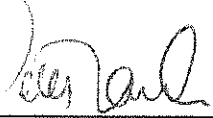
A. Issue a certiorari order to the Loudon Planning Board pursuant to R.S.A. 667:15 (II);

B. Reverse or vacate the decisions of the Loudon Planning Board granting 106 Raceway Preliminary and Final Site Development approval on the ground that said decisions were unlawful or unreasonable, pursuant to R.S.A. 677:15 (V);

C. Order such other relief as is just and equitable.

Respectfully submitted,

James and Susan Snyder,
Stephen and Laurie Webster-Booth,
Erwin Lange,
Plaintiffs
through counsel



February 9, 1989

Peter Marsh
244 No. Main St.
Concord, N.H. 03301
(603) 224-1877

LAW OFFICES OF PETER MARSH CHURCHMAN CONCORDS 244 NO. MAIN ST CONCORD, N. H. 03301

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

88-E-0021-B

JAMES and SUSAN SYNDER, et al.

v.

PLANNING BOARD OF THE TOWN OF LOUDON, et al.

MOTION TO QUASH SUBPOENA OF ARNOLD ALPERT AND FOR OTHER RELIEF

NOW COMES Arnold Alpert, by his attorneys, and requests that the court quash a subpoena requiring him to appear for a deposition in this matter on Friday, May 12, 1989 at 3:00 p.m., and in support of his motion states:

1. This case is an appeal from a decision of the Loudon Planning Board approving expansion of the Loudon racetrack.

2. The pending motion is a Motion to Dismiss filed by defendant New Hampshire Speedway, Inc. alleging that the plaintiffs lack standing to bring this appeal.

3. Your petitioner is not a party to this litigation. He is a resident of the town of Canterbury and lives less than one mile from the racetrack.

4. Your petitioner and another witness, Judith Elliot, were served with subpoenas duces tecum on April 10, 1989, requiring their presence at depositions conducted by New Hampshire Speedway, Inc. and requiring them to produce all records pertaining to a group known as Concerned Racetrack Neighbors.

5. Judith Elliot's deposition was held on April 13, 1989. Mr. Alpert's deposition was postponed and rescheduled for May 12, 1989.

6. In deposing Ms. Elliot, counsel for New Hampshire Speedway, Inc. asked questions on a wide variety of topics, including all conversations public or private concerning the racetrack; contents, time, and persons attending all meetings concerning the racetrack; who wrote various articles concerning the racetrack; who was sent fund appeals; a membership and/or mailing list for Concerned Racetrack Neighbors; and details of all other community protests or groups of concern she had ever been involved with on any subject at any time or place.

7. Mr. Alpert is informed and believes that counsel intends to question him on a similar list of topics, possibly also including details of his employment with the American Friends Service Committee.

May 11 9 19 AM '89
MERRIMACK COUNTY
SUPERIOR COURT
CONCORD, N.H.

ELIZABETH CAZDEN
ATTORNEY AT LAW
118 WALNUT STREET
MANCHESTER, N.H. 03104

25

8. The defendant's stated theory of the relevance of these questions is the defendant's hypothesis that "these named plaintiffs are straw men and in fact they are fronting for a group which is funding and coordinating this litigation and which itself has no legal right to make this challenge;" that the association is itself directed by your petitioner and Ms. Elliot; and that since neither the association nor your petitioner would have standing to bring the action, the named plaintiffs as "straw men" do not have standing either. (See Elliot Deposition transcript, p. 49.)

9. The defendant has not asserted this theory of standing in any pleading filed with this court.

10. Your petitioner has searched diligently and been unable to locate any legal authority whatsoever to support the defendant's claim that your petitioner's beliefs, activities, and/or written or oral communications, or his involvement in the association known as Concerned Racetrack Neighbors, or his political activities other than those concerned with the racetrack, or his employment, could conceivably be relevant to this court's determination of whether the five plaintiffs, or any of them, have standing to bring this action. See, New London Land Use Assoc. v. New London Zoning Board, 130 N.H. 510, 513 (1988); Bedford Residents Group v. Town of Bedford, 130 N.H. 632 (1988).

11. The defendant does not have the right to conduct discovery that is not reasonably calculated to lead to information that would be relevant and admissible on an issue properly placed before the court. Superior Court Rule 44.

12. The plaintiffs' standing in this case depends on an objective and factual determination of factors such as the proximity of the plaintiff's property to the site for which approval is sought, the type of change proposed, the immediacy of the injury claimed, and the plaintiff's participation in the administrative hearings, to determine whether the plaintiff has a "definite direct interest in the outcome." Weeks Restaurant Corp. v. City of Dover, 119 N.H. 541, 545 (1979).

13. In determining a plaintiff's standing to appeal from a planning board decision, the plaintiff's underlying motivation is not determinative. Weeks, supra, at 545.

14. According to pleadings on file in this matter, the plaintiffs in this case all live in reasonable proximity to the Loudon racetrack and have all alleged that the increased traffic and noise resulting from the proposed expansion of the racetrack will adversely affect their enjoyment of their properties. See, Price v. Keene Planning Board, 120 N.H. 481, 482 (1980).

15. The defendant's allegations that someone other than the named plaintiffs may be financing or supporting this litigation has no bearing whatsoever on whether the plaintiffs have standing. Groups of concerned citizens have frequently financed and supported litigation on behalf of a handful of named plaintiffs, and in such cases standing is determined as to the named plaintiffs and not the unnamed supporters. E.g., Brown v. Board of Education, 347 U.S. 483 (1954) (NAACP Legal Defense Fund).

16. The activities about which defendant seeks to question your petitioner are well within his protected First Amendment rights to discuss with others issues of public concern, to associate with others to achieve common political goals, and to speak freely in private or public forums concerning such matters. E.g., NAACP v. Claiborne Hardware Co., 458 U.S. 886, 907, 911-12 (1982).

17. Compulsory inquiry into these protected matters can only be justified if the petitioner's rights are outweighed by a compelling governmental interest. NAACP v. Claiborne, supra, at 912; DeGregory v. Attorney General of New Hampshire, 383 U.S. 825 (1966).

18. The defendant's request for records pertaining to the membership of Concerned Racetrack Neighbors similarly violates the petitioner's First Amendment rights and those of other persons with whom he has associated. E.g., NAACP v. Overstreet, 384 U.S. 118 (1966); NAACP v. Alabama, 357 U.S. 449 (1958).

19. The invasion of privacy and infringement of First Amendment rights that would result from this deposition outweigh the defendant's need for the information that is sought from your petitioner, given its tangential relationship to this litigation. See, State v. Svoleantopoulos, 130 N.H. 471, 473 (1988) (balancing protection of informers against defendant's right to present case).

20. In responding to this subpoena, your petitioner has been put to much time and trouble, and has been called away from his employment, and has had to consult with private legal counsel concerning his rights.

WHEREFORE, your petitioner prays:

A. That the subpoena duces tecum issued for his deposition be quashed;

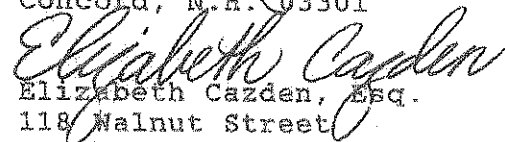
B. That your petitioner be awarded his costs, including reasonable attorneys' fees in the amount of \$1,000 in connection with this subpoena and Motion;

C. For such other relief as may be just and equitable under the circumstances.

Respectfully submitted,
ARNOLD ALPERT,
By his attorneys,



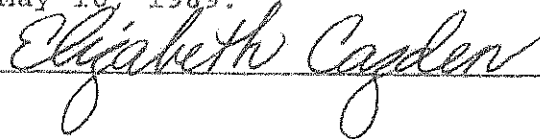
Graham Chynoweth, Esq.
16 Centre St.
Concord, N.H. 03301



Elizabeth Cazden, Esq.
118 Walnut Street
Manchester, N.H. 03104
622-9835

May 10, 1989

I hereby certify that a copy of this Motion has been or will be delivered to Peter Marsh, Richard Wiebusch, Michael Donovan, and Richard Dietz, counsel of record in this matter, and that written notices of our intent to file this Motion were hand-delivered to each of them on May 10, 1989.



ELIZABETH CAZDEN
ATTORNEY AT LAW
118 WALNUT STREET
MANCHESTER, N.H. 03104

INDEX

James & Susan Snyder, Stephen &
Laurie Webster-Booth and
Erwin Lange

vs. Planning Bd. Of Town of Loudon &
NH Speedway Corp *Inc.*
~~106 Midway Raceway, Inc.~~

Document #	Document	Cash \$ 80.00	Exhibits <input type="checkbox"/>
1	1/13/89 Bill (Pet for Review of Planning Bd Decision -RSA 677:15) & Order, ret 2/7/89 (Peter K. Marsh) Prayer A grntd (Manias, J)		
2	1/27/89 Return of service (Town of Loudon)		
3.	" " (106 Midway Raceway, Inc.)		
4	1/27/89 Michael Donovan app sp for Loudon Planning Bd		
5	1/30/89 Robert A. Dietz apps for 106 Midway Raceway, Inc.		
6	2/8/89 Richard V. Wiebusch app for NH Speedway Corp (SH+S)		
7, 7a	" Def NH Speedway Corp mo to amend by substitution		
8, 8a	" " NH Speedway Corp's mo to dismiss		
9	2/9/89 Def 106 Midway-Raceway's response to mo to amend by substitution		
10, 10a	2/9/89 NH Speedway, Inc's mo to amend-chg Corp to Inc. <i>grntd 3/16/89</i>		
11	2/10/89 Plt'fs obj to mo to dismiss		
12, 12a	" Plt'f's motion to amend and amended petition		
13	2/13/89 Certified record of Loudon Planning BD		
14	3/8/89 Answer of Loudon Planning Bd		
15, 15a	" Planning Bd's mo to dismiss		
16	3/13/89 Plt'fs' obj to def planning bd's mo to dismiss		
17	4/5/89 Plt'fs' first mo for summ jdgt w/affidavit		
18	" Plt'fs' 2nd mo for summ jdgt "		
19	" Plt'fs' 3rd mo for summ jdgt "		
20	4/19/89 Defs' mo to ext time to ans pet & MSJ until 30 days after ruling on mo to dismiss <i>granted 5/2/89 (Conias, J.)</i>		
21.	4/25/89 - Def's obj to 1st, 2nd & 3rd motions for SJ		
22	4/26/89 Plt'fs' have no obj to mo to ext time		
23	5/1/89 Def Town of Loudon's mo to Quash Subpoenas of Town Officials. <i>grntd 5/4/89</i>		

INDEX

James & Susan Snyder, Stephen & Laurie Webster-Booth and Erwin Lange vs. Planning Bd. of Town of Loudon & NH Speedway, Inc.

Document #	Document	Cash \$.....	Exhibits <input type="checkbox"/>
24	5/4/89 Order on motion to Quash- grntd (Contas,J)		
25	5/11 /89 Motion to quash subpoena of Arnold Alpert		
26	5/19/89 Stipulation - Settlement Agreement will be filed		
27	5/24/89 Settlement Agreement <i>Apprd 5/26/89</i>		

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT
#89-E-00021-B

James and Susan Snyder,
Stephen and Laurie Webster-Booth,
and
Erwin Lange

v.

Planning Board of the Town of Loudon
and
New Hampshire Speedway, Inc.

STIPULATION

The parties, by their attorneys, stipulate that a settlement has been reached in this case, that a written confirmation of the terms of that settlement is being circulated for signature, and that all further discovery and court proceedings may now be cancelled. The Settlement Agreement will be filed in the Superior Court Clerk's office no later than May 26, 1989.

James and Susan Snyder,
Stephen & Laurie Webster-Booth
and Erwin Lange, Plaintiffs

Date: May 12, 1989

By: *Peter Marsh*
Peter Marsh, Esq.

Planning Board of Town of
Loudon, Defendant

Date: May 12, 1989

By: *Michael L. Donovan*
Michael L. Donovan, Esq.

New Hampshire Speedway, Inc.,
Defendant

Date: May 12, 1989

By: *Richard V. Wiebusch*
Richard V. Wiebusch, Esq.

MAY 19 2 46 PM '89
SUPERIOR COURT
MERRIMACK COUNTY
CONCORD, N.H.

LAW OFFICE OF PETER MARSH
CARRIGAIN COMMONS
244 No. MAIN St.
CONCORD, N. H. 03301
(603) 224-1277

COPY

April 20, 1989

Richard V. Wiebusch, Esq. ✓
Sulleyway, Hollis & Soden
9 Capitol St.
P.O. Box 1256
Concord, N.H. 03302-1256

Re: Snyder et als v. New Hampshire
Speedway, Inc. et al.

Dear Dick:

I enclose a proposed Settlement Agreement in the above-referenced matter. Please discuss this with your client and advise me of the result. Thank you.

Yours,

Peter Marsh

PM:bd
Enc.
cc: Michael Donovan, Esq.

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT
#89-E-00021-B

James and Susan Snyder,
Stephen and Laurie Webster-Booth,
and
Erwin Lange

v.

Planning Board of the Town of Loudon
and
New Hampshire Speedway, Inc.

SETTLEMENT AGREEMENT

NOW COME James Snyder, Susan Snyder, Steven Booth, Laurie Webster-Booth, and Erwin Lange ("Plaintiffs") and New Hampshire Speedway, Inc. ("New Hampshire Speedway") and, in settlement of all claims arising from the case of James and Susan Snyder, Steven and Laurie Webster-Booth and Erwin Lange v. Planning Board of the Town of Loudon and New Hampshire Speedway, Inc., Docket # 89-E-00021-B (Merrimack County Superior Court) agree and covenant as follows:

1. New Hampshire Speedway covenants that it shall not permit any musical concerts of any type or description to be held on the premises currently known as New Hampshire International Speedway ("premises").

2. New Hampshire Speedway covenants that it shall not permit any activities to be held on the premises which generate a source level of noise higher than that of "stock" racing cars accelerating on the turns of the 1.02 mile long track New Hampshire Speedway plans to construct on the premises as that source level is identified in the December 7, 1988 acoustic analysis of BEN Systems and Technologies Corporation, attached hereto as Exhibit A.

3. New Hampshire Speedway covenants that it shall not permit any motor vehicle racing on the premises, including but not limited to trial runs, practice runs or competition events, on any day before 9:00 A.M. (Eastern Standard Time or Eastern Daylight Time, as applicable) or after 7:00 P.M. (Eastern

Pre-race
music

DMV racing,
tractor pulls,
etc.

8:00 AM
7:30 PM

Lana needs to know days per week.

Can't stop beer 14" cooler or less.

No parking in infield

2 beers/sale

Early shut-down good idea

Intend to sell beer; liquor in boxes only.

Will try on "lite" beers

*Portable toilets
New rest facilities
No showers*

Standard Time or Eastern Daylight Time, as applicable). Plaintiffs understand that from time to time circumstances may delay the planned starting time, running time, or completion of an event scheduled and reasonably expected to be completed before 7:00 P.M. and agree that, in such circumstances, this covenant shall not prevent the holding of said events, although their completion may occur later than 7:00 P.M.

4. New Hampshire Speedway covenants that it shall establish a policy that patrons are not permitted to bring alcoholic beverages on the premises and take reasonable steps to notify patrons of that policy.

5. New Hampshire Speedway covenants that it shall not offer any alcoholic beverages for sale on the premises. Plaintiffs agree that this covenant shall not prevent New Hampshire Speedway from offering beer for sale on the premises if that is requested by a commercial sponsor of an event. Should New Hampshire Speedway offer beer for sale at an event, it agrees to establish a policy whereby no more than one (1) twelve ounce container of beer shall be sold to any customer at the time of any sale. Should New Hampshire Speedway offer beer for sale at the request of a sponsor, as provided above, it agrees to make all reasonable efforts to convince the sponsor to allow it to sell "low alcohol" beer only. Should New Hampshire Speedway offer beer for sale at an event, it agrees to establish a policy of ending said sales a reasonable time prior to the scheduled completion of the day's events. Should New Hampshire Speedway offer beer for sale at an event, it agrees to offer shuttle service to patrons to public transportation terminals and accommodations facilities in Laconia and Concord.

6. New Hampshire Speedway covenants that if it allows patrons to camp overnight on the premises or to connect recreational vehicles to utility hook-ups on the premises, it shall operate its camping facilities in compliance with rules applicable to campgrounds within the New Hampshire State Parks system.

7. New Hampshire Speedway covenants that it shall not permit any parking lot on the premises or any parking lot abutting the premises which is owned in whole or in part by any shareholder of New Hampshire Speedway to have a means of egress on Asby Road or any other roadway other than the state highway known as Route 106.

8. New Hampshire Speedway covenants that it shall, at its expense, implement a plan acceptable to Plaintiffs to mitigate the impact on local highways and

Will accept recommendations of LowTY Win

5/B back fr state 5/17/89.

Noise engineering stands higher

Working on 35'

\$15,000 in narrow pd 31 days after final permit. If settled soon

Lawyers' stuff

Wd not consider scaling back

Need 55,000 capacity to make it pay.

Wont ride out holiday w/ kids

roadways of vehicular traffic generated by the holding of major races on the premises. The parties agree that New Hampshire Speedway shall, in the first instance, propose said traffic impact mitigation plan and that this Settlement Agreement shall not be of force and effect until Plaintiffs expressly approve the plan, which shall be incorporated by reference as part of this Settlement Agreement and attached hereto as Exhibit B.

9. New Hampshire Speedway covenants that it shall, at its expense, implement a plan acceptable to Plaintiffs to abate noise generated by motor vehicle racing on the premises. The parties agree that New Hampshire Speedway shall, in the first instance, propose said noise abatement plan and that this Settlement Agreement shall not be of force and effect until Plaintiffs expressly approve the plan, which shall be incorporated by reference as part of this Settlement Agreement and attached hereto as Exhibit C.

10. New Hampshire Speedway agrees that it shall pay Plaintiffs and their counsel all costs incurred in bringing forward this action. Said costs shall include reasonable legal fees and compensation to all persons who attended depositions at the request of New Hampshire Speedway, whether said depositions took place or not (said costs are itemized on Exhibit D, attached hereto).

11. New Hampshire Speedway covenants that it shall incorporate the limitations on use of the premises identified in the preceding paragraphs of this Settlement Agreement in a covenant acceptable to Plaintiffs' counsel and further agrees that it shall execute said document and record it in the Merrimack County Registry of Deeds.

12. The parties agree that they have entered into this Settlement Agreement after consultation with counsel, that this Settlement Agreement shall be governed by New Hampshire law and that it may be specifically enforced by either party in an action brought forward in Merrimack County Superior Court.

13. The parties agree that the docket of this case shall be marked "Case settled according to the terms of the attached Settlement Agreement."

OK

OK

OK

WITNESS the parties signatures this _____ day of _____, 1989.

WITNESS:

NEW HAMPSHIRE SPEEDWAY, INC.

BY: _____
Its duly authorized _____

James Snyder

Susan Snyder

Steven Booth

Laurie Webster-Booth

Erwin Lange

35' req.

TOWN OF LOUDON
LOUDON, NEW HAMPSHIRE
PLANNING BOARD MINUTES
March 16, 2017

Meeting called to order at 7:00 p.m. by Chairman Tom Dow.

Attendance:

Chairman Tom Dow, Vice Chairman Stanley Prescott, Tom Moore, Bob Cole, George Saunderson, Henry Huntington, Steve Ives and alternates Alice Tuson and Dustin Bowles.

Bill Lake from the Fire Department and Pauline Touzin from Conservation were in attendance.

Acceptance of Minutes:

February 16, 2017 Regular Meeting –**Mr. Saunderson made a motion to approve the minutes as written; seconded by Mr. Huntington. All were in favor. Motion carried**

February 16, 2017 CNHRPC Meeting– Mrs. Tuson said that Mr. Ives name needs to be removed as he was not present at the meeting. **Mr. Huntington made a motion to approve the minutes with the corrections; seconded by Mr. Saunderson. All others were in favor. Motion carried.**

Discussion:

- **David McGrath, NHMS, Country Music Festival-** Wilbur Glahn from McLane Middleton law office was present with Mr. McGrath. Several members from Canterbury Planning Board were present, Jim Snyder, Hillary Nelson, Joshua Gordon and Tyson Miller. Mr. McGrath said they are looking to hold a country music festival in the summer of 2018 on tax map 61/6 and 52/15. Mr. McGrath explained that they are using a promoter called Live Nation, the event will run from 2pm-10:30pm for three days (Friday, Saturday, Sunday) and would be located in parking lot S6. Mr. McGrath asked what type of site plan would be needed. Mr. Saunderson asked Mr. McGrath if he agreed this should be regional impact. Mr. McGrath said he can see where it could be. Mrs. Tuson asked how many tickets they expect to sell. Mr. McGrath said roughly 20,000 tickets per day but there will be people camping for the weekend. Mr. Saunderson asked where tickets would be purchased for this event. Mr. McGrath said they would be purchased primarily on ticketmaster. Mr. Saunderson questioned the use not being permitted in that zone. Mr. Glahn spoke about it being considered a permitted use in one of the lots that is zoned commercial under accessory to a sports facility. The other lot that is to be used is zoned rural residential and Mr. Glahn stated that it would be allowed under outdoor event venue. Chairman Dow said that this will be something that they will have to look into further. Mr. Saunderson said that it states in the zoning ordinance that the outdoor event venue is permitted for non-recurring events. Mr. Glahn said there is no definition for what non recurring means. Mr. Saunderson asked if Mr. McGrath agreed that this should be a change of use. Mr. Glahn said he does not believe it should be but if the planning board determines they would require a change of use then they will do so. Mr. Ives said he appreciated Mr. McGrath for being cooperative and understands they are a big part of Loudon's tax base and they do want to see the track succeed. Mr. Ives also said they will be treated as any other business in town, no better or worse and they will have to go through the same process as any other business would. Mr. Glahn said that he has had conversations with the town attorney and was advised to speak with the Planning Board. Mr. Saunderson said the track has many things to address with the most important thing being the covenant. Mr. Glahn said they spoke with Loudon's town attorney about this matter and he believes that the attorney agrees that Loudon has no right to enforce the covenants. Mr. Glahn also stated the covenant reads the property currently owned by the speedway shall not hold concerts unless a

race is happening. At the time of this agreement the two parcels that the track wants to hold the country music festival on were not owned by NHMS stated Mr. Glahn. Mr. Glahn said that if Loudon tries to fight this then NHMS will bring them to court. Mr. Saunderson said they are all trying to completely understand the tracks plans and this is only a discussion at this time. Tyson Miller a Canterbury Planning Board member said he wants to make sure this will require a regional impact notice. Mr. Jakubowski a Loudon resident questioned how many times this event will be held, once per year or is there a possibility to have maybe 8 concerts per year? Mr. McGrath said right now they plan on having this music festival once per year but he is a business and it could possibly turn into more. Mr. Jakubowski asked if they are allowed to have concerts why are they here? Chairman Dow said so they can make sure these are planned properly and the public is notified. Mr. Jakubowski asked if they are using the track to bring power, food, water and other things to support the concert located on this separate lot. Mr. McGrath said yes they would be using the facility for phone, electric and what they may need. Vice Chairman Prescott said they do support the track as a business and they want to see them succeed, they should meet as a board with the town attorney. Mr. McGrath asked the board what they need from NHMS as far as a site plan. Mr. Saunderson said they aren't sure they can answer that, they would like to speak with the town attorney. Mr. Ives asked what type of time frame they are looking to have this completed. Mr. McGrath said they hope to announce a concert will be happening during the July 16th race. Mr. Huntington said he does believe this would be considered regional impact, he agrees the board should talk with the town attorney and he believes this should require a site plan. Mr. Huntington questioned the zoning of the property and believes they would need a variance. Mr. Cole thanked Mr. McGrath for being upfront and coming to the town. Linda Cote a Loudon resident is opposed on having a music festival at the track. Mrs. Cote said they are holding this on a separate lot to get around the covenant because NHMS doesn't want to deal with Canterbury. Mrs. Cote said this will bring lots of people to the area, this will bring lots of noise, the traffic will be horrible just like when they hold race events she cannot get onto 106. Mrs. Cote said they need to follow the covenants the track agreed to. Mrs. Cote also asked if they will be directing traffic right onto 106 or onto a back road. Chairman Dow said it will be right at the main entrance. Mr. Saunderson asked NHMS for deeds of the property they are wishing to hold the concert. Chairman Dow said they will schedule a meeting with the town attorney and will reach out to NHMS after.

- **Dennis Jakubowski, dark sky ordinance-** Mr. Jakubowski brought to the Board an example of a light ordinance. Mr. Jakubowski said they should add to the zoning ordinance a lighting plan. Chairman Dow said when people come in for a site plan they do request to see a light plan and the lights must face down. Chairman Dow said that the light regulations are in the land use regulation handbook not the zoning ordinance. Mr. Jakubowski was concerned that there was nothing in writing and was relieved to hear there is.
- **Peter Parisey, car sales, M30L24-** Mr. Parisey approached the board to discuss running a car repair and sales out of a garage bay at Harry O's Electric. Chairman Dow said that there is already a special exception in place for the garage bays to run auto sales with a restriction of 2 cars that must remain stored inside the garage bays. Mr. Parisey is looking for have a maximum of 10 cars that will be stored on the backside of the building. Mr. Bowles said that would make it a used car sales lot and that is not what the special exception is for. Mr. Moore said that would require a change of use and site plan. Mr. Ives stated that if they allowed Mr. Parisey to sell up to 10 cars out of the storage bays they would also have to allow the other person renting a garage bay to sell up to 10 cars and now the lot would be holding up to 20 cars. Chairman Dow said this property is a laundry mat and the intent was not to have lots of cars being sold from the property, they are allowing the property owner to rent the bays to have some income. Mr. Prescott said everything should stay inside and the outside needs to stay neat. Chairman Dow said we can talk about having 2 cars on the lot but limitations need to be set.

Old Business: None

New Business: None

Report of the Board of Permit: None

Report of ZBA: Variance for Jay's Auto to expand sales onto abutting property.

Board Discussion: Chairman Dow informed the board that he has instructed the planning boards administrative assistant Mrs. Bosco to reach out to the office manager Mrs. Pearl to schedule the meeting with the selectmen and the town attorney. Chairman Dow suggested getting this meeting scheduled as soon as possible so if NHMS wants to come into the next meeting they are prepared. Board members voted for Chairman and Vice Chairman, **Mr. Cole made a motion to re-appoint Mr. Dow to serve as Chairman, seconded by Mr. Huntington; all were in favor. Mr. Cole made a motion to re-appoint Mr. Prescott to serve as Vice Chairman, seconded by Mr. Huntington; all were in favor**

Adjournment:

Mr. Cole made a motion to adjourn at 8:25 p.m.; seconded by Mr. Huntington. All were in favor.

Submitted by,
Danielle Bosco
Administrative Assistant

COPY FOR:

- Planning Board
- Board of Selectmen
- Code Enforcement
- Fire Department

BOARD USE ONLY:

Date Received _____
 Received By _____
 Application # _____
 Fees Paid _____

**TOWN OF LOUDON, NEW HAMPSHIRE
 SITE PLAN REVIEW APPLICATION**

TITLE OF SITE PLAN: Site Plan of the New Hampshire Motor Speedway

Proposed use: Recreation - Concert with overnight parking/camping

Road Frontage, include any new road(s): _____

If accessing an existing road, is said roadway public or private?

- Public, Class V
- Public, Class VI
- Private

Road is or is proposed to be: Public _____ Private _____

OWNER OF RECORD:

Please indicate the following for all owners of record for the property to be reviewed.

Name: New Hampshire Speedway, Inc.
 Company: NHMS
 Street: 1122 Route 106 North
 City, Zip: Loudon, NH 03307
 Phone: 513-5796

LOCATION OF DEVELOPMENT:

Map#	<u>61</u>	Lot#	<u>9</u>	Map#	<u>52</u>	Lot#	<u>15</u>
Tax Map #	<u>61</u>	Lot#	<u>6</u>	Map#	<u>51</u>	Lot#	<u>18</u>

Zoning of parcel(s), including overlay zones Commercial Recreational

Parcel size (Acres): See attached Parcel size (Square Feet): _____

Water source: _____

Number of proposed residential, commercial, or industrial units: N/A

MAP 61 LOT 9
82.05 Acres

MAP 61 LOT 6
32.02 Acres
Current Use Area 3.3 Acres

MAP 52 LOT 15
34.10 Acres
Current Use Area 13.7 Acres

MAP 51 LOT 18
32.02 Acres
Current Use Area 3.3 Acres

Name of Applicant's Agent or Contact Person:

Name of Surveyor: Wilbur Glenn / Jennifer Parent
 Name of Firm: McLane Middleton, Professional Association
 Street: 900 Elm St
 City: Manchester, NH 03101
 Phone: 603-625-6464
 Fax: 603-625-5656

Waivers Requested (please indicate with a check): YES NO

(Please attach a separate cover letter for each waiver request to this application)

Waiver Requested for Item(s):

8, 9, 13, 14, 19

Special Exception or Variance granted by the ZBA: To be filed

Dates of Variance or Special Exception Hearings/Approvals: _____

Date of Conceptual Review, if any: _____

Date of Design Review Meetings, if any: _____

Date of Formal Application Review, Acceptance, or Denial _____

Application Fee: \$ _____	Abutters Fee: \$8 per abutter x # of abutters = \$ _____
Unit Fee: \$ _____	Recording fees (if applicable, \$26 per page) \$ _____
Disturbed Areas Fee: \$ _____	TOTAL \$ _____

I/we consent to allow the Loudon Planning Board or its designee to make on site inspection(s) of my/our property as deemed necessary for the evaluation of my/our site plan application. I/we understand all information required by the regulations must be supplied or a written waiver request must accompany the application. Noncompliance is grounds for denial. RSA 676:4.

Signature of Applicant: _____ Date 4/27/17

Signature of Applicant: _____ Date _____

Signature of Agent: _____ Date _____

**TOWN OF LOUDON, NEW HAMPSHIRE
SITE PLAN REVIEW APPLICATION CHECKLIST**

Name of Site Plan: Site Plan of the New Hampshire Motor Speedway
 Applicant: New Hampshire Speedway, Inc. Map 61 Lot 9 Map 52 Lot 15
 Map 61 Lot 6 Map 51 Lot 18

Existing Conditions Plat Checklist

Submitted	Not Submitted	Waived Requested	
			1. Names, addresses, telephone numbers, fax numbers and e-mail addresses (if available) of the site owner, applicant, and person(s) or firm(s) preparing the plan.
			2. Name of the site plan.
			3. Location of the land/site under consideration including tax map and lot numbers and address.
			4. Title, date, north arrow, and scale, to be less than or equal to 1"= 50 feet.
			5. Locus map of vicinity of the site, at a scale of 1"=1,000 feet, detailing public street system in the vicinity of the site.
			6. Tax map reference, names and addresses of all owners of record of abutting parcels.
			7. Natural and man-made features including watercourses, wetlands, tree lines, stonewalls and vegetative cover, topographic features, and other environmental features which are significant to the design process.
			8. Existing contour levels not to exceed two feet with spot elevations provided when grade is less than five percent. All datum provided should reference the latest applicable USGS Benchmark survey, as amended, and should be noted on the plan.
			9. For all lots, a Site Specific Soils Map shall be provided and prepared by a certified soil scientist in accordance with the standards outlined in Site Specific Soil Mapping Standards for NH and VT, as prepared by the Society of Soil Scientists of Northern New England, 1999 or amended. Any cover letters of explanatory data provided by the certified soil scientist shall also be submitted.
			10. State and Federally designated wetlands.
			11. Surveyed property lines including angles and bearings, distances, monument locations and size of the entire parcel in acres and square feet. Said plan must be attested by a land surveyor licensed in the State of New Hampshire.
			12. The lines of existing abutting streets and driveway locations within one hundred feet of the site; the shape, size, and height of existing structures located on and within one hundred feet of property lines of site, including parking areas, buildings, wells, wetlands, and septic systems.
			13. The location, elevation, and layout of catch basins and other surface drainage control features.

			14. The size and location of all existing public and private utilities.
			15. The location, type, width, and length of all existing easements and encumbrances.
			16. All floodplain information, including contour limit of the one hundred year flood elevation, based upon the most recent Flood Insurance Rate Map, as prepared by Federal Emergency Management Agency (FEMA).
			17. Information pertaining to the site as referred to in the Town of Loudon, <i>Open Space Trail System Plan</i> .
			18. Location and size of existing signage, if any;
			19. Location, type, and foot-candle of existing light fixtures, if any;
			20. Location of existing dumpster areas, if any;
			21. Location of outdoor storage areas, if any

Site Development Plan

			1. Names, addresses, telephone numbers, fax numbers and e-mail addresses (if available) of the site owner, applicant, and person(s) or firm(s) preparing the plan.
			2. Name of the site plan.
			3. Location of the land/site under consideration including tax map and lot numbers and address.
			4. Title, date, north arrow, and scale, to be less than or equal to 1"= 50 feet.
			5. Locus map of vicinity of the site, at a scale of 1"=1000 feet, detailing public street system in the vicinity of the site.
			6. Tax map reference, names, and addresses of all owners of record of abutting parcels.
			7. Natural and man-made features including watercourses, wetlands, tree lines, stonewalls and vegetative cover, topographic features, and other environmental features which are significant to the design process.
			8. Proposed curb cuts, traffic circulation patterns, and parking configurations with dimensions of driveways, curb cuts, curbing, parking spaces, travel aisle widths, and area of parking areas.
			9. Engineering details for parking areas including sub-base design and proposed surfacing material.

			10. Proposed location, dimensions, shape, of all structures to be constructed on the site.
			11. Elevation drawings of proposed structures detailing the exterior façade design of the proposed building(s).
			12. Proposed location of solid waste/trash receptacle location, and screening;
			13. Location of existing and/or proposed septic disposal system.
			14. Location and description of any buffer systems.
			15. Layout and location of existing and proposed utilities, including water, gas, electrical, and phone transmission lines.
			16. Proposed snow storage locations.
			17. Calculation showing total amount of impervious area proposed;
			18. Location and description of any easements, or proposed easements.
			19. Location of all state and federal wetlands.
			20. Any plans cited for reference should be recorded at the Merrimack County Registry of Deeds or stamped by a licensed land surveyor. The name, date, and plan number of recorded cited plans should be provided in the notes section of the plat.
			21. In addition, all easements including metes and bounds, grantee, grantor shall be defined on the plat.
			22. Location, size, height, color, lighting, and proposed language for all proposed signs;
			23. Road construction plan if applicable prepared in accordance with these regulations (to be submitted as a separate sheet);
			24. Erosion and Drainage Plan if applicable prepared in accordance with these regulations (to be submitted as a separate sheet);
			25. Stormwater management plan prepared in accordance with these regulations (to be submitted as a separate sheet);
			26. Lighting Plan, prepared in accordance with these regulations (to be submitted as a separate sheet);
			27. Landscaping Plan prepared in accordance with these regulations (to be submitted as a separate sheet);
			28. Utilities Plan prepared in accordance with these regulations (to be submitted as a separate sheet);
			29. The following notations shall also be shown:
			(a) The explanation of drainage easements, if any.
			(b) The explanation of utility easements, if any.
			(c) The explanation of site easements, if any.
			(d) The explanations of any reservations.
			30. Block for approval by the Board as follows:

I hereby certify that this plat has been approved by the Town of Loudon Planning Board on _____ and shall be filed with the Town of Loudon once all conditions of approval have been satisfied:

_____ Chairman _____ Date

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					Surveyor: Richard D. Bartlett & Associates, LLC		
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April 27, 2017

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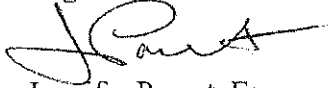
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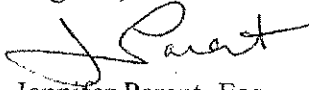
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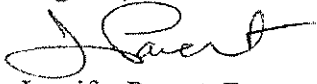
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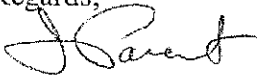
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COPY FOR:

- Planning Board
- Board of Selectmen
- Code Enforcement

BOARD USE ONLY:

Date Received _____
 Received By _____
 Fees Paid _____

**TOWN OF LOUDON, NEW HAMPSHIRE
 CHANGE OF USE APPLICATION**

TITLE OF BUSINESS: New Hampshire Motor Speedway

Proposed use Recreational Concert + overnight parking/camping

Existing use Motorsports and other approved events + overnight parking/camping

OWNER OF RECORD: _____ APPLICATION # _____ (administrative only)

Please indicate the following for all owners of record for the property to be reviewed.

Name: New Hampshire Speedway, Inc.
 Company: NHMS
 Street: 1122 Route 106 North
 City: Loudon, NH 03307
 Phone: 513-5796

LOCATION OF DEVELOPMENT

Map # 61 Lot # 9 Map # 52 Lot # 15
 Tax Map # 61 Lot # 6 Map # 51 Lot # 18

Zoning of parcel(s), including overlay zones: Commercial Recreational

Parcel Size (Acres): see attached Parcel Size (Square Feet): _____

Number of proposed residential, commercial, or industrial units: N/A

Name of Applicant Agent or Contact Person:

Name: Wilbur Glahn / Jennifer Parent
 Name of Firm: McLane Middleton, Professional Association
 Street: 900 Elm St
 City: Manchester, NH 03301
 Phone: 603-625-6464
 Fax: 603-625-5650

Waivers Requested (please indicate with a check): YES NO

(Please attach a separate cover letter for each requested waiver to this application)

Waiver Requested for Item(s):

8, 9, 13, 14, 19

Special Exception or Variance granted by the ZBA: To be filed

Dates of Variance or Special Exception Hearings/Approvals: _____

(Please indicate by month and year)

Date of Conceptual Review, if any: _____

Date of Design Review Meetings, if any: _____

Date of Formal Application Review, Acceptance, or Denial: _____

Fees: \$ _____ \$ 8.00 per abutter = \$ _____

Please attach list of abutters to this application

I/we consent to allow the Loudon Planning Board or its designee to make on site inspection(s) of my/our property as deemed necessary for the evaluation of my/our subdivision application. I/we understand all information required by the regulations must be supplied or a written waiver request must accompany the application. Noncompliance is grounds for denial. RSA 676:4.

Signature of Applicant: [Signature] Date 4/27/17

Signature of Applicant: _____ Date _____

Signature of Agent: _____ Date _____

**TOWN OF LOUDON, NEW HAMPSHIRE
CHANGE OF USE APPLICATION CHECKLIST**

Name of Business: New Hampshire Motors Speedway

Applicant: New Hampshire Speedway, Inc. Map 61 Lot 9
Map 61 Lot 6

Map 52 Lot 15
Map 51 Lot 18

Existing and/or Proposed Conditions Plat Checklist

Submitted	Not Submitted	Waivered Requested	
			1. Names, addresses, telephone numbers, and fax numbers (if available) of the site owner, applicant, and person(s) or firm(s) preparing the plan;
			2. Name of the business;
			3. Location of the land/site under consideration (including map and lot, as well as address) together with the names and addresses of all owners of record of abutting lots of the existing site;
			4. Title, date, north arrow, and scale;
			5. Locus map of vicinity of the site, detailing public street system in the vicinity of the site;
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			8. Location, dimensions, shape, of all existing and/or proposed structures on the site;
			9. Location of existing and/or proposed solid waste/trash receptacle and screening;
			10. Location of existing and/or proposed septic disposal system;
			11. Location and description of any easements, or proposed easements;
			12. Location, size, and proposed language for all signs;
			13. Existing and/or proposed Lighting;
			14. Existing and/or proposed Landscaping;
			15. Block for approval by the Board.

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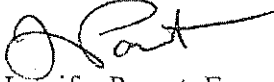
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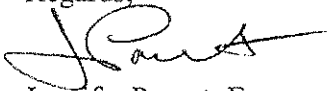
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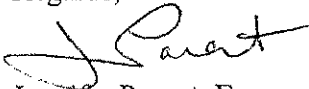
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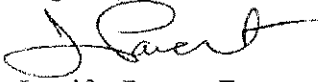
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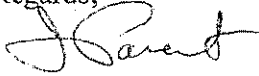
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Thank you for your consideration.

Regards;

A handwritten signature in black ink, appearing to read "J Parent".

Jennifer Parent, Esq.
Agent of NHMS

April 27, 2017

Loudon Planning Board
PO Box 7837
Loudon, NH 03307


Re: Application for Site Plan Review—Map 51, Lot 18; Map 52, Lot 15; Map 61, Lots 6 & 9

Dear Chairman & Members of the Board;

On behalf of the NH Speedway Corp. we are requesting a waiver to Section 13.5:14 of the Land Development Regulations. The section requires the size and location of public and private utilities. The proposed site is an existing parking area for NHMS and has been reviewed and approved by the Planning Board. The site will not be serviced by any public utilities and the only private utility will be temporary electrical service.

Thank you for your consideration.

Regards;


Jennifer Parent, Esq.
Agent of NHMS

April 27, 2017

Loudon Planning Board
PO Box 7837
Loudon, NH 03307

Re: Application for Site Plan Review—Map 51, Lot 18; Map 52, Lot 15; Map 61, Lots 6 & 9

Dear Chairman & Members of the Board;

On behalf of the NH Speedway Corp. we are requesting a waiver to Section 13.5:19 of the Land Development Regulations. The section requires the location, type and foot-candles of existing light fixtures. The site has a number of existing light poles, depicted on the plat, the poles are located a considerable distance from abutting properties and will not have an adverse impact.

Thank you for your consideration.

Regards;

A handwritten signature in black ink, appearing to read "Jennifer Parent", with a long horizontal flourish extending to the right.

Jennifer Parent, Esq.
Agent of NHMS

MAP 61 LOT 9
82.05 Acres

MAP 61 LOT 6
32.02 Acres
Current Use Area 3.3 Acres

MAP 52 LOT 15
34.10 Acres
Current Use Area 13.7 Acres

MAP 51 LOT 18
32.02 Acres
Current Use Area 3.3 Acres

FOR ZBA USE:
Received: _____
Fees Pd: _____
Accepted: _____
Case #: _____

ZONING BOARD OF ADJUSTMENT
Town of Loudon, New Hampshire

VARIANCE APPLICATION

Name of Applicant: New Hampshire Motors Speedway Tel #: 513-5796

Address of Property: 1122 Route 106 North, Loudon, NH 03307

Owner of Property: New Hampshire Speedway, Inc. Tel #: 513-5796
If same as above, write same

Address of Owner: same
If same as above, write same

Location of Property: Map # 61 Lot # 9 ; Map # 52 Lot # 15
Map # 61 Lot # 6 ; Map # 51 Lot # 18

Zoning District: Commercial Recreational

The undersigned hereby requests a variance from Article 503.2, Section B, C, D, and asks that said terms of the Zoning Ordinance be waived to permit average weight camping and tenting in conjunction with a recreational concert

The undersigned alleges that the following circumstances exist to support this variance request.

1. The variance will not be contrary to the public interest because:
see attached

2. The spirit of the ordinance is observed because:
see attached

3. Substantial justice is done because:
see attached

MAP 61 LOT 9
82.05 Acres

MAP 61 LOT 6
32.02 Acres
Current Use Area 3.3 Acres

MAP 52 LOT 15
34.10 Acres
Current Use Area 13.7 Acres

MAP 51 LOT 18
32.02 Acres
Current Use Area 3.3 Acres

4. The values of surrounding properties will not be diminished because:

see attached

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because: USE (A) OR (B).

The "Special Conditions" of this property that distinguish it from other properties in the area are as follows:

see attached

(A) Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because:

see attached

(ii) The proposed use is a reasonable one because:

see attached

-OR-

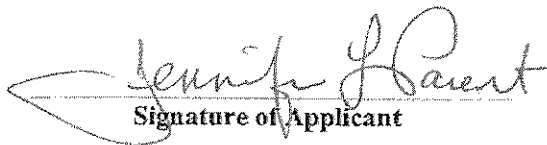
If the criteria in subparagraph (A) are NOT established, an unnecessary hardship will be deemed to exist, if and only if:

(B) Owing to the special conditions, set forth above, 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 because:

I, See attached LOA, Do/Do Not (please circle one) give the Loudon Zoning Board of Adjustment permission to do a site visit on my property for the purpose of this application.

Plot Plan to Accompany Application: This application must be accompanied by a plot plan which is drawn to scale and is of sufficient detail to support the statements made in this application and to illustrate compliance with the special conditions required in the ordinance. At a minimum, the plot plan must show the location and dimension of existing and proposed building footprints, setback distances to the property lines and the road right of way; the location of well and septic systems; significant physical or topographic limitations to development of the lot; and parking and loading areas as applicable. Setback distances from the roads must be based on the distance from the edge of the right of way, not the pavement edge. If you are uncertain of the road right of way location, contact the Loudon Road Agent for more information.

The undersigned acknowledge that to the best of their knowledge all of the above information is true and correct.


Signature of Applicant

5/10/2017
Date

See attached LOA
Signature of Property Owner

Date

May 10, 2017

Loudon Zoning Board of Adjustment
PO Box 7837
Loudon NH 03307

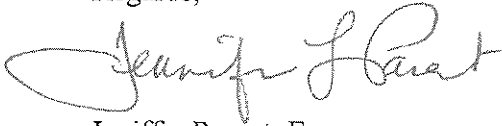
Re: Application for Variance

Dear Chairman and Members of the Board,

On behalf of the New Hampshire Motor Speedway Corp, we are requesting a waiver of the requirement regarding the plot map being submitted with this application. We request the ZBA waive the requirements that setback distances, topography, and well and septic be depicted on the map.

Thank you for your consideration.

Regards,

A handwritten signature in cursive script that reads "Jeniffer Parent". The signature is written in dark ink and is positioned above the typed name.

Jeniffer Parent, Esq.
Agent of NHMS

ASSESSORS INFORMATION			DEED REFERENCE		SUBDIVISION ABUTTERS LIST		SHEET 1 OF 2	
Map No	Block No.	Lot No.	Book	Page	Name	Address	DATE: 4/27/2017	JOB# 417.125
61		9 & 6			Applicant: NH Speedway Corp	Po Box 7888 Loudon, NH 03307		
51		18			NH Speedway Corp	PO Box 7888 Alton, NH 03809		
52		15			NH Speedway Corp	Po Box 7888 Loudon, NH 03307		
51		15			Abutters: Roy & Cynthia Merrill	1229 Route 129 Loudon, NH 03307		
51		16			Kenneth R Jr. & Sandra McKenzie	338 Africa Rd Alton, NH 03809		
51		17			James P Staples	139 Lower Ridge Rd Loudon, NH 03307		
51		22			NH Speedway Corp	Po Box 7888 Loudon, NH 03307		
52		9			Chagnon, Bennet	283 Lower Ridge Rd Loudon, NH 03307		
52		10			Roberts, George	587 Mountain Rd Concord, NH 03301		
52		11			Beaudion, Renate	225 Ricker Rd Loudon, NH 03307		

ASSESSORS INFORMATION			DEED REFERENCE		SUBDIVISION ABUTTERS LIST	
Map No	Block No.	Lot No.	Book	Page	Name	Address
52		14			Abutters: Singer, Heather	189 Lower Ridge Rd Loudon, NH 03307
52		16			Merrill, Roy	1229 Route 129 Loudon, NH 03307
61		5			NH Speedway Corp	PO Box 7888 Loudon, NH 03307
61		6			NH Speedway Corp	PO Box 7888 Loudon, NH 03307
61		8			Rose Meadow Trust c/o Harry W. Franssen Trust	PO Box 291936 Port Orange, FL 32129
					Attorney Jennifer L. Parent McLane Middleton Professional Association	900 Elm Street - P O Box 326 Manchester, NH 03101
					Surveyor: Richard D. Bartlett & Associates, LLC	214 North State Street Concord, NH 03301
					Soil Scientist: Stoney Ridge Environmental	229 Prospect Mountain Rd Alton, NH 03809

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT**

VARIANCE – 503.2 B, C, D

503.2 B (Camping Site: Camping sites shall be at least 2500 square feet in area and shall be clearly marked. No camping site shall be located closer than 150 feet to a public road or abutting property line.)

503.2 C (Number of Sites: The number of camping sites shall not exceed six per acre, exclusive of areas within the Wetlands Conservation District)

503.2 D (Open Space: At least fifty percent of the area of the campground shall be undisturbed open space, not utilized for camping sites)

1. The variance will not be contrary to the public interest because:

Granting this variance will not be contrary to the public interest and does not violate the basic zoning objective of the Loudon Zoning Ordinances. The Speedway is already allowed to conduct overnight camping/parking in this area for NASCAR race weekends, so the variance will not alter the character of the locality or the property in any appreciable way. The same infrastructure available to campers for race weekends will be available for those camping in tents. The variance will allow for overnight parking/tenting in an area where attendees will have proper sanitary and disposal facilities, portable showers and toilets, water supply, and be supervised by NHMS security and staff. NHMS will handle security similarly to how they handle security for a NASCAR weekend. The variance will promote safety and health associated with overnight guests. Lot S7 of Map 52, Lot 15 that allows tenting for race weekends has 22' wide roadways and 25' turning radius to allow for emergency vehicle access. The other camping/tenting sites are 20' x 40' and 20' x 30'. There will be roads within those lots that will be 24' wide and have a turning radius to allow for emergency vehicle access.

NHMS is currently authorized to provide overnight recreational vehicle parking on Map 61 Lot 6; Map 61 Lot 9; Map 52 Lot 15; 51 Lot 18; Map 51 Lot 19; Map 51 Lot 22 and overnight parking and tenting in Lot S7 of Map 52 Lot 15 associated for race weekends. Specifically, tenting is allowed for race weekends at Lot S7 of Map 52, Lot 15 with 118 tenting sites at 12' x 30' and 10 portable toilets. In Lot S7, there are 22' wide roadways with 25' turning radius to accommodate emergency vehicles. The requested variance would be consistent with the essential character of the locality and promotes public health, safety, and welfare. Consistent with RSA 674:33, I(b), there will be no harm (i.e. "it will not be contrary") to the public interest if this variance is granted.

2. The spirit of the ordinance is observed because:

The spirit of the ordinance is observed by granting this variance. The proposed use does not "alter the essential character of the neighborhood" because the neighborhood includes similar use at other property owned by the Speedway and on other property located nearby the Speedway. Overnight camping for a 3 to 5 day period presently occurs in Lot S7 of Map 52 Lot 15 for race weekends. Overnight parking with recreational vehicles is also currently allowed on Map 61 Lot 6; Map 61 Lot 9; Map 52 Lot 15; 51 Lot 18; Map 51 Lot 19; Map 51 Lot 22. The proposed

campsites will have access to proper sanitary and disposal facilities, portable toilets and showers, water supply, and supervision by NHMS security in a manner similar to that now provided for race weekends in July and September. As a result, the use is consistent with the spirit of the ordinance as it promotes public health and safety.

The temporary nature of the proposed use and the safety and health controls proposed are also consistent with the spirit of the ordinance. This request is for a Temporary Special Event activity not to exceed 21 days in a calendar year. The request does not constitute seasonal camping or prolonged camping such as a state park or for an established campground where people stay for a long duration. The public interest is protected by this consistent temporary use of the property. The proposed use will meet the intent of the ordinance for safety and health of the public without altering the essential character of the locality or neighborhood. The camping locations will be the same as those currently recognized and approved for recreational vehicle camping on NASCAR race weekends as well as the tent camping on Lot S7. Thus, this use is similar to what the property is used for today by NHMS.

Granting the variance would not change the essential character of the neighborhood or threaten the public health, safety, or welfare. *Harborside Associates, L.P. v. Parade Residence Hotel, LLC.*, 162 N.H. 508, 514–15 (2011). The Cascade Campground in Loudon, which is about six miles south of NHMS, and Rocky Road Campground, which is two miles north of NHMS, both currently allow for camping and tenting. There are also camping and tenting grounds in Loudon in front of the track on Route 106 and in Chichester, Epsom, and other nearby towns, so camping activities are consistent with other uses in the locality.

3. Substantial justice is done because:

Consistent with the existing use of Lot S7 of Map 52 Lot 15, this variance will allow NHMS to properly address any concerns with the safety and health of people attending the concert. Substantial justice is done because NHMS has been overseeing overnight camping in this same area, and consistent with the public welfare, has provided proper sanitation and disposal facilities and security in all areas including those for tent camping. Similar oversight, facilities, and security would be provided for this Temporary Special Event. The proposed use of tents in these areas is also consistent with the existing use of the property on Lot S7 and consistent with the overnight recreational vehicles that have been allowed for years for NASCAR race weekends on Map 61 Lot 6; Map 61 Lot 9; Map 52 Lot 15; Map 51 Lot 18; Map 51 Lot 19; Map 51 Lot 22.

This proposed use would pose no threat to the area, is consistent and appropriate for the area, will not harm abutters, and would not be visible from Route 106. Therefore, the general public would realize no appreciable gain from denying this variance. With the loss of a NASCAR race, allowing this variance for camping/tenting in conjunction with an outdoor concert would remedy the loss of revenue to Loudon, surrounding towns, and the State. The variance would also allow for the provision of safe and healthy temporary camping/tenting for visitors in the same areas used for overnight camping, consistent with what now occurs on race weekends in these areas, including Lot S7, on which tent camping is currently allowed.

4. The values of surrounding properties will not be diminished because:

As noted, Lot S7 of Map 52 Lot 15 is currently used for temporary overnight tenting activity on race weekends. Moreover, overnight recreational camping is allowed and has been occurring on Map 61 Lot 6; Map 61 Lot 9; Map 52 Lot 15; Map 51 Lot 18; Map 51 Lot 19; Map 51 Lot 22 for race weekends. The camping in these areas has been subject to specific controls and supervision by NHMS, and similar controls and supervision will be provided for the proposed concert. Considering the temporary nature of this special event which will not exceed 21 days in a calendar year, there would be no change or impact on the character of the neighborhood. This is also the case given that one of the two current NASCAR race weekends is leaving NHMS after this racing season. NHMS believes there has been no diminished value to surrounding properties with current use of the property for overnight parking/camping and tenting on S7. Moreover, in the locations identified for this use, the camping/tenting sites will not be seen from Route 106 and is therefore not visually obtrusive.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because: the Special Conditions of this property that distinguish it from other properties in the area are as follows:

NHMS owns considerable property in Loudon that is currently used for overnight parking and camping (including tent camping) during the two race weekends. Although the number of tent campsites is projected to substantially increase, the overall use of the property is projected to be less intense than during NASCAR races.

NHMS is one of New England's largest sporting facilities and has been for several decades. The overnight parking/camping as currently allowed is necessary to accommodate the number of attendees. The overnight camping/parking areas have certain natural buffers surrounding the property. NHMS continues to use the property for NASCAR races and will continue to do so when, starting in 2018, it will host only one NASCAR race. Accordingly, NHMS needs to maintain these parcels for overnight parking/camping to accommodate the number of race fans attending race weekends. The parcels are also located in areas which provide a vegetation buffer that will separate it from abutters. This distinguishes the properties from other properties and makes this type of use a reasonable one.

The use of NHMS's property for a temporary outdoor recreational event is consistent with its current usage and the zoning restriction would interfere with NHMS's reasonable use of the property. There is no fair and substantial relationship between the general purposes of the ordinance (which C/R zone is to regulate the use of the Speedway's land) and the restrictions under the Ordinance as the areas identified for this overnight camping/tenting are currently used for overnight camping purposes.

Taking into account the current use, which allows musical concerts in conjunction with race events, a hardship exists that limits the use on abutting properties NHMS owns. Accordingly, no fair and substantial relationship exists between the general public purpose of the ordinance provision (not allowing musical concerts) and the specific application of that provision to the Property (limiting the ability to hold musical concerts in line with other properties owned by the Speedway in the neighborhood).

Moreover, the proposed use is in the Commercial Recreational or C/R zone, which zone was specifically established to regulate the Speedway's use of its property. The property has been used in conjunction with races and other special events, all of which stimulates the local economy. NHMS will provide the proper sanitary facilities and supervision which promotes public welfare and will not change the character of the neighborhood.

(A) (i) Owing to the special conditions of the property, set forth above, that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because:

The proposed use is for a temporary special event in locations on the property that are currently used for overnight parking and camping, including tent camping in Lot S7. The proposed use will not exceed 21 days per calendar year and is not intended to be a seasonal or extended camping area. It is located in an area of the property that provides a buffer of vegetation that will separate it from abutters.

Taking into account the current use of these areas for overnight parking/camping and tenting in Lot S7 (Map 52 Lot 15), that the property is zoned to be used in conjunction with the Speedway, that the Speedway has always been used in association with overnight camping, and that the parcels that do not host racing activities directly, do not have valuable independent use beyond their association with the Speedway, a hardship exists if NHMS is limited in its use of abutting C/R zoned properties. Accordingly, "no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the parcels."

(A) (ii) The proposed use is a reasonable one because:

This use is consistent with the overnight camping/parking occurring now during race weekends, and the infrastructure in place for recreational vehicles will be available for tent camping, including portable toilets, showers, and disposal systems. This will provide for the health and safety of guests coming to this temporary special event and will also provide protection for neighbors. The proposed use is consistent with what is already occurring on Lot S7 of Map 52 Lot 15, and the designated areas for the overnight camping/tenting use associated with this recreational activity are in locations NHMS currently uses for race weekends.

Conclusion

The proposed use is a reasonable use of the property and would not alter the essential character of the neighborhood. The form and scale of the proposed use is consistent with other properties owned by the Speedway in the neighborhood. As a result, literal enforcement of the regulation would impose an undue hardship because NHMS would be unable to continue using its property—property that is specifically zoned to be used in conjunction with the Speedway—for recreational uses beyond NASCAR races. This hardship would be unnecessary because the impact of allowing more tenting on a temporary basis is alleviated by: (1) the fact that one fewer NASCAR race will be occurring at the property, so the net impact to the property and the surrounding area will be negligible if discernible at all; and (2) NHMS's plans for portable toilets and showers and disposal systems as well as safety measures.

LETTER OF AUTHORIZATION

New Hampshire Motor Speedway

May 10, 2017

Town of Loudon Zoning Board of Adjustment
P.O. Box 7837
29 South Village Road
Loudon, NH 03307

Re: Authorization of New Hampshire Motor Speedway

Dear Ladies and Gentlemen:

The undersigned, as owner of premises in the Town of Loudon, located at 1122 Route 106, further identified as tax Map 61, Lot 9, Map 61, Lot 6, Map 52, Lot 15, and Map 51, Lot 18, hereby authorizes McLane Middleton, Professional Association, and its employees, agents, and consultants, to seek approval from the Town of Loudon Zoning Board of Adjustment in connection with a special exception and variance application submitted herewith.

Additionally, I give permission for the Zoning Board of Adjustment to conduct a site walk on the above referenced premises if necessary. Please contact our office at 603.738.4931 to coordinate accessing the property.

Sincerely,



David McGrath, Vice President and General Manager

LOUDON ZONING BOARD OF ADJUSTMENT
LOUDON, NEW HAMPSHIRE

APPLICATION FOR A SPECIAL EXCEPTION

For ZBA use:
Received: _____
Fees Paid: _____
Accepted: _____
Case No.: _____

Owner Name and Address:

Telephone No.: 513-5796

New Hampshire Speedway, Inc
1122 Route 106 North
London, NH 03307

Map & Lot No.: 61/9 ; 61/10 ; 50/15 ; 51/18

Location of Site: see attached

Total Acreage: see attached

Zoning District (RR, C/I, C/R, Village or AFP): Commercial Recreational (C/R)

Is property in current use (tax purposes)? see attached

A Special Exception is requested to allow: Recreational Facilities (207.3E)
for concerts

This Special Exception is requested from Article 207.3 Section E
of the Loudon Zoning Ordinance.

Name & Address of All Abutting property owners: Use Separate Abutters List Sheet

Distance to abutting property lines from building: N/A

Front _____ feet Side _____ feet Rear _____ feet

Applicant's Name and Address if different from owner:

New Hampshire Motor Speedway
1122 Route 106 North
London, NH 03307

MAP 61 LOT 9
82.05 Acres

MAP 61 LOT 6
32.02 Acres
Current Use Area 3.3 Acres

MAP 52 LOT 15
34.10 Acres
Current Use Area 13.7 Acres

MAP 51 LOT 18
32.02 Acres
Current Use Area 3.3 Acres

Page 2 Application for Special Exception

It is the responsibility of the applicant to supply the following information, as applicable, to allow the Zoning Board of Adjustment to make findings on each of the points below relative to a request for a Special Exception. (See Section 701.3) Attach additional pages as necessary.

1. Identify where the Special Exception is specifically authorized in Article II or Article III of the Loudon Zoning Ordinance: _____

see attached

2. Describe how the Special Exception will avoid injurious or detrimental effects on the neighborhood: _____

see attached

3. Review Articles II, III and V of the Zoning Ordinance and make note of any special conditions required of your proposed use of the property. Special conditions may include compliance with rules relating to subsurface waste disposal systems, steep slopes, setbacks, fuel storage, advertising signs, off-street parking and other requirements. Describe below or on attached sheets how each of the applicable special conditions required in the Zoning Ordinance will be met: _____

see attached

4. Describe any additional demands on municipal services that will occur as a result of the Special Exception: _____

see attached

Page 3 Application for Special Exception

- 5. Estimate the traffic volume to be generated as a result of the Special Exception, and any affects it will have on existing road or intersection capacity or condition:

see attached

- 6. What impact will the granting of the Special Exception have on the natural environment, and how will potential adverse impacts be avoided?

see attached

- 7. What impact will the granting of the Special Exception have on Loudon's groundwater resources, and how will potential adverse impacts be avoided?

see attached

Plot Plan to Accompany Application. This application must be accompanied by a plot plan which is drawn to scale and is of sufficient detail to support the statements made in this application, and to illustrate compliance with the special conditions required in the ordinance. At a minimum, the plot plan must show the location and dimension of existing and proposed building footprints, setback distances to the property lines and road right of way; the location of well and septic systems; significant physical or topographic limitations to development of the lot; and parking and loading areas as applicable. Setback distances from roads must be based on the distance from the edge of the right of way, not the pavement edge. If you are uncertain of the road right of way location, contact the Town Road Agent for more information.

I/we consent to allow the Loudon Zoning Board of Adjustment or its designee to make onsite inspection(s) of my/our property as deemed necessary for the evaluation of my/our application.

Jennifer J. Grant
 Owner/Applicant Signature

5/10/2017
 Date

SPECIAL EXCEPTION FOR REDUCED SETBACK
Additional Information for Applications for Reduced Setback

Items 1-9 must also be addressed if you are seeking a Special Exception for a reduction in the normal setback requirements of the Zoning Ordinance. Please provide below or on separate sheets evidence that the requested reduction in setbacks:

1. Will not unreasonably diminish the light, air and space between properties because:

N/A

2. Will not obstruct fire access or other emergency access because:

N/A

3. Will not result in increased storm runoff or drainage onto adjacent parcels because:

N/A

4. Will not adversely affect abutting property values because:

N/A

5. Will not adversely affect the development capability of the lot because:

N/A

6. Is consistent with the comparable applicable setbacks of developed adjacent properties because:

N/A

7. Is consistent with other existing setbacks in the neighborhood because: _____

N/A

8. Will not adversely affect traffic or pedestrian safety and/or visibility at intersections, driveways or other accesses to the street network because: _____

N/A

9. (For setbacks for roads only) Adequately considers the prospects of future widening of the road and is consistent therewith because: _____

N/A

May 10, 2017

Loudon Zoning Board of Adjustment
PO Box 7837
Loudon NH 03307

Re: Application for Special Exception

Dear Chairman and Members of the Board,

On behalf of the New Hampshire Motor Speedway Corp, we are requesting a waiver of the requirement regarding the plot map being submitted with this application. We request the ZBA waive the requirements that setback distances, topography, and well and septic be depicted on the map.

Thank you for your consideration.

Regards,

A handwritten signature in cursive script, appearing to read "Jennifer Parent".

Jennifer Parent, Esq.
Agent of NHMS

MCLANE
MIDDLETON

LETTER OF AUTHORIZATION

New Hampshire Motor Speedway

May 10, 2017

Town of Loudon Zoning Board of Adjustment
P.O. Box 7837
29 South Village Road
Loudon, NH 03307

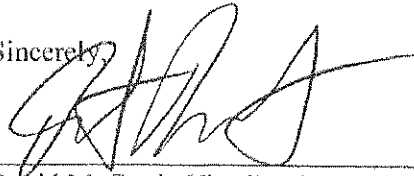
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Additionally, I give permission for the Zoning Board of Adjustment to conduct a site walk on the above referenced premises if necessary. Please contact our office at 603.738.4931 to coordinate accessing the property.

Sincerely,



David McGrath, Vice President and General Manager

McLane Middleton, Professional Association
Manchester, Concord, Portsmouth, NH [Woburn, Boston, MA

McLane.com

ASSESSORS INFORMATION			DEED REFERENCE		SUBDIVISION ABUTTERS LIST		SHEET 1 OF 2
Map No.	Block No.	Lot No.	Book	Page	Name	Address	DATE: 4/27/2017
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ASSESSORS INFORMATION			DEED REFERENCE		SUBDIVISION ABUTTERS LIST		SHEET 2 OF 2	
Map No.	Block No.	Lot No.	Book	Page	Name	Address	DATE: 4/27/2017	JOB# 417.125
52		14			Abutters: Singer, Heather	189 Lower Ridge Rd Loudon, NH 03307		
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61		5			NH Speedway Corp	PO Box 7888 Loudon, NH 03307		
61		6			NH Speedway Corp	PO Box 7888 Loudon, NH 03307		
61		8			Rose Meadow Trust c/o Harry W. Franssen Trust	PO Box 291936 Port Orange, FL 32129		
					Attorney Jennifer L. Parent McLane Middleton Professional Association	900 Elm Street - P O Box 326 Manchester, NH 03101		
					Surveyor: Richard D. Bartlett & Associates, LLC	214 North State Street Concord, NH 03301		
					Soil Scientist: Stoney Ridge Environmental	229 Prospect Mountain Rd Alton, NH 03809		

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT**

ATTACHMENT – SPECIAL EXCEPTION for Recreational Facilities (207.3 E)

Map/Lot 61/9

Map/Lot 61/6

Map/Lot 52/15

Map/Lot 51/18

1. Identify where the Special Exception is specifically authorized in Article II or Article III of the Loudon Zoning Ordinance:

The property is in the Commercial/Recreational or C/R district. The Special Exception is specifically authorized under Zoning Ordinance 207.3 E (“Recreational facilities”).

NHMS is not looking to establish a permanent recreational facility. Rather, NHMS is seeking approval for a temporary outdoor recreational concert. This use will be temporary, with no permanent structures or buildings being erected for the concert. While the term “Recreational Facilities” is not defined in the ordinance, the playing of music and recreational activity associated with it is the type of activity consistent with this permitted use. Hosting concerts at NASCAR speedways has been a long established and widely accepted practice. *See* enclosed article discussing the beginning of this practice that has only grown in scale and commonality.¹

2. Describe how the Special Exception will avoid injurious or detrimental effects on the neighborhood:

Currently, this property is being used for temporary overnight camping during race weekends. These designated areas thus are currently used for the purpose of recreation, including the playing of music at camping sites, eating, and participation in outdoor games during race weekends. The use will not change. NHMS does not anticipate that more people will use the area during a concert weekend than currently use it during a NASCAR race weekend. NHMS will accommodate guests by providing proper sanitation and disposal facilities, water, and security. There will also be recycling of waste and trash pick-up. Thus, the use is consistent with what is occurring on the property now. Additionally, NHMS already conducts musical concerts in conjunction with racing events at its track property. Allowing concerts on other property owned by the Speedway will not harm the public interest. Moreover, there are campgrounds located near the Speedway (such as Cascade Campground and Rocky Road) that have outdoor recreational activities such as camping and tenting, playgrounds, live entertainment, an

¹ <http://www.phoenixraceway.com/Articles/2017/04/EVE-6-TO-PLAY-PRERACE-CONCERT-ON-SATURDAY-APRIL-29-AT-PHOENIX-RACEWAY.aspx>

<http://www.daytonainternationalspeedway.com/Events/2017/Country-500/Country-500.aspx>

<http://rockfestkc.com/info.html> at the Kansas City Speedway. Charlotte Motor Speedway:

http://www1.ticketmaster.com/event/0E0051889A133426?did=m2pack&brand=cms&CAMEFROM=CFC_CMS_WEB_CMS_SINGLEDAY&_ga=1.22523643.1902373602.1486044899#efeat4212?utm_medium=social&utm_source=tw&utm_campaign=41617 and <https://twitter.com/CLTMotorSpdwy/status/853397542935171072/photo/1>

<https://www.autoclubspeedway.com/Articles/2017/03/Smash-Mouth-and-Spin-Doctors-Headline-NASCAR-Auto-Club-400.aspx>

<http://www.talladegasuperspeedway.com/Vanity-Pages/College/Concert.aspx>

amphitheater, and an open-air venue for entertainment and performances. NHMS's use of the property for a recreational use will not be injurious or detrimental to the neighborhood.

3. Review Articles II, III and V of the Zoning Ordinance and make note of any special conditions required of your proposed use of the property. Special conditions may include compliance with rules relating to subsurface waste disposal systems, steep slopes, setbacks, fuel storage, advertising signs, off-street parking and other requirements. Describe below or on attached sheets how each of the applicable special conditions required in the zoning Ordinance will be met:

There will be no permanent facilities or buildings associated with this temporary event, so there are no impacts to special conditions. NHMS intends to provide portable toilets based on the recommendation of the United Site Services, the portable toilet vendor for NHMS. Thus, NHMS anticipates putting similar systems in place as those currently used during race weekends. In addition, NHMS, in conjunction with the concert promoter will provide drinking water stations as well as portable showers. Waste recycling and trash pick-up will be provided by vendors used by the NHMS and/or the concert promoter.

The event would be consistent with the current operations of NHMS during race weekends. It is also customary to what most other locations holding these temporary recreational events provide. Sanitation and security is designed with the consideration and understanding that the proposed event is not a recreational event used for long durations of time.

4. Describe any additional demands on municipal services that will occur as a result of the Special Exception:

NHMS believes that the granting of this Special Exception will not place any additional demands on municipal services. In fact, the special exception will likely reduce the burden on municipal services by placing all of these attendees into a designated location with the attendees using portable toilets, portable showers, and water stations provided by NHMS, in conjunction with the concert promoter. This would be similar to what occurs for race weekends now. There will be proper sanitation and disposal systems in place and water available for attendees. There will be recycling as part of waste management.

5. Estimate the traffic volume to be generated as a result of the Special Exception, and any affects it will have on existing road or intersection capacity or condition:

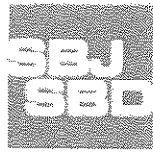
NHMS expects that the traffic flow will be similar to, but less than, normal race weekend traffic. Although some concert attendees may visit each day (as is the case with the NASCAR races) NHMS expects that most attendees will use the overnight camping/tenting in designated areas if approved. As a result, increased traffic is expected prior to, and immediately after the event – similar to race weekends now. This would create no additional effects on traffic volume from what NHMS can accommodate and handle currently for race weekends. Most of the vehicles would be moving to this location upon entry to the property for the weekend. As is the case for race weekends, NHMS will have traffic control plans in place. Parking in designated lots would prevent any traffic issues by stopping any illegal parking and tenting along the Gil Rogers Highway.

6. What impact will the granting of the Special Exception have on the natural environment, and how will potential adverse impacts be avoided?

This temporary recreational activity is similar to what is occurring on the property during race weekends. The temporary overnight camping during race weekends involves people using the area to play music, participate in games, and eat at their sites. NHMS also holds other special events that have been approved. In this way, the proposed use is not appreciably different than the current use, meaning there will not be any adverse impacts. There will be no change to the natural environment as there will be proper sanitary and disposal facilities, portable showers and toilets, and drinking water available to attendees, just as when a NASCAR race is held. Providing these sanitation sites will mitigate any contamination or litter in the conservation areas along the Gil Rogers Highway.

7. What impact will the granting of the Special Exception have on Loudon's groundwater resources, and how will potential adverse impacts be avoided?

NHMS does not expect there to be any impact on Loudon's groundwater resources from this Special Exception because the use as proposed is not appreciably different than the current use of the property.



SBJ/March 29 - April 4, 1999/No Topic Name

NASCAR plugs into concerts

LANGDON BROCKINTON

Published March 29, 1999

CBS Sports and NASCAR, in conjunction with TNN and Westwood One, are teaming up to create a 30-city summer concert tour and interactive fan festival that will feature the Allman Brothers Band.

NASCAR Rocks is scheduled to kick off in Denver on June 12 and run until early September, hitting major markets across the country, sources said.

Details are sketchy, but sources said that CBS is expected to broadcast a "NASCAR Rocks" special in July. Cable network TNN, which is owned by CBS, also will televise a special on the tour sometime in July. (It's likely that the two-hour prime-time TNN show would be re-aired in the fall.)

An interactive fan fest offering NASCAR merchandise and memorabilia will travel with the tour, sources said. Indeed, the NASCAR Rocks venture will provide NASCAR a chance to broaden its fan base.

CBS is said to be looking to sign a handful of sponsors for NASCAR Rocks. No doubt, sponsorship packages would include advertising time on the TV specials as well as an on-site presence throughout the tour.

To help publicize the venture, CBS' Westwood One will add the "NASCAR Rocks" moniker to its nationally syndicated radio programs "Off the Record" and "Superstars in Concert," calling them "NASCAR Rocks Off the Record" and "NASCAR Rocks Superstars in Concert."

NASCAR will heavily promote the tour, as will CBS and TNN, both of which are NASCAR network partners.

Among the cities that will play host to NASCAR Rocks are Boston, Chicago, Philadelphia, Charlotte, Nashville, New Orleans, Dallas, Phoenix, Las Vegas, Los Angeles, San Francisco, Seattle, Detroit, Cleveland, Atlanta, Kansas City, St. Louis, Pittsburgh and Houston.

The Allman Brothers are scheduled to headline every stop. Also performing will be other nationally known and up-and-coming rock, pop and country music acts.

Related Topics:

NASCAR, Westwood One

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Loudon Zoning Board of Adjustment
Meeting Minutes
August 24, 2017

Present:

Chairman Ned Lizotte, Vice Chairman Howard Pearl, Roy Merrill, Charlie Aznive, Earl Tuson, alternate George Saunderson and alternate Peter Pitman.

Town Counsel Brenda Keith was present in the audience.

Minutes:

Regular Hearing July 27, 2017- Mr. Tuson made a motion to approve the minutes as written. Mr. Pearl seconded the motion. A roll call was taken. Charlie Aznive- yes, Ned Lizotte-yes, Roy Merrill-yes, Howard Pearl-yes Earl Tuson-yes. Unanimous – APPROVED.

Discussions:

- None

Public Hearings:

- Application #Z-17-6, NHMS Special Exception- David McGrath opened up the start of the application process by explaining that they want to hold a 3 day country music festival promoted by Live Nation. Mr. McGrath explained these performers will be top notch artists and are expecting to sell 20,000 tickets per day and have about 3000 camping spaces. Mr. McGrath then turned the presentation over to Surveyor Mark Sargent.
Mr. Sargent showed the board some plans which showed the layout for the event covering 32 acres. Mr. Saunderson questioned the zoning of the parcels, some being in R/R and needing labeling. Attorney Jen Parent said that all four of the parcels are in the C/R zone. Mrs. Parent explained that the tracks property is the only property in town in this zoning district so it is very unique. Mrs. Parent explained that in the Loudon zoning ordinance 207.3 section E would allow this as well as in the R/R zone 204.3 section D and that recreational facilities are not defined. Mrs. Parent said they currently hold concerts in conjunction with a race. Mrs. Parent handed the board paperwork that proves that concerts are already being held within the town at Cascade Campground as well as at the Loudon Recreation fields as part of the summer concert series. Mrs. Parent also stated that in Loudon's master plan concerts are considered recreation facilities and cultural events. Mrs. Parent also said that there are surveys in the master plan that shows the residents want recreational opportunities in town. Mrs. Parent said the master plan indicates the speedway is a recreation destination and has clearly defined recreational facilities to include these types of summer concerts in the C/R and R/R districts. Mrs. Parent said that NHMS is not alternating anything in the zoning ordinance they are doing what is allowed and what the town has defined as allowing. Mrs. Parent said when things aren't defined in the zoning ordinance the supreme court says it will rely on the plain meaning of terms and look to the dictionary definition. Mrs. Parent said in webster's dictionary it says recreation is getting diversion as entertainment; Equipped to provide diversions or amusements. Mrs. Parent said that recreational facilities are allowed in the C/R district and the R/R district allows for outdoor recreational facilities.

Mrs. Parent said there has been contention that a concert is entertainment not recreation; Mrs. Parent said that is a strained interpretation and that is not supported by the town's master plan and the definition.

Mr. McGrath said many activities are held during race weekend currently and they would like those similar activities for the music festival. Mr. McGrath said the staff at NHMS is very well prepared and trained for large events and have always done a great job.

Attorney Bill Glahn presented a sound study. Mr. Glahn showed the board several studies that have been done to simulate a concert. The only place proven that a greater sound developed than on race weekend is on Gas Meadow Rd that reached a exceeded a decimal level of 70. In other areas it reached 15-60 decimals. Mr. Glahn said this study was done in the winter and the concerts will be held in the summer when there are more leaves on the trees which will impact the sound.

Mrs. Parent spoke about lighting. Mrs. Parent said that the stage lights mainly point toward the performer with some lights from the top of the stage pointing down onto the performer.

Mrs. Parent said she spoke with the towns tax accessor and was told nobody has sought or been granted a variance for anything that has been sought at the speedway.

Mrs. Parent said there will be toilets, showers, drinking water, recycling and trash pickup.

Mrs. Parent said that in a town study 62.1 % of residents had no complaints about race day traffic and that NHMS knows what it is doing to have traffic go smoothly. Gail Rodgers is in charge of traffic at NHMS and spoke on that issue. Mr. Rodgers said NHMS hold several events other than Nascar. Mr. Rodgers said the traffic plan will be similar to a race weekend and expect about 10,000 vehicles and gave board members graphs to show traffic plans.

Mr. Pearl asked what the expected date will be. Mr. McGrath said they are still working on a date and will be more definite once they are approved. Mr. McGrath said they are looking at early August 2018 or mid July 2018. Mr. Tuson asked if this will just be country music. Mr. McGrath said yes it will be country performers. Mr. Saunderson asked what time the concerts end that they currently hold during race weekend. Mr. McGrath said they end generally around 11pm. Chairman Lizotte questioned this being a campground versus camping. Mrs. Parent said they are requesting temporary camping during this event and they currently have temporary camping for races not create a campground. Mrs. Parent said this temporary camping will be for the music festival. Mr. Tuson asked what hours and days these events would take place. Mr. McGrath said it would be a 3 day event Friday at 2pm until Sunday at 10:30pm. Mr. Lizotte said it looks like it is asking for 21 days of concerts. Mr. McGrath said they are looking to do just a 3 day event. Mr. Lizotte said the special exception allows 21 days. Mr. Saunderson asked Mr. McGrath if they can limit it to 3 separate events per year. Mr. McGrath said he doesn't see them doing more than 2, 3 events would stretch it but he doesn't want to set a limit to 3 events. Chairman Lizotte said if NHMS is currently holding concerts in conjunction with races then why not keep doing it instead of blazing new territory. Mrs. Parent said this isn't a stretch of the zoning ordinance they feel this is a recreational facility. Chairman Lizotte said everything has been worked out for what they are doing currently. Mr. Lizotte said the track lost a race and could just replace it with some other type of race this is now venturing into new territory. Mrs. Parent said they are asking for what they allowed to do as a permitted use under a special exception. Mr. McGrath said he spoke with the Selectmen in July 2016 before they knew about the September race moving to Las Vegas. Mr. McGrath said they were already pursuing this prior to the race moving to Las Vegas.

- **Application #Z-17-5, NHMS Variance** – Mrs. Parent presented the application. Mrs. Parent said they have had overnight parking for the snow bowl but there is a lack of town records on this. Mrs. Parent

said this won't be visible from Route 106 and again explained there will be drinking water, portable toilets and showers and trash pickup. Mrs. Parent said the camping lots will be 20X30 and 20X40. Mrs. Parent asked the application be amended to include 503.3 as well as 503.2 B,C,D. Mrs. Parent said a Nascar event is much larger than what they are proposing with this music festival. Mr. Tuson asked if he was correct that they currently have 4000 camping sites and are now asking for 3000 for this event. Chairman Lizotte questioned the hardship and questioned why they aren't planning another race instead of holding a concert. Mrs. Parent said the hardship isn't losing the race as this was thought of prior to losing the race. Mrs. Parent said the hardship is the unique property of NHMS and it is the only property in town that is in the C/R zoning so it is truly unique. Chairman Lizotte questioned again why they are venturing into this new territory when they could just hold some sort of race in conjunction with a concert. Mr. McGrath said they are an entertainment business and it is his job to find ways to generate profit for this business. Mr. McGrath said for instance Fenway Park started out as a baseball field and now you can do much more like go to a concert or watch a hockey game. Mr. McGrath said the property is evolving.

Chairman Lizotte opened it up for the public to speak.

John Evans of 234 Baptist Rd in Canterbury spoke. Mr. Evans owns property in Loudon but has moved to Canterbury due to the noise from NHMS. Mr. Evans said he has had issues with the people lighting lanterns that then float over to his property and they have burned holes in his hayfields.

Karen Mossman of 142 Clough Hill Road spoke in favor of the concert. Mrs. Mossman said they should be allowed to have the concert festival one time then have the town review it.

Linda Trefethen of 991 Route 106 North spoke in favor of the concerts.

Arnold Albert of 1 Mudget Hill Rd in Canterbury spoke against the concerts. Mr. Albert said he is one of the signers of the 1989 covenant. Mr. Albert said he feels this covenant won't allow these concerts to take place.

Michael Harris of 485 Lower Ridge Rd against the track and said the town has no authority to allow this and believes this will negatively impact the town.

Attorney and Canterbury Planning Board Joshua Gordon spoke not as an acting attorney for Canterbury. Mr. Gordon pointed out that one of the board members is a direct abutter. Mr. Gordon said he believes there is a lack of noticing and that the application is incomplete and zoning lines need to be indicated. Mr. Gordon also argued that NHMS concentrated on the word recreational and not facility and this is not a facility he stated. Mr. Gordon said the application doesn't clarify the hours, dates or number of attendants. Mr. Gordon also questioned being approved for 21 days. Mr. Gordon said Mrs. Parent asked for 503.3 on her application but it is not on her application. Mr. Gordon also said this is new traffic and new sound coming into town. Mr. Gordon also said that a hardship should be considered upon a land issue not an issue with the business itself.

Tyson Miller questioned the board about a member being an abutter. Chairman Lizotte said they are not at any decision making point yet.

Jim Snyder asked the board if they are bound by the covenant. Chairman Lizotte said at this time they are not going to discuss the covenant as they are hearing statements.

Tim Sink president of the greater chamber of commerce approached the board to speak in favor of the music festival. Mr. Sink said this would be a huge economic boom for the state. Mr. Sink said NHMS handles large events very well and Live Nation has a good reputation. Mr. Sink believes this will be very good for the area as well as the whole state.

Charlie St. Leclair is a Laconia resident spoke in favor of the music festival and said this will be good for the entire state as well as provide many jobs. Mr. St. Leclair said it may seem like a burden to hold concerts but this benefits so many people in the state.

Joyce of 312 Shaker Road in Canterbury said she the track has broken the trust of people and we shouldn't trust them. Joyce asked why the track wasn't looking at local performers and encouraged them to do that.

Attorney Karyn Forbes spoke representing Jim Snyder and Arnie Albert. Mrs. Forbes said the Master Plan is not adopted by the town and will respond in written letter to new information that was discussed tonight. Mrs. Forbes said that no decision should be made tonight and Vice Chairman Pearl said they will not be making a decision tonight and are allowing interested parties to submit legal memorandum up until September 14th and are allowing rebuttals until September 19th. Tyson Miller of 107 Baptist rd in Canterbury questioned why they were hearing this application when an agreement was signed in 1989 and when the new owners bought the property they were aware of this agreement.

Linda Cote of 354 Bumfagon Road spoke against the concerts. Mrs. Cote said when the Nascar races are going on she can't listen to tv or have a discussion in her home. Mrs. Cote said she has had trouble getting a police officer to her house at one point because they were busy at the track. Mrs. Cote said the survey mentioned was not in regards to bringing in new things to the town. Mrs. Cote said the town needs to honor the agreement and submitted a letter to the board. Mrs. Cote said this is detrimental to people that live nearby.

Tim Meeh of 341 Shaker Rd in Canterbury submitted a letter about an issue with firewood being brought in from other states and there is now a Emerald Ash Borer problem in the area and he believes that this originated at the track and ruining local trees. Mr. Meeh submitted a letter to the board.

Carol Soule of 56 Whitehouse road spoke against the concerts. Mrs. Soule said she is part of the 1989 agreement. Mrs. Soule said Miles Smith Farm she owns doesn't benefit her business and when races are being held her regular customers do not come and race goers don't come. Mrs. Soule said the only access she has to her property is 106. Mrs. Soule also said that noise is more of an issue at night.

Hillary Nelson of 337 Shaker Rd in Canterbury submitted a letter to the board and spoke against the concerts. Mrs. Nelson said this impacts Canterbury businesses negatively. Mrs. Nelson also said this should have a historic review. Mrs. Nelson also said that it is proven that noise at night can cause heart disease and death.

Mary Ann Steele of 637 Lower Ridge Road said that the master plan doesn't support this and they should be going for a zoning change because this is not permitted.

Dick Bergeron President of the race museum spoke in favor of the concerts as he feels this is in the best interest of not only his business but the state as a whole. Mr. Bergeron said charities are supported by

James O'neil of 63 Oak Hill Dr said the board should approve this as it is consistent with the master plan.

Gaye Holt Currier Road, spoke against the campground and believes the state law classifies a campground as anything with over 2 RV's. Also Mrs. Holt said that a concert was held at a Las Vegas track and there were many injured and deaths. Mrs. Holt said there are other things they can do to bring in more business like a flea market. Mrs. Holt said she would like to know how many people actually responded to the survey.

Abigail Dow of 252 Lower Ridge Road spoke in favor of the concerts as she believes this is good for the town and NHMS has proven time and again that they can handle such events like this.

Carolyn Carr of 200 Bumfagon Rd said she is in support of this concert and benefiting local businesses like herself.

Linda Hunton of 95 South Village Rd spoke in favor of the concerts and said NHMS does a great job at holding events.

Paul Nichols of 228 Loudon Ridge Rd spoke against the concerts questioning how much more they will ask to do. Mr. Nichols quoted Mr. McGrath as saying maybe one day they will have a casino at the property.

Mr. Pearl made a motion for a site walk to be performed by the board. Mr. Aznive seconded the motion. All in favor.

Vice Chairman Pearl made a motion for all interested parties to submit legal memorandum up until September 14th allowing rebuttals until September 19th; seconded by Mr. Aznive. All in favor.

Chairman Lizotte said the meeting will be September 28th at the Loudon Elementary School at 7:00PM

- **Application #17-10, Loudon Ridge Properties (continued) 409 Loudon Ridge Rd-** Surveyor Mark Sargent came back this month to discuss the variance. Vice Chairman Pearl recused himself. Chairman Lizotte appointed Mr. Saunderson a voting member. Mr. Saunderson asked Mr. Pearl if they could put in the approval that no further subdivision of the land could be done. Mr. Pearl said he doesn't believe that it is needed because this land cannot be subdivided anymore but he agrees to do it. Chairman Lizotte asked Mr. Pearl if he worked out the boundary line issue with the neighbor. Mr. Pearl said he did and has agreed to give his neighbor a 50 foot wooded buffer along his property. Jeff Green was present in the audience and was not in favor of this. Mr. Green said this has never been done and he does have 2200 feet of road frontage further down the road. Mr. Green said the zoning was created to keep lots larger in this district. Mr. Merrill said the ordinance was made to keep larger lots but this lot already exceeds the size requirement and by extending the road frontage it cuts into Mr. Pearl's sugarbush. Mr. Tuson said this would be creating a non conforming lot. Chairman Lizotte said he feels this meets the spirit of the ordinance. **Mr. Saunderson made a motion to amend the application that no further subdivision can be done with the land. Mr. Lizotte seconded the motion. A roll call was taken. Charlie Aznive- no, Ned Lizotte-yes, Roy Merrill-yes, Howard Pearl-yes Earl Tuson-no. Majority- APPROVED. Mr. Saunderson made a motion approve the application. Mr. Lizotte seconded the motion. A roll call was taken. Charlie Aznive- no, Ned Lizotte-yes, Roy Merrill-yes, Howard Pearl-yes Earl Tuson-no. Majority- APPROVED.**
Vice Chairman Pearl returned to the board.
- **Application #17-15, Karen Lahar, multi family home-** Karen Lahar presented the application to the board. Mrs. Lahar said they have 3 units in the home and were not aware it wasn't allowed. They have a single family home with an attached in law apartment then added a kitchen upstairs for her sister and brother in law. Mrs. Lahar said allowing this 3rd kitchen doesn't change the number of people in the home. Mrs. Lahar said this kitchen was put in because her sister and brother in law are disabled and have a lot of trouble using the stairs and this improves their daily life. Mrs. Lahar agreed that if they ever sold the property they would remove the kitchen. Abutters Chad & Shone Moore were present and spoke in favor of allowing this. Mrs. Lahar said the sink was approved but the refrigerator and stove was added after. Chairman Lizotte said there is no hardship because Mrs. Lahar's sister and brother in law can move downstairs and Karen can move upstairs or they can add onto the first floor. Mrs. Lahar said there are 4 people living on the first floor and there is not enough room on the second.

Mrs. Lahar also said adding on is not financially feasible right now. Mr. Merrill said this would be opening up something that could happen all over town. Chairman Lizotte said this is a clear violation. Mr. Merrill said they will have to remove the 3rd kitchen. **Mr. Tuson made a motion to deny the application. Mr. Pearl seconded the motion. All were in favor.**

Application #17-16, Carole Soule-Miles Smith Farm, Farmers Diner- Vice Chairman Pearl recused himself, Chairman Lizotte appointed Mr. Saunderson a voting member. Mrs. Soule explained she would like to hold a farmers dinner like many other events that are held on the farm. Mr. Saunderson questioned if this was allowed under agritourism. Mr. Tuson said clearly she is allowed to do this without a special exception. **Mr. Tuson made a motion to deny the application on the basis that she didn't need to apply for this. Mr. Aznive seconded the motion. A roll call was taken. Charlie Aznive-yes, Ned Lizotte-yes, Roy Merrill-yes, George Saunderson, Earl Tuson-yes. Unanimous – Denied- no need to apply.**

Board Discussion: None

Adjournment:

Mr. Pearl moved to adjourn the meeting at 12.10 am; seconded by Mr. Tuson. All were in favor.

Submitted by,
Danielle Bosco
Administrative Assistant

Loudon Zoning Board of Adjustment
Meeting Minutes
September 28, 2017

Present:

Chairman Ned Lizotte, Vice Chairman Howard Pearl, Roy Merrill, Charlie Aznive, Earl Tuson, alternates George Saunderson, Peter Pitman and Dennis Jakubowski.

Town Counsel Brenda Keith was present.

Minutes:

Regular Hearing August 24, 2017- Mr. Saunderson corrected the voting on the Loudon Ridge Properties that lists Mr. Pearl as a voting member and he was not as he recused himself and Mr. Saunderson should be in his place. **Mr. Tuson made a motion to approve the minutes with the changes. Mr. Pearl seconded the motion; All in favor. APPROVED**

Site Walk Minutes September 9' 2017- Mr. Tuson made a motion to accept the minutes as presented; Mr. Merrill seconded the motion; Mr. Pearl recused himself as he was not present. All voting members in favor. **APPROVED**

Discussions:

- None

Public Hearings:

Roy Merrill recused himself from any further participation involving the NHMS applications. Mr. Merrill said he feels he has no direct personal interest in the outcome of these applications, it was raised as an issue last month as he's an extended abutter. Mr. Merrill said doesn't believe he is a direct abutter to the property that NHMS is looking to do anything on but will recuse himself from the board.

Chairman Lizotte appointed Peter Pitman a voting member.

- Application #Z-17-6, NHMS Special Exception-
- Application #Z-17-5, NHMS Variance –
Vice Chairman Pearl said he doesn't believe the board should consider the covenant in the decision process and that the zoning board doesn't have any authority, the task lies solely on the Board Of Selectmen. **Vice Chairman Pearl made a motion not to consider the covenant; seconded by Mr. Aznive; all in favor; motion carried.** Jennifer Parent approached the board to discuss NHMS again this month. Mrs. Parent said she is prepared to answer any questions the board has from all documents submitted over the last month and along with her is her partner Bill Glahn, David McGrath, Bob Barrings and Mark Sargent. Mr. Jakubowski asked if they have limited request to one 3-4 day event in 2018 and beyond. Mrs. Parent said they have planned in 2018 one 3 day concert in 2018. Mr.

Jakubowski stated that would mean they have you have limited this request to 1 event in 2018 and beyond. Mrs. Parent said Mr. McGrath proposed one event in 2018 then has said in 2019 they would try for two events possibly three the following year but it wouldn't be possible to do more than that. Mr. Jakubowski questioned if in the following year they would have tenevents. Mr. Jakubowski said they would have the right to have many events. Mr. McGrath said right now they have one concert promoter that is interested in having an event. Mr. McGrath said could that possibly grow to two or three but at the end of the day he is not looking to turning NHMS into a concert venue. Mr. Jakubowki asked if he would be willing to commit to one event in 2018 and beyond. Mr. McGrath said he is not willing to commit to only holding one event per year. Mr. Jakubowski questioned the NH statue on exemption from a camping permit as long as you limit it to seven days of camping. Mrs. Parent said NHMS is relying on the current state statue 216-I:I. Vice Chairman Pearl brought up the written and verbal testimony from last month's meeting regarding invasive species and it being brought in by outside firewood. Mr. McGrath said they have a protocol in place very clear to all campers through online and channels and any publications that out of state firewood is not allowed. Mr. McGrath explained that they are contracted with a company that works every race weekend and provides firewood to people on site. Mr. McGrath said that they have worked with the Department of Resources and Economic Development in the collection of any illegal firewood. Mr. Jakubowski questioned if the sounds study is a live study of the conditions that they will see for a concert. Bob Barrings went into more details on the sound study. Mr. Barrings said the sound study was a simulation of a live event. Mr. Barrings said these studies are based on an outdoor music venue in Atlanta Georgia. Mr. Jakubowski said he didn't agree that you could compare Atlanta Georgia to Loudon New Hampshire. Mr. Tuson asked if the recent concert that was held during race weekend was in the same location as the proposed music festival. Mr. McGrath said it will be. Mr. Tuson asked if he knew how the people in town had reacted to that music. Mr. McGrath said he spoke with the Chief of Police and there were no complaints. Mr. Tuson explained several complaints were made to the fire chief. Mr. McGrath explained that they held concerts at this same spot in July as well. Mr. Jakubowski said that currently NHMS has two large events per year and now they are looking to hold 5 events so that is not the same. Mrs. Parent said that NHMS has two large NASCAR events per year and now there will only be one large NASCAR event so for 2018 there will be one music festival that replaces that. Mr. Jakubowski said five is still more than two and they are proposing another race to take place in September of 2018. Mr. McGrath said that they do hold events every weekend currently at NHMS and they are working on growing the speedway as a business. Mr. McGrath said the proposed September racing event is on a much smaller scale. Mr. Jakubowski asked if they will be holding a concert in conjunction with this new September race. Mr. McGrath said the plans are very early in the planning stage. Mr. McGrath said this event is a much smaller event and the track won't be spending the money on bringing in those types of things. Mr. Jakubowski said you could hold a concert. Mr. McGrath said if he had to give an answer right now they will not be holding a concert. Mrs. Parent said the current NASCAR events are typically a 7-day event and this proposed music festival will be a day event. Mrs. Parent spoke about the lighting stating that there are some lights in the parking areas currently and any new lighting brought in would be stage lights that are pointed at the performer or down onto the performer. Mr. McGrath said there will be no firework displays and the entire concert will be over at 10:30pm. Mr. Saunderson asked how many acts will be performing during this event. Mr. McGrath said that 4-6 bands will play per day from 2:00pm until 10:30pm. Mr. Jakubowski asked how many people he expects to attend. Mr. McGrath said he expects 20,000 people per day to attend and they are only selling 3-day event tickets. Mr. Jakubowski stated that people could be drinking all day then go out onto Loudon's roads. Mr. McGrath

said he would hope people wouldn't do that but he has no control on people driving, even at the large scale of a NASCAR event people are allowed to leave. Chairman Lizotte asked if there is a potential that the September NASCAR could come back. Mr. McGrath said he doesn't believe that could be possible for a long time if ever as it's very hard to get back a race that is lost. Vice Chairman Pearl asked if there was a policy on people coming into the campground that are not camping. Mr. McGrath said they are allowed to come in and campers are checked in and must have a pass. Vice Chairman Pearl said that it would be fair for the board to assume the only people camping are ticket holders. Mr. McGrath said that is correct. Mr. Aznive asked about the firewood procedure if someone brings in out of state firewood. Mr. McGrath said any firewood that is found is quarantined and then it is removed. Mrs. Parent provided a list of recent sales of houses around the track showing that houses are selling for at or around assessed value in the last two years. Mr. Jakubowski said these house sales are based on NHMS holding two events per year. Mrs. Parent said this shows house sales based on NHMS holding two large events per year much larger than what is expected for a music festival.

The Board moved into public comments. Karyn Forbes approached the Board to discuss her concerns. Mrs. Forbes said this is not a recreational facility and is not permitted by right or special exception. Mrs. Forbes said the applicant has pointed the board to the master plan to support its interpretation of the zoning ordinance. Mrs. Forbes said this is a flawed analysis because the master plan is not adopted by the town only the legislative body which is the voters who have adopted the ordinance. Mrs. Forbes said voters are the only source for the legislative history of any ordinance and to the extent that you rely on the master plan that is error. It is an entertainment not recreation facility. Mrs. Forbes said she is confused on how many events they are wanting to hold. Mrs. Forbes said they want one event in 2018 and two to three in the following years is this two to three additional or three in total. Mrs. Forbes said this board has the right to allow NHMS to hold one concert in 2018 and come back for approval the following year. Mrs. Forbes said the applicant brought in Syntech to do a sounds study but they are working for the applicant not the town or the residents. Mrs. Forbes said this sound test is beyond the scope of being able to understand it. Mrs. Forbes said the town should hire someone to do a sound study. Mrs. Forbes said on the site walk she noticed that there are no buildings or structures to block sound. Mrs. Forbes said there is no sound abatement presented. Attorney Glahn said any of the people opposed could have done a sound study but he doesn't believe the town is in any obligation to do so. Joshua Gordon spoke on behalf of the Canterbury Planning Board. Mr. Gordon said there are eleven tax abetments in Canterbury due to the track and at least one that they know of in Loudon. Mr. Gordon said this shows it is impossible to prove that this is not detrimental to the town. Mr. Gordon also argued a concert venue being an accessory use of a race track. Mr. Gordon said he would like to see zoning lines and topography on the maps. Mrs. Parent said that the letter from Canterbury indicates that there "may be" nine houses on Asby Road and is not located near these houses and as for the Loudon property that is also not located in the area of this proposed concert. Joe Brown of Loudon spoke with concerns of the music festival. Mr. Brown said things change and possibly next year Mr. McGrath will have a new job and someone else will come in and buy more land and approach the board with new things. Mr. Brown said this past weekend the concert at the track was so loud he couldn't enjoy his yard. Mr. Brown said these events will clog up 106 every weekend. Mr. Brown ended with the fact he didn't know that you could get a tax abatement for noise but he will be doing that now. A Canterbury resident Louise said this is a slippery slope. RJ Hardy, owner of Meadowbrook spoke. Mr. Hardy said it takes a commitment from an organization to the residents to keep good faith with residents. Mr. Hardy said Gilford required them to hire an outside sound study. Mr. Hardy said he isn't against this but believes there needs to be a specific commitment to honor the peace of the

residents and if the Board doesn't see it in this application then there will be a long road to honor it in the future. Mr. Hardy said for seven or eight years they ran the operation with total temporary facilities until the town made them build a pavilion. Mr. Hardy said they pavilion was built due to sound issues. Mr. Pitman asked how many nights they hold concerts. Mr. Hardy said this past year they held thirty-seven concerts. Mr. Glahn wanted to clarify the sound study again. Mr. Glahn said that this shows identical speakers that would be used at a live nation concert. This shows what the sound will likely be at the five locations shown. Mr. Glahn said some have argued that in December the sound will be different than in the July. Mr. Glahn said nobody knows if it will be greater or less but they did the best to show a sound study, in summer there are leaves on the trees. Gregg Meeh from Canterbury spoke stating that he agrees with the board that five events is not the same as two and Atlanta is not the same as Loudon. Mr. Meeh said that night and day and December and September are not the same. Mr. Meeh said he submitted several articles on heart conditions and child development issues regarding noise. Mr. Meeh questioned how many tents they are expecting. Mr. Glahn said that the articles that were presented are based on a study of people that live near airports and highways. Mr. Glahn explained that this study shows the effects on people living near places that have noise 24 hours a day and it was a year long study which is much more noise than what is expected with this proposed concert. Mrs. Nelson said there are many studies she has found that show just noise at night causes health problems. Mrs. Nelson said this past weekend she was unable to sleep due to the concerts and had to shut her windows. Mrs. Nelson said she doesn't have A/C and with her windows closed it was very hot and uncomfortable. Mrs. Nelson said that if the concerts will be like this there will be a nuisance lawsuit brought on the town and the track. Arnie Albert of Canterbury spoke about how loud and offensive this concert was this past weekend. Mr. Albert said it is a shame to have to close your windows due to a concert. Mr. Albert suggested the town hire someone to run its own sound study. Mr. Albert said that the agreement that was signed is the reason that he hasn't complained. Mr. Albert said he is concerned about the future of the track and would like the board to limit these events. Michael Sellingham of 7584 Currier Road spoke and said the first year he lived hear it was a pain but now he is used to it. Mr. Sellingham said there is lots of noise that reach eighty decibels right on 106. Mr. Sellingham said he understands an agreement was made years ago but that times change and he also likes living in town because of the tax relief. Mr. Sellingham said the residents in his opinion bear a little burden with the noise and traffic to benefit in the tax relief. Kent Ruswick from Canterbury said he doesn't believe people are stopping and spending money in town they are just driving by. Mr. Ruswick believes the board has the right to say no to this on the noise alone. Theresa Wyman questioned why there wasn't a sound study done on the recent concert over the weekend. Mrs. Wyman is not sure why she should believe what NHMS is saying. Mrs. Wyman said she is confused on exactly how many concerts will be held. Mrs. Wyman questioned what happens if the music doesn't stop at 10:30, then what will the consequences be. Mr. McGrath said yes they are hoping to have up to three music events and when it was said I am growing the company with new events yes I am doing that we have many other events held from 5k girls on the run to many other events. Mr. McGrath said that this concert will be shut down at 10:30pm no later and they will have security on the property that they pay for including local and state police. Alvin spoke about the agreement and said even with new owners it is still NHMS and should be kept. Roy Merrill spoke saying that anyone that says there is no economic benefit has not been in Brookside pizza, the golf course, restaurants in Concord or hotels during race weekend. Mr. Merrill said in regards to property values on Asby road and people that are getting abatements due to the track are parking cars and making money on races as he saw when he drove down. Mr. Merrill said as far as the property values in Loudon all you have to do is look at Bow,

in the 80's everyone was building houses that were \$500,000 houses with low taxes due to a coal plant. Mr. Merrill said the coal plant is not what it used to be and the taxes have gone up and property values have gone down. Mr. Merrill said it's a shame people in this town can't put up with this for such a short amount of days. Linda Cote spoke to the board and said they will be going for an abatement due to the noise. Mrs. Cote said the concert over the weekend ended at 11:00pm and she was unable to sleep as well as when these concerts end people continue to be loud and wake her up. Mrs. Cote said every camper is not checked so how do we know there are no explosives being brought in. Mrs. Cote also would like to see the zoning lines to see how much of the concerts are being held in the RR district. Scott Hagherty an abutter is very concerned about the noise and would like a better sound study done.

Chairman Lizotte recessed for ten minutes so people could take a break.

The Board returned.

Mr. Tuson made a motion that the Board have a comprehensive sound study done so the board can better understand some of the sound issues at hand. Mr. Tuson said there are still leaves on the trees at this time, it would be comparable to the concert being proposed. Mr. Tuson said the community requires it. **No second was made for the motion and Mr. Tuson withdrew his motion.** Mr. Jakubowski said he is not a voting member tonight but believes the decision should be put off as he doesn't believe the applicant has answered the questions on the application clear enough. Mr. Saunderson said he is not a voting member but does agree that a sound study should be done. Chairman Lizotte closed the meeting to the public and opened it up to voting members only. **Vice Chairman Pearl made a motion to accept the verbal amendment to the Variance to add 503.3; seconded by Mr. Pitman; all in favor; Amended.** Vice Chairman Pearl made a motion to accept the special exception. Chairman Lizotte went over the application. A few things that were discussed during the application were Mr. Tuson brought up the concern for how many events they will be having and believes there should be conditions set by the board for the frequency of the events. Vice Chairman Pearl believes that for many years they have held two large events every year and now they are removing one large event and adding a much smaller event. Vice Chairman Pearl said he believes the applicant has provided enough information in regards to site plans and studies. Vice Chairman Pearl said that from his home he used to see lots of the Chinese lanterns and now he sees not many at all and he believes that is due to the track doing its job. Vice Chairman Pearl also said there should be reasonable restrictions set on this concert. Mr. Tuson quoted the applicant by saying we won't know what this concert will sound like until it is done. Mr. Tuson said he thinks the board should approve one event for 2018 and require the applicant to come back after the board has evaluated how the event does. Vice Chairman Pearl made an amendment to his motion to only allow seven nights of camping in relation to a concert. Mr. Tuson said setting a restriction to camping nights opens up NHMS to have concerts 365 days a year as long as it doesn't involve camping. Chairman Lizotte feels it is reasonable to allow one event per year. Mr. Pitman said that a restriction should be set to only allow one concert and then come back if they want more. Mr. Tuson can we limit this to one event in 2018 and nothing further to evaluate this. Vice Chairman Pearl said he doesn't believe allowing one event annually is not unreasonable. Vice Chairman Pearl said setting limits of June 1st until September 30th to ensure this is a summer event is a good idea. Mr. Tuson said setting a deadline of labor day because children go back to school. Mr. McGrath said this is a reasonable request. Vice Chairman Pearl said September 1st would be a good date since Labor Day floats. **Vice Chairman Pearl made a motion to approve the application with the conditions that there will only be 1 event held annually, 2:00pm until 10:30pm, 3 day event, must take place between June 1st and September 1st, Seconded by Mr. Pitman; A roll call was taken. Peter Pitman-**

yes, Charlie Aznive- yes, Earl Tuson-yes, Ned Lizotte-yes, Howard Pearl-yes . Unanimous – Approved. Chairman Lizotte went over the points of the application. Mr. Tuson said the NH state law 216:I-13 states that camping is allowed to RV. Vice Chairman Pearl said that NHMS falls under the exemption for this. Vice Chairman Pearl said that the board should set a limits on the nights of camping to 4 nights so that it doesn't open up to allow camping on other days. Mr. Tuson brought up that the C/R district is in fact unique but was voted on by the town and the board changing that takes it away from the voters. **Vice Chairman Pearl made a motion to approve the application with the conditions that there only be 4 nights of camping, Seconded by Mr. Pitman; A roll call was taken. Peter Pitman- yes, Charlie Aznive- yes, Earl Tuson-yes, Ned Lizotte-yes, Howard Pearl-yes . Unanimous – APPROVED.**

Mr. Merrill returned to the board, Mr. Pitman not a voting member.

Application #17-17, Richard and Iva Lavoie, Accessory Dwelling Unit, Map 22 Lot 34, R/R District – Richard and Iva Lavoie presented the application to the board. Chairman Lizotte read the application and Mr. Lavoie answered questions. Mr. Tuson corrected on the application that it should be 509.1. Mr. Lavoie explained access was in the basement. Mr. Aznive questioned if it had to be entry into the main living space. Mr. Tuson said the door just has to be between the accessory and the single family dwelling unit. Mr. Pitman said the basement can be considered part of the single family dwelling. Mr. Pitman said the septic is certified for a 4 bedroom so the new septic plan works. **Mr. Merrill made a motion to approve the application. Mr. Tuson seconded the motion. A roll call was taken. Charlie Aznive- yes, Ned Lizotte-yes, Roy Merrill-yes, Howard Pearl-yes, Earl Tuson-yes. Unanimous – APPROVED.**

Application #17-18, Michael & Katie Sellingham, Variance for Accessory Dwelling Unit with reduced square footage, Map 41 Lot 12, R/R District- Michael Sellingham presented the application to the board with new plans that make it so he meets the square footage requirement. Mr. Tuson said now that he fits the requirements for a special exception he needs to apply for a special exception not a variance. Mr. Sellingham withdrew his application and will apply for a special exception for next month.

Board Discussion:

Mr. Pearl recused himself

Chairman Lizotte appointed Mr. Saunderson a voting member.

The Board discussed an appeal on application #17-10, Loudon Ridge Properties, 409 Loudon Ridge Rd that was presented to the board by Jeffery Green. Mr. Tuson asked Mr. Green how he is a party to the action or directly affected by this. Mr. Green said he is directly affected by this decision because he has applied for similar applications and he also lives in the same zone. Mr. Green said he is representing abutters to the property as well. Mr. Saunderson asked if he could name the people that he is representing. Mr. Green said at this time he can't. Chairman Lizotte said based on the criteria for Zoning he wouldn't even be notified. Mr. Green said everyone is notified by newspaper and postings in town. Mr. Tuson said the language of the Ordinance does not use the word abutter so it leaves it open to others being directly affected. Mr. Tuson said if he can demonstrate to the board that he is directly affected he can apply. Chairman Lizotte said he feels directly means touching. Mr. Saunderson recommended putting this on hold for a month while the Board consults with Bart. **Mr. Saunderson made a motion to suspend the order of decision pending further consideration and consultation with the town attorney. Mr. Tuson seconded the motion. A roll call was taken. Charlie**

Aznive- yes, Ned Lizotte-no, Roy Merrill-no, George Saunderson-yes, Earl Tuson-yes. Majority rules-
Suspended

Adjournment:

Mr. Pearl moved to adjourn the meeting at 11.22 pm; seconded by Mr. Tuson. All were in favor.

Submitted by,
Danielle Bosco
Administrative Assistant

TOWN OF LOUDON
LOUDON, NEW HAMPSHIRE
PLANNING BOARD MINUTES
October 19, 2017

Meeting called to order at 7:00 p.m. by Chairman Tom Dow.

Attendance:

Chairman Dow, Vice Chairman Stan Prescott, Tom Moore, George Saunderson, Jeff Miller, and alternates Alice Tuson and Dustin Bowles.

Chairman Dow appointed Alice Tuson a voting member in the absence of Henry Huntington and Dustin Bowles a voting member in absence of Bob Cole.

Pauline Tuson from Conservation was in attendance.

Acceptance of Minutes:

September 21, 2017 Regular Meeting --Mr. Prescott made a motion to approve the minutes as written; seconded by Mr. Saunderson; all were in favor; approved.

September 21, 2017 CNHRPC Meeting- Mr. Moore made a motion to approve the minutes as written; seconded by Mr. Saunderson; all were in favor; approved.

Discussion:

- Michael Harris- Mr. Harris said he has concern about the concert and any events held at NHMS. Mr. Harris said the recent Punkin Chunkin caused damage on his property and his road, it caused trees and power lines to fall. Mr. Harris said there was no significant wind that day. Mr. McGrath said there was wind that day of the Punkin Chunkin and he has held this event several times and not had any issues.

Old Business:

Jeff Miller recused himself.

- Application #17-6- NHMS Site Plan, 1122 Route 106 North, Map 51 Lot 18, C/R District- &
- Application #17-6- NHMS Change Of Use, 1122 Route 106 North, Map 51 Lot 18, C/R District- Chairman Dow recognized Debbie & Greg Stevenson, Linda Trefethen and Joe Brown as abutters in the audience. Surveyor Mark Sargent from Bartlett and Associates opened up the presentation and explained the lots being used were purchased after the 1989 agreement, Tax map 51 Lot 18 was purchased in September of 1995 and Map 52 Lot 15, Map 61 Lot 6 and Map 61 Lot 9 were purchased in July 1997. Mr. Sargent went over camping spaces and said in total there will be 3,301 camping spaces with 500 being held on parking lot S4, 854 on parking lot S6, 108 on parking lot S8, 919 on parking lot S9, 602 on parking lot N1, 118 on parking lot N7. Mr. Sargent also explained that none of this will be seen from Route 106. Mr. Sargent also said the only entrance and exit will be the South Gate. Gail Rogers went over the traffic plan that will be similar to a race weekend and they will work with the Traffic Control Committee which includes Loudon's Fire Chief, Police Chief and Selectmen. Mr. Saunderson asked if there was a date for this concert. David McGrath said they have not set a date for this event and are currently working on it but it will be late July early August. Attorney Bill Glahn spoke on the issue of

sound and went over the sound study done by Syntec. Mr. Glahn went over the results of the sound study and said there will always be factors such as foliage, wind, atmosphere conditions. Mr. Glahn said in most of the areas tested the sound was on average the same as on a race weekend and on average to 50-60 decibels. Mr. Saunderson questioned it being the same because races don't end at 10:30pm. Mr. Glahn said races are not held at 10:30pm, Mr. Glahn said this study shows the sound over the weekend of a race weekend and the comparison of a concert is very similar. Mr. Saunderson asked if we should expect the sound decibels to be 50-60. Mr. Glahn said in some areas it is higher and some lower. Mr. Saunderson said there is a sound spike at the Greenhouse at Clough Hill. Mr. Glahn said the sound spike was at 7:00am and there was no racing occurring during that time so this could have been something going on at the location such as mowing a lawn. Vice Chairman Prescott spoke of another spike on the sound graph and questioned if there was a concert going on during that time. Mr. McGrath said there was not a concert at that time. Mr. Moore asked if Live Nation will provide the sound equipment or will the bands provide their own sound equipment. Mr. Glahn said Live Nation provides all the sound equipment. Mr. Moore said then you have some control over volume and a person to go to for sound related issues. Vice Chairman Prescott questioned why the settlement agreement is not applicable in this application. Mr. Glahn said this agreement defines the premises that are subject to the 1989 settlement agreement. It does not use that definition of the premises to define which entity is subject to the agreement. Mr. Glahn said the language in this agreement says it will not permit any musical concerts to be held on the premises currently known as NHMS except in conjunction with a race. Mr. Glahn said this defines what the premises are that are subject to the agreement. Mr. Glahn said that in 1989 the premises known as NHMS did not include these lots. Mr. Glahn said all of the opponents to this concert have left out the word currently when writing to NHMS or the Loudon Planning Board. Mr. Glahn said any successor of NHMS is subject to this agreement according to its terms. Mr. Saunderson asked if the applicant thought this concert violates the spirit of the covenant. Mr. Saunderson also questioned drag racing being held on these properties as that is part of the agreement. Mr. Glahn said this agreement wouldn't restrict NHMS from holding drag racing. Mr. Glahn said he believes the original intent of this agreement was to restrict concerts being held in the stadium. Mr. Saunderson said he spoke to two of the Selectmen that have signatures on this agreement and the intent of the agreement was not to only restrict concerts in the stadium but restrict them on the property. Mr. Saunderson questioned if they planned on drag racing. Mr. McGrath said they are not planning on holding drag racing on the NHMS property. Jim Snyder questioned if the land that was owned at the time of the settlement agreement will be used at all for this concert. Mr. Glahn said it depends if your position is power coming from power lines or ticket sales being sold from the main office than that is irrelevant. Mr. Glahn said if your position is, is the concert itself being held on the property from the 1989 agreement, the answer is no. Mr. Glahn spoke about the bathrooms that are located on the property from the 1989 settlement stating that these bathrooms if needed will be locked but from a sanitation point of view it would be wise to use them. Vice Chairman read minutes from the Planning Board meeting of March 2017 and Mr. McGrath was quoted they would bring phone, electricity and whatever they may need from the property from the 1989 agreement. Mr. McGrath said there are LED lights that are powered by the property and Live Nation will be bringing in generators and everything for this concert and there is no electricity on these lots that will be used. Mr. Moore asked what hours the lights on the property will be kept on during the concert. Mr. McGrath said during large events such as Nascar these lights are kept on all night and the same protocol will be kept for the concert. Mr. McGrath said this is a safety measure that NHMS takes. Several members of the audience spoke.

Hillary Nelson spoke about the noise that the track causes and says that there are studies that prove nighttime noise has negative health effects on people. Mrs. Nelson said this sound study was done in the winter and isn't accurate.

Joshua Gordon said he believes that proper notice was not given to abutters. Mr. Gordon said the issue of people bringing in firewood is a concern and originated from the speedway. Mr. Gordon spoke of the

1989 agreement and believes that this agreement does run with all land owned by NHMS and that people bought homes in Loudon knowing that this agreement would prevent concerts.

Linda Cote questioned how the police will keep her safe during these large events due to the fact that every vehicle is not checked. Mrs. Cote believes that NHMS should have asked for a Variance for camping in the RR District as well. Mrs. Cote also would like another sound study done. Mrs. Cote said businesses are not thriving during large events at the track, they are not able to keep up with the amount of people and have had to shut down.

Judy Elliot said as a signatory to the 1989 agreement the intent of the agreement was to not have concerts on any NHMS property. Mrs. Elliot also spoke about sound and traffic issues.

Greg Meeh spoke of sound issues at NHMS and asked the board to restrict this concert to one time then have NHMS re-apply.

Tim Meeh said the board should look at the lighting to make sure it is dark sky compliant and there needs to be a written plan for insect control.

Libby Stevenson spoke of sound issues at NHMS. Mrs. Stevenson said there is a brook that runs on her property and for a week after a Nascar event the brook turns foamy and brown due to whatever may be happening at the track. Mrs. Stevenson also said that DUI checkpoints should be set up for people leaving the track. Mr. Stevenson said the sound study itself states there are many variables in this study. Tyson Miller said he would like to see metal detectors like Meadowbrook has.

Jim Snyder spoke of sound issues at NHMS and thanked the Planning Board for addressing the settlement agreement. Mr. Miller said that requiring NHMS to pay for an independent and testing out a real concert should be done and set limits to the sound if it is approved. Mr. Miller also asked if the agreement has deed restrictions.

Vice Chairman Prescott asked for a copy of the deed if one does exist.

Mr. Snyder said the agreement states that it should be part of the deed but can't verify if it has been recorded.

Karen Forbes said the agreement is recorded at the registry of deeds. Mrs. Forbes said that NHMS should have to hire someone to do another sound study.

Joe Brown said this concert will change the character of the town and property values. Mr. Brown said if this is allowed, where will it end?

Dennis Jakubowski- Mr. Jakubowski said Mr. McGrath stated it's his job to bring in more revenue and business to NHMS and that Mr. McGrath also states he is not bringing in new business to the area. Gaye Holt said she doesn't believe the Loudon Zoning Board should have passed the applications last month due to the agreement. Mrs. Holt said when she moved to Loudon originally there was only one race but has now grown and is a nuisance. Mrs. Holt also spoke about road closures and sound issues. Dave Ladd said from his property he can hear everything from the track and would prefer to hear music over racing cars.

Bill Glahn spoke of the firewood concern and stated firewood is not allowed on the property. Mr. Glahn said the Loudon Zoning Board has limited this concert to once per year. Mr. Glahn said Asyntech is an independent company and NHMS did not tell them how to perform this study. Mr. Glahn said that the Planning Board could hire another company to perform a sound study and both companies perform the sound study during the actual concert to cross check each other. Mr. Glahn said in regards to the health risks that were brought up due to sound; the study conducted was about people that lived near airports and major highways which is not the same as a 7 hour concert for one weekend. Mr. Glahn said the agreement clearly does not state that it should apply to any lots that are purchased after. Mr. Glahn said it is highly unlikely that anyone that purchased a home in Loudon or Canterbury went to the registry to find this agreement then purchased their home dependant on this agreement. Mr. Glahn spoke about lighting concerns and said the concert will only be held during night time 1 ½ - 2 ½ hours per night due to the concert ending at 10:30pm. Mrs. Parent added that Loudon and Canterbury homes are selling near assessment value so this is not affecting sales. Mrs. Parent said in regards to the variance and special exception not including the RR district, it in fact does cover this. Doug Clasby spoke from the audience

saying he understands there is a lot of pressure regarding these applications but wants NHMS to search deep down and make sure they are doing right by the residents. Mr. Moore asked for clarification on the name of NHMS as on some places it is labeled on the application NHMS and others NH Speedway Inc. Mrs. Parent said that the property is owned by NH Speedway Inc. and the company is NHMS. Chairman Dow said on the change of use application 17-7 it is changing the use to overnight camping. Chairman Dow said a Change of Use application means they are doing something completely different so if they change it to camping then it will not be used for parking for races. Mrs. Parent said they were instructed to file for a Change of Use application so this is the route they took. Mrs. Parent said they do intend on parking cars on these lots for the July race. Mrs. Parent said if they are not required to file this application then please give direct them on what they would like to have or not have them do. Chairman Dow said the next step is for the Planning Board to talk with the Selectmen about the agreement before proceeding any further. Vice Chairman Prescott said he would like clarification on if NHMS is using the property from the 1989 agreement as an accessory use. Mr. Glahn said there are some instances like electricity coming into the property and that is like saying the NH Public Service Company is holding the concert because they are providing the power. Mr. Glahn said if the Planning Board passes these applications it will go to Superior Court and they will decide. Mr. Glahn said this agreement deals with where the concert is to be held not the electricity or where tickets are sold.

Chairman Dow took a recess for legal consultation.

Chairman Dow said he was looking for a motion to continue the applications until the November 16th meeting that will be held at the Loudon Elementary School Cafeteria. **Mr. Saunderson made a motion to continue the application until next month; seconded by Mr. Moore; all were in favor; continued.**

Jeff Miller returned to the Board.

- Application #17-14- Dollar General, Subdivision, Route 106, Map 21 Lot 16-1, C/I District-
- Application #17-15- Dollar General, Site Plan, Route 106, Map 21 Lot 16-1, C/I district- Austin Turner from Bohler Engineering and Patrick Natreba from Liscotti Development presented the applications again this month. Mr. Turner said they now have the driveway permit from DOT. Mr. Saunderson asked if they would be able to stake out the exact location of the driveway. Mr. Turner said as part of the Site Walk months ago they did stake out the driveway and show Board members. Chairman Dow said the Board has not yet accepted the application as complete because they did not have everything that was needed at the time. **Mr. Moore made a motion to accept the Site Plan application as complete and move to the public hearing; seconded by Mr. Saunderson; all in favor; accepted. Mr. Moore made a motion to accept the Subdivision application as complete and move to the public hearing; seconded by Mr. Bowles; all in favor; accepted.** Chairman Dow said there will be an empty lot in between the lot where the Dollar General will be built and the TD Bank and would like an agreement that the empty lot have a driveway with access to the Bank. The owners of the property were recognized as TMCW LLC. Mr. Turner said they would agree to make a note on the plan, any future development on the empty parcel will be required to build the access to connecting both lots to TD Bank. Mr. Moore asked the other Board members if there was anything they could do to not allow direct access to 106. Vice Chairman Prescott said 106 is a state owned road and the Town has no jurisdiction. Mr. Turner showed an updated Site Plan.. Mr. Jakubowski spoke up from the public to show pictures from a Lee, NH Dollar General that had no landscaping and he doesn't want to see that here in Loudon. Mr. Natreba said they don't own the Lee, NH Dollar General. Mr. Jakubowski pointed out tall grass at the Belmont location. Mr. Natreba said he is not able to look at every Dollar General daily but will address this as all locations should be kept nice. Vice Chairman Prescott said the Dollar General in Gilford looks very nice and they should take a look at how that was designed. Mr. Turner said he is not familiar with that store but they can look into it. Mr. Turner said he can look at different coloring like grey. Vice Chairman said it is a very large door. Mr. Turner said this is a building code issue. Mr. Turner said he is happy to make

changes and come back next month. **Vice Chairman Prescott made a motion to continue the Site Plan application until the November 16th meeting; seconded by Mr. Saunderson; all were in favor; continued.** Chairman Dow said the November 16th meeting will be held at the Loudon Elementary School. Mr. Saunderson said the note about the driveway access will need to be added. Vice Chairman Prescott said the map needs to have a Wetlands Scientist stamp, Surveyor stamp as well as Loudon DG, LLC added as the owner. **Vice Chairman Prescott made a motion to accept the Subdivision application with the condition a note be added about the driveway access be built from boundary to boundary if the lot is developed, a Wetlands Scientist stamp, Surveyor stamp, boundary markers added and Loudon DG, LLC be added as the owner; seconded by Mr. Bowles; all were in favor; approved.**

New Business:

- Application #17-18- Warren, Lot line adjustment, 70 Riverview Lane, Map 19 Lot 15, Map 11 Lot 76, R/R district- Surveyor Jeff Green asked for a continuance due to a land dispute. **Mr. Saunderson made a motion to continue the application to the November 16th meeting; seconded by Mr. Bowles; all were in favor; continued.**

Report of the Board of Permit: None

- **Report of ZBA:**
- Z17-19 William Cosswell & Lisa Swanson- Special Exception- Reduced front setback, Map 16 Lot 10, R/R District.
- Z17-20 Michael & Katie Sellingham- Special Exception- Accessory Dwelling Unit, Map 41 Lot 12, R/R District.

Board Discussion: None

Adjournment:

Mr. Moore made a motion to adjourn at 11:09 p.m.; seconded by Mr. Saunderson. All were in favor.

Submitted by,
Danielle Bosco
Administrative Assistant