

**Rochester Zoning Board of Appeals  
Business Meeting Minutes  
May 25, 2023**

**Board Members Present:**

David Arancio, Thomas Flynn, Richard Cutler, Donald Spirlet, Jeffrey Costa

**7:06 pm** Meeting Called to Order by Chairman Arancio

**Minutes:**

- Motion to approve Business Meeting Minutes of May 11, 2023 made by Richard Cutler and seconded by Donald Spirlet. Motion passes 4-0 with one (1) Abstention.
- Motion to approve Public Hearing Minutes for #1190 and #1191 of May 11, 2023 made by Richard Cutler and seconded by Donald Spirlet. Motion passes 4-0 with one (1) Abstention.
- Motion to approve Public Hearing Minutes for #1192 of May 11, 2023 made by Richard Cutler and seconded by Donald Spirlet. Motion passes 4-0 with one (1) Abstention.

**Voucher:**

- Motion to approve voucher for Invoice #8523 for the amount of \$90.00 to The Wanderer made by Richard Cutler and seconded by Donald Spirlet. Motion passes 5-0.

Business Meeting adjourned at 7:14 pm.

**Rochester Zoning Board of Appeals  
Public Hearing Minutes  
May 25, 2023**

**Board Members Present:**

David Arancio, Thomas Flynn, Richard Cutler, Donald Spirlet, Jeffrey Costa, Michelle Upton

**7:14 Meeting** Called to Order by Chairman Arancio

**#1150 Five O’Clock Farm, LLC for property located at 66 Burgess Avenue, identified on Assessor’s Map 15, Lot 19D, for a Special Permit under Chapter 20.40, Section F.6. (formerly Section VIII.D.6.), to operate a commercial equine operation. This is a remand hearing pursuant to Land Court Case No. 20 MISC 000507 (DRR).**

The applicants, Ross and Carol Speer were present along with their attorney/representative, Robert Galvin of Galvin & Galvin, PC.

Attorney Jay Tulerman was also present and representing the Town of Rochester.

Chairman Arancio began by reading the abutter list. Present at the public hearing was:

1. Jeremy Francisco & Elizabeth Goodman, new owners of 50 Burgess Avenue, Rochester MA
2. Thomas & Beth Koeppel, 74 Burgess Avenue, Rochester MA.
3. Thomas Gayoski, Jr., 79 Burgess Avenue, Rochester MA.
4. Sandra Lee Hardy, 65 Burgess Avenue, Rochester MA.
5. Matthew & Carolyn Yoo, 254 Alley Road, Rochester MA.

Representative for the Applicant, attorney Robert Galvin, began with his opening statement. After introducing himself, he gave each member of the ZBA a packet of information summarizing the property, it’s uses (equine operation), the applicant’s reasoning behind the decision to appeal as well as conditions that the applicant’s have agreed to follow. Mr. Galvin began reviewing these documents with the Board. He continued by explaining that currently on the property is a Cape-style dwelling and several out buildings, including a new barn and riding arena, both of which were built after the original hearing in 2020. He then proceeded to explain the situation that led the Applicants to go before the board originally. He stated that they had been advised by the town that in order to conduct riding lessons on the property, they would need a Special Permit. The Applicant’s did not have separate counsel at the time and so they proceeded with applying for the Special Permit. After the initial public hearing, they were under the understanding that they should speak with their neighbors, explain their operation and attempt to find conditions that were acceptable to them. The Applicant did this and returned to the ZBA. The Board granted the Special Permit but with conditions that were not acceptable per the Applicants and thus, they appealed through Land Court. As the complaint through Land

Court evolved, it was referred to Judge Lombardi for mediation. Prior to meeting officially for the mediation, Attorney Galvin and Attorney Bailey came to an agreement that the matter would be remanded back to the Board as he (Bailey) agreed with Mr. Galvin that the issue of the riding lessons did not require a special permit.

Attorney Galvin requested that the Board look at the by-laws and find that this use was a use by right in the Town of Rochester and that the town encourages the agricultural and commercial uses such as the operation his clients are conducting. He stated that his clients, Ross and Carol Speer, do not live on the property full time but that their daughter does live full time in the dwelling located on the property. Mr. Galvin reiterated that this horse farm isn't different than any other in town. He stated that the use is permitted under Chapter 40A, Section 3 and that it is not required to have a special permit. Mr. Galvin stated that based on this, it would be most appropriate for the Applicant to withdraw their application with the understanding that without a Special Permit, the Board cannot enforce conditions, however, the Applicants have voluntarily submitted conditions which they hoped would be agreed upon. Mr. Galvin handed out a small packet containing photos (aerial views) of the property. He showed where the new barn is located and where the manure pile is located. He affirmed that the manure pile is cleaned out every two (2) weeks with periodic spreading of very little of that manure to supplement their lawn and garden growth. Mr. Galvin emphasized that the manure pile is located approximately 630 ft from the property line of one abutter, Michael Kennefick, whom the Applicant has been unable to come to an agreement with. He continued to explain the natural buffers on the property and that his clients have always desired to leave that as it is. He presented photos to the Board of the property to demonstrate that his clients keep the property very clean and tidy and that many of their neighbors are supportive. Attorney Galvin explained that from Memorial Day to Labor Day, lessons would be given from 8 am to 10 pm and from 9am to 9 pm on Sundays. During other times of the year, the lessons would end at 8pm. Attorney Galvin then passed along to the Board letters of support from several neighbors; some that were unable be present at the meeting.

Chairman Arancio asked the Applicant and their representative if they were currently complying with the conditions that the Board had placed on the Five O'Clock Farms when the original Special Permit was granted to which Attorney Galvin stated no. He listed the conditions of the Special Permit that the Applicants were not adhering to beginning with the condition which was that the property be owner-occupied. Property owners, Ross and Carol Speer did not live on the property, but their daughter does. She does have a share in the LLC. Another condition was that the permit was non-transferrable. Attorney Galvin stated that was not applicable as there was no need for a special permit to begin with. The next condition was having only one residential dwelling on the property. Although the current owners were not proposing constructing another dwelling, Attorney Galvin stated that according to the by-laws, another dwelling was permitted for properties with this use. The condition which limited the amount of horses that could be housed on the property at one time interfered with their ability to have horse shows, as some showers trailer their own horses to the property for these events. There was also a condition imposed requiring that the manure be taken once a week, however, the farm currently has it removed every two weeks and the condition that eliminated deliveries on Sunday's was also disputed as sometimes deliveries must happen on a Sunday and also in case of emergencies. Millings were placed on the driveway to limit the dust however the original condition was that

the driveway be paved. The rest of the conditions which involved a 20-foot greenbelt and lighting were being adhered to.

Chairman Arancio stated that he had asked if the conditions were being adhered to because there is a process that must be followed, whether they agreed that the special permit was required or not, it was concerning to him that the special permit conditions were not adhered to. Although the Applicant attempted to find conditions that were agreeable to unsupportive neighbors, by not abiding by those conditions, it demonstrated an unwillingness to navigate through the process. Mr. Galvin stated that the Applicants have a right to pursue at their own risk and he apologized for offending the Board but stated his clients have been very responsible, particularly with the keeping and removal of manure. He further stated that no other farm has conditions imposed like this to which Chairman Arancio stated that wasn't true.

Chairman Arancio asked the Board members if they had any comment and began with Mr. Cutler who stated that he did not have questions at this time, however, he also felt it to be inappropriate that the Applicant's did not adhere to the conditions of the Special Permit. He further added that before continuing he wanted to hear from Town Counsel, Jay Tulerman. The other Board members present wanted to hear from Counsel as well as the abutters that were present.

Public comment was then opened and abutters were encouraged to discuss the matter. First to speak was Matthew Yoo of 254 Alley Road stating that he shared a common property line with the farm and that he does not have any issues with the smell. He continued by stating that they are great neighbors and he hasn't had any issues with lighting or noise as well. His wife, Jeannette Yoo, also spoke stating that she grew up on the horse farm and is familiar with the operations. She attested to how well kept their farm is and that other farms aren't always so diligent with manure containment or removal and she commended them on this. Thomas Koepfel, 74 Burgess Ave, stated he shares the biggest common property line to the farm and is the closest to the manure pile. He said that he hasn't had any issues at all. Thomas Gayoski, Jr, of 79 Burgess Ave stated that his property is only about 100 yards from the farm and he has no issues with the smell of manure or any traffic from their weekly shows. Sandra Hardy of 65 Burgess Ave stated that her home is directly in front (across the street) from the farm and she doesn't smell manure, hear noise from lessons or shows or delivery trucks and she is outdoors most of the time. Mr. Koepfel added that during their lesson or shows, it is hard to even know if there is an event going on. The lessons take place inside the indoor riding arena and there is no sound or lighting escaping from the facility. Abutters, Jeremy Francisco and Elizabeth Goodman, stated that they just recently purchased the property at 50 Burgess Ave. Elizabeth stated that she can sometimes smell the manure but it hasn't been a problem. Being that they are new to the area, their concern was during the hot, summer months as they are unsure how bad the smell could get. She also stated that because she hasn't lived there long, she doesn't know what the traffic and noise would be like during the summer, especially on the weekends when shows are held. She stated she'd rather not have increased noise but again, doesn't know what it would be like. Mr. Gayoski spoke up to stated that anyone who wants to purchase a home in Rochester should sign a form stating that they understand that this is a Right to Farm community. Ms. Goodman then stated that she volunteers at a farm on weekends and loves horses, has no issue with the smell, she was merely stating that she does not know how or if that would change

during the hotter months. Jeremy Francisco stated they hadn't had the opportunity to speak with the Speer's family but they did speak with one of the abutters about the issues. That party had advised them of his concerns. He also stated the he was concerned that the farm did not abide by the conditions placed on them by the ZBA. Chairman Arancio asked if there were any abutters who wished to speak about any issues that have not been mentioned or addressed. The Applicant's daughter stated she feels it's unfair to say that any smell of manure comes from this specific farm as there are multiple in the area with piles of manure.

With nothing further from abutters, each Board member stated they now wanted to hear from Counsel. Jay Tulerman introduced himself and then summarized the legal framework. He continued that under the statute there is substantial relief for agricultural operations. It has been decided by the courts, that equine facilities and riding lessons are within the bounds of those protections provided that they are the primary use of the property. The ZBA has to decide whether there is a substantial agricultural use. According to the photos and descriptions, it appears that this farm does qualify for that level of exemption. The statute also states that a Special Permit cannot be required for this particular use. There is an opportunity for reasonable regulations and as was heard by Attorney Galvin, the Applicants were willing to have certain conditions, even if they withdrew their application without prejudice.

Vice Chair, Thomas Flynn, stated that his concern is with the agricultural use, which is allowed by right, versus the commercial use (riding lessons). If the riding lessons were ancillary to the agricultural operations that would be fine but the petitioner seems to be presenting 12 hours a day, every day of these lessons and he found it hard to believe that the ZBA would not have any jurisdiction over that level of commercial use. Attorney Tulerman spoke about other case law where we find this nexus between agricultural and commercial. In most of those cases, it was found that these lessons were part of the agricultural aspect as it is secondary to the keeping of the horses. After a brief discussion regarding case law and its impacts on local Boards, Vice Chair Flynn simply stated that Rochester should be very careful when it comes to commercial operations in Agricultural/Residential districts.

Associate member, Jeffrey Costa, stated that originally the riding lessons are what prompted the application for a Special Permit. He asked Attorney Tulerman if the riding lessons would always be considered secondary to the agricultural aspect of the use, regardless if they made up 1% or 100% of the operations. Attorney Tulerman clarified that if there were only riding lessons and no keeping and raising of horses on the property, this would be a different discussion. Mr. Costa said that if it is theirs by right, then why and how could conditions be placed. As demonstrated by the Applicants, it would likely not be followed anyway. Attorney Tulerman reiterated that the Land Court remanded it back to the ZBA without judgment. He further stated that it isn't uncommon for an agreement upon conditions be made, without the Special Permit. Associate member, Michelle Upton, asked if the discussion on the Special Permit was moot if there wasn't a need for one from the beginning? She said that she does feel that some sort of agreement on general guidelines because sometimes things change and agreements can be disputed later.

Chairman Arancio asked if the Applicants had counsel present during the original application as Attorney Galvin had stated in the beginning that they were instructed to apply without counsel. Chairman Arancio read out a written letter from Attorney Kathleen Reagan who, in the original

public hearing for this petition, was listed as present during that meeting. Attorney Galvin stated nothing that was being presented was to criticize the Board and since he came in after the fact, he viewed the situation differently. He explained that he represents several communities, all but one of which is a Right to Farm and after having reviewed the by-laws of Rochester, he encouraged them to appeal the decision. He reiterated that on paper it seems that they have twelve horses conducting 12 hours of lessons a day but that is not how it operates. Upon being asked if they had the capability of this, many of those who were present who worked on the farm stated that they did not want to do that and they don't have the staffing for it.

Chairman Arancio asked the Applicants how they are storing the manure pile now. Attorney Galvin stated it is removed every couple of weeks and there may be a possibility to have it removed more often but the problem is the pile isn't that big after two weeks. Chairman Arancio read the 6<sup>th</sup> condition of the original decision and it stated that the manure and other waste material should be stored in a covered, dry container and should be removed weekly from April to October and at least twice a month November through March. He reiterated that this condition was not followed, further driving home his original comment about not complying with the law. Attorney Galvin stated that he understood but that it was a condition that his Applicant's did not agree with and thus they took the appeal. Chairman Arancio read Attorney Galvin's statement in the appeal which stated that the Board had imposed those conditions without showing Five O'Clock Farms or its representatives prior. He said that the Board does not have to do so as it is the purview of the Board to institute conditions they see fit. Attorney Galvin said he wasn't stating that the Board does not have the right to impose its own conditions but when the Applicants were asked to mediate with their abutters and come up with a list of conditions, they thought that those conditions would be used. Chairman Arancio stated that the conditions were based on concerns from abutters not the desire to over reach.

Mr. Cutler asked the Applicant's if they were under contract with someone to have the manure removed. Attorney Galvin stated no but they had an agreement with a local landscaper to have it removed every two weeks. The discussion continued about whether, if agreeing to accept the withdrawal, that any conditions could be upheld and that essentially, the applicants would be agreeing to these on good faith. Vice Chair Flynn stated that the manure, being the most contentious part of the discussion, needed to be properly contained and only then would he be more comfortable approving the withdrawal. The discussion on this subject continued and the Applicant's daughter explained that the landscaper who takes the manure only comes every two weeks because the work and equipment required to remove it is immense and the pile is not that big after just one week. She also stated she is more than happy to have a container constructed to contain the manure.

Before closing public comment, Attorney Galvin stated that his clients would accept the condition to have a 3-sided manure containing structure built within ninety (90) days of this hearing. Both Mr. Koeppel and Mr. Gayoski offered the Applicants advise on how this structure should be constructed as they have experience in farming.

The motion to close public comment was made by Mr. Costa and seconded by Mr. Spirlet. The motion passed unanimously 6-0.

Mr. Spirlet offered a final opinion stating that he would allow the withdrawal as they have shown their intent on what they want to do whether the ZBA has say over this or not. As far as the 3-sided container, allow the Applicant's to figure it out and if a neighbor has an issue with the smell, they can make a complaint through the Board of Health. Vice Chair Flynn reiterated that he would be more comfortable approving the withdrawal if there was more formality. Mr. Costa agreed with Mr. Spirlet as did Ms. Upton.

**MOTION:** Grant request by the Applicant, Five O'Clock Farms, to withdraw the Application, without prejudice, for a Special Permit, application #1150, for the property located at 66 Burgess Ave, identified on Assessor's Map 15, Lot 19D, for the use of the property for a commercial equine operation. The **withdrawal without prejudice** is conditioned upon the applicant's good faith adherence to the conditions listed in the letter from Galvin & Galvin, PC dated May 25, 2023 as well as conditions of the Zoning Board of Appeals for the Town of Rochester. These conditions are as follows:

1. No more than 30 horses kept on site except during horse shows. (These are small area shows; no camping out on site.)
2. Lesson hours during Memorial Day and Labor Day to be Monday through Saturday from 8 am to 10 pm and from 9am to 9pm on Sundays. Lesson to end at 8pm at other times.
3. Manure is kept 600 feet away from abutter, Michael Kennefick, and removed at least every two weeks.
4. Deliveries to be made Monday to Sunday 9am to 5pm (except in case of emergency.)
5. No Public Address system (loud speaker) except during horse shows.
6. Parking lot constructed per site plan.
7. Twenty feet (20') voluntary buffer to abutting property owner (properties natural condition.)
8. Night lighting to be dark sky compliant.
9. Signs to follow the Zoning By-laws for the Town of Rochester.
10. Applicants have 90 days, from date of this hearing on May 25<sup>th</sup>, 2023 to construct a suitable 3-sided structure for manure containment.

The voting Board members were Vice Chair Thomas Flynn, Richard Cutler, Donald Spirlet, Jeffrey Costa and Michelle Upton. The motion to approve the withdrawal was made by Richard Cutler and seconded by Vice Chair Thomas Flynn. The motion passed unanimously, 5-0.

A motion to adjourn the meeting at 8:47 pm was made by Donald Spirlet and seconded by Jeffrey Costa.