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NEXT REGULAR MEETING OF THE ROXBURY ZONING COMMISSION

**ROXBURY ZONING COMMISSION  
ROXBURY, CONNECTICUT 06783**

**Public Hearing  
Monday, April 13, 2009**

**MINUTES**

**REVISED**

**Members Present:** Robert Falconer, James Conway, Elaine Urban, Toby Goldfarb and Gary Coburn

**Alternates Present:** Stewart Kellerman, William Weed and Mary Elizabeth Peck

**Staff Present:** Mary Barton and Karen Eddy

**Others Present:** Mr. & Mrs. Birkins, Mr. Neff, Mr. Lasky, Atty. Tracy, Atty. Lewis, Atty. McTaggart, Atty. Marcus, Atty. Weinberg, Mrs. Goldfarb, Mr. & Mrs. Holroyd, Mr. & Mrs. Stuart, Ms. Leeming and Ms. Loring

**Call to Order:** Chairman, Robert Falconer, called the Public Hearing to order at 7:36 p.m.

Toby Goldfarb recused himself.

**Seating of Members:** Chairman Falconer seated members Robert Falconer, James Conway, Gary Coburn, Elaine Urban and Stewart Kellerman for Toby Goldfarb.

**Legal Notice**

Mr. Falconer read the legal notice that appeared in Voices on April 1 and 8, 2009.

**Application by High Meadow Riding Club/32 High Meadow Lane, Application for a Special Permit for temporary excavation to construct an exercise ring for horses.**

Chairman Falconer noted and/or read the following related documents:

- 1) Letter from Atty. Beckert dated December 18, 2009 to adjacent land owners in reference to CGS 47-42D
- 2) Application by High Meadow Riding Club
- 3) Statement of Use
- 4) Warranty Deed
- 5) High Meadow Landowners Association Agreement
- 6) Site Analysis Plan for High Meadow Riding Club

- 7) Letter dated April 7, 2009 to High Meadow Riding Club advising of Notice of Intervention by Mrs. Joanne Goldfarb
- 8) Letter to Atty. Marcus dated April 7, 2009 – Receipt of Notice of Intervention
- 9) Letter from Atty. Marcus dated April 2, 2009 - Notice of Intervention
- 10) Notice of Intervention dated March 31, 2009 (Attorney Marcus waived the reading of this document)

Attorney McTaggart noted that Commission members should be familiar with the content of the Notice of Intervention as it sets forth the complaints that are being made (*on behalf of Joanne Goldfarb*). Chairman Falconer confirmed that all seated members had read the document.

- 11) Letter from CT Farm Bureau Assoc. dated April March 9, 2009 (Stewart Kellerman noted that the Roxbury Zoning definition should be Section 20.8 not 20.1 as written)
- 12) Special Inspection Report dated April 7, 2009 from the CT Dept. of Agriculture
- 13) Letter from Metcalf Paving dated February 28, 2009
- 14) Aerial Map of High Meadow Subdivision

William Tracy of Bristol, CT stated he was representing the applicant. He displayed a site map of the property and submitted an affidavit of mailing of the public hearing notice to adjacent property owners. He noted that an aerial map of the immediate neighborhood and an A-2 site analysis plan had been submitted at the previous meeting. He also noted that the site plan shows the “meadow” property with the horse exercise ring.

Mr. Tracy gave an overview of the proposal as follows:

- Permit is for excavation and filling. No material was removed.
- Materials were brought in, ring was dug out and regraded.
- Ring is rectangular and almost perfectly level with a slight pitch from north to south for positive drainage.
- Ring is situated on the highest point of the 6.3 acre “meadow”.
- Some excavation was required to achieve level to compensate for the 2-3ft. changes in grade.
- Excavated material was bermed up around the outside of the ring to define the space for horse and rider and to keep sand in place.
- Intention is to landscape the berm. Berm would be graded and planted to provide visual blocking. Plantings would be done on the north side of the “meadow” and ring and ground cover used on the rest of the berm.
- Berm is four feet at the highest point. Height was governed by the use of all excavated materials to avoid spreading material and replanting.
- Perimeter drain was installed around the inside edge of the ring and piped to daylight to the east. This was designed to avoid puddling along the edge of ring. A well-drained processed material was used for the base with sand on top. The ring drains into the perimeter drain. On a rainy day very little water observed coming out of the pipe. Well drained soils infiltrate into the ground and water coming out of the pipe spreads as sheet flow to east side of the meadow. Another perimeter drain along the east side of the meadow would intercept water before it gets to the right-of- way and the downhill neighbor.
- Property slopes south and west so anything coming off the berm will find its way down the west side of the property and into the Adler property.
- No overland drainage is anticipated.

- Berm is vegetated and stabilized with no indication of erosion.

Attorney Tracy noted that the regulations allow for filling and excavating for activities that are incidental to and necessary for the conduct of a permitted use, which is “farming”. The farming definition includes raising and caring for horses. The State’s definition includes training and managing of horses. Roxbury’s definition does not. Both include caring for the horse, which includes giving proper exercise. Atty. Tracey noted that others would speak more about that later.

Attorney Tracy explained that the sand ring is being constructed for the Holroyd’s daughter who has ridden competitively for a number of years. She is an Olympic hopeful who is under consideration for a scholarship and training program that could lead to that end. Like any athlete, this endeavor requires constant conditioning of the horse, which it won’t get in the stall or wandering around in the paddock. An exercise regiment is necessary for the horse to perform at the expected level and that has lead to the construction the ring.

Attorney Tracy introduced Karen Leeming, a team manager of the 2000 and 2004 Canadian Olympic Team. She also works for a company that develops exercise rings and the materials used to construct them. He noted she would address the purpose of a ring like this and the technical aspects of the construction process.

Mr. Tracey noted he had three speakers planned. Mr. Falconer suggested that the Intervenor be allowed to present their position at this point so that rebuttals of each point aren’t necessary later on.

Mr. Tracy noted that he had received a copy of the Notice of Intervention and remarked that the allegations were rather boilerplate. He felt that Mr. Falconer’s suggestion might be useful.

On behalf of the Intervenor, Joanne Goldfarb, Attorney Marcus objected that it would be out of order not to hear the whole application. He said he would prefer to take notes and present his position at the end. If necessary he would question each witness as they went along. Chairman Falconer conceded to his wishes.

Karen Leeming noted that she works for the Canadian Olympic Team and was here on behalf of Shelly and Robert (Holroyd). She described the horse as an athlete who is similar to a football player in the Super Bowl. Both need their fields in order to train properly and they need a safe environment. She explained that competition horses train six days a week and the horse and rider need to be able to train together to become a team. Even pleasure horses need exercise, as they don’t stay fit just being in a field or stable. The sand ring creates a safe environment for training. Riding in a field with holes could result in a broken leg. She reiterated that this arena is that safe environment.

Ms. Leeming explained that fibers are added to sports field to help hold and retain forgiveness for the athletes. There has been a move away from AstroTurf because of injuries. The technology is moving toward adding synthetic fibers to help stabilize the sand to prevent shifting. Ms. Leeming noted that she worked for a high end footing company who is constantly researching materials for a better quality surface for horse arenas.

Ms. Leeming explained that caring for a horse and training are very similar. Part of the care for a horse is exercise. If a horse stands in its stall all day it gets sore. A horse has to move and have exercise to be healthy and keep its muscles in shape.

Mrs. Urban asked if non-synthetic fibers are available. Ms. Leeming said that organics are the worst materials because they break down quicker and create dust. Dust is harmful for the horse and rider. Organics are avoided for that reason. Synthetic fibers don't break down, last longer and are environmentally good.

Mr. Kellerman noted that some synthetic fibers were found to be dangerous on sports fields and have been pulled from the market. He asked for the exact chemical composition of the material, so that an independent appraisal could be performed.

Ms. Leeming said she was in the process of obtaining an MSDS on the fibers and an independent test was being done which was not yet available. Mr. Kellerman reemphasized that he would like a list of the chemical components in the fibers. Ms. Leeming noted that the material was made from recycled tire fiber. Referring to a specification sheet she noted that for example mercury is way below the acceptable limits. She said a chemist told her that "it" is cleaner than your drinking water. She noted that these fibers are used in Olympic arenas and others all over the country. Mr. Tracy noted that they separate out the fiber from the rubber. Studies done on the shredded rubber pellets have a different chemical composition than the fibers that are extracted from that rubber. There may be little bits of the rubber left on the fiber but essentially its stripped out of the tire as its recycled. This is a different product than the one that has been used on playgrounds, which is the shredded rubber or the rubber crumbs that's been used on synthetic grass surfaces. Mr. Kellerman reiterated his request for a precise description of the product. Mr. Tracy said they have the chemical test that was done on the material, product literature from the vendor and a sheet from the EPA.

Mr. Coburn asked if this is the same type of material that is used in competition arenas. Ms. Leeming said that it could be different depending upon the location and the vendor who supplied the materials. A sand fiber ring is definitely a competition ring. Mr. Coburn asked if there were various types of sand and fiber combinations. Ms. Leeming said that depending on the desired grade, silica sand or local sand could be used.

Mr. Tracy noted that about 250 yards of sand was used in the ring and would be mixed with one dump truck (15-16 yards) of fiber. Ms. Leeming noted that it would be tilled in to blend the fiber with the sand and the fiber interlocks with the sand to create a more stable and safe environment. The horses hoof stays more on the surface so it won't trip as much and cause injury. Mr. Tracy noted that maintenance is minimal. It just needs to be raked from time to time. Ms. Leeming said it depends on the volume of use, but the fiber minimizes the amount of maintenance needed.

Mr. Coburn asked about waste material. Ms. Leeming said it would probably end up in the manure bin but the amount would be minimal as the ratio of product to sand is minimal.

Mr. Falconer asked if the material ever breaks down. Ms. Leeming said that it would break down over time. It gets blended into the sand and after a while it's hard to see it. It is synthetic and it should last for a long time, but with rain and horses pounding at some point it would get so blended in with the sand that it dissipates. Mr. Falconer asked about the need for more material. Ms. Leeming felt that depending on the use, more materials might be needed within five years.

Mrs. Urban asked for a sample of the material and was told that they did not bring one to the meeting. Mr. Kellerman noted that they saw it when they visited the site.

Attorney Marcus asked Ms. Leeming if she sells this (synthetic) material and she indicated that she did. Mr. Marcus asked if she made the comment "that a horse can't stay fit in a field" and she said she did. Mr. Marcus asked if Ms. Leeming meant that in all the farms in New England without artificial rinks the horses are not fit and you can't have a horse farm in a field any more? Ms. Leeming responded that there is a difference in fitness level between a mom running around at home after her children and a football player. A horse will not run in a field. Its nature is to walk and eat as much as it can. A horse may look fit to the eye, but won't last long when ridden.

Mr. Marcus compared a marathon runner from Kenya who grows up running on dirt roads that are a lot different from the track at the local high school. What they are building is basically like a track. It's completely artificial and built as an athletic facility. Mr. Marcus asked if the ring is unique to certain types of horses? Ms. Leeming said it would be good for all horses. She noted that horses that run on the street they can suffer leg injuries or they can fall in holes in the backyard or on trails. A riding ring prevents broken legs and other injuries. She remarked that three horses had to be put down at the Greece Olympics because the field was incorrect.

Mr. Marcus asked if Ms. Leeming had seen the meadow before it was excavated and she said she had. He said it was a natural meadow with undulations. Mr. Marcus commented that we've replaced the natural meadow with an athletic field. Ms. Leeming agreed.

Mr. Tracy asked Engineer, Brian Neff to speak about the drainage issues. Mr. Neff noted that the drainage system around the riding ring area consists of an excavated trench with crushed stone and perforated 4" pvc pipe similar to a curtain drain. There are two discharges on the east side of ring. It's a standard system that would be expected around a riding ring and should not be prone to problems. The outlets of the pipe are to grade. On a rainy day Mr. Neff measured 1/8 to 1/4 inch of discharge coming from the pipes. It effectively picks up the water but the discharge is a low velocity trickle, which is not erosive or problematic.

Mr. Falconer asked if Mr. Neff noticed runoff elsewhere and he said there was some water running over land in the field on a full day of rain. He noticed sheet flow in the field that was not related to the riding ring and felt that would be a natural occurrence. Mr. Neff noted that the top of the hill has a very slight slope so the runoff would not get to a velocity that would be erosive. There is always an element of runoff during rainstorms.

Mr. Kellerman noted that he observed that the drainage was toward the Adler property to the east. Referring to the site plan, Atty. Tracy pointed out that the topography shows there is a break in the center of the meadow. The east side flows to the east and the west side flows to the southwest. Mr. Neff noted curvature in the contour lines that create flow in several directions. Mr. Kellerman noted that pvc pipes are pointed in the direction of the Adler proper.

Mr. Tracy asked if Mr. Neff had observed any erosion of the berms to which he remarked that the berms are well vegetated and he did not see any material washing off the berms. It appeared to be a stable situation. Mr. Neff also noted that the contour lines are far apart indicating a gently sloping area at the crest of the hill.

Mr. Tracy asked Mr. Neff to describe what effect the exercise ring might have on the preexisting drainage patterns. Mr. Neff explained that the preexisting flow was in several different directions. Because of the High Meadow Riding Club Public Hearing April 13, 2009 5  
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perimeter drain, the drainage in the riding ring is going out to the east. Before the riding ring was installed there would have been a component of water that ran toward the Goldfarb property in the other direction. With the berm and drainage, the water is now channeled only to the east. Since the riding ring is very flat, it should not develop a high sheet velocity on the ring. The natural topography is very gently sloping with no evidence of any erosion problems.

Mr. Kellerman asked about a 50-year storm. Mr. Neff explained that there would be a component of runoff both in the open field area and in the ring area. With such a gradual slope coming off the outlets and heavy vegetative cover, he did not expect there would be erosion problems even with a 100-year storm.

Douglas Lewis asked Mr. Neff if he had prepared the site plan and he said that Michael Alex had done it. He asked Mr. Neff to outline the meadow lot. He wondered if the ring were located more to the south of the meadow lot if it would be further away from the other residents. Mr. Neff responded that the residences aren't shown on the map but he felt it would be further from the Goldfarb's and the Holroyd's. Mr. Lewis asked if there is any particular advantage because of the topography to building the ring where it is rather than nearer to the bottom of the property. Mr. Neff responded that overall it is a very gently sloping area and it could be built in another spot. It wouldn't make a lot of difference in terms of the construction of the ring. Mr. Neff agreed with Mr. Lewis's conclusion that the ring would be the same if it were built further away from the residences.

Amy Loring noted she has cared for horses for 30 years. She stated that the care of a horse is a huge commitment to its physical wellbeing. From the time that the horse has been domesticated its life expectancy has decreased. Their systems have become a lot more delicate. Something as simple as a change in schedule can trigger a myriad of lymphatic or immune disorders. From the standpoint of defining turnout versus exercise, a horse goes out and wants to forage. Their greatest fear is starvation. We tend to keep hay in front of horses at all times to insure they don't become sick. A horse will not run around, but rather hang out and eat. Exercise means elevating blood pressure and moving legs to keep them from getting lymphatic disorders. She explained the specificity of exercise principal, which states that you only get strong doing something by doing that thing. You can't expect to turn a horse out rather than ride it and have it work. A track runner used to running on dirt will have a hard time on another surface. In order for the Holroyd's daughter to compete on a particular surface, the warm-up surface has to be the same. Ms. Loring noted that every year one in every 30 horses will die from lymphatic disorders, laminitis or injury. This is a large number that can be avoided by regular exercise.

Mr. Tracy asked if there is a reason why you would use a sand ring in the care of the horse. Ms. Loring explained that it provides a great footing and doesn't have a lot of horizontal movement, so if wet, the horse won't skid. Exercise increases bone density, decreases problems with ligament and tendons. Providing a stable footing reduces the risk of holes, slipping, and uneven surfaces, which might cause injury.

In response to Mary Barton's question, Ms. Loring said she has worked at Anderson Horse Farm in Southbury for six years and has been in the industry for 21 years.

Mr. Marcus asked if her farm in Southbury has the same surface and she responded that they have two different surfaces. One is the Travelright and the same company provided the other surface. Mr. Falconer asked if they are all artificial surfaces and she said they are.

Mr. Tracy addressed the following Zoning Regulations:

Sect. 9.3.1 – Indicates that excavation should only be that which is reasonably necessary to the purpose. Mr. Tracy offered to leave a book on exercising that notes the size of rings are from 100-200 feet wide by 200-300 feet long. This ring is in the smaller end of that range at 140' x 220'.

Section 9.3.4 – There should be adequate protection against erosion. As Mr. Neff described there is no erosion. There should be adequate drainage to prevent stagnant pools. Mr. Tracy noted that this is the reason for using the processed base and installing perimeter drains.

Mr. Tracy noted that the regulations are written for excavation and restoration rather than construction of a ring like this. When regrading for landscaping the regulation does not want bare soil left. In this instance the end product is the bare sand for the interior of the riding ring on which they do not want grass growing. The restoration would be the completion of the sand ring, the berm and the landscaping shown on the plan so the area would be completely stabilized and vegetated. Mr. Tracy also noted that the sheet flow is not being altered as it leaves the site in any direction, so there should be no affect on the neighbors. The berm needs to be completed; the additive needs to be added to the sand and the planting needs to be finished.

Mrs. Urban noted that the State of Connecticut inspection report states that the Holroyd's have plans to build a 21-stall horse barn with an indoor rink. Mr. Tracy responded that this is not that application. It might be something they have thought about and may be considering, but it would be a separate application on a separate parcel.

Mr. Kellerman noted that the statement of use is very precise and it states that the ring is intended for the private use for the daughter's practice. He wondered if there would be any objection to a precisely written motion in accordance with the statement of use.

Mr. Falconer questioned why the ring was built where it is and not further away from the other properties. Mr. Tracy responded that the northern end of the property was a bit flatter and it is closer to the Holroyd's house. He remarked, " Mom wants to be able to watch from the window."

Michael Weinberg, resident of Roxbury, restated that the possible commercial activities on the 22 acres were not under consideration here. He wondered about the advertisements on the Internet by the High Meadow Riding Club about boarding horses and offering stalls. He wondered if the people to whom they intend to rent stalls at their current barn would be entitled to use this ring? Mr. Tracy responded that the boarding of horses is allowed and the boarders would be permitted to use the ring. Mr. Weinberg questioned whether a commercial activity such as people renting stalls and being entitled to use the ring should be allowed in a residential area. Mr. Tracy said that exercising of the horses would go along with boarding. Mr. Weinberg argued that renting stalls is a commercial activity and therefore those involved in a commercial activity are going to be allowed to use the ring in a residential area. He felt this would raise all sorts of zoning questions.

Mrs. Holroyd said they are currently offering stalls to rent at Willowcreek Farm in Southbury, not at Roxbury. We are not looking to rent stalls on our own property (in Roxbury). We have horses that we lease to people. The ad on the Internet says High Meadow Riding Club at Willowcreek Farm. She noted they lease 8 stalls to help cover attorney costs for this process. Mr. Weinberg argued that the ad on High Meadow Riding Club.com states Roxbury and noted that Mr. Marcus has a copy to submit.

Mr. Weinberg said he feels the central issue is whether a commercial enterprise can take place in a residential area in Roxbury. Mrs. Holroyd read the ad, which states High Meadow Riding Club at Willowcreek Farm. She said they do not have any of the amenities listed in the ad at their Roxbury home. Reading from the ad, Mr. Marcus noted that there are two outdoor rings, trails and lodge amenities, large stalls available that describe Southbury. The ad further states that also available are horse stalls in a private barn on 43 acres in Roxbury, outdoor sand ring and miles of riding trails great for lay-ups, overnights and weekenders. Mr. Marcus felt that the outdoor sand ring and miles of riding trails refers to the Roxbury facility. This is Mrs. Goldfarb's concern.

Mrs. Holroyd continued that we own four horses all of which are coming home from Willow Creek tomorrow. We have to board horses offsite for the winter because we don't have a facility to ride them on our property. As it states in the letter from the department of agriculture we boarded two horses. She said the Lewis and Adler's also board horses. It's something that goes on in our neighborhood and not only by the Holroyd's. She stated that Mr. Lewis's barn is four times bigger than hers and he has many more horses. The Adler's also board horses.

Mr. Tracy reiterated that the application is not to run a commercial exercise ring. The application is to run a private exercise ring. It is just the exercise ring that is before you. You need to proceed based on that. If there is going to be further construction on a different piece of property, that would be a whole different application.

Mr. Tracy noted that he is submitting an aerial map of a portion of Roxbury that shows a number of other facilities that are already in use in the Community. Also being submitted is the Metcalf Paving Document, Dept. of Agriculture Inspection Report, Farm Bureau Letter, Jumping Exercise Manual, Travelright information and information about North Brook Farms, which is another partner in the Travelright venture.

Mr. Kellerman noted that Travelright has several different types of synthetic fibers and he asked that they identify the particular one that would be used. Mr. Tracy agreed to provide that information.

Mr. Tracy said he found a page on ground rubber applications on the US EPA website. This is not the ground rubber product but the fibers come from the rubber. They list horse arenas as another use for this product. He noted that the CT Parks Assoc. lists High Tread International, the recycler that generates this product, as an approved vendor. A letter of support from the Adler's is being submitted along with test information on the product. He said they have retyped the hand written explanation of how the materials relate to the standards. (Packets with the aforementioned information were distributed to each commissioner and the Intervenor.)

Mr. Falconer asked if the Commission had questions. Mr. Kellerman reiterated that the statement of use is very precise and if a motion is written it would be in accordance it. Mr. Kellerman noted that Section 5.8.1b states that any boarding of horses on an interior lot shall not be a commercial enterprise and the horses are to be cared for by the owner(s) of said horses and or the owners of the property used for same. Mr. Tracy said he interprets that as the boarding can occur if the property owner is providing the care of somebody else's horse that is being boarded there. Mr. Kellerman restated that it should not be a commercial enterprise. Mr. Tracy said or if the owner of the horse comes on the property and takes care of their horse. Mr. Kellerman said it only applies to the owner's horse. Mr. Tracy explained that it would restrict you from holding the stalls out for hire and hiring somebody to provide all the care and charging

people for a turnkey operation. Mr. Kellerman said he was sure this would come up if the operation were expanded.

Mr. Weinberg noted that the statement of use talks about an exercise ring for private use. As a neighboring property owner he would like to know what is meant by "private use". There are people who live on contiguous properties that could be directly affected by this and they have a right to know what "private use" means. Mr. Weinberg wondered if the Holroyd's would stipulate that the riding ring would be used only by the Holroyd parents and children and not by the people who may rent stalls.

Mr. Tracy responded that private use means it will be used by the owner and those who have permission of the owner. If the Holroyd's have a guest and the guest brings a horse and wants to use the ring, they may consider that. You and I will not be able to go up there and ride. Mr. Tracy said his neighbor lets him fish in his pond, but he doesn't let some of the other neighbors use it. That's private use. It's restricted. It's not commercial.

Mr. Falconer asked if the other people that are invited to come and use the ring would pay for that privilege. Mr. Tracy said no, it's not commercial. Mr. Weinstein asked for confirmation that the people who rent stalls from the Holroyd's will not be able to use the ring. Mr. Tracy responded that no money would change hands for the use of the ring. Mr. Kellerman wondered if the use of the ring would go along with the stall rental and the exchange of money for that. Mr. Tracy said he did not know the answer to that. It would depend upon the boarder and the horse and the Holroyd's use of the ring at that moment. Right now they are not boarding any horses.

Mr. Kellerman reiterated that the statement of use only speaks of the Holroyd's daughter. He wondered if the applicant would consider limiting the use to only family members.

Mrs. Urban noted that High Meadow Road is very steep and there is a concern about the potential for increased travel on the road by horse trailers and guests. She noted that the neighbors are obviously concerned about the intent of the use.

Mr. Tracy stated that the intent is not to open the ring for public use, charge at the gate and have people coming from who knows where with their trailers coming up and down the road. They should be able to invite friends and neighbors to use the ring.

Gary Coburn asked Attorney McTaggart if the "Meadow" has been defined as open space and she said it has. Do the Holroyd's enjoy a tax deduction along with the open space designation? The Holroyd's stated that they do not get a tax deduction on the property.

Mr. Tracy explained that the (Homeowner's) Agreement that governs the area restricts the use to agriculture and recreation. He further explained that that is a private matter, which is currently subject to litigation. However, that should not control the Zoning decision.

Neil Marcus spoke on behalf of the Intervenor, Joanne Goldfarb, who is also a neighbor. Mr. Falconer asked if Mr. Marcus would be limiting his remarks to the environmental issues raised in the Notice of Intervention. He noted that he would speak generally on behalf of Mrs. Goldfarb and then speak to the points in the Intervention separately.

Mr. Marcus said we believe that the applicant lacks standing. He referred to Judge Morano's decision of October 31, 2008 in which he defines the "Meadow" as open space. He then goes on to talk about the use of the open space meadow. Attorney Marcus noted that the open space here is privately owned by the Riding Club and they pay taxes on it. Oddly enough the assessor doesn't seem to care about improvements on the property because they pay the same tax whether the property is excavated or not. The court clearly says that the neighbors have no active use of the property. They have no right to ride their horses and walk their dogs there like they did years ago before there was High Meadow and the Adler's owned it. However, they did get the benefit to use it as open space. So the question is what is the use of open space? The restriction says that the use has to be agriculture or recreational but it's got to be open space. The idea of constructing in open space doesn't make sense at all. Once you start to construct in open space and build facilities, it's no longer open space. Think of it with a 21-stall horse barn. It might be agriculture, but it wouldn't be open space. The problem is that the court has awarded my client and the other members of this High Meadow Association an interest in the open space. As a result of that only those people who have an interest in the open space can come before this commission with standing to change the open space. Not one but all of them. We have a problem with standing to change the open space. We have a problem with standing. Gail McTaggart saw to it that we have a statutory notice. The issue is have the neighbors who have an interest in the open space joined in changing the open space so it's being developed. The answer is no.

Attorney McTaggart noted that the court decision referred to earlier is on appeal. Attorney Marcus pointed out that Attorney McTaggart's letter dated December 8, 2008 to Robert Falconer deals with High Meadow Riding Club's application for special permit for temporary excavation under Section 9 of the Zoning Regulations. He asked that this document be entered into the record and he read an excerpt from it as follows: "If the Commission approves the application under the statute the restriction holders within 15 days have right to appeal the decision back to the Zoning Commission which they then have the unenviable task of making an express finding that the last use approval does or does not violate the terms of the restriction. Depending on the facts presented this situation may be impossible until the private rights of the owners are fully litigated so that we know what the private rights of the owners are in the restriction. After the decision if there is an appeal under this rule the Commission will assess the known facts at the time and perhaps may need to defer to the courts. If this application is denied, this issue is moot." I agree with Gail McTaggart. We have the October 31<sup>st</sup> decision that says its open space. We have an appeal to try to determine the use of the open space because the court just said they can use it as open space but not actively use it. That's the issue Gail refers to that the Commission is advised to get a final determination. In the same letter, page one, third paragraph, Gail writes, "Thus some of the neighboring owners "Lewis and Goldfarb" have been held to have an interest in the preservation of the limitations of use of the open space although the court ruled that they do not have the right to use the open space themselves." Mr. Marcus continues that that is a good analysis of what the court did. My client has an interest in the preservation in the limitation of use of the open space. What's before you tonight is not in her interest and is not appropriate under the circumstances, so that's on the issue of standing.

Mr. Marcus addressed the environmental issues. He showed pictures of the meadow before any construction. He pointed out two horses in the Lewis field that are "improperly let out in the natural environment and are suffering from obesity". The fence toward the horizon marks the property of the Holroyd's. The brown line is the extension of High Meadow Lane. The "Meadow" is the area with the stonewall. These photos show the meadow prior to excavation. The next picture shows the same two pine trees and now it shows the meadow has been changed to a beach because you have sand. The next picture is a closer picture of the sand ring and the artificial fiber piled up in the middle. What you don't see in the later pictures is the stonewall. It's disappeared. It's unbelievable that it has disappeared

because Atty. Tracy said this is an excavation for a filling permit not to remove material. Then he said they would use the material to create a four-foot berm around the riding ring and they want to use that natural material on the site. I will ask Atty. Tracy to explain what happened to the stonewall. It seems to me that this is deceptive. If they aren't taking anything off the property, you may ask them to bring the stonewall back. It's not incorporated into the application, its just disappeared. We ask that it be reinstalled because they did not intend to remove it in the first place. The natural environment was a meadow. It had native growth as you can see in the picture. It had a stonewall. It didn't have artificial fiber. It wasn't an athletic field for horses. It was open space in the proper sense of the word. A letter was read that was submitted by Joan Nichols of the Ct. Farm Bureau. In the middle of the third paragraph she said, "The equine community has contributed enormously to the preservation of open space and farmland in CT. CT horse farms are businesses that contribute significantly to the local regional and state economy." These are businesses. There was some question before as to whether or not this riding ring is part of the business of this facility. There were all sorts of denials about that and the shuffling of positions but the fact of the matter is the farm bureau says that the equine community is a business and there is nothing wrong with that when its in the proper zone and has the proper permits. According the letter, " It contributes significantly to the local regional and state economy especially in terms of natural resource protection and quality of life." That sounds great, but look at the application before you. You take a natural environment "a meadow" which is designated as open space and you excavate it and you fill it with sand and artificial fiber, which is a great athletic field for horses but it is hardly protecting the natural resources and quality of life of this neighborhood. So we are here on behalf of the environment and I will ask you to ask the applicant as part of this application to tell you what was there before. To give you a report from a soil scientist as to what native soils were taken out, to give you a report from a qualified environmentalist to tell you what plant species, and animals use this meadow as their home. Then you can determine whether Joan Nichols is correct in saying that this type of equine facility will contribute to protection of the natural resources and the quality of life of the community.

Attorney Marcus noted that Section 6 of the Zoning Regulations talks about the authorization of uses by special permit. It's a special permit to do some excavation and the use is to create this athletic facility for horses. We went through the application process, the A-2 surveys, the architectural plans etc. What you have to look at is Section 6.2.4 – the Commission's considerations. Will this use have an adverse affect on the adjacent area? You can say you can do this but put it at the southern end of the "meadow" where it won't affect the neighbors. Does it materially obstruct significant views of the meadow and the stonewall? This application doesn't meet this regulation. The following has to be looked at:

- Does it preserve important open space and other natural features?
- Will this proposal adversely affect safety in the streets? High Meadow is not a great place to encourage the equine business. Its not properly located. It's a lousy road for this business.
- Will this be in scale and compatible with surrounding uses, buildings, streets and open spaces?

Mr. Kellerman noted that the regulations do define open space as any land without structures. Structures include a roof.

Mr. Marcus said he considered fences and stonewalls as structures. They say that horses can't stay fit in a field. We are going to get the point when people will come before the commission because they want to take out their lawns and put in Astroturf so the kids don't turn their ankles when they are playing sandlot baseball. If they wanted to build this facility on their own property outside the meadow, we wouldn't be here tonight. It's really a misuse of the open space.

Mr. Marcus noted that there was a lot of discussion about the care of horses, the artificial surfaces, the quality of the rider for whom this was intended. That's all very interesting that it is being constructed for her use. You have before you a significant amount of discussion and some materials on the High Meadow operation and how they advertise. Here is another one--The Stall Mucker's Horse Care Service that is located at 32 High Meadow Lane in Roxbury, another business that operates out of the same facility. There's the subtle and there's the obvious. I think the commission will come to the conclusion that the subtle is trying to hide the obvious. The obvious is that we are developing an artificial horse facility and taking away the natural environment without regard for what was there. Before you close the hearing you ought to ask for an inventory of what we are losing for this athletic facility. I'm not opposed to horses having athletic facilities. We are opposed to the commercialization of High Meadow. We're here to restore the open space to what existed prior to this excavation and particularly to bring back the stonewall because that is a major feature. A similar type of facility exists in Southbury, which isn't that far away. This type of artificial training facility doesn't belong on the High Meadow open space. For all of those good reasons both on behalf of the neighbors, the Intervenor and the environment we think this application is incomplete. It doesn't have the proper applicants and you need to get this information before you make a decision. If you do that and continue the hearing we will come back and examine the information that is submitted and let you know whether we think it meets your regulations.

Mr. Kellerman requested that Mr. Marcus bring in an expert regarding the environmental impact of the project. Mr. Marcus said he would do that.

Mr. Falconer said the hearing would be continued because there is more information that needs to be entered.

Mr. Tracy made the following points. Mr. Marcus read from the court decision but what he didn't tell you was that the Goldfarb's were looking for an injunction from the court to remove the ring and their request was denied. Regarding remarks about the pristine nature of the property; Mr. Tracey said it was a pasture. He asked how you get a pasture? It had to have been cleared and probably graded and the stumps removed. It was probably plowed because it's been seeded with timothy and other pasture grasses. Then it requires periodic mowing and seeding and maintenance. It is an artificial environment to begin with.

When questioned by Chairman Falconer, Camilla Ferrend said she could be present at the hearing next month to give her comments.

Attorney McTaggart asked that anybody who is presenting information from websites bring the actual materials to the Commission to be entered into the records. For the record she entered the Assessor's classification of the property and asked Mrs. Eddy to distribute copies to all parties.

**MOTION:** To continue the Public Hearing on May 11, 2009 regarding an application by High Meadow Riding Club for a special permit pursuant to Section 9 of the Zoning Regulations for temporary excavation for the purpose of earth movement and construction of an exercise ring for horses.

**MOTION:** By Gary Coburn, seconded by James Conway and unanimously approved.

Respectfully submitted,

Karen S. Eddy  
Land Use Administrator

CC: First Selectman, Town Clerk, Planning Commission, Wetlands Commission, Conservation Commission, ZEO, Town Attorney

**These minutes are not considered official until approved at the next Regular Meeting of the Roxbury Zoning Commission.**