

TOWN OF SOMERS
ZONING BOARD OF APPEALS
SPECIAL MEETING AGENDA
June 14, 2022 – 6:30 P.M.



A. CALL TO ORDER

B. ROLL CALL

C. DISCUSSION/DECISION:

1. Discussion possible decision regarding proposed settlement in the matter of Union Agricultural Society of Somers, Enfield, Ellington vs. Somers Zoning Board of Appeals docket #TTD-CV-21-6022383-S; Public comment will be permitted.

D. ADJOURNMENT

SETTLEMENT AGREEMENT

THIS AGREEMENT ("Agreement") is by and among UNION AGRICULTURAL SOCIETY OF SOMERS, ENFIELD, ELLINGTON AND EAST WINDSOR, INCORPORATED, a Connecticut non-profit corporation having its principal office in Somers, Connecticut ("UAS"), the SOMERS ZONING BOARD OF APPEALS (the "ZBA"), and ANGELA KOEHLER, of Somers, Connecticut, RICHARD KOEHLER, of Somers, Connecticut, DIANE LOPES, of Somers, Connecticut, RENEE PASAY, of Somers, Connecticut, CLIFF PASAY, of Somers, Connecticut, SHARON RENZONI, of Somers, Connecticut, TOBY RENZONI, of Somers, Connecticut, MELISSA CAYE, of Somers, Connecticut, STEVE RANCOURT, of Somers, Connecticut, NICOLE RANCOURT, of Somers, Connecticut, and DAVID MINNEY, of Somers, Connecticut (jointly and severally, the "Neighbors").

WHEREAS, UAS is the owner of a certain piece or parcel of land known as 56 Egypt Road, Somers, Connecticut (the "Property");

WHEREAS, Neighbors are the owners of certain properties in Somers, Connecticut that are adjacent to or within 100 feet of the Property;

WHEREAS, the Property was the subject of an appeal made by the Neighbors to the ZBA challenging the decision of the Zoning Enforcement Officer that the use of the Property as a venue for a fairground and other various events, including the sale of alcohol, constitutes a legal non-conforming use of the Property (the "ZEO Decision");

WHEREAS, the ZBA modified the ZEO Decision and UAS subsequently commenced a timely appeal of the action of the ZBA by serving its Citation, Summons and Complaint on the ZBA on or about March 30, 2021 (the "Appeal");

WHEREAS, the parties to this Agreement have reached a settlement with respect to the Appeal as set forth in this Agreement.

IN CONSIDERATION of the mutual benefits to each of the parties herein and of the terms and conditions of this Agreement, each of the parties agree to the following:

1. So long as the Property is being used consistently as a fairground (as determined in accordance with paragraph two (2) below), UAS shall be permitted to continue holding agricultural fairs and other accessory, non-agricultural events on the Property, subject to the following terms and conditions:

- a. At no time will the Property be used for a mud bog. Further, UAS agrees not to seek approvals from the local regulatory authorities to use the Property as a mud bog in the future;
- b. The events shall not involve motorcycle or other motorized racing on the Property and there shall be no helicopter flights originating or concluding on the Property. Notwithstanding the foregoing, nothing herein shall prevent helicopters, for emergency purposes, such as life star, from using the Property;
- c. UAS shall use the site plan attached hereto as Exhibit A, as may be modified by UAS from time to time to accurately reflect the buildings and improvements upon the Property, in its leases of the Property to designate the area(s) to be leased for these events;
- d. If such event shall require a Mass Gathering Permit, the Town of Somers will erect appropriate barricades and/or signage to block off Sunshine Farms Drive during the event so as to prevent attendees from driving through and parking along Sunshine Farms Drive. The Town and UAS shall cooperate as necessary to try to avoid the Town from incurring any overtime expenses to Town employees associated with taking these actions. However, if an overtime expense is incurred by the Town, then UAS shall reimburse the Town for the same up to the amount of \$220.00 per event, which sum is subject to adjustment by the Town from time to time to reflect a reasonable cost of living increase. The aforementioned obligation of UAS to reimburse the Town shall not apply to the blocking off of Sunshine Farms Drive by the Town during the annual Four-Town Fair;
- e. If alcohol is served at an event:
 - (i) It will be served in glasses or cups, not in bottles or cans; and
 - (ii) The service of alcohol shall cease at the time the event ends, but in no event later than 8:00 pm on Sundays, Mondays, Tuesdays and Wednesdays and no later than 9:00 pm on Thursdays, Fridays and Saturdays. The aforementioned times shall not apply to the annual Four-Town Fair; rather the service of alcohol at the annual Four-Town Fair shall cease at the time required in the liquor permit issued for that event.
- f. All buildings shown on Exhibit A may be leased and/or used for agricultural fairs. All buildings shown on Exhibit A except Buildings 5, 6 and 7 may be leased by UAS for other accessory, non-agricultural events;
- g. If music is to be provided as an accessory use at any events:

- (i) Any speakers for the music will be faced away from neighboring residences; and
- (ii) If the music will be amplified, UAS will have a representative present during the event to monitor and enforce the town's noise regulations at the Property line and a log will be kept of the recorded readings; and
- (iii) UAS shall be limited to holding not more than one event per month having music by a band or DJ or that is amplified. The parties further agree that the September event having music by a band or DJ or that is amplified will be the annual Four-Town Fair. There is no limit on the number of events that may have music as an accessory use provided that the music is not by a band or DJ and is not amplified; and
- (iv) If the music is by a band or DJ or is amplified:
 - (a) Any such music shall be limited to only one day associated with that event, except in the case of the annual Four-Town Fair, in which case the music may play each day during the fair; and
 - (b) The music shall cease no later than 8:00 pm on Sundays, Mondays, Tuesdays and Wednesdays and no later than 9:00 pm on Thursdays, Fridays and Saturdays. The aforementioned times shall not apply to the annual Four-Town Fair; rather music at the annual Four-Town Fair shall cease when the fair ends for the day;
- h. UAS shall make available to the Town, or on UAS's website, a schedule of events such that information will be available to the public at least thirty (30) days before a scheduled event. Further, UAS will provide the name and phone number of a representative to be contacted during events in case of a complaint;
- i. There shall be no overnight camping associated with the events, except by:
 - (i) Exhibitors, concessioners and vendors at the annual Four-Town or the 4-H fairs, for the duration of the fair (as well as may be reasonably necessary for set up and breakdown before and after the fair); or

- (ii) Girl scouts, boy scouts or other similar non-profit youth organizations, for no longer than three (3) consecutive days; or
 - (iii) Exhibitors at any animal exhibition held on the Property, for no longer than three (3) consecutive days.
- 2. The Property shall be deemed to be consistently used as a fairground so long as, at least once a year, an agricultural fair is held thereon. For purposes of this Agreement, an agricultural fair shall be deemed to include the annual Four-Town Fair, 4-H Fairs, or any other gathering having as its primary purpose the buying and selling of any agricultural or horticultural commodity or the exhibition of animals or any agricultural equipment or practice. Notwithstanding the foregoing, if UAS is prevented from holding an annual agricultural fair in any particular year due to pandemic or other causes outside of its control, the Property will not be deemed to have ceased being used consistently as a fairground. Rather, the parties agree that there must be a clear intent by UAS to abandon the use of the property as a fairground for the Property to be deemed to no longer being used consistently as a fairground.
- 3. At such time as the Property is deemed to be no longer consistently used as a fairground, then this Agreement shall become null and void, in which case, the accessory, non-agricultural events noted in paragraph 1 shall also cease to occur and any other use of the Property will be subject to all of the then-existing zoning regulations.
- 4. The parties hereto shall treat each other with respect and civility and encourage their respective representatives to refrain from making any disparaging public commentary regarding this dispute.
- 5. This Agreement is contingent upon approval of the same by the ZBA at a public hearing, and by the Hartford Superior Court, as required by Section 14-7B of the Connecticut Practice Book. Within ten (10) days of the full execution of this Agreement, the parties shall submit to the Hartford Superior Court for its approval a Stipulated Judgment incorporating the terms of this Agreement. In the event that this contingency is not satisfied, this Agreement shall become null and void.
- 6. This Agreement shall inure to the benefit of and bind the parties hereto and their respective legal representatives, heirs, administrators, executors, successors and assigns.
- 7. This Agreement embodies the entire agreement between the parties and supersedes any and all prior negotiations, agreements and understandings, written or oral, formal or informal, all of which are deemed to be merged herein.

8. If any term or provision of this Agreement shall to any extent or for any reason be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but the remainder of this Agreement and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, subject to such modification hereof as may be necessitated by such invalidity.
9. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.
10. All exhibits attached to this Agreement are hereby incorporated by this reference to this Agreement.
11. This Agreement may be executed in counterparts, each of which shall be deemed an original. A facsimile or electronic version of a signature shall have the same legal effect as an originally drawn signature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ____ day of May, 2022, as to UAS, this _____ day of May, 2022, as to the ZBA, and this ____ day of May, 2022 as to the Neighbors.

WITNESSES:

UNION AGRICULTURAL SOCIETY OF
SOMERS, ENFIELD, ELLINGTON AND
EAST WINDSOR, INCORPORATED

By:
Its:
Duly Authorized

SOMERS BOARD OF APPEALS

By:
Its:
Duly Authorized

THE NEIGHBORS (Angela Koehler,
Richard Koehler, Diane Lopes, Renee
Pasay, Cliff Pasay, Sharon Renzoni,
Toby Renzoni, Melissa Caye, Steve
Rancourt, Nicole Rancourt and David
Minney)

By:
Their Attorney
