

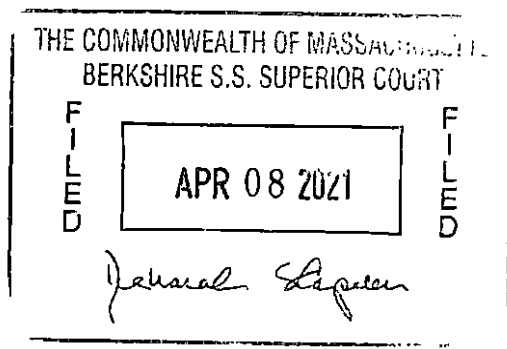
COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2176CV00052

ALEX S. ROSENBLUM,)
ALISON J. COLE, PETER MILLER,)
and MILES GARFINKEL,)
Plaintiffs)
vs.)

TOWN OF RICHMOND,)
TOWN OF RICHMOND BOARD OF)
SELECTMEN,)
ROGER MANZOLINI,)
NEAL PILSON, ALAN HANSON,)
PRIMADONNA LLC, and)
BERKSHIRE WINERY LLC d/b/a)
BALDERDASH CELLARS,)
Defendants)



AMENDED COMPLAINT

INTRODUCTION

- 1. This is an appeal pursuant to M.G.L.c. 40A, § 17, by citizens of the Richmond Shores community, of the February 24, 2021 decision of the Town of Richmond Board of Selectmen granting Primadonna LLC's (aka Primadona LLC) application for an amendment to the Special Permit under M.G.L.c. 40A, § 9. A certified copy of that decision (hereinafter, the "Amended Decision") is attached hereto as Exhibit A.

JURISDICTION

- 2. The Superior Court has jurisdiction pursuant to M.G.L.c. 40A.

PARTIES

- 3. The Plaintiff, Alex S. Rosenblum, is a property owner in the Richmond Shores community with an address of 311 Shore Road, Richmond, MA.
- 4. The Plaintiff, Alison J. Cole, is a property owner in the Richmond Shores community with an address of 28 Spruce Road, Richmond, MA.

5. The Plaintiff, Peter Miller, is a property owner in the Richmond Shores community with an address of 314 Shore Road, Richmond, MA.
6. The Plaintiff, Miles Garfinkel, is a property owner in the Richmond Shores community with an address of 293 Shore Road, Richmond, MA.
7. The Defendant, Town of Richmond, is a municipality organized under and pursuant to the laws of the Commonwealth of Massachusetts with its administrative offices located at 1529 State Road, Richmond, MA.
8. The Defendant, Town of Richmond Board of Selectmen (the "Board") reviews and issues special permits. The Board's offices are located at 1529 State Road, Richmond, MA.
9. The Defendant, Roger Manzolini, is a member of the Board with an address of 725 Canaan Road, Richmond, MA.
10. The Defendant, Neal Pilson, is a member of the Board with an address of 499 East Road, Richmond, MA.
11. The Defendant, Alan Hanson, is a member of the Board with an address of 796 Dublin Road, Richmond, MA.
12. The Defendant, Primadonna LLC is a duly organized Massachusetts Limited Liability Company with a principal place of business at 75 Leona Drive, Pittsfield, MA.
13. The Defendant, Berkshire Winery LLC d/b/a Balderdash Cellars ("Balderdash"), is a duly organized Massachusetts Limited Liability Company with a principal place of business at 81 State Road, Richmond, MA.

FACTS

14. Plaintiffs own real property in the Richmond Shores community located in the Town of Richmond, MA, and have lived in the area for many years. Plaintiffs enjoyed the peace and quiet that the neighborhood provided until Balderdash Cellars began holding functions and events on its property.
15. Balderdash owns and operates a winery on two parcels of land located at 79 State Road, Richmond, MA (Map 403.0, Block 0001, Lot 1000.0), which consists of approximately 2.5 acres of land, and 81 State Road, Richmond, MA (Map 403.0, Block 0001, Lot 0000.0), which consists of approximately 20.82 acres of land (collectively, the "Locus"). The Locus is in the Residential "RA-C" zone.
16. 79 State Road is owned by PRIMADONNA, LLC a Massachusetts limited liability company (incorrectly referred to as PRIMADONA, LLC in the Amended Decision) (the "Applicant") and 81 State Road is owned by Christian D. Hanson and Donna M. Hanson.

17. On May 14, 2018, the Richmond Planning Board received a legal memorandum from Cain, Hibbard, & Myers, P.C. interpreting the Town of Richmond Zoning Bylaw (the "Bylaw"). The memorandum indicated that while a winery could be an exempt agricultural use under the Bylaw, hosting outdoor events was not. See Richmond Planning Board Meeting Minutes, May 14, 2018, attached hereto as Exhibit B.
18. On May 14, 2018, Christian Hanson ("C. Hanson") appeared before the Richmond Planning Board to discuss his intention to operate a winery on the Locus. He indicated that his business plan for Balderdash winery called for hosting up to thirty-five weddings and other events per year. (Exhibit B).
19. After C. Hanson left the meeting, the Richmond Planning Board members discussed the formation of a subcommittee to write a zoning bylaw change to allow outdoor events on farms such as those that C. Hanson described. (Exhibit B).
20. On September 24, 2018, the Richmond Planning Board held a meeting to discuss the proposed addition to the Bylaw to allow events on farms. See Richmond Planning Board Meeting Minutes, September 24, 2018, attached hereto as Exhibit C.
21. The proposed change would add the term 'Farm Function' to the existing Bylaw. 'Farm Function' was defined as:

Any event or concert held on a farm (see definition of a farm, in the Right to Farm By-Law, Chapter XIII, Section 2 of the Richmond Town Bylaws), including but not limited to, weddings and family celebrations for which a fee is paid, concerts, promotional events, and other activities held for a fee on farms of sufficient size. Farm functions supplement farm income in order to promote the sustainability of farming, enhance our community and preserve open space.
22. 'Farm Functions' incorporates the definition of the term 'farm' found in the Richmond Town Bylaws, which includes "parcels of land or water bodies used exclusively for agriculture."
23. The Richmond Town Bylaws' definition of 'farm' further provides that "farming" or "agriculture" includes the cultivation and tillage of soil; dairying; production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities; growing and harvesting of forest products and lumbering; the raising of livestock; the keeping of horses as a commercial enterprise; and the keeping and raising of poultry, swine, cattle, sheep, ratites and camelids.
24. Upon information and belief, Balderdash does not currently meet the Richmond Town Bylaws' definition of a 'farm.'
25. Balderdash's website indicates that all the grapes it uses to make wine are imported from California.

26. The proposed addition to the Bylaw also required that the farm have at least fifteen acres of land on the site and that the land total would include all adjoining and adjacent lots.
27. The parcels making up the Locus are owned by separate legal entities, one of which consists of only two and a half acres.
28. At the September 24, 2018 Planning Board meeting, citizens of Richmond expressed concerns about the noise that these outdoor events would cause. (Exhibit C).
29. Despite significant opposition, the proposed change was added to the Bylaw on October 30, 2018.
30. On February 13, 2019, the Applicant submitted an application for a special permit (the "Application") to the Board of Selectmen to allow Farm Functions on the Locus as defined by Section 2.2 of the Bylaw.
31. The Special Permit was granted by the Board of Selectmen on July 24, 2019.
32. After the Special Permit was granted, Balderdash began hosting Farm Functions on the Locus, including weddings and other outdoor events.
33. The events held at Balderdash involve loud music and large crowds and have interfered with Plaintiffs' right to quiet enjoyment of their homes.
34. Plaintiff Alison Cole has heard music amplified over loudspeakers coming from Balderdash both inside and outside her home. In addition to the music, she has heard the musicians speaking into a microphone from their homes as well as noises from the crowd, including clapping and shouting. See Email dated March 18, 2021, attached hereto as Exhibit D.
35. On one occasion, an event at Balderdash featured a live band with drums. The music was so loud that Plaintiff Alex Rosenblum and his guests were forced to retire indoors to escape the noise. See Emails dated August 22, 2020 and November 22, 2020, attached hereto as Exhibit E.
36. Plaintiff Miles Garfinkel has heard the noise, including electric guitars and drums, while sitting on his front porch and dining in his outdoor gazebo. The noise has often driven him indoors. See Email dated March 19, 2021, attached hereto as Exhibit F.
37. Plaintiff Peter Miller has heard bands playing and drums from his home. On one occasion, the music was loud that his overnight guests could not put their child to bed. See Statement attached hereto as Exhibit G.
38. Though the Special Permit does contain certain conditions with respect to noise control during events held on the Locus, these conditions are not preconditions to conducting

events and are so vague in their terms as to be unenforceable and have not abated the noise coming from the property during events.

39. For example, the Special Permit provides that exterior amplified music shall not be louder than 89db(A) when measured no more than three feet in front of the speakers. It further provides that the Applicant shall monitor the dB(A) level to ensure compliance with this requirement but does not provide a mechanism by which the monitoring is to be performed or by which control of the noise is to be regulated.
40. Although a sound engineering study was performed, it was incomplete and inadequate. Further, the sound study recognized that it did not take into account the use of instruments such as drums or horns. It also failed to take into consideration any crowd noise.
41. On November 3, 2020, the Applicant submitted an Amended Application to allow Farm Functions to be held inside a barn on the Locus in addition to the areas surrounding the barn.
42. The amendment to the Special Permit was granted on February 24, 2021.
43. Though the Applicant's amended application purported to address the noise issue by providing the option for events to be held inside the barn, the barn is in the process of being renovated and is not yet ready for use.
44. The Amended Decision does not provide a timeline for the completion of the barn.
45. The Amended Decision also does not provide for adequate monitoring of noise levels.
46. The Board has failed to adequately consider and address the noise levels caused by the Farm Functions at Balderdash.
47. Due to the Board's failure to adequately address the noise levels at Balderdash, Plaintiffs have been and continue to be deprived of their right to quiet enjoyment of their properties.

COUNT I

48. Plaintiffs reassert and reallege the allegations set forth in paragraphs 1 through 45 of the complaint and incorporates them herein by reference.
49. Plaintiffs are persons aggrieved within the meaning of M.G.L.c. 40A, § 17, by the Amended Decision of the Board of Selectmen granting the Applicant's Amended Application for a Special Permit.
50. The Board of Selectmen issued the special permit without sufficient basis.

51. The Amended Decision was arbitrary, capricious, constituted an error of law, constituted an abuse of discretion, exceeded the authority of the Board of Selectmen, was against the weight of the evidence presented at the public hearing and was otherwise harmful to the Plaintiffs.
52. The Plaintiffs have been harmed by the Board of Selectmen's granting of the special permit to Applicant, as said permit deprives them of the quiet enjoyment of their properties and enables conduct and activities that generate excessive noise.

WHEREFORE, the Plaintiff respectfully prays that the Court:

1. Determine that the Amended Decision is arbitrary and capricious, erroneous and in excess of the Board of Selectmen's authority;
2. Enjoin the Applicant from conducting any Farm Function events involving music, and require the Building Inspector to monitor and enforce the sound levels generated by any Farm Function activities.
3. Annul the Amended Decision and issue an Order and Judgment declaring unlawful the Board of Selectmen's grant of the Amended Special Permit, and in the alternative to order the Board of Selectmen to amend the Amended Decision to require the erecting of sound barriers at the Property and provide a timeline for erecting such barriers.
4. Award Plaintiffs attorney's fees, costs and expenses associated with these proceedings; and
5. Grant such further relief as justice and the rights of the parties may require.

Dated: April 6, 2021

Respectfully submitted,

THE PLAINTIFFS
ALEX ROSENBLUM,
ALISON J. COLE,
PETER MILLER, and
MILES GARFINKEL

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