

# Zoning Board of Appeals – Town of Spencer

## *Minutes*



Regular Zoning Board Meeting  
Wednesday, August 17, 2011 7:15 PM  
McCourt Social Hall  
Memorial Town Hall

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The meeting was called to order at 7:24 p.m.

Zoning Board Members Present: Chair Joanne Backus, Clerk Allan Collette, Associate Members Delores Kresco, and Alternate Pamela Crawford.

Zoning Board Member Absent: None.

Staff present: Michelle Buck, Town Planner and Bea Meechan, Senior Clerk, ODIS.

### **Old Business:**

**A Continued Public Hearing – Jonathan Gabriel, Trustee of the ATV Realty Trust, 51 Borkum Road.** Ms. Backus opened the hearing at 7:24 p.m. The Board closed the discussion on this public hearing on August 3, 2011. The hearing tonight is for the Board to finalize its decision on the case. Mr. Weinberg, Town Counsel, prepared a draft decision and submitted it to the Board prior to tonight's meeting. Mr. Weinberg advised the Board to review the draft decision for any modification at this time.

Ms. Backus announced the *members sitting in the voting were Mr. Collette, Ms. Kresco, and herself*. Ms. Backus asked the Board members for any comments on the draft decision, if there are any.

Mr. Collette and Ms. Kresco said the draft decision covers everything (applicable Zoning Bylaw, Use Table, and testimonials) and represents everything that has been discussed in the prior meetings. Ms. Backus found a grammatical error; she requested to remove the "a" in the front of conducted a site visit on the third paragraph under the Procedural Background. It shall read "also conducted a site visit on June 25, 2011" instead of "also a conducted a site visit on June 25, 2011."

**Findings:** *Chair Backus read the findings at this time:*

Based on the testimony of numerous witnesses, including Jonathan S. Gabriel, Trustee, at the public hearings, observations made during the site visit, and the exhibits received in evidence, the Zoning Board of Appeals (ZBA) finds as follows:

1. The ATV Realty Trust, Jonathan S. Gabriel, Trustee, is the owner of a large parcel of real estate, comprised of approximately 62 acres, situated at 51 Borkum Road, Spencer (the "Locus").
2. The Locus is situated in the RR (Rural Residential) zoning district under the Spencer Zoning Bylaw.
3. The surrounding neighborhood is comprised of single family homes on large wooded lots. The area is, but for the operation of ATVs and motorized dirt bikes on the Locus, bucolic and serene. Borkum Road is a designated "Scenic Road."
4. Commencing in 2006, the ATV Realty Trust constructed a "Practice Track" for high performance ATVs, as well as motorized dirt bikes, at the Locus. The Practice Track covers a multi-acre portion of the Locus.
5. No residence or other building has been constructed on the Locus, and except for the ATV Practice Track, there are no other structures or improvements.
6. Commencing in 2006, the ATV Realty Trust allowed the Locus to be used for the operation and racing of high performance ATVs and motorized dirt bikes. Much of that use was associated with a business owned by the Trustee's son located in Northborough, then Worcester, Massachusetts, known as Gabriel Racing. Indeed, in approximately the Fall of 2009, subsequent to the issuance of the Cease and Desist Order, ATVriders.com reported, and the Trustee admitted, that the Locus was the "private practice track" at which a performance ATV known as the "Gas Gas 450 Wild" was tested and reviewed.
7. The noise generated by the extremely loud droning of the ATV engines, which on some days continued for hours on end, is unreasonably disturbing, offensive, and stressful to the residential neighbors and is substantially detrimental to their use and enjoyment of their properties. Numerous complaints were lodged with the Spencer Police Department in response to the noise associated with the ATV Realty Trust's use of the Locus.
8. At all times material to these proceedings, the sole and primary use of the Locus was the operation of ATVs and motorized dirt bikes.

Applicable Provisions of the Zoning Bylaw:

Section 4.2 of the Zoning Bylaw sets forth the "Use Table, Principal Uses" for all zoning districts including the RR (Rural Residential) practice track, nor the principal use of ATV/motorized dirt bikes, is explicitly or implicitly allowed in the RR district, whether as a matter of right or special permit, whether for business, commercial, or private purposes.

While Item E.22 of Section 4.2's Table of Uses authorizes, by special permit, certain outdoor sports facilities, this is specifically limited to "non-motorized sports."

Section 4.7 of the Zoning Bylaw (Prohibited Uses) specifically and unambiguously provides that, "Any use not included in the Table of Uses is prohibited...."

Conclusion and Decision:

1. The principal or accessory use of the Locus, which is situated in the RR zoning district, for the operation of ATVs and motorized dirt bikes for commercial or business purposes is prohibited.
2. The principal use of the Locus for the operation of ATVs and motorized dirt bikes for personal or private purposes is prohibited. This does not mean, however, that the occasional and reasonable use of an ATV, or other motorized devices in connection with site maintenance, or work necessary and incidental to the development of the site for residential or other lawfully permitted purposes, is prohibited under all circumstances.
3. Since there is no residence on the Locus, there is no support for the contention that the operation of ATVs and motorized dirt bikes for personal or private purposes is a customary, permissible accessory use.

Therefore the ZBA decides as follows: The Cease and Desist Order prohibiting the use of the Locus for the use and operation of ATVs and motorized dirt bikes for all purposes, commercial or business, private or personal, except insofar as occasionally and reasonably incidental to site maintenance or work necessary and incidental to the development of the site for residential or other lawfully permitted purposes, is affirmed.

All Board members agreed with the above findings. Chair Backus awaited a motion on the decision.

*Mr. Collette* made a motion to move that the Zoning Board of Appeals adopt the findings and conclusion read by the Chair, and affirm the Cease and Desist Order prohibiting the use of the property located at 51 Borkum Road, Spencer, for the use and operation of ATVs and motorized dirt bikes for all purposes, commercial or business, private or personal, except insofar as occasionally and reasonably incidental to site maintenance or work necessary and incidental to the development of the site for residential or other lawfully permitted purposes. *Ms. Kresco* seconded the motion and the vote was 3-0 in favor. *Chair Backus made it unanimous.*

Ms. Backus explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instructions to the applicant, and also to all abutters.

**Approval of Minutes: Minutes for June 22<sup>nd</sup> and July 19<sup>th</sup>, 2011.**

Ms. Kresco made a motion to accept the minutes for June 22, 2011. Mr. Collette seconded the motion and the vote was 4-0 in favor.

Ms. Kresco made a motion to accept the minutes for July 19, 2011. Mr. Collette seconded the motion and the vote was 4-0 in favor.

**Other Business: None**

With no further discussion, Mr. Collette made a motion to adjourn the meeting at 8:00 p.m. Ms. Kresco seconded the motion and the vote was 4-0 in favor.

Submitted By:

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Bea Meechan, Senior Clerk ODIS

**List of Documents used on August 17, 2011**

- Draft Decision prepared by Mr. Weinberg.