

Town of West Tisbury
PLANNING BOARD
P. O. Box 278
West Tisbury, MA 02575-0278
508-696-0149
planningboard@westtisbury-ma.gov

March 15, 2022

Zoning Board of Appeals
P.O. Box 278
West Tisbury, MA 02575

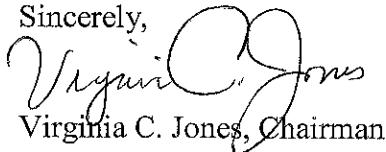
Dear Board Members:

At our meeting of March 14, 2022, the board reviewed an application referred by your board from David Reed for a special permit for a Service Business on Assessor's Map 30, Lot 4, 371Edgartown Road to rent the property 10 to 20 times per year for weddings.

The board determined that the location, proximity to the road, potential noise and excessive traffic, particularly on weekends, would be major factors regarding this application. This would impact the abutting neighborhood and could have the potential to encourage others to apply for similar permits. We are aware that this will trigger a DRI regarding parking and will be referred to the MVC. We suggest that the ZBA examine whether there may be an agricultural restriction on this property as is often the case regarding agricultural land.

Thank you for your consideration to this matter.

Sincerely,


Virginia C. Jones, Chairman



Zoning Board of Appeals

From: bob tonti <bobtonti@gmail.com>
Sent: Wednesday, March 23, 2022 11:06 AM
To: zba@westtisbury-ma.gov
Subject: re: Reed application for variance to run a wedding business from his property.

I am responding to the Reed application for a variance for their property to allow the property to be used as a wedding venue from May to October every year.

I am a 20 year resident of West Tisbury and opposed to the town granting this variance for multiple reasons.

To begin, I believe that this project will impact more than just the house across the street. Traffic, safety,,noise, and visual issues will apply to all the abutters and the travelers using the West Tisbury Road.

I also believe that as a non resident, the Reeds seem not to be aware how much the traffic patterns have changed in recent years. The pandemic has caused increased population causing increased traffic congestion. In the summer, we have experienced routine backups on the WT road including a backup from the stop sign at Barnes Rd. & WT Road all the way back to Pond Road West. Consequently parking and traffic issues are of prime concern.

Objections

1. Parking- Parking cars on this property during evening hours would be a hazardous endeavor affecting all abutters. The Reed's suggest that for up to 40 cars, the guests would be stopping on their own and turning into the property as needed. And if more than 40 cars were involved, a traffic policeman would be needed. Irrespective of using or not using a traffic policeman, this will create traffic problems and is rife with safety issues. While the Reeds think the problem is less significant late in the evening, I believe it could be worse with potential drinking and driving in the dark exacerbating the situation.
2. Amplified music is a significant problem for all abutters. Our experience has been that music from neighbors' parties held across the meadow (which is at a further distance than the Reed's property is from us) has sounded as though the party was in our front yard. I also do not accept the Reed's claim that the music noise would be less than road noise. Please show me the data that supports that.
3. The prospect of looking across the road and seeing a parking lot with 40+ cars offends the same sensibilities that helped us choose to live in this pastoral part of WT in the first place.
4. I am empathetic with the Reed's need for more money to support their MV home. However, that is not an acceptable reason to award a variance.
5. The Reed's desire to marginally lower the cost of weddings on the Vineyard though altruistic, is not a valid reason for a variance.
6. The property is zoned agricultural and residential. The Reeds want to run a commercial business which for me is not asking for a variance, but a different zone definition for their property. In effect they are requesting a change of use and not a variance and their request should be denied.

We are all typically taking advantage of our back yards during the same period that the Reeds want to run their business. Yet, they seem to think it is okay to take at least one weekend day every week during this time period and introduce traffic and safety concerns and noise pollution to negatively impact the bucolic setting in our beloved West Tisbury.

Please deny their request for a variance.

Regards

Bob Tonti

Zoning Board of Appeals

From: Sandy Turner <sandy.claire.turner@gmail.com>
Sent: Wednesday, March 23, 2022 7:34 PM
To: zba@westtisbury-ma.gov
Subject: David J Reed's application for Wedding Venue at 371 Edgartown Road

Hi Pam,

Thank you for the application and agenda for the wedding venue across the road and east of us.

I'm sorry not to be fully supportive of this effort, but I am very concerned about the music. I think the number of homes affected by the amplified music is considerably underestimated in the application. I believe that we will be able to hear the music on Woody Bottom Road and on the western end of the Deep Bottom development. There have been events near the main road on the Deep Bottom side in the past, that we've been able to clearly hear.

Considering that the application is for up to 20 weddings a year, that means their music will be our music every weekend all spring, summer and fall.

Thank you for your consideration of my concerns.

Sandy Turner
35 Woody Bottom
West Tisbury

DEEP BOTTOM POND OWNERS' ASSOCIATION, INC.

P.O. Box 4273
Vineyard Haven, MA 02568
Tel. & Fax (508) 693-6585
email: dbpondoa@gmail.com

March 21 2022

Town of West Tisbury
Zoning Board of Appeals
Attn: Pam Thors, Board Administrator
email: zba@westtisbury-ma.gov

Re: Public Hearing on Application for Special Permit from David J. Reed to allow the operation of a Service Business (wedding venue) under section 8.5-2 of the WT Zoning Bylaws at 371 Edgartown Rd., Map 30, Lot 4, RU District

Dear Ms. Thors,

On behalf of the Deep Bottom Pond Owners' Association, Inc. ("the Association"), which is an abutter to the property indicated above, I am writing this letter in opposition to the Zoning Board allowing the above-mentioned Special Permit for the following reasons:


1. Noise issues – Owners rights to quiet enjoyment of their property and the noise generated and carried by the proposed events.
2. Traffic safety and traffic congestion issues on the high-speed Edgartown-WT Road and Deep Bottom Pond's nearby gates entering and exiting the development.
3. Devaluation of members' properties – due to a large-scale event venue operating close by in a residential area.

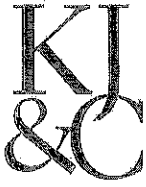
The Association represents 73 owner/members in the Deep Bottom Pond development of whom several are located on the west side of Pond Road whose properties will be affected by the noise and devaluation of property by the proposed large-scale event venue proposed by Mr. Reed.

The Association is very strict in its Covenants to protect all members from event noise and traffic within our development and the owners' rights to quiet enjoyment of their property. Due to the proximity of Mr. Reed's property to many of our owners, it is necessary for the Association to voice an opinion of rejection of the Special Permit.

DEEP BOTTOM POND OWNERS' ASSOC., INC.

by:


Clark R. Rattet, President



KREMS, JACKOWITZ & CARMAN, LLP
ATTORNEYS AT LAW

KENNETH A. KREMS
DAVID R. JACKOWITZ
SCOTT D. CARMAN
NICHOLAS F. FELONEY
ADAM T. SHERWIN, OF COUNSEL

LISA O'BRIEN, SENIOR PARALEGAL
EMMA DEMAILLY, PARALEGAL

March 23, 2022

By Email Transmission

West Tisbury Zoning Board of Appeals
Lawrence Schubert, Chair
Julius Low, Vice Chair
Deborah V.B. Wells, Member
Andrew Zaikis, Member
Jeffrey Kaye, Member
Casey Decker, Associate Member
1059 State Road
PO Box 278
West Tisbury, MA 02575

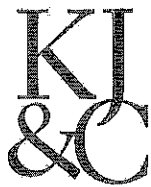
RE: Application for Special Permit- 371 Edgartown Road

Dear Mr. Chair and Members of the Board:

Please be advised that this firm represents Peter and Candace Cramer (collectively, "Cramer" or "my client") with respect to the Application for Special Permit of David J. Reed (the "Application") concerning 371 Edgartown Road, West Tisbury, Massachusetts (the "Subject Property"). For all of the reasons described below, my client respectfully requests that the Board deny the Application with prejudice.

I. Description of Properties and Area

Cramer is the owner of 374 Edgartown Road, West Tisbury, Massachusetts, on which a single family home sits (the "Cramer Property"). The Cramer Property is located directly across the street from the Subject Property. A single family dwelling currently sits on the Subject Property. An aerial view from Google Maps depicting both properties is attached hereto as "Exhibit A." The Subject Property is located above the road and the Cramer Property is below the road, denoted with a red dot. As the image demonstrates, the area is extremely rural, with significant vegetation. Accordingly, the properties are located in the Rural District. Edgartown Road resembles a highway, which is very narrow with a hill where the Subject Property and the Cramer Property are located. Motor vehicles regularly travel at high rates of speed on this part of Edgartown Road.



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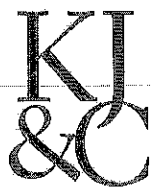
II. Legal Analysis

Foremost, the Application seeks the incorrect zoning relief in order to obtain permission to use the Subject Property as a wedding venue. Specifically, the Subject Property is already being used as a single-family home, and David J. Reed (the “Applicant”) intends to continue such use of the Subject Property. As such, he is not seeking to *change* the use from that of single family to a Service Business, to wit, a wedding venue but, rather, he is seeking to *add* a Service Business use to the single-family use.¹ As the Applicant is seeking to add this commercial use to the single-family use, he is actually creating a “Home Occupation” use under the Town of West Tisbury Zoning Bylaw (the “Bylaw”). The Bylaw defines a Home Occupation as follows: “[a]n occupation, trade, profession, or other business activity engaged in for compensation, conducted as an *accessory use* wholly or partly in a dwelling unit or accessory structure by a resident thereof.” (emphasis added). Because the wedding venue use is clearly accessory to the single-family use, the provisions of the Bylaw pertaining to Home Occupation are applicable.

A. *Home Occupation*

In accordance with Section 8.5-1(B) of the Bylaw, the Applicant is required to obtain a Home Occupation Special Permit in order to use the Subject Property as a wedding venue. The Applicant cannot satisfy the criteria for a Home Occupation use *as a matter of right* for several reasons: (i) it will generate additional traffic (Section 8.5-1(A)(3)); (ii) it will require additional parking (Section 8.5-1(A)(4)), and (iii) the use is not clearly secondary to the use of Subject Property for dwelling purposes (Section 8.5-1(A)(5)). As it is without question that the Applicant cannot make a Home Occupation use as a matter of right, he would require a Home Occupation Special Permit in order to use the Subject Property as a wedding venue. See Section 8.5-1(B). However, the Applicant cannot qualify for a Home Occupation Special Permit because among other things to be discussed below, the use is not “clearly secondary to the use of the premises for dwelling purposes,” as required by Section 8.5-1(B)(1). Specifically, the Applicant intends to rent the Subject Property for weddings ten (10) to twenty (20) times per year generating between \$50,000.00-\$200,000.00 in annual revenue to the Applicant, with third party vendors providing myriad food and services at the Subject Property during the weddings. For these reasons, the Applicant is attempting to shoehorn the clear mixed use (residential/wedding venue) into a so-called Service Business, which nevertheless should be denied for the reasons stated below.

¹ As set forth in the Applicant’s narrative, he wishes to use the Subject Property as a “wedding venue on *an occasional basis*. . . . [and] plan[s] on *residing at the property* for considerably longer periods in the relatively near future.” (emphasis added).



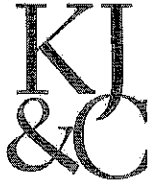
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B. Mixed Use/ Service Business

A mixed use of a Single Family Dwelling and a wedding venue (even if the wedding venue could *arguably* be described as a Service Business) does not appear in the Use Table of the Bylaw. Pursuant to Section 3.1-1, “[u]ses that are not listed [in the table] are prohibited.” As such, the Applicant’s proposed mixed use of the Subject Property is expressly prohibited by the plain terms of the Bylaw. In addition, pursuant to Section 3.2-1 of the Bylaw, “[a]ny building or structure or any use of any building, structure or premises which is injurious, obnoxious, offensive, dangerous or a nuisance to the community or to the neighborhood through noise vibration, odors, fumes, smoke, gases, dust, harmful fluids or substances, danger of fire or explosion or other objectionable feature detrimental to the community or neighborhood health, safety, convenience, or welfare” are considered prohibited uses in all zoning districts.

Section 14.2 of the Bylaw defines a Service Business as “[a] business or non-profit organization that provides services to the public, either on or off the premises, including but not limited to building, electrical, plumbing, and landscape contracting, arts instruction or studio, auto repair, business and educational services, catering, health club, house cleaning services, locksmith, photocopying, repair and restoration services, tailoring, typing, and word processing. Service business does not include retail business, restaurants, warehouses, or other uses separately listed in the Use Table.” The wedding venue use proposed by the Applicant cannot rationally be categorized as a Service Business. Similar to a Restaurant Use, which is explicitly forbidden in the Rural District and expressly excluded from the definition of Service Business, a wedding venue is a periodic extremely intense use of land. The contemplated use will create large gatherings of people (perhaps 200 or more people), who all come and go from the Subject Property simultaneously. The use of the Subject Property will include the service of food, liquor and music, not unlike a restaurant, which is not permitted as a Service Business.

The other Service Business uses cited in the definition above are by no means as periodically intense as a Wedding Venue. Each of the definition’s described uses squarely contains an individual service component (i.e. photocopying, typing, auto repair), which is not applicable to a wedding venue use. Unlike a typical Service Use, a wedding venue is a destination where the primary use comprises a large event with innumerable people. In the instant case, the venue will be a large outdoor tent to house hundreds of people where music is played and food is served. There is not a singular service component as is contemplated in a typical Service Business. Rather, a wedding venue contains many varied services similar to a restaurant. The use will require, at a minimum: tent constructors, waiters, bartenders, caterers,



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event managers, lighting contractors, and bands or disc jockeys. These events would require significant set up and break down in addition to the event itself and the vast coming and going of motor vehicles at the beginning (and end) of each wedding. In sum, a wedding venue can by no means be reasonably described as a Service Business given the complexity and intensity of the proposed use.

C. Special Permit

If the Board determines that (i) the Applicant is not seeking to use the Subject Property as a Home Occupation; and (ii) the proposal is not a prohibited mixed use and, thus, the only relief that the Applicant requires is a Special Permit for a Service Business, the Applicant nevertheless fails to meet the requirements of the Bylaw necessary for the issuance of a special permit.

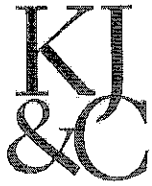
In order to grant a Special Permit for a Service Business, pursuant to Section 9.2-2² of the Bylaw, the Board must generally find that:

1. The proposed use is in harmony with the general purpose and intent of this bylaw.
2. The benefits of the proposed use to the Town outweigh its adverse effects.
3. The proposed use is consistent with the West Tisbury Master Plan.

As well as specifically find that the proposed use:

1. Is consistent with the purposes and requirements of the applicable land use district, overlay districts, and other specific provisions of this bylaw (including Site Plan Review requirements) and of other applicable laws and regulations.
2. Is compatible with surrounding uses and protective of the natural, historic, and scenic resources of the Town.
3. Is accessible to fire, police, and other emergency vehicles.
4. Will not create excessive off-premises noise, dust, odor, or glare.
5. Will not cause traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition.
6. Will not overload any municipal facility or any public or private water, sewage disposal, or drainage system.

² While the Use Table references Section 8.5-2 for "regulation of non-residential uses in the RU District," the ZBA "shall ensure compliance with all applicable provisions of this bylaw . . . *including the criteria in Section 9.2-2*" when reviewing special permit applications.



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7. Will not adversely affect the availability or cost of housing for year-round residents of West Tisbury.
8. Will not cause significant environmental damage due to flooding, wetland loss, habitat or ecosystem disturbance, or damage to valuable trees.
9. Will not cause other adverse environmental effects. . . .

The Applicant does not make a modicum of a showing that any of these requisite factors have been satisfied. First, the “general purpose and intent” of the Bylaw is, *inter alia*, “protecting the Town’s natural character, providing year-round housing that is affordable, offering opportunities for small businesses that do not change the attractive rural, agricultural, and residential character of the Town and providing a scenic and ecologically healthy environment for year-round and seasonal residents.” Allowing the Applicant to use the Subject Property for up to twenty (20) large weddings per year will not foster any of these stated goals of the Bylaw. Rather, such use in the Rural District would be historically at odds with zoning and land use in the Town as nothing even remotely close to this magnitude and intensity of a commercial use has ever been allowed in the Rural District. Second, the “benefits of the proposed use to the Town [do not] outweigh its adverse effects.” Setting aside that allowing twenty (20) large weddings to be hosted in a rural neighborhood will not benefit the Town in any respect, the adverse effects would be numerous, including but not limited to, excessive noise and hazardous traffic conditions. See infra.

The Applicant likewise fails to demonstrate that a wedding venue use would be “consistent with the purposes and requirements” of the Rural District. Specifically, the purpose of the Rural District is to “maintain the Town’s historic pattern of rural settlement, characterized by large expanses of open space and unspoiled views from the road, a scattering of residences and small businesses, and clustered development surrounded by open space.” See Section 2.3-1. Specifically, hosting up to twenty (20) weddings per year with hundreds of people and vendors and motor vehicles scattered about will do anything but maintain the Town’s rural settlement. There is further no question that a wedding venue *will not* be “compatible with surrounding uses” given that there is no commercial uses in the surrounding neighborhood whatsoever, let alone ones that have anything near compatibility with a wedding venue.

The Applicant cannot demonstrate that the wedding venue would be “accessible to fire, police, and other emergency vehicles” and that it would “not cause traffic congestion, impair pedestrian safety, or overload existing roads.” In fact, the road cut to the Subject Property is located in a very dangerous part of the highway featuring a hill and where vehicles travel at high rates of speed. There is no lane designated for turning and the entry to the Subject Property is located on a highway, rather than a quiet side street. The visibility of such entry to the Subject Property is poor. In addition, motor vehicles would be entering the Subject Property for weddings during the peak period of time when beachgoers are driving back from the beach.



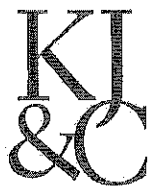
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There is nothing proposed to prohibit attendees of the wedding from parking on the highway's narrow shoulders which would create tremendous hazards to health and safety, especially when it is dark and alcohol has been consumed.

As commercial signs are prohibited, the Applicant will be unable to mark the wedding venue and its entrance, which will cause countless turnarounds on the highway and pulling into (and backing out of) the Cramer Property, whose driveway entrance is less than one hundred and fifty (150) feet from Mr. Reed's driveway. The only other options to turn around are the Rutkiewicz driveway or the Deep Bottom entrance, both of which would cause a nuisance to a nearby neighbor. Mr. Reed referred to having an off-duty police officer to direct traffic into and out of the Subject Property. Regardless of someone directing traffic, dangerous backups and bottlenecks will occur on a high-speed state highway. There is no space to line up (cue) cars as they enter or exit the Subject Property. Cars and trucks blocking the highway could lead to accidents and will also be dangerous for bicycles and mopeds. Additionally, this section of the highway has poor site lines and could be dangerous for someone trying to pull out of the Subject Property's driveway or backing out of the Cramer Property's driveway. Vehicle and moped accidents have occurred on and near this section of the highway.

In addition to the motor vehicles of attendees, multiple vendors will arrive at the Subject Property in their trucks and vans with food, tents, chairs, waster containers and porta potties, which will be exacerbated when the vendors have to set up and shut down at the beginning and end of each wedding. The "Proposed Parking Area" depicted on the Applicant's Site plan features sixty six (66) parking spaces, but provides no analysis of whether/how it will accommodate the number of motor vehicles that hundreds of attendees and vendors will drive to the Subject Property for weddings. The Applicant has provided no analyses or studies from traffic or parking engineers, despite that it is his burden of proof to satisfy the criteria set forth in the Bylaw.

Perhaps most significant is the Applicant's failure to demonstrate that he will not cause disturbances to his neighbors as he offers nothing to show that his proposal would "not create excessive off-premises *noise*, dust, odor, or glare." In fact, the Applicant admits that my client will hear noise from the weddings: "our one neighbor across the street might be able to hear music from wedding celebrations." Dismissively, however, the Applicant tries to justify this additional, excessive noise by claiming—without any analysis or documentation—that "reception music would be substantially less than the noise from cars travelling down the road at 45 mph." Despite that it is his burden of proof, the Applicant has not come forward with any sound study or other documentation from a noise engineer to substantiate that bald assertion. Taking the Applicant's argument to its logical extreme, since there is already noise caused from other sources near the Subject Property and the Cramer Property, then it is totally acceptable to cause additional noises so long as they are not worse. This, of course, is not the standard set



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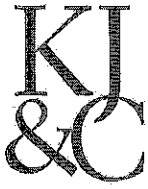
forth in the Bylaw. It is common knowledge that a wedding is a large party which produces constant loud noise from music, dancing, laughing and conversation for the hours long affair, at which hundreds of people will be present. The Applicant proposes to cause this level of noise for several hours on up to twenty (20) evenings per year in a quiet, rural area. In sum, the Applicant has fallen woefully short of his burden to prove that weddings at the Subject Property will not cause excessive noise.

In sum, despite that the Board must find in the affirmative for *all* of the twelve (12) factors above in order to grant the Application, the Applicant's filings do not satisfy a single one. Generating additional revenue to maintain ownership of the Subject Property and offering more affordable weddings, bear no relationship to the factors that the Board must find in order to grant the special permit.

Finally, pursuant to the clover footnote in the Use Table, the Applicant's proposal is also required to comply with Section 8.5-2 of the Bylaw (Non-residential Uses in the Rural District). Said section requires the following:

- A. There shall be no evidence of the use through persistent or excessive sound, vibration or odor at the boundaries of the premises.
- B. Buildings housing the use and exterior storage of materials or equipment shall be screened from offpremises view by vegetation, grade or location.
- C. Parking for the use shall be located off-street and screened as in Subsection 8.5-2(B) above, unless the Zoning Board of Appeals agrees to reasonable modifications.
- D. No more than two vehicles in excess of 10,000 pounds GVW shall be regularly parked on the premises. 63 West Tisbury Zoning Bylaw
- E. Traffic generated shall not be more disruptive to the neighborhood than traffic normally resulting from agricultural or residential development considering volume, type and hours, unless the Zoning Board of Appeals agrees that reasonable modifications are justified by the size and location of the lot.
- F. The use must not cause or contribute to any erosion of land or increase surface water drainage from the lot.
- G. The use shall not create hazards, unacceptable disturbances, unacceptable injury to the neighborhood, or unsightliness visible from any public way or neighboring property. 8.5-3 Educational, Religious, or Child Care Use Educational uses, religious uses, family day care homes, day care centers.

For all of the reasons stated above, use of the Subject Property as a wedding venue would violate, at a minimum, subsections A, E & G of Section 8.5-2. As set forth above, there can be no question that: (i) weddings would cause "excessive sound," (ii) the traffic associated with the weddings will be far "more disruptive to the neighborhood than traffic normally



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associated with *agricultural or residential development;*” and (iii) all of the noise, traffic, parking and other logistical issues caused by a large scale gathering such as a wedding will “create hazards [and] unacceptable disturbances.” In short, the necessary factors that the Applicant cannot satisfy make manifest that it would be completely inappropriate to maintain a wedding venue at the Subject Property within the Rural District.

III. Conclusion

In addition to the fact that the Applicant failed to seek a Home Occupation Special Permit and that the mixed use he is seeking is prohibited by the Bylaw, it is the Applicant’s burden to establish the factors set forth in Sections 8.5-2 and 9.2-2 of the ByLaw in order for you to grant the special permit that the Applicant has sought. Due to the utter lack of studies, analyses, documents or other evidence to satisfy the vast majority of the necessary factors coupled with robust facts demonstrating that many of the factors actually *cannot* be met, the Applicant has fallen well short of his burden of proof necessary for the Board to issue the special permit. For all of the foregoing reasons, on behalf of Cramer, I urge you to deny the Application.

Sincerely,



Scott D. Carman, Esq.

Encl.

CC: David Reed
Client
Deep Bottom Pond Owners’ Association, Inc.

EXHIBIT A



Edgartown - West Tisbury Rd

Edgartown - West Ti

Pond Rd

Google

Commonwealth of MA
27-1

State First

Reed

4.1

4

1

Edgartown W.isbury Rd

Rutkiewicz
7

7.1

3
Cramer

2.90

Deep Bottom
Pond Property Owners

2.46

Rutkiewicz
7.4

Tonti
2.43

2.44

2.47

Cramer
2.41

Shaub
2.42

Browne

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2.40

Loslov

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2

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ond Rd