

**Members Present:**

Kary Jablonka  
Adrian Ooms (7:15)  
David Everett, chairman  
Robert Leary  
Suzanne Williams  
Mitchell Khosrova  
Tal Rappleyea, Atty.  
Walt Simonsmeier, CEO  
Paul McCreary, Engineer

**Members Absent:**

JP Henkel

**Public Present:**

Scott Longstreet	Jack Schultz
Elle Dietemann	George H. Vollmuth
Terry Lasky	Marc Jackson
Alice Witherall	Stephen Piazza
Peter Blandori	Gwen Gould
Elizabeth DiPalma	Rick Steinbach
Pam Katz	Paul K. Fiero
Michael Behrens	Terry Buck
Donna Kiesel	Ted Miner
Abby M. Behrens	Jim Cartin
Hannah Hanani	Angela San Diego
Kristen Wogen	Lynn Wheeler
Patricia Lasky	Patricia Tenace
Tommy Annas	Robert Trevellyan
Suzanne Trevellyan	Ann Beth Deily
Mark Twentyman	Linclon Mayorca
Judy Luhman	several others

Chairman David Everett called the meeting to order at 7:03PM. The Pledge of Allegiance was recited. David Everett moved and Suzanne Williams seconded that the meeting minutes from the previous meeting be approved. This carried.

**BERKSHIRE TELEPHONE- REQUEST FOR PUBLIC UTILITY SPECIAL USE PERMIT FOR A SWITCHING STATION LOCATED ON RT. 203 NEAR SUTHERLAND RD.**

**PUBLIC HEARING**

The Public Hearing was opened at 7:08PM. A letter from National Grid indicating ownership of this land, a map and a screening plan were presented by Bob Holmes, Berkshire Telephone's representative. The screening plan involves placing 10-15 junipers on the side, as they can handle the weather. Some lattice work may also be used. Chairman Everett suggested doing whatever the landscaper recommends. The Public Hearing was closed at 7:16 PM. Mitchell Khosrova moved that a negative declaration be adopted for SEQRA as there are no significant impacts on the environment because of this project. This was seconded by Kary Jablonka and carried. Mitchell Khosrova moved that the Public Utility Special Use permit be approved subject to receiving a NYS Highway permit and doing screening of the boxes with appropriate trees and 6' high lattice fencing of wood or plastic, preferably using renewable resources. David Everett seconded the motion and the Special Use permit was approved. Mr. Holmes will see that the approval fee is paid.

**FAIRPOINT COMMUNICATIONS- REQUEST FOR PUBLIC UTILITY SPECIAL USE PERMIT  
FOR A SWITCHING STATION LOCATED ON RT. 203 IN NORTH CHATHAM  
PUBLIC HEARING (cont.)**

Bill Mulrein and Bob Holmes spoke for this project. The plan is to remove the boxes and concrete pad and restore the lawn at the present site while an alternate plan is sought. This removal will take place next week, weather permitting. David Everett wondered if encasing the boxes in a shed would be something to consider. Mr. Mulrein stated that the present goal is to get off of that corner, since it's clear that the community does not want it there. Currently, they are pursuing a possible contact for a location on a different property. Hence, this present application is being withdrawn, and when a new site is found a reapplication will be made. Elle Dietemann wanted to know what would be left, and Mr. Mulrein stated that as much as possible would be removed.

**JOSEPH HALLENBECK, JR.—REQUEST FOR A VARIANCE TO ALLOW AN ADDITION TO  
HIS HOME AND A BACK DECK INFORMATIONAL**

Mr. Hallenbeck would like to add 10 feet across the front of his home and place an existing deck on the back of the house, but is unable to meet setbacks because the lot is non-conforming. Suzanne asked about the sheds in the back, and Mr. Hallenbeck stated that they have all been removed. A 3 foot variance in the front is needed, 16' on the side and also a variance in the back for the deck. There was a question as to the survey, and CEO Walt Simonsmeier stated that he has been at the property and all pins are in place. He also stated that since this is a non-conforming lot, where Mr. Hallenbeck wishes to place the addition is the only spot for it because of the septic. In this neighborhood, many of the houses are set within 10 feet of the road. Suzanne Williams wondered if there were any outstanding violations on this property, and Mr. Simonsmeier stated that there are none. The Public Hearing will be set for next month, and the Planning Board will be asked for input on the project.

**PS/21- REQUEST FOR RELIEF FROM RESTRICTIONS PLACED ON THE SPECIAL USE  
PERMIT, USE OF BUILDINGS FOR HOUSING AND THE ABILITY TO RENT SPACE TO THIRD  
PARTIES PUBLIC HEARING (cont.)**

Chairman Dave Everett stated that many communications were received prior to the meeting, most of which were positive, which have already been reviewed by the Board members, and will not be read into the record of this meeting. Scott Longstreet reviewed the modifications they are currently seeking: 1. permit up to 5 events per season to exceed the current permitted hours by up to ½ hour; 2. permit an average of 4 evening events per week averaged over the entire season plus up to 40 additional matinee events per season; 3. provide that events that are not amplified or are no louder than 80 dcbL at the source be held without limitation in number and not counted in the above events; 4. a two year extension of the sunset use of the tent; 5 to allow use of the two single family homes and one out-building as temporary artist and student residences and 6. to allow use of the tent and permanent facility as rental to third-parties for non-performing arts events and community activities. Mr. Longstreet reiterated that number 3 is new and addresses the problem of having to cut back on many items to make room for the larger events. This way, events such as movies and sings are protected. Engineer McCreary was asked about the 80 dcbL at the source, and he feels that would not make any impact on the proposal, which already had been evaluated in the EIS process. He explained that the dcbL level could be created through a formula or through

field testing, which is what was done, and which is preferable. If sound is 80 dcbL at the source, there would be no problem as far as creating intrusive sound. Currently, the train is the biggest sound creator. The standard is 5 dcbL increase for it to be intrusive, so 80 dcbL is a guarantee that it isn't at an intrusive level. Bob Leary wondered what some examples of non-amplified performances might be. Mr. Longstreet said such things as sings, a chamber orchestra, Walking the Dog Theatre are all either not amplified at all or use a very low level of amplification and would not be any louder than 50 dcbL at the property line. Mr. McCreary stated that this is well below the limit and that there would not be any intrusive quality. It may be heard to some degree, but it wouldn't be intrusive. Kary Jablonka asked whether using these protocols was within the proposed limits, to which the response was yes. Mitchell Khosrova reiterated that the noise protocol would remain the same. It was understood, however, that this addresses the sound from the performances, and there could be other sounds such as traffic. Mr. Longstreet stated that in a ¾ mile perimeter of the site, only one neighbor stated that the noise was intrusive. There are 85 residences closer than the aforementioned neighbor, and no complaints were made. The argument that is being made is that the neighbors are living up to the agreement that was made, hence no complaints. Chairman Everett stated that Board has received about 30 letters and petitions which were reviewed prior to the meeting.

CEO Walt Simonsmeier stated that at the last meeting, a comment was made regarding complaints having been made via telephone and mail that were not responded to. He stated that he did not receive any in his capacity as Code Enforcement Officer, Marilyn, the clerk to the ZBA did not receive any, nor did Jesse, the Town Supervisor, nor did Tal, the lawyer. Mr. Simonsmeier said that the only complaint he did receive was from construction noise during the building phase of the project, and complaint of dust from the construction. Many of those living nearby have been in to the office for permits or other reasons, and never was a complaint uttered. One person came in wondering if PS/21 was operating, so he checked to see, and it was.

The Public Hearing was opened.

Robert Trevelyan stated that he has learned a great deal since this entire project started and that there are many valuable community benefits to it.

Pam Katz wondered about 3<sup>rd</sup> party events. Atty. Longstreet stated that this would make the facility available to the community. It would be a wonderful venue for groups such as the scouts, seniors and clubs to use as a meeting place, as there is little space in the community. It also would be lovely for a wedding, and they would like to be able to make it available. It would be a shame not to allow this type of use. Ms. Katz wondered about the harm to the community. Atty. Longstreet stated that he didn't feel there was any harm.

Colleen Sapherdon stated that having PS/21 accepted in the first place was a bitter pill to swallow, but since it had been agreed upon, she didn't call. However, now the request is to go from 3 days a week to 26 straight performances and then an additional 40 matinees translates to 12 hours of noise. She feels she can take the three days, but now it will be intrusive.

Terry Lasky wondered if Mr. McCreary is qualified to tell him what is intrusive. Mr. McCreary stated that of course that is a personal thing, and his comments are based on the state standard of decibels. Mr. Lasky said that the complaints that are being heard tonight should be enough for the ZBA to realize that there are complaints. He stated that PS/21 would not meet with the neighbors as was requested at the last meeting.

Lynn Wheeler had concerns about point 6—rentals to a third party. She feels that she would hear noise from weddings, and how would the noise levels be monitored and controlled for these. Renting to a third party is smart because it is an economic boost for PS/21, but these events could be too noisy. Mitchell Khosrova stated that any violation by a third party user would become a violation for PS/21.

Patricia Lasky wondered why there was no more sound testing being done. Chairman Everett stated that we can sound test at our own discretion, although it is not mandatory. She also stated that she did call and leave messages and wrote a letter to which there was never a reply. She said that she hears PS/21 all the time, not snippets. It is part of the neighbors' daily lives. She feels her citizenship in this town is less important than someone who is financially able to make this happen.

Michael Behrens said that his home was one of the homes where field testing was done over 2 years ago. Although the present performances aren't blaringly intrusive, and he made no complaints, this will be different. The noise fades in and out which is very bothersome. He wondered what compromise would be made for the neighbors. They didn't want the entire project, and now PS/21 are back asking for more. He also stated a concern about controlling sound when rented to a third party. With the 85 residences there will be more complaints. The neighbors don't want a compromise. The website indicates that there are tickets on sale that exceeds the number of performances allowed.

Marc Jackson agreed with all the comments already made. He told of his 1<sup>st</sup> grader who comes downstairs at 8:30-9:00 PM wondering about the noise outside, which comes in and out. He then must close the window to his son's room. This is intrusive and he wondered where the line is for intrusiveness. The people who are complaining are the ones who are affected because they leave near it. He wants it to be no louder and no more in number.

Colleen Sapherdon wondered why the schedule was posted if this wasn't even approved. Mitchell Khosrova told her that the ZBA really hates it when people come to this Board because they've violated part of the code and are trying to fix it. This was not the case here. PS/21 took a business risk by advertising because they felt that they had to do this. Mr. Everett stated that they discussed this with the Board, and selling advance tickets is not a violation. Suzanne Williams said that she thought that the decision was to bifurcate the use of the homes and the third party usage, which was not done. She feels that every time this applicant comes before the Board they are asking for something different. Some discussion on this followed, and Atty. Longstreet said that they were trying to do the best they could to have fewer problems. Ms. Williams said that they are asking for more.

Terry Lasky said that at last month's meeting PS/21 stated that they needed the approvals so that they could post their schedule. He checked on the internet that same night and the schedule was already posted, which certainly is disingenuous.

Hannah Hanani said that she hears noise at night too---frogs and crickets and birds in the morning. Are these sounds of nature or noise? The music is magic which can enrich lives. She wondered how many people complaining have been to a performance at PS/21. This is something that people can embrace.

Kim Costigan lives very close to the facility. She came to the Board 2 years ago because of the proximity, but has chosen to live with the situation and be amicable with Judy. Even though she is not pleased about it, she stated that she hears every performance non-stop, even over the sound of the TV. She wondered how much she was expected to give or bend. What is reasonable for her to listen to that isn't her choice, and how much should she be imposed upon? Bob Leary stated that it seemed to him that getting the permanent structure up, which will be sound-proof, should be concentrated on. Mitchell Khosrova wondered about the benefit of a business plan. David Everett asked why no fund raisers have occurred thus far. Atty. Longstreet stated that PS/21 needed to be able to demonstrate what could be offered, which they are still fine-tuning. Also the present economic climate is not in any great shape, and they are hoping for improvement in that. Mitchell Khosrova asked if there is a strategy in place. Does PS/21 feel that if they get these changes that it will work? Judy Grunberg said that they can only try, and if it doesn't work, they will have to close. Mitchell Khosrova suggested that we may wish to consider random testing to be sure all is still consistent with our past findings. Suzanne Williams stated that the neighbors are still going to hear it and it will continue to be intrusive to some nearby, as intrusiveness is a personal thing which can't be measured by state standards. Kary Jablonka said that some of the nearby neighbors have supported this. Everyone will never be on the same page regarding the intrusiveness of this situation.

Patricia Tenase thought that perhaps a compromise could be made---keep it status quo until the permanent facility is in place.

Gwen Gould stated that we live in a noisy world. When a train goes by during a performance at PS/21, the performers can't be heard. The performing arts impact everyone, mostly in a positive way and it is valuable to the larger community. With live dance you can express yourself and we could lose these elements if we don't take the time. PS/21 is a business and has to be allowed the chance to grow. Restrictions make it very hard to grow and prosper. This is the best use of this property and is a gift.

Terry Buck said that she hears everything all the time. She hears the ball games and the swimmers at Crellin Park, the police, the firemen, construction, the fair, 36 trains a day, Crellin factory sounds, traffic, semis, helicopters, lawn mowers and leaf blowers. She also hears every performance, and it's beautiful.

Barbara Tome said that making a community rich takes time, skill and commitment.

Jim Cartin objects to the selection of decibel level as the maximum. If there is no definition of a maximum, how can 80 dcb be selected.

Abby Behrens stated that she is very concerned. There has been no capital campaign as of yet, and they wish to show a year in the black before starting that. They took the risk and presented

the summer program, but didn't take the risk to begin fund raising. This doesn't make sense. She feels that they will keep coming back and asking for more extensions, and that the permanent facility will never happen.

Stephen Gaza said that although he can't hear PS/21 he does use it. He understands that it is hard to guarantee anything to the neighbors. He sees the difficulty between the community and those living nearby.

Fran Violette said that people who are unhappy about something are the ones who tend to respond, while those who are happy with the way things are don't respond, which is why there aren't that many in attendance.

Tommy Annas was confused about some of the facts and how many times it has been reviewed as to what had been agreed upon. Chairman Everett explained that we can't revisit the prior approval by law, and that we must deal with the present request.

Lincoln Majorca said that he'd hate to see a beautiful project die. He suggested that perhaps the amplifications could be lowered a little as a compromise. He feels the project has to stay as it has so much to give.

Alice Witherall reported on her satisfying experiences with PS/21 which gave her the opportunity to take her grandchildren to a performance. She encouraged people to go and expose their children to what's going on. She was able to take her mother, who was terminally ill, to PS/21 because of its proximity, and it was very therapeutic.

Elizabeth DePalma is an artist who loves music and supports the arts. However, she stated that there is a big difference between going to a performance by your choice and having it in your backyard.

Judy Lumen is concerned about 3<sup>rd</sup> party rentals with no restrictions. She would like to see that restricted.

Robert Peitkiewicz said that they were told what the rules were when this was passed, and they dealt with it. He feels that is now being used against the neighbors, and wondered if they should have been complaining all along.

Pam Katz thinks that regular monitoring, and allowing the sunset approval for a year only with the neighbors letting the Board know might be helpful.

Terry Lasky stated that he and the neighbors love music. However, when it travels ½-1 mile from the source, it is not music; it is noise. People who live far away from here do not understand the problem of those who are nearby.

Patricia Lasky said that the neighbors need to be heard. Given the set of facts, now PS/21 is back wanting more and they will continue to keep coming back asking for more. The neighbors have given a lot, and it is noise. They shouldn't have to come back every few years---which is what they were afraid would happen. This facility shouldn't have gone into a neighborhood.

Colleen Sapherdon feels that items 4 and 6 are contradictory since once the permanent facility is in place the tent is supposed to be coming down. Chairman Everett stated that with the current permit, the life of the tent will end when the permanent facility is in place. Ms. Sapherdon expressed a concern about 3<sup>rd</sup> party rentals since the dynamics of the project is changing.

Barbara Tome said that there are lots of businesses in rural areas.

Judy Grunberg said that renting or leasing to outside sources is something that all non-profit groups do. She cited Art Omi, Shaker Museum, other museums and theaters as examples. They make the decision as to who to rent their facility to and PS/21 is asking to be able, like all the others, to do this.

Amy Behrens feels that the neighbors have been blindsided. This was not something in the original permit and all PS/21 will do is continue to ask for things.

Chairman Everett thanked everyone for participating. The Public Hearing was closed at 9:17PM.

Atty. Longstreet reminded the Board that all landowners have the right to use their property. If PS/21 goes away, what does go in will still have noise associated with it.

Chairman Everett instructed the Board to review the resolution that had been prepared by Atty. Rappleyea. Some discussion ensued, particularly on 3<sup>rd</sup> party rentals. Mitchell Khosrova was thankful to the community and the neighbors and the way their concerns were presented. Atty. Longstreet stated that they would like to get through this season in the black, but having 4 years to raise \$7-10 million will be difficult. There was Board discussion on what kind of sound testing would be appropriate. After many comments it was decided that it should be randomized at various times and venues in the evening because most people are there then. Someone will be hired to conduct this testing. Abby Behrens wanted to know why the Board had a resolution before them before tonight's discussion even took place. Chairman Everett explained that this is common procedure and the information is garnered from previous discussion and then can be adjusted to meet any new needs. Mitchell Khosrova moved that the resolution be accepted, taking out #4 (two year extension of the sunset on use of the tent) and adding the setting up of protocol with the town engineer for random sound testing for a one year period at the applicant's expense. The motion was seconded by Kary Jablonka. In a roll call vote, all present voted in the affirmative except for Suzanne Williams who voted against the project. The project carried. JP Henkel was absent from the meeting.

The meeting was adjourned at 9:45PM.

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David Everett, Chairman

Respectfully submitted,

Marilyn Cohen, clerk