

TOWN OF CHATHAM
FEBRUARY 25, 2010

ZONING BOARD OF APPEALS
FINAL COPY

MEMBERS PRESENT:

Kary Jablonka

Robert Leary

JP Henkel

Mitchell Khosrova

David Everett, Chairman

Jeff Lick

Adrian Ooms

Tal Rappleyea, Atty.

George Schmitt, Engineer

Walt Simonsmeier, ZEO

MEMBERS ABSENT:

None

PUBLIC PRESENT:

Edgar Acevedo Scott Longstreet

Barbara Nagler Sylvian Nagler

Joan Bloomberg Robert Trevellyan

Suzanne Trevellyan Barbara Peduzzi

Heather Spitzer Muriel Faxon

Angelo SanDiego Alice Witherall

Liza Corsillo John Spitzer

Warren Collins Peter Blandori

Terry Lasky Patricia Lasky

Evan Kutzer (?) Marc Jackson

Other community members

The February 25, 2010, Zoning Board of Appeals meeting was called to order by Chairman David Everett at 7:06PM. The Pledge of Allegiance was recited. Bob Leary moved and Kary Jablonka seconded that the minutes from the previous meeting be accepted. This carried.

PS/21- REQUEST FOR A MODIFICATION TO THEIR SPECIAL USE PERMIT WHICH WOULD ALLOW THE TENT TO BECOME A PERMANENT PART OF THE FACILITY PUBLIC HEARING (cont.)

The Public Hearing was reopened. Chairman Everett announced that the reports that were received will be reviewed and summarized and then public comment

would be sought. It was requested that comments be limited to new material, and that proper decorum be followed in addressing the Board and respecting others' right to speak. This is an emotional issue, but everyone is an adult. Tal Rappleyea will review the history of this project from its inception, including the modifications approved to date. Walt Simonsmeier will review the complaints received and the investigation he conducted. The Town Engineer will provide the 2008 noise evaluation report. A map will be presented delineating those supporting and opposing this modification along with the appropriate correspondances. E-mails and letters from the public were also received and are available, as well as the article run in the newspaper with some comments.

Atty. Tal Rappleyea provided a history of this project, which included the legal standard of review for any project, the conditions of approval (April, 2005), the Sound/Noise Protocols Modification adopted in January, 2007, and the April, 2008 Modification of Conditions approval. (on file)

Code Enforcement Officer Walt Simonsmeier reported that he contacted the police agencies asking about any complaints in and around PS/21 for their 2009 schedule. The State Police said that they received a noise complaint on Aug. 22, 2008, which was investigated and determined to be unfounded. The County Sherriff stated that there were no complaints in 2009, but there was a complaint in January of 2008 of loud train noises. The village police stated there were no complaints.

Engineer George Schmitt reviewed the noise testing done in 2008. This was a random sampling of 12 programs. None that were tested approached the established limits. Although there was some audible sound on White Mills Rd, he reiterated that it did not approach the limits. The sounds mix in with the ambient sounds, which means you can "hear" sounds but at an ambient level, in this case about 44 decibels. JP Henkel wondered how decibels are measured. Mr.

Schmitt explained that a logarithmic scale is used. The one utilized in this case uses an L-10 scale which holds a much stricter standard than the generally used LEQ scale. Chairman Everett also stated that the Board followed the DEC noise mitigation policy as part of the DEIS. JP Henkel said that he needed a definition for the word "objectionable." Mr. Everett stated that would be a reasonable sound level.

Atty. Scott Longstreet reviewed a graph of the area surrounding the tent, and showed the people that either spoke, wrote or submitted complaints and the proximity to the tent using color coding. 15 residences stated that they are not bothered by the sound although they may hear it, while 6 found it to be objectionable. There are a total of 85 residences in this area, and many have not made any contact whatsoever. Of the 6 who did find the sound objectionable, 4 of these were against the project since its inception, and 2 of these brought a lawsuit against the town, which was defeated. Only 21 nearby residents out of 85 spoke out either in favor or opposed. Some are unwilling to come forward for a variety of reasons. The report from the engineers reviewing the testing from both the first year and in 2008 proved that although the sound was audible at times it never increases the volume level from the normal ambient level. It may be heard because of the ebb and flow of sound, as part of a background noise, which hardly can be described as intrusive or objectionable. Under SEQRA the Board needs to review mitigation efforts for any significant environmental impact. There is none as there will not be an increase in the volume decibel level at the residences at all. There also had been a question as to whether the orientation of the tent would minimize the sound. The engineers reported that it is set so that the noise goes into the hill, and is in the best possible spot. Atty. Rappleyea spoke to the fact that the law is clear regarding a Special Use permit. Requesting financial aspects such as a business plan or how funds are being raised are not areas covered by this law. If the project meets the criteria needed, the Special Use permit is approved. The project is exactly the same except that

the sound is not going to be enclosed in a permanent building. However, the sound level is not being increased.

Chairman Everett opened the floor to the public.

Terry Lasky stated that he attended previous meetings, and 12-15 residents came to complain. The weather changes the way the sound travels. The engineers did not go to the neighbors' homes during differing weather conditions. He wondered whether the weather would cause the sound to be above the legal parameters. Different people are disturbed by different things. Mr. Lasky asked Mr. Simonsmeier if he asked about complaints from residents on Rt. 66. He stated he did and there were none. Mr. Lasky wondered how those records are maintained, and for what length of time. Mr. Simonsmeier stated that he didn't know. Mr. Lasky also commented that those talking about the impact of the noise should be those living there and that it was up to the ZBA to listen to them. Atty. Rappleyea added that legally a Board cannot exclude anyone from testifying.

Colleen Safford stated that she felt she had to place the call she did on July 24, 2009. The people enforcing don't know anything about PS/21. Parameters may be in place, but they are not working. The sound is very intrusive. She insisted that her complaint is not unfounded. Perhaps it is the decibel level that needs to be addressed. 50 decibels is the loudness of a radio or a conversation, which is intrusive. She also stated that there are three residences between her house and PS/21, and that two of them are vacant. People are afraid to come to the Board for different reasons. One can look at this in many different ways, but it doesn't mean they are not bothered by the noise.

Evan Messenger stated that he has lived here for 10 years and he wonders where Chatham would be without Judy's ventures. She has enhanced lives in all

that she does through her philanthropy based on her civic responsibility. A community with no arts is a community in decline. All of the details to minimize problems have been thorough. Mr. Messenger supports this venture fully.

Patricia Lasky wanted to know what recourse she has when the tent is permanent and she has to listen to PS/21 forever. She stated that she knew this would become a permanent tent. She wanted to know how she can enjoy the peepers and the trains when she hears PS/21 over all of that, which is not what she bargained for, nor did she expect to hear this muffled din. What will be done for her and the other neighbors? Atty. Rappleyea explained that this is a balancing act. Some will gain and some will not. He suggested that she speak directly to her attorney. Mrs. Lasky wondered about cutting her taxes. She stated that she has come to these meetings for the past six years, and now the tent will be permanent. What will be done for her?

Barbara Peduzzi read a letter from the Chatham Business Alliance in favor of this request.

Frances Iaconetti told the Board that he initially came to the meetings because of the possible impact this project might have on the property around it and the noise. He lives south of PS/21 and hasn't heard it at all. Something that is objectionable is in the eye of the beholder. He wondered if anyone on the Board has gone to any of these houses and listened. They could go when something is going on and when it is quiet to see the difference. Possibly granting a 3-5 year extension to the tent so this type of thing could be done would be a solution to see if PS/21 can take other measures to modify the noise, as he understands that noise can sound differently.

Peter Blandori stated that his brother Mark lives on High Bridge Rd, and that he hasn't heard anything.

Warren Collins lives in Kinderhook. 30 years ago when she came here, she had no neighbors. Now she can hear the country music, the loud lawnmowers, and the chain saw on a Saturday and Sunday, the ATV across the way and an incessant barking dog. All of these sounds are a nuisance, they are audible and they are legal.

Terry Lasky stated that Mr. Blandori works for Judy, which may be why he doesn't hear anything, plus the fact that he plays his drums very loudly. He wondered if Judy has the right to prevail just because she's a philanthropic person.

Frances Viellette stated that she attends events at the tent and is grateful to Judy for these, as well as for the free movies.

Marc Jackson said that of the 4 homes near him on High Bridge Rd. two are not permanent residences; his is. Maybe Mr. Blandori doesn't hear PS/21. He does. The other resident who is full time may be hard of hearing, too.

Melissa Pollack supports PS/21. She spoke about the noise issue she had this past summer at her residence where she had to call the State Police to complain. They don't feel they have real jurisdiction over this, but they had to insist that someone come and deal with it. There are decibel meters, and it would be a good idea to have the Town personnel write letters or contact the authorities and suggest they get them. The Town does have a monitor from PS/21 and Mr. Simonsmeier stated that we also have a hand held meter to use.

Mr. Lasky stated that there continues to be confusion as to who is to be contacted for a complaint. The neighbors were told not to call the Zoning

Enforcement Officer but the sheriff. He also pointed out that there were 6 plaintiffs in the Article 78, not 2. He also stated that the letter from the Business Alliance should not be considered because PS/21 has had no impact.

Colleen Safford added that they have wanted to meet with PS/21 to try to come up with solutions to lessen the impact, but that they have refused to meet with the neighbors. She wants Judy to understand that she's upset many people. She would have liked to have seen more good faith by the applicant. She has great dreams but lacks skill, and it is very upsetting that the applicant wouldn't work with the neighbors.

Mr. Iaconetti stated that the tent was to be temporary and that the inconveniences would eventually decrease. By making it permanent, this would be for life. The tent was to help it along.

The Public Hearing was closed at 8:50PM.

Mr. Leary reminded everyone that if PS/21 violates the sound agreement, the special use permit can be pulled. Tests will continue. He is not in favor of a permanent tent. He feels that if the building goes up, the tent should go. He also feels that they should not be allowed to rent the tent for a wedding as that is not culture or art.

Jeff Lick spoke to the fact that he has been involved in fund raising, and he was approached about PS/21. All the right work was done by them. It is sometimes difficult to balance the needs of the community. It's hard to say there won't be any noise, but everyone has to do some accommodating. We all have some noise at our homes. The economic impact on the Town is beside the point. The Board has reasonable guidelines to live up to.

JP Henkel said that he is having a hard time filtering out the adversarial comments. The sound can be heard on White Mills Rd. and High Bridge Rd. Sound can have an annoying nature. He's wrestling with whether this is more objectionable than another allowable use. It's frustrating that there has been so little collaboration.

Kary Jablonka talked about how many would be needed to find something objectionable. There really isn't a number involved for this. Rather, we have to listen to the evidence, which means we can only consider those who have come and voiced an opinion, plus use the objective evidence provided. He is a bit uncomfortable with perpetuity, and feels there should be ongoing conversations for mitigating this. PS/21 makes an important contribution.

Mitchell Khosrova said that the Board has had difficult decisions to make in the past. If a request fits the description and meets the requirements, it should be allowed. Perpetuity seems to be the problem. Incredibly difficult sound standards were set from the beginning, all of which were met. If all of these restrictive requirements were met, what right does this Board have to deny the request? This land could have a development of 20 houses, which he feels would be more intrusive. Five years for the tent was given, during which time all the testing was done, and they never came near the agreed-upon sound limits.

There was some discussion about keeping the tent when and if the building was constructed. There would never be concurrent performances. The Board grappled with what to do now. In the past, a consensus was taken and then the attorney would draft a resolution to consider before a vote. Or, the vote could be taken tonight and then the resolution could be done.

Colleen Safford spoke again about hearing this 12 hours a day for 4 months a year. She wondered about living with the original decision as far as number of

performances. JP Henkel also wondered whether intermittency would help. Mr. Khosrova reminded the Board that the sound is within the set limits. Mr. Schmitt commented that other issues than sound may be present. Mr. Everett stated that sound does seem to be the only issue.

Dave Everett moved that the Board amend the SEQRA findings to allow the tent to be a permanent structure. This was seconded by Kary Jablonka. There were 6 Ayes and 1 Opposed (JP Henkel).

JP Henkel moved that the tent be approved using the 2005 findings for times and frequency of performances. Bob seconded the motion. Mr. Henkel stated that something has to be done for these neighbors. He knows that he would be livid if this happened to him, and he can't believe that the applicant is willing to do this knowing how disturbing it is to some neighbors. Mitchell Khosrova said that they have heard the objections throughout the entire process since its inception, and he resents hearing that nothing has been done. There was one Aye (JP Henkel) and 6 Opposed. The motion was defeated.

Kary Jablonka moved to approve the modification which would permit the tent to become a permanent structure. Adrian Ooms seconded the motion. JP Henkel thought that conditions as far as the frequency of performances and the lateness of operation could be made. The applicant indicated that they are happy with what they currently can do as far as frequency and hours of operation. There were 6 Ayes and 1 Opposed (JP Henkel). The motion carried. Mr. Henkel stated that he felt that this use is more objectionable than other allowable uses.

The meeting was adjourned at 9:33PM.

David Everett, Chairman

Respectfully submitted,

Marilyn Cohen, clerk