

Town of Hamilton
Planning Board Meeting
Wednesday, August 4, 2021, 7:00 PM
Hamilton Town Community Room
38 Milford Street, Hamilton

Present: Travis Dubois, Mary Galvez, Elaine Hughes, Michael Welshko, Bettyann Miller, Deputy Town Clerk Elisa Robertson, CEO Mark Miller, Kathleen Palmer, Planning Board Alternate

Absent:

Others: Ms. Allie Dunham, Mr. Mike Dunham (Via Phone from Cincinnati), Attorney Mr. William Heitz, Esq. (via Phone from Rochester), Mr. Clint Smith

7:07 pm Chairman Mike Welshko calls the meeting to order.

This work session has been scheduled to ask questions and discuss sound parameters with Mr. Clint Smith from Colden corporation regarding the AMD Holdings Special Use Permit Amendment to add outdoor activities to their use.

The Colden Corporation representative Clint Smith conducted a sound study at various locations around the neighborhood to gather ambient sound readings on July 10, 2021. Due to a miscommunication Mr. Smith is not present yet. Chairman Welshko asks if anyone has any basic questions regarding the report that he may be able to answer in the meantime.

There are none and Mr. Smith arrives within minutes.

Ms. Allie Dunham is here representing AMD Holdings. Her father Mr. Mike Dunham is joining via telephone from Cincinnati, OH; and their Attorney Mr. Bill Heitz is also joining via telephone from Rochester, Ny.

Chairman Welshko asks Mr. Smith to please give an overview.

Mr. Smith states that he believes that the goal of retaining his firm was to establish a reasonable baseline, or background sound level in a couple different weights and frequencies and to get a general understanding of how loud or quiet that area is. It is a rural area, it is quiet and the data reflects that. He begins a review of the report (see attached).

That day was low winds with some traffic; as a result of the transfer station; it was very representative of a weekend day and a standard mid-summer day. A standard calibrated meter with a wind screen, which blocks out wind. Wind does create pressure, which does affect microphones that is why they use them so that they can get an accurate true sound pressure level.

Three different locations were selected as nearby residential receptors surrounding the property.

They typically collect and find the averages of the Leq, (A weighted sound pressure level), as well as the C weighted equivalent pressure level. This is based on science and

A weighting represents what the human ear reacts to and perceives. The A-scale attenuates or

discounts the lower frequencies because the human ear is not designed to interpret and react to lower frequencies.

We are speaking at 500 to 400, Hertz, and our inner ear keys in on those specific frequencies.

That's why we utilize the A-weighted scale.

They measured in five-minute increments.

And then from there, he also provided a little bit of context into some NYS and DEC policy in the report. It is not the C-weighted scale, because of a focus on what is perceived. The study and the science is based on a wide scale to compare the C-weighted results to these stratifications in perception is probably not appropriate. It needs to be noted the NYSDEC policy is based on A-weighted measurements, so it would not be appropriate to compare C-weighted measurements to the policy.

A person may not be able to tell the difference between a 5-10 difference in dBc, the information is not there to be able to make changes in the C-scale, which is why the tables are based on the weighted scale.

Mr. Smith continues on to say that NYC code; though the locations are every different (urban vs. rural), is a good guide to allowing for a nice comfortable community residential dwelling but also allow for businesses to run and operate. The NYC code has an entire section dedicated to commercial music. They use a 1/3 octave band in excess of 45 and have set a flat limit of 42 dBA.

There are environmental issues to consider; insect noise on that road at night could be 48-50 dBA on some occasions. There are many factors to consider when trying to set a limit.

There is discussion about using the L90 average instead of a mathematical average.

L90 is the level that 90 % of the measurements exceed in a measurement. The "spikes" or highs and lows are discounted from the average. There is a lot of merit for using the L90 value for establishing background and community noise.

The L90 is not recommended for establishing a guideline, an average A-weighted (or C-weighted) may be the best option depending on which way the Board wants to go.

Getting a sound meter that measures the statistics would be a costly rental (\$120.00 a day) it would have the octave analyzer. A bare-bones A-weighted/C-weighted meter is roughly half that cost.

There is more discussion regarding the mathematical average vs. the L90 average. Music playing over a period of time has highs and lows that may be over a short period of time, where as traffic noise may be very sporadic. The board is trying to be as fair to the applicant as possible. Mr. Smith agrees that the L90 Measurement for this situation is appropriate.

Sound is not additive. If there is music playing and a truck goes past it may not increase the sound at all, or maybe by just a bit. The Codes Officer would have to make some judgement calls in the field. Spikes in sound are removed with the L90 readings so things like a car going by

or a loud sharp noise would be eliminated. Mr. Smith recommends five-minute readings. Chairman Welshko asks if there is any disadvantage to going for longer readings such as 10-15 minutes? The longer the reading is, the better the data, five minutes should be the minimum. This sound test found very similar ambient sound readings to the previous ones done in 2017. The board reiterates the reason why the 2017 study was faulty in its recommendations, measurements were made in A and C-scale, but all recommendations were in A-scale. These numbers are not comparable.

Mr. Smith discusses the history of the science behind sound measurement. The C-scale which is the sound that is sometimes more felt than heard, low bass noise was not addressed in the 2017 sound study with regards to limitations.

The example of a barking neighbor dog is brought up and Mr. Smith explains that much of sound is subjective. What one person considers sound another person may consider noise. It is very subjective.

The Town of Hamilton does not currently have a noise ordinance, the board is concerned with sound and regulating it as part of the Special Use Permit.

A board member asks if they are reviewing this part of the application only because there have been complaints. The answer is: "No because noise was one of the considerations before when the permit was just issued, now they are changing the use to be able to be outside."

The applicant (Mr. Mike Dunham) shares some concerns about their venue being the only one that has sound restrictions and that they are trying hard to follow and comply with all parameters set forth. Mr. Smith is asked to stay for a while in the case that more questions come up.

Chairman Welshko announces that the meeting has come to the point where the proposed draft conditions should be addressed. At a previous meeting the conditions were discussed and there was agreement between the applicants and the Board on all conditions except #11 which was regarding sound.

Chairman Welshko states that the board is prepared to move on with the presumption that all other conditions other than #11(sound) are agreed upon. Conditions 1-10 and 12-14 are all settled and tonight #11's parameters will be established.

The board first discusses the A scale which is the sound that people actually hear. He references the NYC code, acknowledging that they are very different communities, they do have a limit not to exceed 42 dBA. He proposes that that could be useful establishing a decibel level at a control point of the receiving nearby residence. He argues that what is acceptable in an apartment in NYC is probably acceptable on ones front porch here. He asks the board if they have any comment or discussion. He reminds everyone that his would be using the control points that Mr. Smith had established described in Table 5 in the report.

On the A-scale L90 this has an ambient noise level of 30 during the day and 26 at night; 42 would be a substantial increase in decibels over the ambient. The DEC guidance is for 6 decibels over ambient but that may not be attainable in this situation. The 42 would be at the control points.

There is some discussion about NYC conditions and whether the sound measurement is taken inside the residence and if that applies to this rural area. The board is just using the NYC ordinance for reference.

Moving the control point to the property lines of the residences as opposed to outside the barn doors was important because the CEO now does not need to trespass on to the property during someone's wedding to take readings. The applicants are responsible for impacts that take place off of their property, like dust and noise, etc.

The applicant argues that other noise may be happening that is not coming from their property when the measurements are taken and that they will be held to an unfair standard.

Chairman Welshko reminds them that these were actual measurements that were taken on a Saturday with the transfer station open, with vehicles going by.

Mr. Mike Dunham states that he thought he heard that the dBA would be the most appropriate to use instead of the L90 because that is not used by either the DEC or NYC code. He continues to state that the A-scale seems the simplest and easiest and that it would take into consideration the averages.

Board member Travis Dubois states that they are talking about the A scale and that there may be some confusion between the A scale and the L90. They have been talking about the dBA however the applicant may be better off with the L90; that would clip the spikes.

There is concern by the applicant that the ambient sound may vary from day to day and that by setting a parameter so low they may not be able to comply.

The Board explains that they are not setting the limit at the low, they are in fact doubling the limit. They are concerned that the applicant is trying to represent that the readings taken on July 10 were uncharacteristically low. However, they are consistent with the previous two sound studies. Mr. Dunham is not saying that, he just wants the parameters to be consistent. Chairman Welshko proposes at L90 dBA of 42 at any of the three control points. He asks the board if there is any discussion, there is none. The board is in agreement. They still need to address the low frequency sounds.

Again, there is discussion about changes in the ambient noise due to insects and other environmental factors. The L90 would discount 10% of those spikes that the applicant is talking about. Chairman Welshko voices some frustration over this discussion because it was agreed that they would get ambient background noise and that all would abide by what was measured; and apply a reasonable increase. A 12 dBA increase is reasonable, it is consistent with what NYC is allowing, which has substantially more spikes. The Codes Officer may have to use some judgement when taking readings. There are also three different control points.

Board member Dubois reminds everyone that the DEC recommends that 6 dBA over ambient can be considered intrusive, so this recommendation seems very reasonable considering it is four times the DEC recommendation.

Ms. Allie Dunham voices concern over comparing the L90 average to the dBA scale. Mr. Smith clarifies that the 42dBA is not an L90 reading it is the A-weighted scale.

There is a question regarding the readings at the control points or in the actual residences. Those readings from inside would rely entirely on the construction of the residence. Ms. Allie Dunham states that if the board is comparing this to the NYC standards and that they are comparing it to something that they really don't have the facts on because we don't have readings from inside the residence; like what is stated in the code.

Chairman Welshko offers to go back to the DEC recommendation of 6 dBA over ambient. She states that it would be 6+57 (Leq). She is corrected that it would be 6+30(L90).

Her point is the DEC is Leq not L90. However, Mr. Smith explains the that the L90 is just a statistic.

Chairman Welshko states that they are not using the NYC code as their own but using it for some guidance.

Mr. Mike Welshko: "If somebody, somewhere in the busiest city in the world, decided that 42 dBA was an acceptable limit for inside a residence. I could probably justify that it might be fine out here, on Poolville Road, in a quiet rural environment, sitting on my front porch. That's the comparison I am making." He is unsure how much more in depth the board can go on this. It is a very quiet, rural environment and the board is trying to come up with some reasonable accommodation for the venue while at the same time compromising with the peace and quiet enjoyment of the residents.

Ms. Allie Dunham is trying to understand all of the technical nuances here. She agrees that if the sound expert believes that the way the measurements and calculations that were done was proper then they choose to go with his recommendations. She is concerned that the L90 reading for the ambient is quieter than it normally is.

There is some discussion about the L90. It is to the applicant's advantage to use the L90.

Ms. Allie Dunham explains that she has never seen and has no experience with the L90, she has always used the A weighted scale with her sound meter that measures the Leq. This may be where some of the confusion comes in for everyone. At every event she takes readings and is able to know exactly where they are sound wise. Her meter does not take out the highs and lows. Because that number (L90) seems so low due to the averaging, there is concern that they can never meet that criteria.

Mr. Mike Dunham states that because the L90 is a complex reading that they would have to get a new different type of meter. His concern is that they would not be able to get a quick simple

reading without all kinds of equipment to be able to determine whether or not they are staying within the guidelines. The A-weighted meter is what the Dunham's have as well as the town. The board is proposing to use the A-weighted readings.

A board member states that the Leq is 57, however that takes into consideration every loud truck or farm equipment that has gone by. The board feels that it would have a hard time subjecting the local residents to that much constant sound pressure.

The board and Mr. Smith discuss using the A weighted meter and how to come up with a good way to approach the meter reading. If the applicant does the A weighted reading and it is below the maximum of 42 dBA for over 90% of the time that would be appropriate. The Town Board would have to decide if they want to get a more sophisticated meter.

Ms. Allie Dunham explains how she has always taken readings in the past and her methodology. She wants to be able to fix any issue that comes up at that moment not have to go and average the 5-minute reading.

The board has come to a consensus about using the A-scale.

The Board now turns their attention to the low frequency sound. They ask Mr. Smith to please give them a recommendation so the Codes Officer would be able to measure the low frequency noise in an appropriate manner. He states that he would refer back to New York City, they reference a specific range, one third octave band having a center frequency between 63 and 500 hertz. The low frequency seems more cut and dry, there are not the highs and lows that are associated with the A-weighted scale. This should be fairly easy for the CEO to be able to measure. The applicant and the CEO would need to upgrade their meters, the base sounds can be modified by asking the DJ to turn down the bass. It is difficult to attenuate bass noise but the best way is by going to the source and lowering it there. A reading on the C-scale will not be the same as a reading in the one third octave band. Mr. Smith feels that the 1/3 octave band is the most direct way of measuring low frequencies.

Chairman Welshko asks the board if there are any questions or discussion about that.

It is recommended that both the Town and the applicant need to have meters that can measure these different scales and frequencies, there are many makes and models. They are all calibrated to the same standard. What it comes down to is that the applicant, in both cases (A scale or low frequency) will have to modify the sound at the source.

The applicant will be able to do their own measurements and modify the sound immediately instead of waiting for a complaint where the CEO must go and measure. The applicant has reached out to neighbors and has told them to call her if it is too loud, so that she can make adjustments. The goal is to fix things in the moment and not wait for a complaint to come in.

The Board decides to go with the guidance from the NYC code. It states that the sound shall not exceed 45 dB in any one-third octave band having a center frequency between 63 and 500 hertz. That is not an average, it is a straight reading.

There is more discussion about the different types of meters and measuring capabilities. Mr. Smith can make some recommendations as to what model reader would be easiest to use and do the things that need to be done.

The board also mentions the three control points that are stated on page 7 of the Colden report.

The Board discusses nighttime reading and daytime readings. They decide not to have separate readings for daytime and nighttime. The board is hoping to wrap up the conditions so that they can be passed at the next meeting scheduled for August 10, 2021.

The applicant's attorney was sent a list of proposed conditions and he made some modifications that were sent to the Town Office at 5 pm, right before this meeting. The Board was asked if they got them and if they are acceptable. The Board has not really had the chance to review them; and they also see some issues. The Board was under the impression that other than condition #11(sound) all of the other proposed conditions were settled.

Ms. Allie Dunham states that there is not much changed just a few words here and there. Mr. Mike Dunham states that there was some wording that needed to be changed and some corrections needed to be made. They forwarded it to Nadine (Bell, town Attorney) and that these wouldn't bother anybody.

Chairman Welshko refocuses the board to get the sound condition completed first.

Resolution 2020-: Motion to add the following condition to the proposed conditions regarding the AMD Holdings Special Use Permit Amendment Application The applicant shall comply with the sound recommendations established by the Planning Board as set forth by Mr. Smith of the Colden Corporation during the Planning Board work session on August 4, 2021; more specifically, sound levels shall not exceed an L90 average of 42 dBA at any of the 3 control points identified in the Environmental Noise Monitoring and Guidance Report, dated July 23, 2021, prepared by Mr. Smith, and sound pressure shall not be in excess of 45 dB in any one-third octave band having center frequency between 63 hertz and 500 hertz (Colden report page 4 dated July 23, 2021); sound may be measured at any of the three control points:

- i. **1676 Poolville Road – nearest residential receptor (at telephone pole)**
- ii. **1385 Smith Road – nearby residential receptor (shoulder of the road)**
- iii. **1604 Poolville Road – nearby residential receptor (shoulder of the road near gate with “posted sign”**

Motion: Bettyann Miller

Second: Travis Dubois

Vote: YES – 5 NO - 0

ADOPTED

The Board turns its attention to the applicant's proposed conditions, which were the conditions that were proposed by the Planning Board and the applicant's attorney has made some modifications. The Board members did not get this document until after 4 pm on the day of the meeting. The Town Attorney forwarded it to them after her review.

There some minor editing changes and then others are more significant. Ms. Allie Dunham says that the language that has been changed is merely to clarify a few things. The changes are made in different colors.

There has been a change to number 1 (please see attached). The section "in a day" is removed and during any one event has been added.

Chairman Welshko asks if they plan on having more than one event in a day?

Ms. Dunham says no but it may depend on the nature of the event, there would never be more than 300 people at one time.

Mr. Welshko states that there is a big difference between an event that 300 people attend an event that there's maybe no more than 300 people there a time. But there's people coming and going all day and the total attendance is 2000. That's a huge difference in the impact of the area.

A Board member asks about two separate events? It has been stated in the past that they are not going to do that. Ms. Dunham states that their parking has determined their occupancy so just like any other place, like a restaurant, there capacity is counted at any one time. Mr. Mike Dunham states that if they have 50 people there in the morning setting up and then a wedding of two hundred, that you cannot count that cumulatively. What it means is that we cannot have more than 300 people at one time in the facility.

Chairman Welshko believes that that was the intent of the board to make it as it is worded. There is a big difference between an event that 300 people attended and an event where there were a different 300 people every two hours.

Mr. Mike Dunham gives different scenarios for the board to consider. He claims that there has never been a discussion about a total number of people in a day.

Mr. Welshko believes that it has been discussed and he can look in the previous minutes. The original document states only that maximum occupancy is 300 people including staff. He is not

ready to make a decision on anything tonight. This altered document is brand new and the Board has not really had time to review it. However, he feels that comparing this venue to a restaurant is like comparing apples and oranges. In addition, the Board feels like this is a significant change and that the public did not have the chance to review and comment on it. The Board has to take that into consideration.

Mr. Heitz asks if there is a single business in the Town of Hamilton that has a daily occupancy limit. Mr. Welsho states that he is unaware of any, but to compare this to a restaurant is like apple and oranges. People got to a restaurant for a relatively short period of time, people got to an event and they stay for hours. This venue is the only one of its kind in the Town of Hamilton. The board makes the decision not to make a decision on the new materials that were just presented to them. They would like to take some time and go back through their notes. There is the regularly scheduled meeting next week on August 10 and they will address this then.

They will do a quick overview of the other proposed and then modified conditions now (please see attached document).

- Number 1 – Changes to be discussed.
- Number 2 – The applicant wants to be able to capture any weddings or events in that last weekend of October. Changed to ending date November 3.
- Number 4 – Wish to add smoking areas to places where people can be drinking. The applicant will take responsibility if people want to have the doors open for the smokers, if it becomes a “hang out” space to monitor the sound (both music and conversational) so it is not a nuisance to the neighbors.
- Number 9C – This change is to make it less ambiguous. They specifically listed the activities that they also wanted to include such as horse drawn carriages, vintage truck rides and tours. These would not be big groups. The Board would like to discuss this a bit more with our attorney. There is some concern about these becoming large enough activities that they should be limited to the event areas. Some of these things can be ignored because it is normal things that anyone would do on their property.
- Number 12-13 – will be covered by #11 if another sentence is added.

The Board would like to think about and consult with their attorney to address condition one at the next meeting. The applicant really wants to be able to hold that “one event” that may need/want rolling attendance.

The Board assures the applicant that she can give tours offering the outdoor aspects of the permit. The final permit will be approved after some discussion and negotiation of the first condition on August 10, 2021. The Board asks if they have any events between this meeting and the next. No, they do not.

They did have an outdoor wedding that they were permitted with a waiver and all went well and there were no complaints.

The Deputy Clerk reminds the applicant that they still need the large format site plans.

The new trees and planted as well.

The board signs their vouchers.

Resolution 2021-43: Motion to adjourn.

Motion: Elaine Hughes

Second: Travis Dubois

Vote: YES – 5 NO - 0

ADOPTED

Respectfully submitted by
Elisa Robertson
Deputy Clerk