

Town of Hamilton
Planning Board Meeting
Monday August 7, 2017, 7:00 PM
Poolville Community Center
7484 Willey Road, Hamilton

Present: Chairman Darrell Griff, Elaine Hughes, Bettyann Miller, Mary Galvez, Bill Nolan, Town Attorney Scott Chatfield, Deputy Clerk Elisa Robertson, Town Clerk Sue Reymers

Others in Attendance: Mary Jane Miner, Steven Skollar, Ronald Burstein, Allie Dunham, Drew Dunham, William Heitz, Esq. (via telephone).

Chairman calls the meeting to order at 7:00 pm.

Mary Jane Miner, Earlville Road, Earlville, NY; Tax Map # 199.12-1-19, Subdivision follow – up

Chairman Griff asks for Mr. Chatfield to offer some legal advice on this. He explains the circumstances. No illegal lots have been created. Ms. Mary Jane Miner speaks to the circumstances surrounding this subdivision. They confer over the tax map of the parcels in question. Town Clerk Reymers (one of the parties involved) helps to clarify things for Attorney Chatfield. Chairman Griff would like to clarify things for the record.

Resolution 2017-56: Motion amending the previous approval of Mary Jane Miner's Subdivision Approval, eliminating the condition which required the owner of lot 28 (Nancy Miner) to buy the portion immediately behind her existing lot.

Motion: Bettyann Miller

Second: Elaine Hughes

Vote: Aye – 5 Nay – 0

ADOPTED

Drew Dunham, Special Use Permit Application, 1647 Poolville Road, Earlville, Tax Map #184.-1-35,36,37

The purpose of tonight's meeting is a consultation with a sound engineer, Mr. Robert Andres of Environmental Safety Associates.

Ms. Allie Dunham informs the board that their attorney (Mr. William Heitz) could not be at the meeting but would like to be included via telephone.

Chairman Griff consults last month's minutes to see where we left off.

Mr. Andres has a written analysis of the Napierala sound study. He has copies of his analysis for the Board to review. The applicants also have a copy.

Mr. Andres speaks to the board about his review of the Napierala sound study.

Mr. Andres first gives his background, and how he has worked with other cases that are similar in nature to this one. He discussed the weighting of the scale, they only measure decibels (dB) on the A scale. As a general rule that is a fine standard, however, the new equipment that is out there has the ability to create louder bass sounds. There is also no mention as to whether the readings are maximums or averages. He took a reading this afternoon over about 5 minutes on the front lawn at the site. His readings averaged in the high 30's, the report says high 40's however, they need to determine the L90 which is the ambient noise level that is observed over 90% of the time.

There was a DJ producing music and they were taking readings at various places. However, there is no indication that it was the same music at all times, and that it was the same signature at all times. So we do not have an exact idea. It is a good start but we do not have any real idea of what the sound stopping capability of the building is. We do not know what instrumentation was used in the study and how and when it was calibrated. We can assume that the ambient noise in the area is between the high 30's and 40's.

Mr. Andres states that there will not be complaints as long as the sound levels are no more than 10 dB above ambient noise level at the nearest property. He thinks that his can be done. He continues on to discuss individual properties. He discusses the position of the barn doors and the new entrances that will be created on the back.

Mr. Andres describes the barn and comments that the acoustics are quite good inside. He states that good acoustics means that there is clearer sound and therefore less volume is needed. There are many sound leaks in the building. He comments that in comparison to other venues that he has seen this one is quite manageable. He offers to take questions. There is some discussion about the graph that he has provided (see attachment).

Attorney Chatfield asks how to measure the amount and the "annoyance" factor of low frequency sounds "A" weighted scale does not address it at all. C weighted is the frequency used to measure low frequency sound. Chairman Griff asks how C weighted measurement is found. Mr. Andres recommends that he measuring be done in C weighted scale. Attorney Chatfield asks what the range is for low frequency sounds. Mr. Andres replies that they can be as low as 20Hz but they typically are in the 40-50Hz range at the low end and can go up to about 500. There is a need to address it.

He explains the graph given to the board. The frequency is on the bottom axis and that intensity is on the vertical axis. Low frequency sounds do not dissipate in air, therefore they carry much farther.

Board member Galvez asks about the effectiveness of "sound plows" that hang from the ceiling. Mr. Andres replies that they are really meant for sound that is bouncing around inside a building which is not the case here. He continues on to say that the more definition there is to the music the quieter it can be.

Chairman Griff asks what his recommendation would be, do another sound study?

Mr. Andres states that they should be careful about laying out the requirements, because it is really a performance standard. They do not really care how loud it is in the barn, they care about the sound that is leaking out.

He gives the example of a local case in Cazenovia. They now use light amplification. One of his concerns about the application is that they want to rent it out for different things, and if they do that they have to have some method of controlling what is in there.

Ms. Allie Dunham: "Well, we started out broad just to give us the option but our focus is weddings, so that is what we are going to stick with."

Chairman Griff asks if they need to amend their application.

It is determined that they do not need to amend, but that these things can be determined later on. The board is still considering the environmental significance right now and they need more information to do so. Part of that will be fashioning performance standards; the zoning ordinance permits this use by Special Permit.

If we can reasonably conclude that the standards in the code are satisfied by the project design, as modified as necessary, a special permit should be issued. The challenge becomes setting conditions and then potential enforcement issues; if conditions are violated. Additional background readings etc. are not as important at this time, as are the fashioning of the performance limitations.

Placement of the band/entertainment in this case is important; he suggests the north end and at the south having the bathrooms to act as a buffer for sound.

It is determined that Mr. Andres may be most helpful in the acoustic design of the project. The next question is to try to come up with a range of anticipated costs for Mr. Andres services, assuming the board can come up with a scope of services that are sufficiently detailed enough for you to perform such services.

Mr. Chatfield asks how, as a condition of this, one would know where to place the sound system, and are there ways to design the sound amplification system so as to minimize the potential impacts off site?

Mr. Andres states that this is not an acoustic problem, the barn is acoustically good. The best way is always to distribute the sound, putting speakers in down the road rather than having to great big speakers. The holes in the walls need to be closed as well, these can all be conditions.

That is precisely the kinds of advice that the board is looking for.

The board will have to decide if they want to set the limit at the source or at the residence.

Mr. Andres would recommend in a rural setting such as this that the sound level at the residence be no more than 5dB over the ambient level.

Board member Galvez asks how to know what the sound level should be at the source to get the proper level at the receiving end?

Mr. Andres explains that there are formulas to figure that out, that sound decreases 6dB every doubling of the distance.

Chairman Griff asks if they should write the conditions based on the C weighted scale?

Mr. Andres replies "yes", C scale takes bass sounds into account.

When asked if another study on the C scale need to be done? No, because of the sound leaks but also you can control the amount of sound within the barn.

Mr. Chatfield explains that the approach being taken earlier, trying to set a condition that says you can't broadcast more than X dB's is not really the best approach. They need to establish criterion that would not be exceeded at the properties and then work with Mr. Andres and the applicants to fashion their plans so that that goal can be attained. Some sort of performance would have to take place to see how well the goal has been accomplished and then see if additional things are required to mitigate sound.

The type of music is also an important factor in sound perception.

Mr. Griff confirms if there would be little or minimal cost for Mr. Andres services to work through this. He asks if he can give some sort of figure, just to give the applicant some idea.

Mr. Andres states that any additional work will not exceed \$1,000.

Mr. Chatfield asks what we have occurred thus far about \$1,000? Mr. Andres agrees. Attorney Chatfield then addresses the applicant to see if they are willing to incur such costs. He informs their counsel that the question was directed to them. Mr. Heitz asks if there is a sound ordinance and it is confirmed that there is not.

He expresses dismay that in his opinion the board is using his client as a test case for forming a sound ordinance. He feels that all of the burden is being put on to his client; when they have been cooperative. To him it seems as though the board is using the Dunhams to fashion legislation. He means no disrespect. He mentions an application that was approved at a previous meeting where a dB level was set as a condition. He would like to find a way to get the board the information they need without having multiple meetings and costing his clients significant amounts of money.

Mr. Heitz: "I do take exception that they (his client) have to go through this process while I sat there and the Poolville Country Store had to do nothing of the sort. I do not know why, maybe it is an issue that has just come up and it is now suddenly important to everybody, but why?"

Chairman Griff: "If you will let me interject here. The Poolville Country Store... you saw the conclusion of over 3+ years worth of meetings."

Heitz: "You did not drag in the expert as far as I know..."

Griff: "You have no idea what took place for the 3+ years before that; so you are making comments about something that you are quite frankly ignorant of."

Mr. Chatfield explains some ways in which the two applications are very different. Density of population, buildings, and foliage as well as a higher ambient noise level are mentioned. He goes on to explain that the board is trying to find a way to grant his clients request without

regretting the decision because of the potential for noise. The board could just deny the Special Use Permit, they can file an Article 78, and it can all be sorted in court as to whether or not we have the right to go through this process or not.

Mr. Heitz states: "We are not against going through the process, and I am not debating that but frankly I do take exception to being called ignorant and I hope that is on the record."

Both attorneys continue to debate the length, timeliness, and cost of the process.

There is some interjection from the audience.

The board cannot agree to a timeline for approval without all of the information being before them. There is continued discussion concerning different types of dB levels to establish a standard for this property as well as Mr. Andres role in helping determine the best types of mitigation. Mr. Andres can help the board set a performance standard, so that when they open they are in compliance. Mr. Andres will also be needed to help test the sound after all of this is completed.

The board is trying to determine if the applicant is willing to pay for those services. Mr. Heitz is concerned about his client putting a lot of money into this without a positive outcome. He requests that there be come estimation of when a decision will be made.

The attorneys debate further.

Chairman Griff explains that the board's goal is to have enough information to make a reasoned decision, one way or another. The board could make a decision now. They do not wish to drag this out and make it more expensive; by going through the process and possible consequential Article 78 proceedings, from where ever that may come. He wants to make sure the board follows all the steps and performs its due diligence so that whatever decision they make will hold up in court. The board is tasked with doing what is best for the whole town, all the residents, whether it is the applicants or their neighbors.

Mr. Heitz asks again if the board can come up with a timeline. Chairman Griff states that he does not feel that the board would be comfortable with that. Mr. Heitz again asks for a possible decision date.

Ms. Allie Dunham: "I guess what we are asking for is that Mr. Andres give his professional opinion by the next meeting, so that the board has sufficient information to proceed. That's what we are..."

Mr. Chatfield explains that Mr. Andres has given his opinion already that they need to do changes to the building...

Mr. Drew Dunham: "We need to figure out what those changes are..."

Chairman Griff explains that is what they are trying to do; Mr. Andres needs to get paid to do that. He asks again if they are willing to incur those costs to work with Mr. Andres to mitigate the sound issue.

There is some discussion and explanation about what a "performance standard" is. The applicant states that they were under the impression that no other testing was needed.

Mr. Chatfield suggests to the board that they proceed without the applicants consent, do what needs to be done, reach a conclusion as quickly as possible. If it is to grant the approval, there be a condition of reimbursement for the expenses incurred. If it is to deny the approval, we will sort it out in court.

Mr. Heitz expresses his befuddlement about why the board will not just set a dB limit and be done.

Mr. Chatfield explains that this question has been answered numerous times already. He expresses his frustration with the ongoing debate with the applicant's attorney.

Chairman Griff states that he feels that the board would like to see the applicants work with Mr. Andres to mitigate the sound issues on the facility and then establish a maximum at the source versus a maximum at the property lines.

There is discussion about setting the limits at the source and keeping the sound 10 dB at the nearest or most affected property. There is also discussion about the ambient noise and the L90.

Mr. Chatfield asks Mr. Andres: "Which method of monitoring the performance would you recommend? Setting a decibel limit on the C Scale at the property line of the applicant or at the structure or property line of the receiving property?"

Mr. Andres: "Depending on how restrictive you want to be on your limit, you would do it at either the residence itself of the receiving land use property line. You would not do it at the generating land use property line because it doesn't matter there."

Chairman Griff asks how to figure out what it needs to be at the source to keep it below the level at the property line? Attorney Chatfield states that is why the test is needed. They stress that the improvements need to be done first.

Board Member Galvez states the she is unclear as to the board's role, she feels that he board should establish a limit and not be concerned with how the applicant makes that happen. Mr. Chatfield explains that we do not want them to be out of compliance the first day they open. The applicants offer that they will start up and then as need be make modifications to the building to come into compliance. Mr. Chatfield warns that this would be a constant enforcement battle that the town does not want. Mr. Chatfield forcefully states that all the board is trying to do is come up with an acceptable sound level to both the applicants and the neighbors with as little trial and error as possible.

Mr. Andres discusses some of the things that he would recommend right away, such as building vestibules by the proposed rear entrances is one example. He discusses "pink noise" and how that is used to establish acceptable noise levels.

Mr. Drew Dunham asks if that could be a condition, could be established at this time based on Mr. Andres opinion here? If they are too loud then they have to turn the dial but it is not putting the brakes on the project. Mr. Andres would be the one to write the conditions.

Attorney Heitz reads from the DEC code with regards to noise, he is concerned that the board is requiring the applicant to do the sound mitigation before the approval of the application. He states that the applicant is not opposed to mitigation requirements. He states that typically you would see a board establish a limit and then not care how the applicant gets there as long as they do not go over. He asks that the board let them know what the mitigation efforts should be, that they will comply with them, and then give them a ceiling, and they will live with it.

Chairman Griff asks the Board to please give their opinion.

Board member Miller states she would like to know what the actual ambient noise levels are.

Board member Nolan would like to see a number whether it is the DEC's or our board's decision he would like to see what it would be after the mitigation has been done. He could not vote positive right now.

Board member Hughes agrees, but she feels that it is a problem that can be solved without spending a lot of money. "This could happen if everyone can agree, and get the noise level where it should be, with the conditions. But we really need some numbers."

Board member Galvez states that everyone needs to remember that this is a big change to the use of that property, and we are not going to rush into anything. The important thing is that whatever number is acceptable at the receiving end. "I think that how the applicants get there is something that they need to work with Mr. Andres." It is not something that she could vote positively on right now. She reminds everyone that they are all neighbors, this is a small town and thinks that they can come to terms in a congenial way.

Mr. Chatfield reminds the applicant that the numbers from the Napierala report and Mr. Andres preliminary findings are very different with a 18-20 dB difference in some cases. He also reiterates that the effect of noise, especially the low frequency sounds, is best dealt with on the C scale. Mr. Chatfield consults the chart that Mr. Andres brought, and points out that in the frequency range for bass noises the "annoyance factor" is significantly different between the two different (A and C) scales. He stresses that those are the kind of inputs that the board will need to fashion the appropriate level at the individual receptor sites, because they are so different in this setting. It does not matter whose services they use to fashion the kind of modifications for the structure that will allow them to get to the performance standard that we need to have. The board needs to get that report from Mr. Andres as to his suggestion, in these circumstances, what is a suitable sound level for this site. The board needs to make sure that whatever conditions they set that there are no complaints.

Chairman Griff asks again if the applicant is willing to work with Mr. Andres. He would like to keep this as neighborly as possible.

Ms. Allie Dunham: "I have one question and that is do you feel that if he goes through and writes out his recommendations for us to implement, conditions on approval, if he gives you

those recommendations, is that sufficient for you to then make a decision? If he finds a number that he thinks we need to stay at, and he gives recommendations for mitigation or whatever it may be in his write up, do you believe that that is sufficient information for you to come to a conclusion?"

Board member Hughes states that it should be.

Mr. Chatfield: "On the issue of sound. He can recommend what the conditions would be."

Chairman Griff: "Well, we have been through this quite a bit tonight. It has been understandably heated on both sides. So, as I said, I guess we put it back in your court with how you want to move forward with this."

Ms. Allie Dunham: "That is kind of what I was getting at, if you believe that you would feel comfortable with the sound issue, upon his report of the information that he took tonight on the property and everything...if you would feel comfortable with his recommendations then we would proceed."

Chairman Griff: "Is that agreeable to the rest of the board?"

Numerous voices overlapping.

Mr. Chatfield: "... we would proceed means? The only reason we asked the question is because they wanted to know how much it was going to cost. The only reason we agreed to go through this process was to get that number so that they could either say 'yes, we will underwrite those expenses' or 'no we won't'. That was consistent with the chairs desire to do it amicably,, and I still do not hear an answer."

Chairman Griff: "Right."

Mr. Drew Dunham confirms that the cost would be about a thousand dollars.

Mr. Chatfield states that Mr. Andres has already incurred some money to come and do what he has already done, so it could be possibly a thousand dollars more.

Mr. Drew Dunham: "Let's go ahead with it."

The applicant has agreed to incur the cost to work with Mr. Andres to give the board some information regarding ambient noise and sound mitigation. We are reasonably certain as a board that given that we can put to rest the sound issue.

Mr. Chatfield clarifies: "So, we are looking for two things.

1. A report from Mr. Andres summarizing all of these things, making recommendations, coming up with numbers.
2. Have Mr. Andres give the applicants and us guidance as to what mitigation measures would be appropriate to help ensure that the day they open their doors they won't be in violation of the limits that are going to be recommended to us to include in some kind of conditions. Is that correct?"

Mr. Heitz agrees that it is a good way to proceed. That way the mitigation efforts can be included in the finishing of the barn and as part of the plans.

No action needs to be taken at this time.

Mr. Chatfield asks if noise was the only issue that had been identified as a possible problem that was of large impact. There was no or small impact on lighting.

Mr. Chatfield clarifies for the board that just because something was checked “no or small impact” on an issue does not mean that the plan as proposed is perfect. It just means that you do not need additional information to be able to fashion appropriate conditions to make it acceptable.

Board member Galvez inquires about the status of the public hearing. She is informed that it already took place.

Resolution 2017-57: Motion to approve Planning Board Minutes from July 17, 2017.

Motion: Mary Galvez

Second: Bill Nolan

Vote: Aye – 5 Nay – 0

ADOPTED

Next Meeting to be held on September 12, 2017 at 7:00 PM

Place to be determined.

Resolution 2017-58: Motion to adjourn.

Motion: Bill Nolan

Second: Elaine Hughes

Vote: Aye – 5 Nay – 0

ADOPTED

Respectfully submitted by:

Elisa E. Robertson

Deputy Clerk

Town of Hamilton