

Members Present:

David Everett, Chairman
Mitchell Khosrova, Dep. Chairman
Robert Leary
Jeffrey Lick
JP Henkel
Adrianus Ooms
Kary Jablonka
Tal Rappleyea, Town Attorney
Paul McCreary, Town Engineer

Public Present:

See attached list
Stenographer present- (a copy of the transcript is on file)

Chairman Everett called the meeting to order at 7:01 PM. The Pledge of Allegiance was recited.

Generation Impact withdrew their application before the Board. They will be contacted for a written confirmation of the withdrawal.

Mr. Michael Polemis of PO Box 204, Old Chatham, NY presented an application for a deer fence. The fence will be high tensile wire with eight (8) foot high posts. The posts will be wooden not electric and the fence will run about five (5) feet back from the road. Mr. Polemis has verbal approval from the Columbia County Highway Department and he does not need Town Highway approval since Route 13 is a county road. Mr. Polemis was asked to provide a survey map showing the fence along County Route 13. A variance is required for the entire fence due to the height of 8 feet. Reference was made to 180-4 Definition of a Structure of the Town Code. More discussion ensued whether a survey map was necessary unless a setback variance is required. Mr. Polemis was directed to speak to Building Inspector Walt Simonsmeier regarding this.

A motion was made by Kary Jablonka to approve the October 30, 2013 meeting minutes with additions made by Mitch Khosrova, seconded by Mitchell Khosrova, motion carried.

Jacob Meyer of 4225 Route 66, Malden Bridge, NY 12115 requesting a Special Use Permit regarding converting the first floor of an existing two story detached structure into a living space which would create a two family residence.

Informational

Mr. Meyer submitted an EAF form and a document from Claverack pump regarding the well. According to the Columbia County Health Department, this septic system can support a three bedroom residence. Mr. Meyer spoke to Walt Simonsmeier and was informed that there is a C of O for this property and for the home above the garage. David Everett asked Mr. Meyer to ask Walt to provide him with the C of O for the Board. Kary Jablonka made a motion to find a negative declaration for this application and commented that a Special Permit with the condition of updating the C of O be considered. Bob Leary seconded the motion, carried. A Public Hearing is set for December 18, 2013 at 7:00PM.

Jeff Lick commented that he had some questions regarding the new short form SEQR stating that there is no rural description on this form. The closest description states non-agricultural. He questioned number 5 on the form and stated that a precedent is being set as far as the new zoning code is concerned and stated that the current Comprehensive Plan is inconsistent. He stated that this needs to be addressed at a ZIC meeting. Tal Rappleyea commented that this encourages multi-family dwellings and town houses.

Special Use Permit Modification for the PS 21 performance arts facility which is owned by Questaterra, LLC located at 2980 State Route 66.

Public Hearing Continuation

Chairman Everett asked Ms. Brandee Nelson of Crawford and Associates to introduce herself, Mr. Ken Andria of Acoustic Dimensions and Mr. Evan Stoller, architect, to the audience and the Board. Each member of the Board introduced themselves as well to the audience. The Chairman also introduced Town Attorney Tal Rappleyea and Town Engineer Paul McCreary. He explained that this was a continuation of the public hearing from last month and that the Board received a letter from Mr. McCreary which he asked Mr. McCreary to summarize. There were also approximately one dozen emails also received today in support of PS21 providing a variety of benefits of this project. An email from Colleen Safford was also received raising a variety of issues with respect to this project.

Ms. Nelson gave a recap of the information previously heard at the public hearings up to this date. She stated that PS21 was approved through the SEQR process about 11 years ago with the first phase being a tent and the second being a fully enclosed performing arts facility. She explained that this was Phase II of the project which has been in operation for the last 8 seasons and which has been approved for continuous operation. This phase of the project will begin in the spring. Board members walked the property themselves on November 23rd and viewed the structure in its north/south orientation with the north end open to the air. PS21 has now recognized that this facility has developed as a seasonal venue and the proposed use will continue to be seasonal in operation. She stated that since the beginning of this project, this structure has been proposed to be bermed into the hillside taking advantage of the natural topography. The seating allows for a better acoustic experience for the audience with more projection of sound.

Ms. Nelson explained that this proposed "shed" location was approved for the footprint for the original Phase II building. The environmental review for that location had been done previously but the footprint is now smaller than what was originally approved for Phase II. The west side of this building is fully enclosed and partially enclosed on the north and south sides. According to Architect Evan Stoller, only 24 percent of the structure is open. This building is subject to the same limitations on events as far as day, evening, weekday and weekend as well as the total number of events. They would continue to be in compliance with noise limits which seem to be the focus of concern of the Board. Mr. McCreary had suggested providing a berm on the northern side of the property which PS 21 is now proposing to do. A plan showing the location of the berm was presented to the Board that shows the tree line that runs up the crest of the north/south ridge of the property. There is also a tree line that runs perpendicular to that east to west. The berm will be in the southwest corner of the intersection of the tree lines. The height of the berm would exceed the low point in the roof line which would cutoff sound to the east. The west side of the building is enclosed and there have not been any concerns to the south due to distance as well as Crellin Park and Sonoco Crellin located to the south of this project.

PS21 would like to add to their contracts with their performers, the noise and hours of operations limitations so that they can have additional control over their performers. Chairman Everett asked if PS 21 would include that provision in their contracts for weddings and community events and community organizations that use the facility? Ms. Nelson stated that she believed it would be a standard provision of the contract. Chairman Everett asked Ms. Nelson if she thought that weddings and community organizations would have the sophistication to know what the decibel level is and have the ability to control it? It would be up to the person with the contract to comply with the sound requirements.

Mitch Khosrova asked if the sound requirements are staying at 105 decibels at the source? He feels that this would be very difficult for anyone to enforce at the property line especially a DJ using an amplifier. He asked Ms. Nelson to come back to the next Board meeting with a more practical and enforceable place for enforcement. Chairman Everett agreed with this saying that it's unrealistic to ask a community group to monitor their sound levels at the property line. He believes that there will be some enforcement issues and compliance issues for certain groups that will be at PS21 and this Board needs to figure out how to deal with that. He stated that it is this Board's charge to address any noise issues so they don't happen in the future. More discussion ensued with Architect Stoller regarding noise enforceability at the property lines.

Chairman Everett suggested discussing other simpler issues that were discussed at the last hearing to see what progress has been made with respect to those. The Fire Chief had visited the site but the Board and Crawford and Associates have not received anything from the fire department thus far. Ms. Nelson did state that Chief Pratt was concerned with getting water to the site if there was a fire but once he was told the building would be fully sprinklered he didn't have any further concerns. The dry hydrant has been used during fire drills so the fire department is familiar with it. The Chief did not seem to have any concerns about circulation. The only thing the chief asked for was to provide a Siamese connection on the building. Chairman Everett asked Ms. Nelson to get an email or letter from the chief indicating that he has reviewed the plans and that they are acceptable to him or if he has any questions. Mitch Khosrova suggested giving him a draft to sign might be easier.

Chairman Everett asked Ms. Nelson if the SWPPP has been submitted yet for the SEQR review and she stated no. He also asked whether or not there would be any potential changes to the deed restriction or the conservation easement. Ms. Nelson commented that there would not be any changes. Tal Rappleyea is going to review the developer's agreement and identify any kind of changes and submit them by the next meeting. Tal will also review the hours of operation and consistency of those with respect to the various permits and approvals that have been issued. Ms. Nelson stated that they have already approved the hours of operation to be 11:00 am to 11:00 pm Sunday through Thursday and 11:00 am to 11:00 pm Friday and Saturday. A source level sheet was presented to the Board. Mitch Khosrova stated that an email from Attorney Scott Longstreet stated that an "event" is specifically defined as not to include practicing or rehearsals but it is actually like the actual event. Ms. Nelson commented that any rehearsals that extended beyond the time limit would have to comply with the sound limits.

Ms. Nelson stated that they have not heard any response from NYS DOT whether they had any comments one way or another regarding this project. There will not be any changes to the entranceway.

Ms. Nelson introduced Ken Andria with Acoustic Dimensions, the acoustic consultant for PS21 and Evan Stoller, the architect for the project. Mr. Andria would be able to answer any specific questions the Board has with regard to both sound transmission and building design and construction and how they relate to sound transmission. Mr. Stoller has been working on an acoustic assessment of the site. Chairman Everett and Mitch Khosrova also asked about the color of the building and if the "earth tone" color would change. Mr. Stoller stated that he thought that would be an earth tone or natural rustic tone. The roof may be white in color since a white roof is thermally much more efficient but they are not ruling out a dark colored roof either. Chairman Everett asked that they decide on the colors for the next meeting. The chairman asked Ms. Nelson if the visual assessment that was done with respect to the original project and the line of sight drawings were accurate or if they needed to be changed at all? She stated that PS21 was proposing around 44 feet as the total building height but they are down to about 37 feet now so it is lower on the horizon. The current height of the top of the tent is under 30 feet so they are staying within the footprint.

Kary Jablonka asked Mr. Andria to explain his background and what he brings to this project as an acoustical structuralist. Mr. Andria explained his educational background and job experience. He also explained that his task is to analyze the new location and compare it to the existing structure and rationalize how they are similar or different and what the resulting sound levels will be at the new facility. He showed a map with the locations of the existing neighbors and explained that different things affect the propagation of sound with distance being the biggest factor. The way sound is attenuated over distance is longer therefore doubling of distance only goes down 2 DBs. For very large distances, the percentage that is changing is very small so that the decibel drop or increase is also very small. Mr. Andria continued to explain the decibel impacts and that the new system is still under design. The Board continued to discuss the location of the speaker level which will be mounted below the top of the side elevation. Jeff Lick commented that this was an important point because the building looks like its going to be a trumpet aiming for the east. He feels that if this is going to mitigate the east then the Board needs to understand this and this is more of a concern now. Mitch Khosrova stated that he had mentioned at the last meeting whether this meeting was going to be premature and if PS21 was going to be ready. The design of the building and the speakers have not been figured out yet according to the architect and sound engineer. Mitch also commented that he was having trouble with how the applicant is expecting to make a decision on some type of finality when this Board has not been told what's going to actually be there as well as what the fabric will be and what the actual mitigation will be. He explained that he didn't know what questions to ask the engineer based on this because things have not been decided yet. Ms. Nelson disagreed with Mr. Khosrova stating that she felt having Mr. Andria and Mr. Stoller on board would help her better articulate to the Board the seating inside the building and the maximum mounting height for the speakers. Mitch asked Ms. Nelson that with what the Board knows now, can they make assurances to the people north of the property that they are not going to have problems? Ms. Nelson stated yes. Whether or not the building will have any particular type of siding or certain color, this will not affect the sound transmission. She asked the Board to give them some flexibility on these issues. Mr. Stoller stated that if they specified the speaker system now it would probably be different once the building was built because the technology is always changing. They just

want to describe the largest portions of the project that have the biggest impacts on the changes in the decibel values. There will be decreases in sound levels at the property lines depending on the property.

Chairman Everett commented that at the site visit it was explained that the height from the ground level to the peak was going to be around 15 feet. The width was going to be around 60- 80 feet. He asked that with the recess of the stage and the speakers below grade, would the large opening not have an adverse impact with respect to noise going to the east because the line of sight is broken? Mr. Andria stated that it would have less of an impact than the current tent does. There was more discussion regarding the orientation of the building, the stage and speakers and the stadium seating. Finishes inside the building such as a sound absorbent material are still being decided upon that will allow the sound to either resonate or bounce off the floor or walls. Ms. Nelson stated that the new site has less sound impact to the surrounding environment than the current tent site even without certain finishes on the interior. Mitch stated that this Board is trying to get some finality before a decision has to be made. Kary Jablonka wanted some clarity on why the exterior material would not have an influence on the sound. Mr. Andria stated that the interior of the building will have some minor effect on how much sound is projected to the outside because of the absorption capacity of the interior finishes. If the interior material was sound reflective instead of sound absorptive, the difference would only be about 3 to 6 Db. Paul McCreary offered his own explanation of interior sound acoustics for a performance type venue to help the Board members understand better. He stated that what Mr. Andria does in his design is to make the experience for a person listening or watching an event better or purer so that they hear the sound as it is intended. The focus of the sound will be on the audience. The question put forth now is whether a non-amplified event has been an issue for the neighbors or not. Colleen Safford stated no. Mr. Lasky stated that it depends on the weather ceiling and a whole bunch of other things. Sometimes he hears disjointed sounds. Mitch asked Mr. Lasky specifically for an electronic speaker. Mr. Lasky commented that you can have an acoustic instrument with a microphone in front of it that might not carry that far. But you can also have a guitar plugged in to an amplifier which gives a totally different effect.

Bob Leary commented to Ms. Nelson that PS21 didn't do the enclosed building because it would cost too much. He asked what guarantee does the Board have that PS21 will put the best in this building to reduce the noise the most and not base it on cost. Ms. Nelson stated that that was not fair to answer because they would be put into a corner. People cannot fully design buildings to construction level detail when they don't have any idea whether they are going to get an approval. Mr. Leary commented that that would help them get the approval if the Board knew that PS21 was going to put the very best in this building. Ms. Nelson stated that she could not commit to having every detail of this building completely designed. She stated that PS 21 has demonstrated that they are reducing the impact tremendously. Mr. Stoller stated that it behooves them to make a commitment to the decibel levels. If their calculations are wrong they need to correct that and mitigate the sound. Mitch commented that despite not having all the finite details of the building, if the DBA levels were worked out with the help of Paul McCreary and Ken Stoller, this Board can get there with further discussion.

JP Henkel asked why a non-structural curtain wall is not installed? Mr. Stoller stated that that was an option they could look into. Mr. Stoller believes that the hill behind the venue will help mitigate any problems and that the main concern seems to be unscripted events. JP commented that it didn't seem

to be a deal breaker if the only issue was mood. A curtain or retractable wall would be a relatively easy thing to do. If the Board is willing to consider all possible ways to mitigate sound, this option should also be on the table. There was discussion of whether or not the building could be moved down the hill over a hundred feet but then the building would be completely out of the footprint of the original approval. Moving the building would not mitigate the sound entirely.

More discussion ensued with Paul McCreary regarding the acoustical treatment within the building. What the Board would like to know is what is the equivalent sound source volume in DBA with the acoustical treatment within the building? Right now it is 75. The lowering of the sound level is extremely important. JP Henkel commented that he didn't believe the lowering of the sound level was the main goal. We want to lower the level at the property line. Mr. Andria stated that he believes that what the Board is asking is could the maximum allowable levels at the property line be decreased because 50 DBA at the property line is possibly too loud? The two largest factors of this project are the topography and the full enclosure of the roof. It is particularly important for the properties that are further away because of strange atmospheric conditions, and wind direction. Having a roof on the structure limits the amount of sound that is picked up and the topography limits the amount of sound that is projected out.

JP Henkel stated that one of his concerns throughout all of this has been that he doesn't want to trade one neighbor's suffering for another neighbor's. He stated that he is convinced that the neighbors to the west and north will see an improvement. Mr. Andria stated that the neighbors to the east will see improvement because the ridge line is blocking the line of site to the speakers.

Chairman Everett opened the hearing to the Public at 9:12 pm.

Terry Lasky asked why PS21 doesn't put up some sort of a bond and we arrive at some figures as to what neighbors would hear at their houses. If the sound can't be regulated after a certain amount of time then PS21 should complete the other 24 percent and enclose the building. He stated that at the last meeting it was mentioned that it would cost \$3 million to enclose the entire building. If the sponsor put up a bond and the result is not satisfactory, then the facility would have to be enclosed. He also stated that it was confirmed tonight that there is only a ten foot difference between the bottom level of the ground level of the facility and the eastern berm. How is the sound going to be baffled by the topography? Chairman Everett explained that this Public Hearing would be continued at the December 18th meeting and he suggested that everyone, including Mr. Lasky, take a look at the newest information that has come in and study it so we can have a more informed discussion about it.

Mr. Jim Kraft a Board member of PS21 referred to the Lincoln Center and Avery Fisher Hall with all the millions of dollars that have been spent on those buildings, that there are so many things about sound that you are just never going to know. He commented that any parent can bring their child to an event for a very artistic experience and that this is a very important art center in this town.

Alice Weatherall stated that this town doesn't often have something that you can bring your grandchildren to that is extraordinary. She said she understands the noise issue but to have this offered locally is a phenomenal thing.

Colleen Safford commented that a few of the things that she emailed to the Board members had been mentioned this evening in detail. She stated that she too doesn't understand why PS21 doesn't just enclose the building and why it would cost \$3 million to cover the 24 percent space that is open.

Ms. Nelson tried to clarify the approximate \$3 million dollar cost that was stated at the last meeting. She commented that this is a number that was mentioned as a possible figure not an accurate number as there are substantial costs associated with mechanical and electrical systems if the building is to be enclosed. She wanted to make it clear that the original applications intent was to continue with the seasonal open air structure. Because there is a strong desire to continue that indoor/outdoor quality, they feel that this application is a much better building than the tent.

JP Henkel again approached the subject of constructing something that would dramatically mitigate the sound to the east without costing so much. Mr. Stoller said he would go over this with Judy Grunberg.

Ms. Safford again asked the Board concerning the decibel levels. She also stated that she was concerned with the scheduling and the monitoring of events and the enforcement and protections that the neighbors might be offered. She stated that she would like to know personally from Judy Grunberg that there is a respect for her and her family. She stated that she feels this Board has gone above and beyond and agrees that this can be an enrichment to the community. She would like to know how rehearsals will play out in the scheduling and about how many weddings are considered as acceptable? Chairman Everett asked Ms. Safford if she has had a chance to look at the current application at all and she responded yes. He also asked her if she felt this was a benefit or a detriment to the community? She stated that she hoped it was a benefit but she didn't know because she was given an assurance before.

Judy Grunberg stated that a dress rehearsal was louder than they would have liked and they will be putting into their contracts that whether it's a dress rehearsal or a performance there has to be a certain level.

Patricia Lasky read a letter to the Board stating that one of her concerns is that fully two-thirds of the main lobby is not covered by a roof and that all of a sudden only 24 percent of the building is open. She feels very concerned whether this number is accurate or not. She would like a cost accounting of the present building and the enclosed building. She stated that the tent had been initially proposed as temporary while PS21 raised money for an enclosed facility. Now the mood of a fully enclosed facility does not suit PS21. She believes PS21 has not kept any of their promises. She stated that she is for the arts but wants this building to be enclosed so she can sit on her porch and listen to her music and not the buzz of something else in the background. Ms. Lasky was asked to read her comment again regarding the main lobby of the building and to present the Board with her letter while they were looking at the plans. This letter is on file for review.

Mr. Armand Beandry asked the Board what 44 to 50 decibels would mean in his terms. Is that like being next to a car or vacuum cleaner? Mr. Andria commented that it was like soft stereo music in a residence. Mr. Beandry wondered if he was standing on the property and you were playing something in the building would it be like a soft whisper, a conversational level or him yelling at someone across the

room. Mr. Andria explained the decibel levels. Mr. Beandry explained that the roof could take care of a lot of the acoustic bounce that could be bothering the neighbors. Mr. Andria stated yes.

Suzanne Cucharelli commented that she has a business in Chatham and appreciates the opportunity to have live theater and dance. She believes PS21 has a good economic impact on the community.

Fran Veillette a Board member of PS21 stated that all of this came about because the skin of the tent is deteriorating. The PS21 Board had to make a decision as to whether they were just going to replace the skin or try to improve the ambience for people who go to the performances and to also mitigate some of the problems that arising because of the sound. She stated that in this environment they can't raise enough money to enclose the space. There is just no way that they can raise enough funds for an enclosed facility. She said she is listening to all of the comments and thinking that maybe the Board made the wrong decision and maybe they should just replace the skin on the tent and let everything else stand as is. She does not feel that anyone sees that there is a better solution to the shed that will help present better performances at a lower decibel level for the community.

Susan Davies, the administrative director for PS21 commented that what Fran Veillette said was correct and that she is getting the feeling that there is such a great sense of distrust of this organization. They have a great sense of commitment to what they are doing by bringing arts to the community. She also read a letter from Paula Forman who could not attend tonight's meeting in approval of PS21.

Sam Reilly who has worked for PS21 for the last 2 ½ years, also made comments in approval of PS21. He stated that this needs to work even if the shed doesn't work.

Mitch Khosrova commented that he personally was extremely disappointed in tonight's meeting in contrast to last month's meeting. He felt that last month there were some very constructive comments made. He stated that there has been a lot of talk of not trust which is not this Board's issue. The application before the Board now in his mind is without a doubt better than the current situation. He stated that whatever anyone thinks about PSS21 or Ms. Grunberg, if no one is going to make this application better or if anyone can convince him that this application makes things worse, he does not know what the community wants this Board to do. This Board can't force the applicant to enclose the building. The Board can either deny this or approve it. He feels it is important for everyone to understand what our limitations of our authority as a ZBA member are.

Mr. Lasky commented that he felt Mr. Khosrova had not been listening to him. Chairman Everett told Mr. Lasky that this hearing will be continued on December 18th at which time more comments will be heard.

Chairman Everett commented that there were a lot of emails received today up to an hour before this meeting as well as technical documents handed to the Board at the meeting. He stressed that this is not helpful to the Board to receive that kind of material the day or night of the meeting. He asked that comments in writing be presented to the Board well in advance of the meeting or to come to the next Board meeting.

The Board requires PS21 to provide a letter from the fire department, an acoustic engineer's report, SWPPP, a decision on an exterior color and the roof finish as well as the cost and width of a certain barrier wall as well as any preliminary information on the interior finishes.

With no further business to discuss, Kary Jablonka made a motion to adjourn the meeting at 10:15 pm and continue the Public Hearing on December 18th, seconded by Bob Leary, motion carried.

David Everett, Chairman

Respectfully submitted,
Barbara A. Fischer, Clerk