

Members Present:

David Everett, Chairman
Mitchell Khosrova
JP Henkel
Robert Leary
Jeffrey Lick
Adrianus Ooms
Kary Jablonka

Public Present:

Brandee Nelson, Crawford and Associates
Evan Stoller, Architect
Susan Davies
Scott Longstreet, Esq.
Judy Grunberg
Frances Veillette
Paul McCreary, Town Engineer
Tal Rappleyea, Town attorney
Press-Chatham Courier

Chairman Everett called the meeting to order at 7:00 pm. The Pledge of Allegiance was recited. The minutes of the December 18, 2013 meeting were tabled until the February meeting.

Chairman Everett explained that there were 2 critical issues before the Board that need to be resolved. These issues were the hours of operation and how to handle the back door to the new building. If there isn't an agreement on those issues, the Board may have to reopen the Public Hearing.

Scott Longstreet, counsel for PS21, and Brandee Nelson explained that PS21 is concerned that keeping the doors open during non-amplified events may allow sound to escape and they wanted to make sure this was a non-issue. PS21 wants assurance that they will not be penalized if this happens. Ms. Nelson explained that the thought that this may be a condition, they don't want to jeopardize the permit if someone inadvertently leaves the door open. It is the intent to keep the door closed at all times. Mitch Khosrova commented that he did not want the staff to become lazy and leave the door open and thereby possibly going over the sound limit. Dave Everett stated that maybe a sign could be posted on the door and state in the contract that this needs to be done. It is the responsibility of the applicant to make sure that they comply. Brandee asked Tal Rappleyea what the proposed language would need to be. Tal will draft the language stating that the door should be closed at all times.

Scott Longstreet was concerned that the Town may have a building inspector waiting for someone to leave the door open and then PS21 would receive a violation. He feels that this is one more example of a condition being imposed on the applicant without any data saying that this would not be a problem. He suggested to find out if it makes a difference with a sound test and if it does they will comply. In the event there is a violation, it would only be deemed a violation if it is accompanied by a complaint.

Jeff Lick commented that he was empathetic to this having been involved in stage shows. The dancers who become hot from the dancing will open the door without caring if there is a contract. JP Henkel commented that he was asking for a distinction to break the rules that the Board already agreed to. He stated that nobody was suggesting the door be closed 24/7 only during certain events and we have the sound engineers study to refer to.

Dave Everett commented that the Board found out at the last meeting that the doors would be open and the applicant agreed to keep them closed. He stated that he understands that aesthetically keeping the doors open would be nice. Scott Longstreet commented that the engineer did not say that this would make a difference at the neighbor's homes. Mitch Khosrova stated that his recollection was that we are avoiding the sound at the property line and the Board would like to know what the engineer says now not later. Brandee Nelson commented that mathematically the sound would project out to the mid 40 range. Mitch stated that he personally would like to have more data. He also stated that it would be much more practical and efficient to know what the source is. The Board's original request was that the 98DbA would be at the audience instead of the property line. If we knew what the source was, the perimeter levels would be close to ambient level rather than the source. Mr. Longstreet said that they should test once whether the door being open or closed would make a difference. Chairman Everett commented that according to the engineers, the noise level would change due to atmospheric conditions. JP Henkel commented that he could not vote on a permit that has an outstanding condition. Chairman Everett asked Tal if in the draft it could state that they get a "warning" if they violate this condition. Mr. Longstreet stated that the issue is unintentional violations because they can't put a guard at that door.

Tal stated that the draft could say that the West doors shall remain closed during rehearsals and shows and that this condition alone shall not be grounds for revocation but fines could be written in conjunction with multiple violations. Jeff Lick asked if they were still testing the sound levels and they needed to look at the SEQR. Town Engineer Paul McCreary stated that a test needs to be done at the location of the center of the lower audience level to see if the 98 dB (A) is being maintained. Mitch stated that he was not comfortable with imposing fines. JP stated that if this is a chronic problem then it's a violation. Jeff commented that anyone could open the door and this has a much higher chance of being out of their control. Mr. Longstreet commented that he did not want the door being left opened inadvertently to be the cause of bringing them to court.

Mitch asked Judy Grunberg if it would be hard to make the staff well aware that the doors should be closed. He wants the applicant to feel that this is a big deal. Mr. Longstreet stated that he did not know whether Ms. Grunberg could say that she can put staff at that door during a performance. Even Stoller commented that they may install a shell on stage for high tech sound. The door will probably be a slider door which is a big deal to open. The acoustics designing would be a big deal to sound for performances. He also stated that it could be stipulated in the contract that the door would be closed during performances and rehearsals. Opening the door is an acoustic disaster for anyone performing on stage. Paul McCreary stated that if they are double doors you can have closers on them. Kary Jablonka commented that the only reason the door should be open is for loading and unloading but someone could open it without anyone knowing.

The Board took a brief recess at 7:58 pm and returned at 8:02 pm.

There was more discussion of the wording in the contract. Tal Rappleyea offered the wording to say a single or minor violation shall not result in revocation of the permit but multiple or several violations may result in revocation of the permit. Scott Longstreet commented that it may say multiple violations

would not preclude revocation. The applicant agreed that a condition will be that the “back door” must be closed throughout events.

Tal explained that the Town has a specific adjudicated procedure. The Building inspector receives a written complaint, he investigates the complaint and if there is a violation he sends a letter asking for the violation to be corrected. If it is corrected then it’s done, if not then a letter is sent out stating that it must be done within 10 days. If this is not done then Tal goes to the Town Board and asks to go to court. Both Mr. Longstreet and Tal Rappleyea both agreed as well as the Board that they will consult together on the wording of the contract regarding the door being closed.

The next issue before the Board is the hours of operation.

Brandee Nelson stated that PS21 would rather not reduce the hours of operation they already have. A letter was received from PS21 legal counsel Scott Longstreet as well stating this. Mitch Khosrova commented that last month PS21 asked that movies be an exception to the new hours of operation. The ending hour for the week that was discussed was 10:30 every night. Brandee asked the Board if the number of exceptions could be increased at all. Judy Grunberg stated that PS21 is alleviating the sound problem from the tent to the new building and commented that rehearsals tend to go later than the actual performances. She also stated that they could put in the contract that they won’t have amplified sound after a certain time. Mr. Longstreet commented that PS21 has given everything the Board has asked for. Mitch Khosrova stated that there were specific complaints from neighbors and the PS21 engineers agreed that some sound will always be heard, especially percussion instruments.

The hours of operation were discussed. PS21 would like to leave the evening hours of 11:00 pm during the week and 11:30 pm during the weekends. This would be for all events whether they are amplified or not. Mr. Longstreet stated that just because they would be allowed to go to 11:00-11:30 pm does not mean that they would all the time. Mitch Khosrova stated that he had a problem with the late night during the week. He does believe that things will be dramatically better than it has been and he doesn’t have an issue having some issues but every night is a problem with amplification. Mr. Longstreet did not know whether they would need amplification during the week but he did not feel it was right to limit the hours. In discussions with Paul McCreary he stated that sound will still be heard even at 3 decibels but there is a difference between perception and hearing. PS21 will continue to be heard. Perception plays a part in regard to measurement.

JP Henkel stated that he never felt comfortable with extended hours. The noise is within ear shot of neighbors’ bedrooms and he wouldn’t want this while he was trying to sleep. Mr. Longstreet commented that PS21 is trying to be a good neighbor and they are substantially better than where they were before. Mitch Khosrova said that no one wants to hurt the viability of this project they just want to come down on the amplification. They are willing to make some concessions on non-amplified and amplified sounds. Live versus movies does not seem as intrusive.

The Board took another break at 8:36pm and returned at 8:41pm.

After consulting with members of the PS 21 Board Mr. Longstreet stated that the Board agreed to keep the hours of operation for weekends ending at 11:30 but during the week they would agree to stopping at 11:00pm for amplified events and 11:00 pm for movie nights. They would like to extend the morning hours to start at 8:30 am everyday non-amplified events and start at 11:00 am for amplified events. PS21 would like to extend the special events per season to 10 events that may exceed the time constricton to 11:00 pm during the week and midnight on Fridays and Saturdays. This would mean that 10 events during the season may go beyond the time to 12 midnight. The season runs from approximately May 15th through October 15.

The Board took a vote regarding the hours of operation. Vote-Bob Leary, Mitch Khosrova and JP Henkel do not agree to leave the hours as approved in the current special permit. Adrian Ooms, Kary Jablonka, Jeffrey Lick and David Everett all agreed to leave the hours as approved in the current Special Permit. The hours agreed upon for PS21 by a majority vote is 11:00pm during the week and 11:30 pm on Fridays and Saturdays, five times during the season the time is allowed to exceed to 12 midnight.

The Board again voted on granting the earlier morning hour to start at 8:30 am instead of 11:00 am with no amplified sound. Vote- JP Henkel, Kary Jablonka, Adrian Ooms, David Everett, Jeffrey Lick, Bob Leary; yes, Mitch Khosrova, no. Motion passed.

Chairman Everett read through Part 2 of the EAF. He stated that Part three may not be needed at this time. All members agreed that there are no potentially large impacts and Part 2 is acceptable.

Brandee Nelson referred to page 21 in regards to the positioning of the speakers, possibly from the ceiling. She also referenced adding two retaining walls and keeping the doors closed in the back at the West wall. The decibel level of 45 was also considered reasonable.

Adrian Ooms made a motion to approve Part 1 of the EAF as modified, seconded by David Everett, motion carried.

The Board took another recess at 9:10 pm before reading the Findings Statement. The Board reconvened at 9:21 pm. Chairman Everett read through the Findings Statement for corrections and or revisions.

On the first page, Paragraph D should also say Part 2 as well.

On page 5, number 14- It was recommended to take the material Tal has and place it in this line. In the Summary of Mitigation Measures, Brandee Nelson suggested including some of the mitigating decisions such as the berms and the retaining walls and to omit the last bullet.

Environmental Considerations/ Findings- change current proposal to Phase 2

#3- Regarding water resources- storage tank should be changed to water vault.

Sound/ Noise- add berms, walls and keeping doors closed.

Brandee Nelson suggested that they should have the flexibility to go to the building department.

All 95 dB (A)'s should be changed to 98 dB (A)'s.

Changes to Schedule A- none

Remove tent in Schedule B.

Brandee would like to add the wording from Mr. Longstreet for a bullet list of things. There are two issues 1) frequency of testing, 2) sound. This will need to be reworked and brought back to the next meeting.

Brandee Nelson asked the Board if they felt that they could make a SEQR determination so PS21 could go to the Planning Board. Scott Longstreet reiterated that the dB (A) level at the property line would be 45 and 98 dB (A) at the source and let the methodology be left to the Town Engineer. They will find a convenient place to place the sound level machinery as close to the front row as possible.

Brandee noted that the Planning Board is unwilling to go to a Public Hearing without a SEQR. The members of the ZBA Board all stated that they are not ready to vote on the SEQR yet. Chairman Everett will speak to the Chairman of the Planning Board to have them schedule a Special Meeting by the end of February.

The Board asked that Phase 2 be added to the top of the Resolution.

On page 4- need to add that amending SEQR statements *is* required.

Paragraph 11- need to insert that they made additional commitments to mitigate the sound

In reference to "the ZBA acknowledged" –this applies to all projects and is not relevant.

Therefore determined- needs to say approving Phase II and it was determined and found that they need to add retaining walls as part of sound mitigation. Tal will fix this section to state "walls other than retaining walls".

#5-Scott Longstreet stated that changes need to be made here to make all apply to Phase II- Phase I continues as is until Phase II is done.

#8- Schedule C – needs wording in reference to the developer's agreement.

Conditions of approval-

#1- What constitutes an event- rehearsals and performances, weddings, activities authorized under Special Use Permit. Tal will work on this.

#4- insert as amended

#2 should say in substantial accordance with plans- should say on or before December 18, 2013 as modified

#5 in Phase II should be added

#8- remove-it's invalid

#11- In reference to the Fire Department- the connection to the outside should be a Siamese connection to the building, and a direct port to the water vault.

#21- unamplified events as well as amplified events do not exceed 80 dB (A) at the source.

#22- should say modified to today's date

#23/24/25- text needs to be taken out

#27- remove Army Corps

#30- modify with changes from Mr. Longstreet.

#31- remove from conditions and move it to sound protocol.

JP Henkel questioned future calibration- Will there be testing of subsequent sound systems?

#33- Tal will work on wording with Mr. Longstreet- referred to deed restrictions upon receiving C of O.

#37- take Town out

Need to add- doors, 98 dB (A) level on floor and more

Need to add phrase at end stating “only in accordance with Special Use Permit” There needs to be conditions that have to comply with SEQR.

Developer’s Agreement

Paragraph 4.5F pg 6- change

Paragraph 4.9- The Board wants the applicant to certify that this condition has actually been met. Chairman Everett stated that he wants PS21 to make sure they are paying attention to this and once or twice a year have a written certification stating that all equipment is working and has been checked. This should be done at the beginning of each season at least.

Tal will check on the escrow account to see if it can be terminated and establish a separate escrow account just to deal just with the noise. The agreement needs to be modified.

The Board decided to reconvene on February 27th at 7:00 pm.

Kary Jablonka made a motion to adjourn the meeting for this evening at 10:44 pm, seconded by Dave Everett, motion carried.

David Everett, Chairman

Respectfully submitted,
Barbara A. Fischer, Secretary