

PUBLIC HEARING continuation
TOWN OF CHATHAM
Held at the North Chatham Fire House
Route 32, North Chatham, NY
June 24, 2015
6:00 P.M.

The purpose of this meeting is to consider Adam Slone & Life Serve Youth Foundation's request for a Hardship Waiver from Local Law #1-2015

PRESENT: Supervisor Jesse DeGroot, Councilman Henry Swartz, Councilman Maria Lull (arrived at 6:15), Councilman Bob Balcom Councilman Jean Rohde , Town Clerk Beth Anne Rippel, Town Attorney Tal Rapplelea

OTHERS PRESENT: Adam Slone, Sally Veillette, Karen Murphy, Jim Temple, Thomas Road Conservation Alliance members and many others.

Supervisor DeGroot called the meeting to order and led the pledge to the flag.

Town Clerk read the notice of Public Hearing.

Supervisor DeGroot reminded folks that this is a hearing on LSYF hardship waiver from Local Law #1-2015. It is not a hearing on the special use permit and not a question and answer session. The Hearing is for the Town Board to hear civilized comments from the applicant and the public on the Hardship Waiver application.

DeGroot opened the floor to Mr. Slone

- Adam Slone stated that his attorney, Andy Howard, was not able to attend the meeting tonight He did write an opinion which Slone has ask Sally Veillette to read.
- Karen Murphy interrupted and said they did not have the opportunity to speak on March 31 and they were not given advanced notice. This continued hearing should focus on their ability to rebut/reply to the submissions and asked that there be no redundant testimony.
- DeGroot said that the public would have the opportunity to speak after Mr. Slone was finished.
- Slone continued and spoke to the unnecessary hardship. He has made application to show a hardship. And understands there are those who want the Town Board to change the requirement. The standard is clear and they have met that standard. Prior the enactment of LL #1-15 he spent over \$1, 250,000.00 to purchase the property. He prepared engineering and design plans, applied to the necessary permits and had studies done as required by the ZB as it pertains to the Special Use Permit specifically for starting a tennis camp on the property. The breakdown of costs went to the Board. The purchase price + \$117,500. for engineering/consulting fees + \$33K in closing costs + carrying costs all spent for a legally permissible use. The application was before the ZB and the Public Hearing was scheduled but all this stopped when the Town Board enacted the moratorium. The money spent cannot be gotten back and it was spent specifically for the purpose of establishing a tennis camp on his property. With no camp there is no return on the investment. The moratorium has also had an effect on the LSYF ability to get donors to further the foundation's mission. Slone provided the Board with 20 plus letters advising that they would suspend their financial support as a result of the moratorium. The financial impact to the Foundation runs into the hundreds of thousands of dollars. The future of the Foundation is in jeopardy because of the moratorium. Slone has provided the Board with what is costs to carry the property while it stands in limbo. He believes that he has demonstrated a financial hardship due to the moratorium. The unnecessary hardship goes beyond dollars and cents. THE moratorium was to stop large scale development on dirt roads in the Town. The ZB determined that this is not a large scale development. It involves the expansion of a septic field, construction of tennis courts (which any resident could build without a special use permit) and interior renovations which is also permitted without a special use permit. If granted the waiver it would not threaten the health, welfare or safety of the community. The waiver will allow the non-profit organization the opportunity to do good thing for this community, children of Chatham and beyond. The small scale seasonal tennis camp will have no negative impact on the neighbors. Please do not succumb to the small vocal group opposed to the project. He started the project to help kids and the community. In spite of the financial hardship of the moratorium and the slanderous comments said about the kinds and about Slone all they want is for a chance to return to the ZB and PB for review.

About 5 months ago members of the Board suggested moving the entire camp to Crellin Park. CP is a public facility and he didn't feel that it was appropriate to move the whole camp there. Building on the Town's suggestion to alleviate the concerns around construction of the tennis courts and noise associated with them we proposed moving the courts to the Park. DeGroot and Swartz formed a committee with the goal to study the feasibility. The Foundation would build and donate the courts to the Town and the camp would use them for 4 hours/day during the summer. Five new tennis courts would provide a huge boost to

the community and the school district. At the first committee meeting everyone introduced themselves Murphy introduced herself and said that she was "in it to win it". They learned that the Alliance wanted the courts at Crellin but only if the kids move too and Murphy had her own agenda. Weeks later Slone heard that LSYF was bribing the Town by offering to put courts at the Park. Now the tennis courts at the Park are off the table. This is a great loss of the Town of Chatham and the kids.

Sally Veillette stood to read the letter prepared by Andy Howard. As she started she was loudly asked to speak up because she couldn't be heard. There was shouting and commotion in the audience and Veillette passed the letter to Councilman Balcom who had offered to read it. Letter is on file.

DeGroot opened the floor for further comment and asked for the newspapers reporters and town clerks edification that those speaking please state their names.

DeGroot acknowledged Jim Temple's raised hand. Karen Murphy interjected and said that she would like to speak first since she is counsel for the TRCA. DeGroot asked Mr. Temple if he would yield to Murphy to which he responded, "No". Murphy would speak second.

Temple stated that he is a 68 year resident of the Town of Chatham. He and his wife raised their family here, his parents are buried here. He listened to the concerns of the TRCA from a member of the group for about 4 hours. He doesn't know Slone. The turmoil that's going on here is not part of the Town he grew up in. He was taught to rely on your neighbors and to trust them. He asks the Board to trust Slone. He does show a hardship and hopes that the Board will send this back to the ZB and let them see this through and put this matter behind us.

Murphy stated that she is a member of the TRCA and also serves as co-counsel. The Alliance is responsible for supporting the Board in its decision to implement the moratorium which protects everyone. They are opposed to granting Slone a hardship waiver. They are here today because there is a legal standard that should be adhered to. Murphy presented the Board with a copy of a letter written by attorney Eric Young which explains the legal standard as they see it. There is a criterion for hardships in moratorium law. The Board needs to know what they're supporting, this is not subjective, it's an objective determination. They are asking the Board to provide criteria for the hardship waiver. Murphy read from a prepared statement. There are a substantial number of people in the room who are opposed to the hardship waiver. Mr. Slone has not proven his hardship. The burden of proof must be met for the Board to grant the hardship waiver and Slone has not proven a hardship through his financials. Slone hasn't met the burden on any level so the request for the waiver has to be denied. Slone can wait until the moratorium expires. He is not being denied anything. He took a risk and he is now going to have to wait. Murphy asked the Board to listen to the residents and do the right thing. Statement on file.

Ted Miner moved back to the area 35 years ago and they have raised many children here. They run a non-profit horse rescue organization in Old Chatham and they have never asked for a tax break to live their lifestyle. He asked for a mission statement from TRCA and hasn't found it yet. He also looked for a mission statement from Slone's group and hasn't found it. He wishes Slone had pursued this under his own name and not LSYF. Slone is asking tax payers to pay for his non-profit status.

Linda Ziskind wanted to remind the Board about specific moratorium wording. There is no criterion for a hardship. There is a clear criterion for what a hardship is not and delay is not a hardship according to the law. The moratorium is to protect those of us living in agricultural and residential areas. The moratorium was enacted for projects requiring SUP on dirt roads and to ensure that all projects conform to the new zoning law. The hardship should not be judged by the "woefully outdated" current zoning code. Spending money on certain engineering fees and the like is just part of the process of applying for a special use permit. Ziskind stated that the new zoning laws are going to be different. Having read the ZIC minutes she found references to a proposal that would require a 50 acre minimum for summer camps. The new zoning laws are based on the Comprehensive Plan. Slone's property is not 50 acres. Slone is in a hurry to get the hardship waiver so he can get his project in under the old zoning laws.

- How are we going to judge Slone's request for a hardship waiver? There are no criteria. The Board is deliberately keeping the language "arbitrary" and laws aren't arbitrary.

- Slone hasn't presented any evidence of a hardship. The money he spent is money anyone would spend when applying for a SUP through the ZB. Slone bought the property and not the non-profit LSYF and he has enjoyed the property as his second residence. If the Board grants Slone the waiver it would be violating its own law. Letter on file.

John Wapner has watched Thomas Rd. become busier and busier over the 37 years he's lived there. He read a letter written by his wife Cynthia Bobseine. They asked the Board for definable criteria for a hardship and are opposed to granting Slone a hardship waiver. Letter in file.

Heather Uhlar read from a letter in her cell phone from Mr. Somers of NYS Ag and Markets. She asked him what constitutes a hardship in an agricultural district. There are 4 points.....

1. applicant must prove that the applicant is unable to achieve a return from any allowable use in the zoning district.
 2. must prove that the circumstances apply to the property for which the variance is requested.
 3. must prove that the hardship is not self-created.
 4. must prove that the character of the neighborhood will not be altered if the variance is granted.
- As per Ag. and Markets the applicant must meet all requirements to be granted the hardship. Slone has met none of the requirements.

Jeff Murdock supports the idea of the tennis cam however the hardship waiver is the issue here. It makes no sense to spend a million dollars without the permits in hand. Slone has made a mistake, a big one. If you need a SP and move ahead you made a mistake. Support the moratorium and the tennis camp where it's appropriate.

Dawn Fratengelo stated that the Quakers purchased a piece of property and they needed a SUP. They spent a lot of money on various fees and weren't certain they would get the SUP. People wondered how they could spend all that money without knowing if they were going to get the SUP or not. It was a long process but in the end they did get the SUP for their project. Was it Slone's proposed tennis camp and the opposition to it that prompted the passage of the moratorium? She is "dismayed" by what has happened in the community as a result of this. It's not the community she moved to or the community she loved. Slone has agreed to pay the taxes on the property. He went to the ZB and PB and he's trying to get the project done. Will the Town be able to heal from this? The "rancor and hatred" is not necessary.

Michael Gregg read a letter from Geraldine and Philippe Mariel Town of Chatham residents in opposition to a hardship waiver. Gregg stated that if the Board denies the hardship waiver then perhaps Slone can go back to work with the residents and the Board on this. If Slone had done that then things may be different. He suggested Slone get to know the residents. Why would Slone want to live somewhere where the neighbors don't like him? He challenged Slone to work with the Board and go to everyone on the road and get their input. You have to live with your neighbors. The law is black and white.

Lucinda Buckley of Malden Bridge is not taking a position on the Thomas Road issue. Slone has a great idea but it could be in a better location. But we're here to address the moratorium and the Comp Plan. Said she was heartened by the moratorium so that something wouldn't be built which will not comply with the Comp. Plan. We value our dirt roads and the rural nature. She and her husband moved here 19 years ago and the traffic has increased significantly. They ride on the paved and dirt roads. There are more cars and they're going faster. There is more commercial activity and businesses. Taking away the dirt roads will change the community. Slone has not demonstrated a hardship. Buckley apologized to Slone for the bitterness he has experienced from the community.

Johanna Semick has lived outside East Chatham for two years and cautioned the Board to be careful with special use permits. The permit goes with the property and that decision could last another "eighty years".

Slone responded to some of the comments made tonight:

- He has tried to work with the neighbors at the suggestion of the ZB. Murphy was the first person he spoke to. He told her what his plans were and the response was "startling" Two days later he was notified by an attorney and was told to not speak to the residents, they had formed an alliance. Arguing ensued and DeGroot asked Slone to stick with the hardship.
- He went to the ZB before he bought the property and was told it would be a long, tough process but he was within the "scope of the law". It didn't mean that they were going to approve it. He was reassured by the meeting and felt he could move ahead and spend the money on the property.
- There's a process to getting an approval. He was to go the ZB and PB to get the project

approved which is what they did.

- Here's the hardship: If the moratorium was in place early on in the process instead of many months down the road then he would never have spent the hundred thousand dollars and would have stopped moving ahead with the project. He would have had to wait. They were following a process and were thrown into a moratorium, that's a real financial hardship.

- As for taxes, he has said many times to the Board and in ZB meetings and written in the newspaper that he is willing to pay the taxes on the property. Not 100% of the taxes but how many other non-profit offer to do that?

- To address the "discount" he had gotten on the property.... He purchased the property for 1.1 million dollars, it had been on the market for 4 years at 1.3 million dollars.

Barbara Neagler from Rock City Rd. is opposed to the hardship.

Lilly Kolay doesn't live here but she has always admired the beauty of the area and encouraged the Board to hold on to that beauty because "once you break something (meaning the moratorium) you can't go back".

Deborah Pierce from East Chatham and supports the moratorium. She read a letter from Dr. Mishkin and his wife and they are opposed to the hardship waiver.

Sue Tanner read a letter from Wendy Conway who is opposed to the hardship waiver.

Lynn Cross a 38 year Old Chatham resident, They own their own property and bought it herself. They pay taxes and run a non-profit on the property and have never asked for any variances.

Murphy said that Slone repeated multiple times what he spent. It's been narrowed down to Slone spending 100K. In real estate transactions you assume a risk. You assume the risk and you have to do your homework and know that there is a Comp. Plan and that the ZIC has been working on zoning changes for 5 years He should have kept the contract contingent. Slone did not protect himself when he bought the property with no contingencies. The cost of doing business is not a hardship. He took a risk, made a mistake and now he is subject to a delay. There is no basis for granting a hardship.

Jim Buckley from Malden Bridge said that Slone "seems to be a successful real estate developer". Buckley doesn't think that Slone should be throwing himself on the mercy of the Board and asking for a waiver if it was something that Slone had created himself. The hardship was self-imposed.

Lauren Vitello boarded her horse at the farm that Slone now owns. It was a beautiful farm. She now boards her horse at Heather Uhlar's farm. Thomas Rd is a safe place for children to ride. It was sold as a horse farm so why can't Slone keep it as a horse farm. The hardship is changing the use of the facility and why is Slone asking people to pay for his mistake?

Jim Johnson feels that the moratorium is a good idea. Everyone here is saying what was said 4 months ago so why is DeGroot bringing up again what a hardship is? DeGroot stated that this was a hardship hearing. It was requested by the applicant. Johnson said that DeGroot called the meeting. DeGroot said that the applicant He was interrupted by Johnson who said that the none of the other Board members changed their minds about it. DeGroot continued and said that under moratorium law applicants are entitled to a waiver hearing and DeGroot's job is to administer that no matter how he feels about it. Johnson said that 4 months ago DeGroot was in support of the moratorium and he is flip-flopping now.

There was no further comment and the Public Hearing was closed at 7:37 PM.

Murphy asked if the Board was going to vote on the hardship. DeGroot said that's what they were going to talk about now and stated that he would like to consult with the town attorney.

Attorney Tal Rappleyea said that the moratorium law says that the Town Board has fourteen days to issue a decision. The Board heard a lot of information tonight and over the last 4 months and it is advised that the Board take some time and not decide tonight. Rappleyea proposed that for the next meeting there be a written prepared resolution. He would follow the same pattern that he has used before and have attorney-client conversation each board member so there

wouldn't be a violation of open-meetings-law. He will discuss and recommend the criteria and standard for the approval then prepare a written resolution based on a compilation of everyone's comments. At the July 2nd meeting they will go through the resolution page by page. If they need to change it or fix it they will and decide if that resolution should pass or not. If it doesn't pass then they go back and draw up another one. This way the Board will have something in hand with everyone's..

Rappleyea said that the moratorium criteria were set forth in the Town Montgomery case. It is a case that was cited and accepted and used by both the Alliance and Mr. Baker in some submissions that he has made. It has also been used by the applicant. It's something that we spoke about on March 31. He believes that the criterion in that law is the correct criteria. It is solely about moratorium and not about use or area variances it is about a moratorium. In Rappleyea's opinion it is right on point. It has been supported by both the applicant and the opposition. We can discuss this case to be prepared for the July 2 meeting.

DeGroot asked for thoughts from the Board:

Lull wants to take time to look at all the material they were given tonight and wait until the workshop meeting. They have a lot to "digest" and they owe it to the Town and the applicant to go over everything thoroughly. Lull apologized for being delayed this evening, it was unavoidable.

Balcom stated that many of the comments made this evening were good ones and gave them something to think about. They were different from what they've heard before. He is fine with waiting until July 2.

RES. #89-2015 to set the Workshop meeting for July 2, 2015 at 7PM at the North Chatham Firehouse Councilman Swartz offered RES. 89-15 and moved its adoption to set the Workshop meeting for July 2, 2015 at 7:00PM at the North Chatham Firehouse. Councilman Balcom seconded the motion.

VOTE

AYES: DeGroot, Swartz, Lull, Balcom and Rohde NAYES: None Resolution adopted.

Motion was made by Councilman Swartz, seconded by Councilman Rohde to adjourn at 7:44 PM. Motion carried.

Respectfully Submitted by,

Beth Anne Rippel, Town Clerk