

**Town of Chatham
Meeting Minutes March 30, 2015**

**Zoning Board of Appeals
Final Copy**

Members Present:

David Everett, Chairman
Robert Leary
Jeffrey Lick
JP Henkel, arrived at 7:20 PM
Kary Jablonka

Tal Rappleyea, Town Attorney
Marilyn Cohen, Planning Board Chairman

Excused: Mitch Khosrova, Deputy Chairman
Adrian Ooms
Kary Jablonka was excused early

Public Present: Betsy Wyman of Columbia Falls,
Nicholas Vamvas, PE Crawford & Assoc, David
Kahn, Accoustic Distinctions, MaryBeth Slevin,
Atty for PS21, Judy Grunberg, Evan Stoller,
Patricia & Terry Lasky, Colleen Safford, other
members of the audience

Brenda Marello, Stenographer for Crawford & Assoc.

The Pledge of Allegiance was recited at 7:00 PM. At 7:01 PM the meeting was called to order by Chairman Everett. Mr. Jablonka motioned to accept the minutes of February 26, 2015 with a second from Mr. Leary. All board members present were in favor and the motion passed.

Public Hearing Item 1, Columbia Falls Request for Interpretation, 295 Route 295, Chatham, NY

Chairman Everett stated he was not in attendance at the last meeting and asked Betsy Ferris who was standing in for Jody Rael of Columbia Falls, who was out for a family medical emergency, for a recap of the information presented. She explained that the property is under a caretakers watch and the amount of vandalism at the property has reduced by having this person living in the structure on the property. Columbia Falls would like formal approval to have the caretaker live there on the property at the caretakers building and are requesting that the current use be changed to a residence. Mr. Lick explained to the Chairman what took place at the meeting from last month and that it was a collective thought that this request be deemed an "accessory use." Chairman Everett believes that the building sounds like an accessory use but asked if it was customary to have an apartment for a security person on an industrial lot. Mr. Leary then referred to the Town's attorney, Atty. Rappleyea, who then explained the need for the change of use. He explained that the CEO, Mr. Simonsmeier deemed that Columbia Falls would need to go before ZBA for the interpretation. Mr. Jablonka stated that it was integral to the operation of the facility and Mr. Everett inquired to the Town Attorney if it is customary for this to happen, a residence in conjunction with an industrial use. Atty. Rappleyea replied that anecdotally it is something that could minimally have residences on site for the employees to eat, sleep and stay. Chairman Everett stated that this is zoned industrial and there is only one industrial zone in town and limited in size and it is not going to have a wide precidential impact. Mr. Leary inquired to the ZBA clerk if there was proof that required notices had been sent to the neighbors by the applicant and the response was yes. Chairman Everett asked for any other comments and there were none. A motion to open the public hearing was made by Mr. Leary and seconded by Mr. Jablonka. The Chairman then asked for comment from the audience and there was none. A motion to close the public hearing was made by Mr. Lick and seconded by Mr. Jablonka. All members were in favor and the motion was carried. Chairman Everett stated that this item is exempt from SEQR review. Mr. Leary made a motion to accept the following statement with regard to the regulation of this building and its use: "The one story building located at 295 Rt. 295, Chatham is an accessory structure and it cannot be rented. It can only be used as a residence for security guard/caretaker." Chairman Everett moved to accept this statement, Mr. Jablonka seconded it. *Ayes were received from Jablonka, Leary, Lick, Everett and*

Nayes were none, so the motion was carried. The application for request for interpretation for Columbia Falls was approved.

Public Hearing Item 2 PS 21/Questaterra

Chairman Everett asked, for purposes of the record due to the presence of a stenographer, that Mr. Vamvas introduce everyone on behalf of the applicant. Nicholas Vamvas of Crawford and Associates Engineering introduced himself and his firm as the engineers for PS21 and introduced Mary Beth Slevin, Counsel to PS 21 and David Kahn, Sound Engineer of Acoustic Distinctions. Mr. Everett announced that this meeting is a public hearing for PS21, an amendment of the special use permit and then asked for a motion to open the public hearing. Mr. Jablonka made the motion with a second from Mr. Leary. All members were in favor and the motion carried.

Mr. Vamvas reviewed that in August, 2001, Questaterra, LLC/PS21 originally applied to the ZBA for a special use permit and height variance for a temporary performance space that included a tent to hold performances. The plan also included a plan for a permanent facility that was supposed to be fully enclosed. He went on to review the process. In October, 2001, the ZBA classified the project as Type I pursuant to SEQR and declared to intend to act as lead agency for the proposal. In November 2001, the ZBA issued a positive declaration and this designation kicked the project into a DEIS process. Over the next three years, the DEIS (Draft Environmental Impact Statement) and FEIS (Final Environmental Impact Statement) were developed between the Board, the Town and PS21. In January, 2005 the DEIS was deemed complete by the ZBA. In April of 2005, the special use permit approval was granted. In May, 2005, the Town and PS21 entered into a developer's agreement allowing the project to move forward with construction and operation.

Mr. Vamvas went on to explain that since the fall of 2005 the tent at PS21 has been in operation seasonally. In February, 2010, the special use permit was modified to allow the tent to operate in perpetuity and is in harmony with Crellin Park and the surrounding areas. Nearby is Sonoco Crellin Plastics and a waste treatment facility about a tenth of a mile south of PS21. There are also CSX railroad tracks 1000 feet west of both the proposed facility and the town facility, which handle approximately 25 to 30 trains daily. He stated that the modifications that are now proposed fall within the Town codes. The original proposed facility was larger according to the original plan (28,000 sq. ft.). Mr. Vamvas explained that this modified proposal is much smaller in scope. The black box theater would have seating for 100 people and once opened in warmer weather seating would be expanded to 300. Total area is just over half of the original size proposed. He went on to explain what would be included in the building. The total roof area is only 14,500 sq. ft., a little over half the original. The black box area contains performance stage, adjunct stages, ticket booths, storage, dressing rooms, rehearsal space, restrooms, office space, mechanical space, and a workshop.

All building and fire code requirements will be met. He stated that the parking area was installed as part of phase one and there will not be a need to add additional space. ADA (Americans with Disabilities Act) parking will be added adjacent to the proposed theater. With regard to parking, the town code requires 75 spaces for 300 people and the modification will have 100 which will exceed the space required. Mr. Vamvas indicated on the map where the parking would take place and drop off spaces via a new driveway approximately 260 linear feet. Walkways will be ADA compliant to allow full access to entire site.

He went on to say that the water and well is north of the area and was previously drilled and installed in 2003 as part of the DEIS process. It will be a transient water supply. The well was flow

tested in 2003 and analyzed pursuant to Part 5 of the state sanitary code. It produces 6 gallons per minute which is more than adequate for this use. Water supply will be a public water supply due to the facility being a year round facility, classified as transient non-community by the NYS DOH. Mr. Vamvas explained that because the analytics that were completed in 2003, they expect they are only going to need point service treatment that will comply with the aforementioned Part 5 treatment water standards, and that would include disinfection. The sanitary sewer on site is to the east and located in the same spot that was approved in the original EIS process. All sanitary waste will be managed on site. There will be a septic tank and pump station. The field location was tested and witnessed by the DOH (Department of Health) in November, 2013 and due to the proposed water use being over 1000 gals., but under 10,000 gals. A day, they know that a SPDES general permit is needed for waste treatment. Total site impacts will be just over four acres, which would require a SPDES permit. The runoff from the impervious surfaces will be collected in downspout drains, streams, gutters and a bio retention that will treat the runoff. It matches the existing storm water treatment. There are also bio-retention areas and the bio-retention in large storm events would actually discharge into underground detention for overflow storage, which matches the existing storm water treatment. They have underground storage in these two parking bays. Crawford and Associates provided a SWPPP to Morris and Associates for comment this past December and they have responded to the report as part of the site plan application.

Mr. Vamvas continued. The proposal will require new lighting because of a new driveway being added. There will some full mounted lighting and ground lighting to allow for safe passage. None of the lights are near property lines and there will be building mounted lighting at entrances and indicated on the plan and it will down lighted. Because of size and use of the structure, they are required to have sprinkler system within the entire footprint of the property. They are constructing a 50,000 gal. water vault located near the loading dock, Along with the sprinklers would be fire pumps and backup generators, and everything is going to be designed to comply with NFPA and NYS fire code.

He has made attempts to contact the Chatham Village fire department, but has not received a response yet. According to Mr. Vamvas, the previous assistant fire chief, Mr. Rideout was present at the walk thru in 2013 and he agrees with former Chief Mr. Pratt for the original connection to the onsite fire suppression. Mr. Vamvas expects that Mr. Rideout will be sending a letter regarding this to the ZBA.

Mr. Vamvas went on to explain the difference between the revised Phase two project and the original Phase two. It will impact four acres. The original was going to require disturbance over seven acres of soil. There is less than an acre of new impervious surfaces between the patios, the loading dock, the new drives, the walkways, the building. The original Phase two was over 1.8 acres of impervious area, so they there is a reduction in disturbance of 43% and a reduction of impervious area of 62%.

The original seating was for 405 patrons. The new facility will be limited to 300 seats. Because of this there is a 25% reduction in water and in amount of traffic/air quality.

The storm water was designed pursuant to general permit 0201. The new General Permit 0-15-002 released by the DEC is more stringent in water quality treatment. Because of this they are treating the storm water to a higher quality.

The driveway will be larger but they are only adding 300 feet of driveway between the new driveway and the drop off area. They are not adding any parking. The original plan called for 4600 linear feet of new internal driveways with additional parking. This is a 93% reduction in driveway and 21% fewer parking spaces.

With regard to visual impact: the original building was going to have a maximum elevation of 532 ft. and an average height of 41 ft. The maximum elevation for the new theater is just over 516 ft. The average height is 30 ft. so there is a lower elevation of nearly 16 feet and it is 11 feet shorter on average.

There is no impact to wetlands. The land use and zoning impacts have no change.

With regard to community services, Mr. Vamvas went on to say that the increase service costs were going to be offset by increased sales tax and that hasn't changed. No change in cultural resources. Archeological assessment is completed. They are staying within the foot print.

As far as sound, David Kahn provided a letter in December, 2014 and an addendum in February, 2015, stating the tent provided little to no attenuation. With the building due to its solid construction, however one should see a fairly substantial reduction in the sound. They are constructing solid walls, as compared to the tent that is not solid, the changes in the sound pressures levels will be 6 decibels less, to the north will be 2 less, to the west is 12 less, and to the south is 7 less which leads to predicted sound pressure levels of 42 decibels to the east, 42 to north and 35 to the west. Mr. Kahn said that through discussion with the ZBA they agreed to use a sound limiter, which measures the sound ten feet outside of the footprint of the building. We agreed to lower the dBA limit to 85 from 90. Chairman Everett then asked if there were any questions. He asked Mr. McCreary if his comments raised on the SWPPP are technical in nature. Mr. McCreary's reply was yes. Chairman Everett wanted to make sure there are no environmental issues and Mr. McCreary confirmed this. Chairman Everett then stated that the ZBA is the lead agency under SEQR and he wanted to make sure there are not going to be any environmental issues. Mr. McCreary again affirmed that there would be no environmental issues related to any revisions based on their conference.

Mr. Kahn then elaborated on the noise study. He pointed out that they compared noise issues with the existing tent. They chose the most conservative guideline, when the sound is emanating from the property line we not exceed 6 dB above that. There was attenuation to the west because of the solid wall. To the north, it could have potentially gone up because they were getting closer to the property line, but because of the construction of the pavilion as compared to the tent it is lower to the north than where the tent is now and more attenuation to the east and to the south where they actually moved further away. In order to conform to the guideline, Mr. Kahn explained, that they need to calculate what the sound level would be at the property line based on the sound level emanating from the tent. This raised the issue of where do we measure the sound levels around the tent. He went on to explain the issue of controlling environmental issues: there are a number of standard procedures for controlling the sound emanation from the property lines. There are limiters placed on these sound systems. He stated they wanted to figure out at what decibel level that they needed to set this at. They calculated what the maximum level would be measured 10 feet outside of the roof in order to be at the ambient noise level at the property line. The number calculated was 90 decibels. We agreed to add a 5 dB cushion factor. So the limiter would be set at 85. He then explained what one would hear with one to four dB(A) level. With a solid structure and, while open in some areas mostly to the north and to the east, the west is completely enclosed,

the amount of area where the sound can essentially escape into the area is significantly less than the existing tent structure, which in large part why they were calculating lower environmental noise impact from the pavilion compared to the tent.

Chairman Everett then asked Mr. Vamvas to explain how the facility would operate as far as closing and opening it and if he had brought the elevations of the building with him. At this time, Mr. Henkel asked Mr. Kahn for a point of clarification. He asked Mr. Kahn if the calculations of the decreases at the various property lines, 6 east, 2 north, 12 west, 7 south, is based on the original 90 or was it based on the 85. Mr. Kahn replied that the calculation is actually independent of the level and is based on the distance between the pavilion and the property line.

Mr. Kahn showed and explained the elevation maps and where the open and closed portions were. Mr. Vamvas was asked how the structure is going to operate from season to season. Mr. Vamvas replied that the black box portion (showed the drawing) is closed off during the winter, with small performances taking place then, and then in the summertime the temporary wall that are bi-fold doors can be opened. In the colder weather, it can be closed. From May to sometime in the fall the doors would be open. Chairman Everett asked if there is a stage door and Mr. Vamvas indicated where this was on the map. He said this could be used for large equipment. The stage door will be closed during the performances. Mr. Lick asked if there is a plan developed for how the doors will be open and close as it wasn't clear at the first meeting how this would work. Mr. Vamvas replied that this is still under discussion and for right now the doors will open and close two times per year, spring and fall. He indicated that they had submitted the site plan that day to the Town planning board. They will discuss further material they will need for the site plan application and they will also submit a building permit application to the building department.

Chairman Everett asked if Mr. Vamvas met with any other permitting agencies for feedback. He replied that he met with the Department of Health for the water supply. They had mentioned earlier that they would be transient non-community. They will have to do some form of service treatment or disinfection.

Mr. Everett asked for confirmation of hours of operation as discussed at the previous ZBA meeting. Ms. Slevin reviewed the hours of 9 AM to 11 PM Sunday thru Thursday and 9 AM to 11:30 PM on Friday and Saturday.

Mr. Leary inquired about the sound again. "If you go out ten feet and you have the sound limiter and you adjust that to 85 and there is a performance going on. The property line is 850 feet to the north. At the 850 feet what will the dB be? It cannot exceed 85 correct?" Mr. Kahn replied that it would be much lower. Mr. Vamvas replied that 42 decibels is what was calculated for actually 90. Mr. Kahn agreed that if it was 90 decibels measured 10 feet, then at the property line to the north, the measured level would be 42. If it is 85 measured 10 feet from the tent, then it would be 37 decibels at the property line to the north. Mr. Jablonka stated that this is below ambient. Mr. Kahn went on to explain that the measured ambient level at the property line to the north was 44 dB. They would be eight decibels below that.

Chairman Everett addressed the applicant by stating that at last meeting they had committed to the fact that renters would have to use the PS21 sound system, and that is regulated by the limiter and only by PS21 staff and the applicant confirmed this. It was also confirmed that everything is indoors.

Chairman Everett, on behalf of Mr. Khosrova who was not in attendance, asked Ms. Slevin if they had brought a sample of the siding for the building. She replied that they had not since this has not been decided on yet. The chairman then asked Atty. Rappleyea and Mr. McCreary if the escrow account was current and that bills are up to day and their reply was that they believed so.

Chairman Everett asked both lawyers if the developer's agreement that was part of the original approval for this was still applicable or if it needs to be amended. Atty. Rappleyea replied that it will need to be slightly amended to reflect the modifications. Most of them relate to the storm water runoff and the drinking water and other items. Ms. Slevin agreed with this and added that they have some construction issues as well.

Chairman Everett asked the town attorney if the ZBA should be considering amended SEQR findings or should they ask for a new negative declaration or a positive declaration. Attorney Rappleyea replied that one of the first two would be fine and that either a negative declaration based on doing the complete review again or just an amended one based upon the newly submitted information. He reinforced that the septic, sewer, visual and traffic are all the same if not decreased. The only difference will be the significant decrease in sound which also is being decreased by this proposal by the evidence that has been presented. Chairman Everett asked Ms. Slevin their preference and she believed that a negative declaration would be appropriate. Mr. Henkel inquired if this would be an amendment of the findings from many years ago and the chairman replied that it would be the original approval.

Chairman Everett asked about amplified music starting at 11 AM. Ms. Slevin replied that at last month's discussion it was determined amplified music could begin at 9 AM provided that the reduced level to 85dBA was adhered to. The chairman asked the ZBA if they were in agreement with this. Mr. Lick responded that this was a trade-off to the operating hours. Chairman Everett asked that once construction begins, is the tent going to be removed as part of this proposal. Ms. Slevin replied that she believed that this was the case once the new Phase 2 building was ready for operation. She stated that if there is a transition period where the new facility isn't quite ready for operation, they (PS21) don't want to lose their whole season.

Chairman Everett then opened the meeting to the public. Terry Lasky, a neighbor who lives down the road from PS 21 commented that it's strange to him that last year "we talked very carefully about not having anything going on outside the facility, even when it was open and there was a roof...now all of a sudden, in the summer, we have 200 people sitting outside to the north of the facility; by the way, that's where we live. And according to the new science, they might not even hear the music, but they're still going to be outside. He went on to debate the "science" of last year with regard to berms, closed doors and how the sound wasn't going to be able to travel anywhere. He stated that now all of a sudden they have no science other than a roof that is going to prevent this sound from traveling to where he can hear it. It seems to him that it's not really science until you build it and try it and what protections do the neighbors have if this just doesn't work? He wanted to know what happened to all that science with berms in the front and in the back that they spent hours talking about previously.

Chairman Everett thanked Mr. Lasky and stated that this brought up a good point. At the last meeting it was discussed about whether (PS 21) would agree to some conditions that would allow the Town to do some sort of follow-up noise testing after the facility was constructed and in operation to actually determine whether or not the limiter was working. The chairman went on to say that there would be corrective measures that would be looked at. He asked Ms. Slevin if this

was correct. Ms. Slevin replied that they would recommend that there be a process of commissioning of the limiter and basically the whole sound system. They would request that during this commissioning period the Town verify that the ambient levels are being maintained during that process. This would provide opportunity to make sure that the Town understands how the limiter works and that it does indeed work, both ten feet from the roof line and then also at the property line.

Chairman Everett asked the town attorney if he could accept this protocol through a condition if the board decides to do this and his reply was yes. The chairman then asked for other comments on the application. Mr. Henkel then asked Mr. Kahn to speak about the berms. Mr. Kahn explained that this was included in their calculations. If there is the direct line of sight from the sound source to the receiver at the property line, they can calculate the reduction based on the distance, but if there is not a direct line of sight and the sound has to bend around such as the berms you see on the side of highways, then you can calculate the additional reduction that would be in place depending on the location and the height of the berm. According to Mr. Kahn that when they looked at the topography in more detail; there is no direct line of site to the north between the pavilion where it is currently designed to be constructed and the property line to the north. Essentially there is already a berm there based on the topography of the land. There doesn't seem to be any value to adding any additional berms.

Kate Gulliver, a patron and volunteer of PS21 spoke to the noise issue. Usually facing the parking lot she didn't hear any undue noise. She stated that the crowd is polite and has heard nothing there that would bother the neighbors admitting she is not a neighbor. She believes it would be a real addition to the life in Chatham referring that there is little to do when the summer crowds are gone and there is very limited entertainment.

Colleen Safford, a neighbor, spoke that she has never argued with the idea of PS21 and having lived through this for quite a number of years. She stated that they have come to hear a science of this application in the past, referring to the application in 2005 with the tent and they were told that the noise was only at ambient levels at the property lines, and that science never held true. When it didn't hold true, she stated that she made numerous phone calls to the sheriff's department, the town, etc. quoting that "The sheriff says, 'Well, the Town approved it, so there's nothing we can do either.'" She feels that as a neighbor, the science seems to be pretty muddy, and she would like to have some type of checks and balance system that if this science doesn't hold true and that they have something to go to. She is concerned with the late hours, stating that she doesn't believe that anyone has a problem with the performances, but it's how late they go and the fact that there is no formal system that if the science falls apart that there are some checks and balances. She asked that there be something that can be put in place that way.

Patricia Lasky, who lives ½ mile to the north of PS21, spoke next. She stated they were told nine years ago that the tent was not permanent. They were told that this would eventually be a closed facility. She said she is thrilled it will be closed for the winter and feels it should be closed all seasons. She went on to say that she heard the noise from the tent, even from the berms and that all of this landscape was supposed to protect her after guaranteeing that this wouldn't happen. She is now faced with a permanent outdoor facility from 9:00 to 11:30 PM. It didn't work for the tent, now it's that much closer and doesn't believe she will have protection from the noise. She stated that this is an "outrage." She stated that (PS21) doesn't know what doors they will have on the building and there is no fail-safe and there should be a fail-safe for them. She went on to say that the board thinks that they are unreasonable when in fact they love the arts. She wants it all to

happen she just doesn't want to have to hear it when she is in her house listening to her own music. Mrs. Lasky explained that in the summer she had to close the doors of her bedroom so that she can't hear the noise of PS21.

Julie Kabot, of North Chatham, spoke. She explained that she is not a scientist but is a musician and has been involved in some sound studies. What strikes her is that the tent is wide open and sound goes up and is higher than the berm. There is a roof and the audience sits under it and that should help with the sound. She feels that while the limiter isn't necessarily a total fail-safe, it gives a lot of room for adjustment in a way that the tent doesn't. She hopes this happens and thinks the community will benefit.

Mr. Lasky spoke again. One of the questions he had last time was the sound coming out of the front of the facility that can bounce off the hills, across the street and then go anywhere? I was told there would be a berm in front and now that berm is gone. So he asked again, "how can we gauge where the sound will go when it comes out of this megaphone-shaped building?" He went on to say that there are going to be speakers and asked how high they are going to be. He also wants to know how does this affect the sound that's coming out of this triangular shaped building across the street. And how is this impacted by the weather conditions? He feels that none of this has been taken into consideration after spending hours talking about this last year. Chairman Everett asked for clarification on the front of the building Mr. Lasky referred to and Mr. Lasky replied that it was the east side. He went on to inquire the board as to what kind of testing has been done with the 200 people outside, what will be done about that? Ms. Slevin responded to this by saying that some clarification is needed. She said they talked about the pavilion as being outdoors, but the pavilion is under the roof, so there is no seating. She wanted to make it clear that there is no activity outside the perimeter of the roof line. All activity is within the building, although some of it is open air. The ticket booths, concession stands, the restrooms, and the seating for the patrons are in fact, all within the pavilion. Chairman Everett asked if there is a patio to the north indicating this on the map. Ms. Slevin replied that it is a patio but strictly for folks waiting for the performance to begin and end. It is not a place for performances. The chairman then asked if there will be outside cocktail parties or weddings or those kinds of things occurring at all. Ms. Slevin replied no and referred to the discussion last month with the board that all activities would be restricted to the interior building. Obviously people will be walking around but the magnitude of the event will be within the perimeter of the building. Mr. Henkel asked for the square footage of the patio. Mr. Vamvas apologized replying that he did not have the information with him.

Chairman Everett asked Mr. Kahn to address the issue that Mr. Lasky raised about the sound going to the east. Mr. Kahn replied that from his understanding Mr. Lasky's issues was with sound going to the east vs. north. He stated that they calculated the sound level that would be measured at the property line to the east and to the north. The chairman asked if part of the building on the east side is enclosed. Mr. Kahn answered that in comparison to the tent it is closed in that the elevation at the back or where it is open is higher than the level of the platform. He indicated this on the map and said there is a roof and there is a limiter aperture where sound can escape from the pavilion either under the roof or over the level of the grade at that time. So it is open, but the opening is limited compared to the opening to the east of the existing tent. Chairman Everett asked if the grade of the front of the building is higher than the stage and wanted to know where the speakers were going to be. Mr. Stoller then indicated that the green line on the map denotes the grade to the east. The chairman stated that this is a basically a built-in berm and Mr. Kahn confirmed this.

Mr. Henkel wanted to know where the speakers will be mounted and Mr. Kahn indicated on the map where the speakers would be mounted under the building. He went on to say the speaker that is about 22 feet above stage level is in the center. And then there will be speakers to the left and the right. Those speakers will be located roughly 10 to 11 feet above the level of the stage platform and they are pointed down toward the audience. The design of the sound system will limit the sound to the seating area. When you move outside that area, the sound will be considerably lower. They are directional speakers. Chairman Everett questioned the positioning of the speakers in relationship to the opening of the building. Mr. Kahn explained that the location of the speakers is determined by where the speakers need to be in order to effectively cover the seating area and not beyond the seating area. He continued on that the elevation is dependent both on that and on the quality of the sound. The idea is to try to bring the speakers down lower so that the sound that comes out of the speakers is more natural. They are 4 to 5 feet above the level of the talent in order to create a more natural sound whereas the center speaker is pointing more straight down. Chairman Everett asked that if he was standing in the opening of the building and he looked into the building would he have direct line of sight of the speaker or will the speaker be higher or lower where he is standing. Mr. Kahn believes he will have direct line of sight to the speaker depending on where he is standing.

Atty. Rappleyea inquired as to how this array is set up currently at the tent. Mr. Kahn replied that it is a portable system, so there is some variation. They won't have the same level of directivity control as these that are being designed. He went on to say that they were conservative in their calculations and did not include any additional attenuation due to the loudspeaker characteristics in the calculation. They think there will be some benefit but didn't include this in the calculation in order to be more conservative and to at that time give the designer of the speaker system a little more flexibility.

Chairman Everett was confused in that he thought they had said that due to the elevation of the floor as it sort of slopes down toward the stage that will actually act as a line of sight. He asked if it was fair to say that it will block the line of sight for the sound to basically get out of the opening. Mr. Kahn replied that he wouldn't say completely this would happen. It does reduce the aperture of the opening. It doesn't eliminate it; otherwise, it would be a completely enclosed facility. So there at certain elevations, there is a direct line of sight into the facility from the east. Chairman Everett replied that in certain areas around the facility, there is a direct line of sight from the speaker out through the opening of the building and Mr. Kahn stated that this was correct. Mr. Lasky and Mr. Everett wanted to know through which elevation and Mr. Kahn replied that to all other elevations except the west that there would be at least some areas where there is direct line of sight. The chairman asked Mr. Kahn if he knew where these would be or if it really mattered at all for purposes of his analysis. Mr. Kahn replied that it didn't matter for the analysis because they are monitoring the sound level which does have direct sight to the speakers and are setting the limiter in order to ensure that the level at the property line does not exceed the code and does not exceed the ambient level.

Mr. Lasky inquired as to the east elevation and if the opening and the peak of the roof is to the east and the what the width of the opening is, referring that it looks like it is acting as its own triangular megaphone out to the east and toward the mountains across the street. Chairman Everett asked for clarification on the height of the opening to the east. Evan Stoller and Mr. Vamvas replied that it is 20 feet at the peak. The chairman asked if their argument is basically that it is irrelevant because the limiter is going to limit the dB level to 85dB ten feet out of the structure. Ms. Slevin responded on the east side and Mr. Kahn responded yes. Mr. Vamvas referred to the sketch showing the elevations. He showed that the existing grade rises up from the building and the drops down

towards the property line, so there will be some attenuation by the existing berm. But Mr. Kahn's calculations showed the reducing the decibel level by 6 to the east regardless of speaker position. Even if we exclude the position of the speakers they are talking about a significant reduction in the amount of sound headed east as compared to the tent.

John Feldman, a Spencertown resident, stated that from a cultural and economic point of view PS 21 is an asset and a big benefit to the community. As a film maker he deals with sound all the time. One can measure sound with meters. The type of sound that is coming out of PS 21 is generally classical music and relatively low in volume. At 85 dB is quite low. He went on to say at Mr. Lasky that the science of the acoustics is fairly well worked out. You can measure this stuff in meters and it is pretty accurate. He went on to say that it is unfair to say that you have to wait for the outcome of the science to know if the science works because you would never know. At this point, Mr. Lasky asked to respond to Mr. Feldman. Chairman Everett told him to hold on and the asked Mr. Feldman to please not address other members of the audience and to address the board instead in order to avoid a debate. Mr. Feldman then apologized. The chairman stated that the board is making the decision so it would be great if Mr. Feldman could address them. Mr. Feldman then continued on. He pointed out that the type of music at PS21 is typically classical music that is relatively low in volume. When there is talk of 98 or 85 decibels, it is about peak. He went on to talk about modulation whereas with rock music the idea is to keep it loud and steady which can be annoying. It never really gets loud at PS 21. Having gone to PS 21 it's never really loud and will probably never get close to 85dB. The speaker he assumes are just going to be focused on the audience and not blasting outside of the facility like a rock concert would be. The speakers are only there to make the audience hear the music better. And the speakers will be directed toward the audience. He asked the board to keep in mind this, the type of sound and the reason it is amplified when making the consideration.

Chairman Everett asked Mr. Lasky if he would like to respond to the comments just made. Mr. Lasky stated that acoustics are not an exact science and that anybody who knows anything about acoustics has to admit that. He referred to Avery Fisher Hall that had to be built all over again. He stated that if this was an exact science the berms that were talked about last year would be done, instead of some open air facility.

Ms. Stafford then spoke. She said that when we have had snafus in the past with performances running over, no one knows how to handle that. She asked the board if we could figure out a way that Questaterra can be held accountable for this. She would like to see an agreement that holds them accountable should a performance run over the timeframe, that the performers are compliant and that they are held to the sound limiter. This has been a grey area.

Mr. Henkel replied that they did have a discussion as to what constitutes a performance during the day, referring to Ms. Stafford's statement about a performance that ran over due to the band arriving late. Chairman Everett addressed Mr. Kahn assuming that he knows that performances and rehearsals and all other types of events are going to be required to meet the 85 dB limit. Mr. Kahn agreed. Mr. Lick added "within those hours."

Gili Liv, a resident of Ghent, spoke that she understands the concerns of the neighbors and was there to support PS 21 and hopes that there is a satisfactory agreement soon.

Mrs. Lasky inquired as to what the decision was regarding the hours, 9 AM to 11:30 PM on Fridays and Saturdays and 9 AM to 11PM on weekdays. Chairman Everett replied that yes that is the

current proposal, but the board has not made a decision on anything yet. Mrs. Lasky went on to say that she thinks the hours are preposterous without an enclosed facility. There is no architect here who knows what he measured and how he designed the building. She wanted to know who can speak to these issues. She does not understand what the height of the walls is and the distance between the roof and the floor and wanted to know why we not understand how much open space there is. What is the percentage? She believes that if it is not an enclosed facility, the hours are preposterous.

Mr. Henkel then asked Mrs. Lasky and Ms. Stafford what hours they thought were not preposterous. Mrs. Lasky responded that "it is hard for her to be comfortable because I'm hanging myself. You're giving me a rope to hang myself." Mr. Henkel replied that her answer was fair enough. Mrs. Lasky went on to say that she was guaranteed nine years ago when this first started that we shouldn't worry that it was ultimately going to be an enclosed facility. She wants the board to honor their word and make the facility an enclosed one because that's what they all bargained for. She stated that when you are a member of a community and people tell you that there is a guarantee, that people should standby that. She told the board they should be men of their word that this is what they were told and believed. She explained that she has sat for five years listening to what comes to her as noise. She knows it is music to others but not to her. She believes the board has created a problem of their own making and that she was guaranteed an enclosed facility. Chairman Everett responded that there was never any guarantee of an enclosed facility. Mrs. Lasky interrupted, disputing his statement. The chairman asked her to not interrupt. He went on to say that what the ZBA did was to approve an enclosed facility and that the applicant has the right to change that approval any time they want. He said, "So they are here before us with an application and the ZBA is considering changing what we had previously approved, and we are evaluating the potential impacts related to that. So there was never any guarantee. I just want to make sure that the record is clear on that particular point."

Mrs. Lasky spoke to this by stating that they were told "rest assured that we should patiently wait out the five years, that's all we had to put up with." She stated that she wished she had that in writing. She stressed that they were told to wait out the five years patiently and it was going to be an enclosed facility.

Mr. Lasky addressed the board again. He said he did not know what a guarantee means to the Board, but referred to a discussion a couple of years ago. He said, "the deal was, the Board said...they promised the neighbors: You neighbors, you shut up. And if they don't start construction within five years after the inception of the tent on a permanent facility, we close the tent down." He said to the Chairman, "You didn't remember it. I'm not sure you were on the board at that time that promise was made, but Tal remembered it. Do you remember it now Tal?" Atty. Rappleyea responded that he would have to check his notes. Mr. Lasky stated that he said he remembered that was the promise. He told the board that PS 21 came back to them about three years ago or so and said they hadn't raised one penny yet in donations, so they needed to get an extension on the tent and the ZBA gave it to them. He said that this was their first disappointment. Mr. Lasky finished by saying that the board can say one thing and do what they want the next day.

Chairman Everett thanked him and asked for any other final comments or thoughts. Mr. Leary asked a question about sound. If he looked north at ten feet, with 85 dB at the property line and if he was a ½ mile away from the property line would he hear anything with the limiter. He asked at what footage does the sound end. Mr. Kahn replied that the difficulty for this is that the audibility will depend on the ambient noise level. According to him, "One can calculate the reduction from 85

decibels going out 800 feet, 1000 feet a half a mile because sound drops off at a rate of 6 decibels every time you double the distance, so it is a logarithmic fall. It follows the same science as magnetism forces between two bodies. Also you can calculate what the sound level will be; whether the sound is audible or not will depend on the ambient noise level.” He believes that part of the challenge with the science of sound relates to the fact that at the end of the day, we can measure the sound and we can quantify it, but the sound is being judged by the people whose assessment is subjective. He said, “It is difficult to predict with great accuracy how an individual may subjectively respond to what they hear. And so the goal of our study and the goal of the environmental guidelines and regulations that are in place are designed to protect the public from excessive noise. And our study and calculations and suggestions of the limiter, which is what’s done by other outdoor facilities, is to provide a modicum of protection from people that live at or beyond the property line. And that’s the science we followed.” Mr. Kahn asked Mr. Leary if that helped answer his question. Mr. Leary responded that there is no real answer to that and thinks that there should be some sort of a cutoff at a distance. He said that it obviously depends on what music is played. Chairman Everett replied that there are too many variables. Mr. Kahn stated that there is a distance but it’s completely theoretical. Ms. Slevin explained that is why they looked at what the general ambient levels at the four points, north, south, east and west and determined what they are. Some days it will be 40, sometime 50 so they took the average which was generally between 45 and 48. She went on to say that Mr. Kahn’s calculations show that with the original calculation at 90 dB at ten feet from the perimeter of the building, they were able to meet those ambient levels on each occasion or be below them. They have agreed to lower the 85 dB so that it gives that additional level of cushion. Even though they know they can meet the ambient levels at 90, by going down to 85, she explained that they have provided that additional cushion, additional security that those ambient levels will be preserved or that there won’t be any impact at all. Mr. Leary asked again if some music at one time or another could be heard a half a mile away regardless of the sound limiter. Mr. Kahn replied that it is certainly possible but it will depend on the ambient level.

Chairman Everett then made a motion to close the public hearing. Mr. Lick seconded the motion. All members were in favor and the motion carried. Chairman Everett asked Attorney Rappleyea for some guidance in the next steps. He responded that the ZBA has 62 days to make a decision and to announce that. He advised that he would contact each board member individually as attorney client conversations so they would not have to have a meeting. He would then reduce those conversations into a proposed resolution and bring it back to the ZBA board for review, word by word, page by page. Changes can be made as needed. They would then craft the resolution that would hopefully be approved by all the board members. Whether it’s an approval or disapproval will depend on what we find during those attorney/client conversations. The chairman asked his board members if this procedure was agreeable or if they wanted to come back to the next meeting and have some further discussions about it. Mr. Henkel responded that he would prefer to allow the board members not in attendance to have more discussion regarding this. Mr. Rappleyea responded that this was fine. Chairman Everett suggested that they come back next meeting and have a conversation about which direction they want to go with this. If there is thought about approval then they can discuss conditions. If there is discussion about maybe denying it, they can further discuss this. Everyone was in agreement with this.

Item #3 Application from John Wapner & Cynthia Bobsiene, 231 Thomas Rd., requesting Interpretation of the Zoning Ordinance

Chairman Everett confirmed with Mr. Wapner and Ms. Bobsiene that the CEO had sent them a letter of violation. He stated that there appears to be two issues: one is that they have clients coming to their home for counseling as they are therapists. The chairman asked if this issue has been

resolved. Mr. Wapner replied that they have worked from home for 37 years and had called the town many years ago to see if they would need a permit. They were told they did not. He stated that he has no problem in obtaining this permit now.

The second issue is the issue with the tennis court on their property. Currently there is a tennis pro who teaches tennis lessons to various friends, family or associates of the Wapners on their court during the nicer months of the year. They were referred to the ZBA because the Town CEO believes the Wapners are operating a business because the tennis pro gets paid to teach lessons. Chairman Everett asked the town attorney why they would need a site plan review.

The chairman asked if the tennis pro is related to them and he is not. He is paid by the people that take lessons. The Wapners do not receive any compensation. Mr. Wapner explained who takes lessons, mostly friends, family members, etc. He explained that will be an issue if he needs a site plan. They would then curtail the lessons that Eli, the tennis pro, teaches. Chairman Everett believes it sounds that this fits the home occupation classification. But the issue becomes that if we deem this a home occupancy, then the ZBA will require a site plan. Chairman Everett then read the ordinance. He asked the Wapners how many people come for lessons during the week and Mr. Wapner replied not more than a dozen people. Mrs. Bobsiene replied that not all people pay the pro to teach. Chairman Everett asked how big the driveway is. Mr. Wapner explained the driveway and that there is an area for parking right off the road near the tennis court and that no one parks on the road or driveway. The court is separate from that area. The hospital tournament also utilizes the court for their annual fundraising tournament. It is used once per the weekend during the summer. Atty. Rappleyea said that it is clearly subordinate to the primary use there. Because it doesn't fit any of the other requirements is this simply an accessory use or a home occupation? Chairman Everett read the statute. Being that the tennis pro is not an employee of Wapners and the owners are not conducting the actual activity it does not meet the home occupation definition. He stated that this could be an accessory use to the residence. Chairman Everett inquired as to why this is any different to someone who hires a lifeguard to teach lessons at their own pool. Mr. Henkel explained the reason a site plan is required is to determine the objection ability of what is taking place outside. Marilyn Cohen, the Planning Board Chair, spoke that a site plan is for safety and protection.

Chairman Everett feels that this can fit under the definition of an accessory use to a residence due to the number of people involved and the amount of times it happens. He said that if it goes beyond that then it becomes something more than an accessory use. Atty. Rappleyea said that this could be a good interpretation for future uses on that road and the board is addressing the potential of what uses could happen on that road. The chairman explained to the Wapners that with this interpretation this will be a limited use and they will need to adhere to that. Chairman Everett then said to put the application for interpretation on for a public hearing for next month. The Wapners will need to notify the neighbors. Chairman Everett explained to them that because they appealed the CEO's decision which is stayed they can continue to hold lessons for the next month. The clerk will forward them the information of notifying the neighbors.

A motion to go to closed session under section 108 of general municipal law was made by Chairman Everett and seconded by Bob Leary.

A motion to close the meeting was made by JP Henkel. The motion was seconded by Jeffrey Lick. All members were in favor and the motion carried and meeting was adjourned at 9:30 PM.

David Everett, ZBA Chairman
April 16, 2015

Submitted by

Shari Franks, ZBA Clerk