

**Town of Chatham
Meeting Minutes May 28, 2015**

**Zoning Board of Appeals
FINAL Copy**

Members Present:

David Everett, Chairman
Mitchell Khosrova, Deputy Chairman
Robert Leary
Jeffrey Lick
JP Henkel
Adrian Ooms

Public Present: Nicholas Vamvas, PE Crawford & Assoc., David Kahn, MaryBeth Slevin, Judy Grunberg, Evan Stoller, Terry Lasky, Tricia Lasky, John Wapner, Cynthia Bobsiene, Jose Ramirez, Heather Uhlar, Linda Ziskind, Susan Davies, Joshua Dunham Mark Smith

Excused: Kary Jablonka

George Schmitt, PE, Crawford & Associates
Tal Rappleyea, Town Attorney
Brenda Marello, Stenographer, MF Reporting

The Pledge of Allegiance was recited and the meeting was called to order at 7:01 PM by Chairman David Everett. A motion to accept the minutes was made by Deputy Chair Khosrova with a second received from ZBA member Lick. All members were in favor and the motion was carried.

Item # 1 Public Hearing for John Wapner & Cynthia Bobsiene, 231 Thomas Rd., Chatham, NY, seeking An Interpretation of the Zoning Law or Zoning Map

A motion to open the public hearing was made by Chairman Everett and seconded by Mr. Khosrova. Chairman Everett asked the John and Cindy Wapner for a review of the issue. Mr. Wapner stated that he received a notice from Code Enforcement Officer, Walt Simonsmeier, that a complaint had come to the Building Department that Mr. Wapner was conducting a business at their residence. Mr. Wapner explained that Eli Armstrong, who works as the tennis pro at the Old Chatham Tennis Club, was giving lessons to family, friends and others on the Wapners private tennis court at their residence. Mr. Armstrong goes to their house several times per week. Mr. Wapner said they do not receive compensation for this. He stated that there has been a rumor that has a business relationship with the club, but he said that is not true. Chairman Everett asked the ZBA board for questions. Mr. Leary asked if Mr. Armstrong gets paid and the reply from Mr. Wapner was that Mr. Armstrong gets paid from the people taking lessons. The board went on to discuss the definitions of use. Mrs. Wapner feels that this didn't fit the definition of a home business. Mr. Khosrova explained the concern is that if there are only a couple of people that is minor but if you have more than that and people are parking on the roads then you have a different situation. The Town Attorney, Mr. Rappleyea, asked if this is: a.) a home occupation or b.) some other form of business that requires a site plan review. Chairman Everett questioned if it could be a home occupation and then recited the definition. Mr. Khosrova read town code §180-29 and referred to previous applications. Is this an accessory use? Mr. Wapner referred to the Wings, of Old Chatham, who appeared before the CZBA in January and who were told their request to hold small chamber music events in their home wouldn't be a zoning issue. There was no zoning issue that was determined according to the ZBA board. Mr. Khosrova stated he didn't want to set a precedent. Chairman Everett feels this might be an accessory use. He read the definition. Atty. Rappleyea then said the focus on the intensity is where you can draw your distinction. He asked how many students the tennis instructor teaches. Mr. Armstrong, who was in the audience, responded that he doesn't teach kids, he teaches adults. The most he teaches at one time is six adults approximately three times per week. Mr. Khosrova asked if there would ever be a need to have more than six players at the Wapners and the reply was that six would be the maximum. Mrs. Uhlar spoke up as a neighbor who lives across from the Wapners and commented that there is no impact on the surrounding

neighbors with regard to the lessons taking place. Mr. Lasky, a Chatham resident, spoke up and said the fact that this came up is silly and asked the board if he had to submit a site plan to give a lesson in his home? At this point, Chairman Everett made a motion to close the public hearing. A second was received from Mr. Khosrova, the motion carried. Mr. Wapner expressed his concern with this issue siting the letter that he received from the town and that there was no documentation of the complaint when he went to foil it. Chairman Everett explained to him that it is not a ZBA issue. They are here to review decisions made by the town CEO. He told Mr. Wapner that if he has a complaint to take it up with Mr. Simonsmeier or the Town Board. It was eventually determined that since the Owners do not receive compensation of any kind, the use does not fit the Home Occupation definition. Due to the minor and incidental nature of the use, there are no signs advertising the activity, the ZBA determines that in this case-by-case analysis, the use is an accessory use as that term defined in the Zoning Law and therefore is a permitted use without the need for a Site Plan Review. Since the within application is an Interpretation of zoning law, the ZBA determined that it is exempt from SEQRA as a Type 2 action. If there is an increase of intensity of the use a Site Plan Review may be required if it is determined that the use has changed from an accessory use to a commercial activity. Chairman Everett motioned deem this an accessory use. Mr. Khosrova seconded. All board members were in favor and the motion carried.

Item #2 For informational purposes only: an Application from American Tower Co. ASA Networks seeking a Special Use Permit to place Wi-Fi equipment on tower at 181 Harmon Heights Rd., Chatham, NY 12037.

Jose Ramirez, representative for ASA, presented to the ZBA. He explained that this is a startup company serving some of the Columbia County are and they supply broadband and high internet access. He showed a radio that they put on the cell tower located at 181 Harmon Heights. He explained he hasn't needed a permit in other places. Mr. Ramirez passed around the picture of the cabinet size 36 x 36 that would be constructed there are two of them and attached to the current tower. He explained the conduit goes under the ground. Approval is needed from the ZBA to get permissions from American tower to proceed. Mr. Leary asked what area the broadband would cover. Mr. Ramirez replied that it will depend on how far they can go and thinks it may be two to three miles. Mr. Henkel asked where on the post the equipment would be located and Mr. Ramirez indicated on the diagram. Chairman Everett asked the town attorney if this requires a site plan review and special use permit. Atty. Rappleyea replied yes. Mr. Ramirez said there is no license and it is WiFi. It doesn't fall under the FCC. Mr. Leary stated that it is a radio frequency signal. The board discussed town code. The signal is comparable to that of a garage door, cell phone or microwave, not UHF but wireless. Mr. Khosrova explained that the ZBA procedure is a public hearing which we can do next month and site plan approval. Mr. Ramirez is trying to get this in sooner due to their investors. Mr. Khosrova asked how far the transmitter would reach. Mr. Ramirez replied again that it would be two to three miles maximum. He stated that the site is already built and there is no need to make a new one. Chairman Everett said that the board will need to see where everything will go. According to code 180-22.1E accessory structure, it is not a building. Mr. Rappleyea said that all of B2 of the code are applicable: 2 a b c d e. Mr. Khosrova asked if they received permission from the owner of the tower and Mr. Ramirez replied yes. He distributed the scope of work to the board. Mr. Everett prefers a site plan they can approve. He asked if there are other structures there on the property and Mr. Ramirez showed him other panels that are there. Atty. Rappleyea thinks it's exempt under b, c, d 180-22.1 and that doesn't include any new accessory structures other than those clearly indicated on the diagram. Chairman Everett feels it should be done by a professional engineer and it's constructed with the site plan as opposed to a hand drawn sketch. He said they can waive the public hearing. Mr. Henkel says he believes that paragraph 2 is written for this this specific thing. Mr. Khosrova asked if the original cell tower

application called for additional expansion. Mr. Henkel didn't believe a site plan was necessary, although he did agree that the board doesn't accept a drawing that is handwritten. The town engineer, George Schmitt, stated that the original approval of the tower plan should show future additions. In his opinion, what could happen is that they would have had these panel's conduits showing on the original. If the board is comfortable with it the panel will be installed according to regulations that apply...it's already on file and already approved. Chairman Everett explained the approval was done a long time ago and with one tower. Mr. Schmitt replied that this panel is much smaller and it's one more panel on an existing shed. Chairman Everett stated again that he wants to see the drawing done professionally. The town engineer replied there is either a full on site plan or to start over. Mr. Henkel moved that they waive the site plan, with a second from Mr. Lick, however a motion hadn't been made on the other issues. According to Mr. Henkel, Section 180-22.1B2 was written for such a proposal as this. Atty. Rappleyea recommended that the board amend the special use permit. Mr. Lick asked Mr. Khosrova if he thought there was a safety concern. The reply was no but he wants to follow the law. Atty. Rappleyea said this would be exempt from SEQRA review. Mr. Khosrova asked the town attorney if it was ok that this was not an accessory structure and his reply was yes. The board revisited the motion by Mr. Henkel earlier to waive the site plan. Ayes on the motion were received from Mr. Henkel and Mr. Ooms with Nays received from Mr. Leary, Mr. Khosrova, Mr. Lick and Chairman Everett. The Chairman then asked if the board was good with the waiver of all the other issues and the reply was yes. He asked Mr. Ramirez to put together a real site plan by ten days before the next meeting. Mr. Henkel explained that the engineer is needed. Mr. Khosrova motioned to waive the public hearing and exempt as a Type II action to SEQR. Mr. Leary seconded the motion. All board members were in favor and the motion carried. Notice of action is needed for the applicant and will be sent to them by Atty. Rappleyea.

Item #3 Questaterra/PS 21 request to amend Special Use Permit

Chairman Everett addressed PS 21 representatives, Nicholas Vamvas of Crawford Associates and MaryBeth Slevin, Attorney, that there were six documents that needed to be discussed. First item was the recommendation of approval from the Columbia County Planning Board. He asked if they and the ZBA members had a chance to review it. The reply was yes. The next documents were comments from Morris Associates and responses from Crawford and Associates. Chairman Everett asked if George Schmitt of Morris if he had reviewed them and if he was good with the responses from Crawford. Mr. Schmitt replied that he had reviewed them and is okay with them as long as the CZBA is okay with them. The Chairman asked the ZBA members if they had any issues with Crawford's responses and the board replied no. He then asked Mr. Vamvas if the EAF changes had been made and the reply was yes, but Mr. Vamvas stated that the planning board change on the lighting had not been made as they still have to address the planning board.

The Chairman asked Ms. Slevin if she received a copy of the amended finding statement and if she had a chance to review it. She replied she did and she provided her comments of it to the town attorney. He asked Mr. Vamvas to review the changes with the EAF and to provide the signed copy of it, which he did. Mr. Vamvas explained that Mr. Schmitt had sent a comment letter on behalf of Morris Associates last week and that Crawford had sent responses. He said there are two changes to the EAF: Section D, number 2 on page 8, question M, part I. The EAF they had sent in February had to be revised to make the version provided now congruent with the noise protocol. Then on Question N, Part I, they revised that to concur with the small change they made to the lighting plan that they had provided to the planning board. Mr. Vamvas explained they added wall-mount fixtures on the exterior of the building on the west and north side. Mr. Schmitt had reviewed this as part of the process of the planning board and noticed the difference so Crawford made that change. Mr. Khosrova had a question about item M-I regarding "construction" asking if it had been changed or should be changed. Mr. Vamvas did not believe the original EAF referred to "construction" noise.

Paul McCreary of Morris Associates had Crawford add the construction noise as well as the operational. The original document did not refer to construction noise, so they made that change and that it agreed with the noise protocol. Mr. Khosrova wanted clarification regarding ambient levels stating that he thought the discussions over the last several months was that the noise would not go above 85 dBA and in fact thought it would be below ambient. He said he was surprised to see that it is the same original language that they had. Mr. Vamvas replied that it wasn't the original language. Originally they were following DEC protocol, no more than 6 decibels above ambient. He wasn't sure how it got misconstrued but he stated he knew the discussion the last meeting that the board was expecting them to maintain below ambient levels at the property line. Mr. Khosrova asked if this document should reflect this. Mr. Vamvas replied that the noise protocol was revised to allow for the five decibels above ambient. Mr. Leary said that they (the board) never approved that. At this point, Chairman Everett suggested they switch the documents, leaving the EAF for discussion of the noise protocol and come back to the EAF after. He asked the board if they had read the noise protocol and Mr. Khosrova stated he hadn't had a chance to read it yet. Ms. Slevin explained the noise protocol, dated May 28th, and that the engineers, Mr. Vamvas, Mr. Kahn, and Mr. Schmitt had an opportunity to talk about the protocol and to reach a consensus on what an appropriate protocol would be based on the agreement that the limit of sound would be 85 dBA ten feet outside the pavilion. She believed that this is what drives the process, the absolute limit of the noise ten feet outside the pavilion. Mr. Khosrova replied that this was not his understanding of what should be driving this but couldn't speak for the board. His understanding of what would be driving is that it would be below ambient at the property line. Ms. Slevin answered that it can't be below ambient at the property line because as soon as anything is added, even another cricket, ambient changes. She didn't want to speak for the engineers, but this was important to understand. Mr. Schmitt then went on to explain how they determined ambient and how it will be tested (Please refer to draft Transcript May 28, 2015, M-F Reporting, Inc. page 13 through 19).

Chairman Everett then asked who on the board had read the revised noise protocol. Everyone had either read it or reviewed it quickly. He asked they should take the time to review it. Mr. Khosrova stated that he doesn't think it's what they agreed to. As a board they dismissed the DEC, they did not want to work with them and let the applicant know this months ago. So, he was surprised to read that it was back in the protocol. Mr. Khosrova went on to say although several board members didn't like the hours, he was personally okay with it because he had been assured by Mr. McCreary of Morris Associates, that noise was not going to exceed ambient. He didn't understand how there could be a miscommunication and felt that now there was a new engineer (Mr. Schmitt) on the project who was then convinced to go back to DEC. Mr. Khosrova stated that it's not what he believed the board agreed to. Ms. Slevin deferred to Mr. Khan to explain the ambient level and DEC policy (Please refer to draft Transcript May 28, 2015, M-F Reporting, Inc. page 22 through 38.)

Chairman Everett asked for clarification of language with regard to "other events" at PS 21 referring to the statement, "No event or amplified activity shall take place either partially or entirely outside of the permanent structure. All event seating shall be inside." He asked if they needed to distinguish between events and activities so they don't have issues with code enforcement. Ms. Slevin explained they were trying to distinguish between performances or contracted activities where there would be amplified music. She said they are just trying to preserve the right to do other types of activities that don't involve performances but are that are part of the community structure of the facility. Mr. Schmitt explained that in the noise protocol they stipulate sound and that both amplified and un-amplified noise is included. The board asked how this would be enforced. Mr. Vamvas replied that it's subject to the same compliance. If there is a complaint, then the code enforcement officer is called. Ms. Slevin explained that part of the commissioning process will test unamplified sound. So it won't just look at the pink noise for the amplified sound, it will also go

through a process that will look at unamplified sound. Mr. Khosrova wanted to know if a complaint is made how the code enforcement officer will know whether or not they are in compliance. Will he be going to the property line with the noise meter and at what level would he be testing? Mr. Vamvas answered that the testing would be at the ten foot perimeter, if any unamplified sound is going to exceed that 85 decibel level then that would be an instance in which they're not complying with the conditions. Ms. Slevin confirmed that this is why they go back to the perimeter measurement, because that's the one that's an absolute number. Mr. Henkel asked what if it is an unamplified noise being generated not in the pavilion, where does he test? Ms. Slevin replied that they are not going to have performances outside of the pavilion, whether it's amplified or not. Mr. Khosrova agreed and that it is the walking and hiking that will be outside. All the events have to be in the pavilion and they have agreed to that. Chairman Everett read from the list of conditions document #29. He said this relates to the amplified and unamplified sound and it's tied to the ambient noise level that's set forth here in the protocol. In his opinion, the way it gets enforced is that the code enforcement officer goes out with the noise monitor and monitors those locations. And if it's above five, then it will be a violation. If it's below five it will be good to go. Mr. Vamvas asked to clarify that they really need the compliance point to be their ten-foot perimeter, because that's controllable. Chairman Everett replied, "But this says the property line. That's what it is. And isn't the five dBA triggered at the property line?" Mr. Vamvas replied that this was correct. But when talking about measuring in the case that there may be a complaint, they're going to need to use that ten foot perimeter because it's controllable. The limiter is set so that they're getting 85 dBA at that ten foot perimeter. He said that there could be some other noise generated at the property line that could cause the level to be more than five decibels above ambient that would have nothing to do with PS 21. Chairman Everett wanted to know what happens if there are 500 Girl Scouts on the property, not the pavilion, and they are making noise...the limiter is irrelevant in this situation. Mr. Leary wanted to know if the limiter would be able to log in a time and decibel limit, so the code enforcement officer would know if a complaint was legitimate especially if he can't get answer the complaint right away. Mr. Kahn responded that the limiter does not have that capability. Mr. Leary wanted to know then what good would it do to call the code enforcement officer...how would one prove anything? The board questioned the town attorney about enforcement. Atty. Rappleyea explained that he went to the town board with this question of enforcement and told them the CZBA is requesting that there be additional ways of enforcement with respect to complaints of noise. He said the Town Board took it under advisement. Mr. Leary stated that there were about ten questions under advisement still pending. Chairman Everett asked if there were any other final questions on the noise protocol. The response was no.

The board then turned to the EAF. There was confusion of who had received the copies of it. Some documents were emailed and there were other documents that came in at different times. It was determined by the board that the ZBA clerk is to receive all documents in a timely manner at least ten days before. The clerk will make copies as needed (or the applicant will supply the necessary copies) and mail them to the board members not less than ten days before the next board meeting. Board members can also request that the documents be sent electronically.

The board then reviewed the EAF question by question. (Please refer to Transcript May 28, 2015 of M-F Reporting, Inc. pages 66 thru 97.)

Chairman Everett then asked if the applicant had reviewed the resolution. Both the town attorney and Ms. Slevin replied they had. Atty. Rappleyea stated that it tracks the procedural history. The board took a five minute break to make more copies of the resolution and review it. Mr. Khosrova explained that the protocol runs a half hour, and the change that they made in number 3 should be at least half hour of the operation on Friday and Saturday, which is 11:00 to 11:30 rather than 10:30 to 11:00 and they're in agreement. So number 3 in the protocol should change 10:30 to 11:00

and 11:00 to 11:30. Ms. Slevin had another issue to discuss. She stated that following up on the discussion that Mr. Vamvas had reviewed with the board before about having the point for enforcement ten feet outside the perimeter of the building, because that's the constant that we can control. Number 29 of the conditions we believe should be revised to reflect that. Atty. Rappleyea asked if it should be 85 dBA and Ms. Slevin replied that it is whatever the ultimate number is because it may not be 85. It may be lower than that. Chairman Everett expressed concern that he thought the whole protocol was tied to what the noise level is going to be at the property line. Mr. Khosrova was concerned as well, but that for enforcement purposes, what the applicant did is they said they want to hit now it's five dBA above based on the protocol. Then they are going to have this number, 85, but it may not be, it may be lower. Ms. Slevin replied that it may be more than. Mr. Khosrova stated that once a number is established it is much easier to enforce. (Please refer to Transcript May 28, 2015 of M-F Reporting, Inc. pages 102 thru 111.) After much discussion, it was determined that the Schedule B would become Schedule A. Chairman Everett requested a motion to approve the amended findings statement. Mr. Leary seconded the motion and all board members were in favor and the motion was carried.

Chairman Everett then referenced the resolution. He asked the town attorney if there were any changes. He confirmed that the language regarding ten feet for the perimeter was the same as the engineer's and that the date needed to be changed from April. Chairman Everett asked if a developer's agreement had been worked on. Ms. Slevin replied that the grant was circulated a month ago. Both Atty. Rappleyea and Ms. Slevin were in agreement with the current draft, which was attached as Schedule C. Chairman Everett wanted to be sure both parties were okay with this and they were. He asked if everyone else had a chance to look at the resolution, the reply was yes. Chairman Everett then made a motion to approve the resolution with the conditions as amended and asked that the town attorney provide the board with the updated copies of all of the documents that they had modified at this meeting. Atty. Rappleyea stated that the copies would be available within five days according to the statute. Chairman Everett motioned to pass the resolution document. Mr. Lick seconded the motion and all members were in favor and the motion was carried.

The Chairman thanked everyone for their time and help through this lengthy process and wished them luck. A motion to adjourn the meeting was made by Chairman Everett and seconded by Mr. Lick. The meeting was adjourned at 9:47 PM.

June 19, 2015

David Everett, ZBA Chairman

Respectfully submitted by
Shari Franks, ZBA Clerk