

MINUTES
SPECIAL MEETING
BOLTON TOWN BOARD

July 16, 2014

Special Meeting:

Supervisor: Ronald Conover
Councilman: Robert MacEwan
Councilman: Owen Maranville – (6:48)
Councilmember: Cheryl Bolton
Councilmember: Susan Wilson
Town Clerk: Jodi Connally
Counsel: Michael Muller

Call to Order: 6:32 pm.

Pledge: Cheryl Bolton

- Please remain standing for a moment of silence for Albert Robinson & David McComb.

Public Hearing:

Sound Amplification Request by Jeff Strief, Happy Jacks for background music, January to April: 9am to 6pm and June through September: 9am to 10pm; Columbus Day to December 31st, 9am to 6pm.

- Resolution regarding sound amplification permit for Happy Jacks.

Supervisor Conover stated this is the second year for this permit. The Board stated that the music is minimal background music and they have never received any complaints on it.

RESOLUTION #166

Councilmember Wilson moved, seconded by Councilmember Bolton to approve the sound amplification permit for Jeff Strief, Happy Jacks for background music, January to April: 9am to 6pm and June through September: 9am to 10pm; Columbus Day to December 31st, 9am to 6pm. All in Favor. Motion Carried.

Sound Amplification Request by Jeff Strief, Mrs. Whizzy-Fizz-Popp's for background music from May 15 - October 15, 11am to 9pm daily.

- Resolution regarding sound amplification permit for Mrs. Whizzy-Fizz-Popp's.

Mrs. Gabriels from the public asked about the location of this store. Supervisor Conover stated that it was the candy store next to Black Bass.

RESOLUTION #167

Councilmember Bolton moved, seconded by Councilman MacEwan to approve the sound amplification permit for Jeff Strief, Mrs. Whizzy-Fizz-Popp's for background music from May 15 - October 15, 11am to 9pm daily. All in Favor. Motion Carried.

Sound Amplification Request by Edward Foy Jr., Chateau on the Lake, Sundays: July 20 – October 12, 2014 and Saturday September 20, 2014, 4pm to 9pm.

- Resolution regarding sound amplification permit for Edward Foy Jr.

Carol McCleery of 5 Congers Point South, referenced part of Ordinance 22 and she wanted to define how outdoor amplified music was depicted in this ordinance. She then read her letter of opposition as follows:

We gather this evening because the town now requires permits for outside amplified music and has limited the decibel level of all music. Presumably, there is a reason that this permit process is required. The town must have envisioned situations where some permits would not be granted, otherwise, we are all here just wasting the time of town employees and wasting the time of business owners to fill out paperwork. There must be some situations where the music would be too intrusive, too disturbing, or just not reflective of the vision that we have for Bolton Landing. May I suggest that this is one of those occasions?

In order to better decide on the current request, we have the opportunity to look at a record of what the experience would be like since The Chateau was permitted amplified music on July 12, 2014. Here is a summary of the events of that evening. You may already have the Bolton police report, but I have several key additional points to make about the evening:

1) The guest and the band set up in a tent that was erected on the lawn more than halfway down to the water from the main building, approx. 50 feet from the water. At 5 pm Mr. Foy Jr. starts up his boat, Seabiscuit, and while traveling in reverse asks my husband, Jonathan Sauerwald, and me to get out of the lake where we were swimming because he was going to pick up the bride and return to the Chateau by water and we may spoil wedding photos. Although in total disbelief that we were asked to get out of Lake George, we cooperated without comment and while swimming ashore, a Chateau employee appears on OUR docks to request the same, she having walked through the break in the fence between the 2 properties. Still, despite this further intrusion, we cooperated without comment except to ask about the evening's music plans and to say that we had 2 decibel meters and would be monitoring the noise levels. The employee then returned through the fence opening. Then another individual appears through the fence to drive away in a white SUV with New Jersey plates that was parked on our association property.

2) The bride arrived at 5:30 and there were amplified family/bride and groom introductions at that time. The initial music was soft, but the band in the tent started at 8pm. During the course of the evening Mr. Foy, Jr. repeatedly shouted to us from his docks and property asking our decibel readings saying that his readings at the end of his docks were in the 75 range. We did not engage him in conversation. Our reading, on our property at the property line were consistently in the 80 to 90 range with peaks reaching 95!

As you can see from the above meter snapshot, the top line shows a recording of the music decibel fluctuations over time and that they consistently stayed in the 80 to 90 range on my property! Tom Bethon joined us with his own readings and video. At 9:15 Tom Bethon called the Warren County Sheriff's Office and Officer Keane of the Town of Bolton Police Dept. arrived soon after. He said that he could not use our reading and that his meter was broken and could not take a reading himself but would document our complaints. The officer encouraged us to call for any and all encroachments!!!! The officer left and minutes later a loud man's voice shouted "HOW ARE YOUR DECIBELS" which was so loud that we heard this from inside of our home!!!

3) Please also note that a new patio was installed during 4th of July weekend along the south property line of the Chateau bordering the Carnese and McCleery properties and the installation required a backhoe to level the area. This new patio was being used during the wedding for patrons eating dinner. This well-lit patio had 2 tables of 6 each and additional small tables positioned close to our property line! There was no notice of its being built and is in direct conflict with Mr. Foy Jr.'s initial description of the scope of operation including placement of outside lighting and description of dining areas. The initial plan included only subtle unobtrusive down facing lights along its perimeter and this is definitely not. While standing on our own property we were asked by both a waiter and then Mr. Foy, Jr. himself, "Can I help you?" and "What did you want".

This is how the July 12th evening went and as you can see, music was not the only intrusion that the neighboring homeowners had to deal with. Now we are here tonight as this Town Board considers the application by The Chateau for amplified music for 5 straight hours every Sunday through October. With 13 remaining Sundays, that would be 65 hours of amplified music on Sunday evenings, from 4pm until 9pm. Music is all intrusive. There is no room in your house where you can escape from it. Sundays in your own home should be a sanctuary that one hopes your town will understand and protect. We hope that you will do that and deny this application. In addition, if the town chooses to further consider this application, please note that at this time the town has absolutely no way to monitor the volume of any music and therefore cannot ask the business owner to reduce the volume. Although the town's meter is broken, the 3 meters that were used at Congers Point during the evening of the 12th were not acceptable evidence. As I pointed out in my previous letter, the Chateau property is only 80 or so feet wide. The Chateau is completely surrounded by private homes. Even Nirvana Farm is rented mostly to families with young children. This music will enormously affect the 18 neighboring property owners and 3 additional homeowners across on Green Island.

In weighing the circumstances of this request, the Town Board should ask what, is the benefit to the town in granting this music permit. Will this, like the music at Frederick's, attract new customers to the town? Will new Chateau patrons be attracted to dance to New York, New York and other Sinatra redo's? Is there any benefit to the town that could possibly outweigh the pain and the certain loss in property values that approval would inflict on so many?

We appreciate the value of businesses in town and appreciate how hard it would be to say no to a request being made by one. However, saying no is the only proper and reasonable response to this application.

Pat Cianci of 19 Congers Point South, stated the following:

- She had concerns with Mr. Foy's "unprofessional" attire while presenting his application at the previous meeting
- There were photos on Facebook of Sunday evening music events, even though they had been tabled at the last meeting.
- This past Saturday there was a wedding which received a permit with less than 2 weeks prior to the event.
- The music from this event was hard rock and not the dinner music Mr. Foy presented.
- Later that night there was the loudest display of fireworks that went on for 25 minutes which rocked her home.
- She is greatly affected by the noise from BLM Marina and Performance, but they have the common courtesy to explain upcoming events and updates, and she thinks this is a "neighborly" way to conduct business, rather than being blindly notified by mail.

Thomas Bethon, 5 Congers Point stated he had called the police for a true meter reading to be put on record. His concern is that they were not notified within the 30 days. He is also concerned about the neighbors on Green Island who have a direct involvement even if they are not within the 500'. It seems as this bed and breakfast is changing into a night club and a banquet facility which were not approved. They have already had two incidents with alcohol impaired people backing their boats up on the beach, once while his daughter was swimming and was just missed and the other with someone going out at 50 mph in a 5 mph zone. He believes it a safety concern. He would like the Board to take into consideration that people sitting there for 5 hours, drinking and listening to a band changes the atmosphere into a night club and not a bed and breakfast and he would have fought this business being approved if it was going to be approved as a night club.

Jane Gabriels, 16 Green Island Lane and her sons own 14 and 18 Green Island Lane. They have never had any notification for the noise and because of the water the music goes right across the bay into their houses. She stated that she did not see any notification of this meeting in the newspaper or the website and said that this is practically an illegal meeting. Atty. Muller stated that it was on the website and it was posted on the Town Clerks Board. She insists that they stop this. It bothers her terribly to see Hugh Wilson's house treated this way.

Chet Oliver, 8 Cottage Lane in Pioneer Village stated that he was at the wedding and the fireworks were from the Sagamore. While they were at the function the neighbors were hiding in the bushes. He stated that the noise was kept at a minimum and it was a nice affair, the band was turned down and a guitar player played during dinner. He stated everyone had left the property shortly after 10pm and it was very reasonable. It is not a night club and it is a nice place to go to dinner. Also Green Island is further away than 500' and that is why they were not notified.

Edward Foy Jr., 15 Allen's Alley.

- He stated the request at the dock was a request from the groom.
- He stated not one person can mend the fence.
- He also used a decibel reader and tried to ask the neighbors what their reading was.
- This was his olive branch to make sure that he was under the reading for the town ordinance.
- He asked this as a concerned proprietor not sarcastically and they did not reply to him.
- His parents did not raise a fool.
- He believes coordinating the decimal readings could have helped and is a reasonable request.

- He took 16 readings to make sure they saw he cared.
- He explained that there are a lot of things that affect into a decimal reading.
- He says while speaking the decimal reading went way up.
- He owns a home in Congers Point, and he can have someone bring his car home and it was his car in the Congers Point spot that was moved.
- They were correct with the count of guest on the patio, because they were leaning over his fence with recording devices and looking at people.
- He ate over \$1,800.00 in bills that night with guests who said people were watching them and spying on them from the bushes.
- He thought that it was people that were lost and was surprised that they were older people that lived in Congers Point.
- The difference between them and him is that he can't call the cops to report Peeping Tom's on his property when he has an event going on.
- It would be very embarrassing.
- The fireworks were from the Sagamore.
- He will coordinate with Green Island to see what the decimal readings are.
- He tried to talk to the McCleery's but they refused.
- If there are people leaving the docks that are unsafe please talk to him.
- He put in a permit for only 1 day a week, not 7.
- He is a commercial property.
- He ate over 8 dinner tabs that night because it was embarrassing to have people peeping over his fence.
- He's a big boy he will deal with it but he believes that he gave the neighbors an opportunity to control sound levels and they chose to ignore him.
- He is open to meet with the neighbors once a week to alleviate the issues.

Ms. McCleery stated she was not hanging over the fence and she was standing on her property and she took a photo of the terrace, the people dining and the lights above to indicate how bright it was and she would never reach over the property line. The right of way is on her property and the other owners in Congers Point do not have the right to drive on it. They have been swimming there for 38 years.

Thomas Bethon stated these are their homes and their beach and they are here for the music and if the decibel reading goes over for only second it is illegal. The ordinance is written for residents like them and they should not have to deal with this. He stated the property was approved for a bed and breakfast not a night club and not a catering facility and he needs the Board to address this issue.

Atty. Muller read letters from the following:
 Daniel J and Jean Carnese – opposed
 Michelle Perosi Froehlich – opposed

Jennifer Foy stated that the event that took place on Saturday was not the same music ordinance that they are here for today, it was a wedding.

Mrs. McCleery stated that the Foy's have never at any point have extended any request to talk to them.

Thomas Bethon stated that a saxophone is bad. It is an instrument that is considered a band instrument.

Councilmember Wilson stated that in the spring of 2013 the town purchased a decibel meter specifically because it would hold up in the court of law. In the fall it was broken and it was sent out and professionally repaired and calibrated within several weeks. Unfortunately the officer was incorrect when he stated the instrument was broken and the Board is addressing it. The meter is functioning.

Supervisor Conover stated that the meter fits into a broader effort with the adoption of the noise ordinance to precisely assist in keeping a balance between commercial activities and residential activities. The Board receives all kinds of amplified music applications and they have had issues, which the new ordinance has helped to resolve.

Councilmember Wilson stated that the Chateau has approvals to operate as an Inn, they converted the approvals from a bed and breakfast to an Inn back in June of 2013.

Supervisor Conover stated that there are time limitations on this operation and a limitation to the number of boats at the dock.

Councilmember Wilson read the resolution with the approvals from the June 27, 2013 Planning Board Meeting for the Chateau.

Atty. Muller stated that they have received a great many complaints within the last week. He stated that there is no verification at this point that the allegations have been proven, but they will attend to them. He stated that he does not recall seeing any exclusive sound complaints more of them were about congestion, traffic, and movement of a building or shed, which would violate the site plan requirements if proven. He stated that if there is a violation of the site plan approval, they give the property owner notice to come into voluntary compliance and if they fail the Planning Office recommends to the Town Board that they be prosecuted in a court of law.

Supervisor Conover stated that when the new ordinance was drafted it was drafted that so their future decision making could be grounded on their experience they are having at a particular location.

Councilmember Bolton stated that the topic of tonight's meeting was strictly for the 15 dates on the sound application request. Atty. Muller agreed.

Councilman MacEwan asked for clarification for where the music was to be located. Mr. Foy stated that the music would be on the northwest side of the patio.

Councilmember Wilson asked when the music would be on Saturday, September 20th. Mr. Foy stated from 4 pm to 10 pm. The Sunday music would be from 4 pm to 9 pm.

Councilman MacEwan asked if this would be something they would be willing to modify as they go. Edward Foy Jr. stated he would like to know now whether it is approved or denied right now, he will get complaints for everything he does. Councilman MacEwan stated he just thought this was a way to extend the olive branch.

Supervisor Conover stated that there were a number of options for the Board. He stated he could well understand the concern relative to number and the hours of operation. He stated that to be a night club you need to be in the late hours and every night of the week. He stated he could understand the concern of the neighbors. He stated that he is not prepared to go past 9 pm. Councilmember Wilson stated that she was thinking along the same lines as Councilman MacEwan but that is not what the applicant would like.

Councilmember Bolton stated that although that seems feasible, when they approve other applications they do not use the same rational. Councilmember Wilson stated they don't have the same concerns expressed and part of the Ordinance allows them to take that into consideration.

Councilman MacEwan stated his thought was to give a balance to both sides.

Murph McCleery asked if they would be able to call the Police and would the Town Police have the capability to assess and measure the decibel level. Councilmember Wilson stated that they do. She stated that the officer's ability would be able to make testimony. Atty. Muller stated that this would not hold up in a court of law. Councilmember Wilson stated that the testimony of the officer may not hold up to a court of law, but the testimony of the officer to the Town Board would certainly be taken into consideration, and the Town can enforce their law. Atty. Muller stated that if the machine does not work, he would recommend that it cannot be prosecuted.

Atty. Muller stated that this Board has the power to approve and deny the permit. He stated that if the Board passes it tonight, Mr. Foy starts off with a clean slate. If violations are noted 1, 2 and 3, this Board reserves the right to withdraw this permit. Councilman MacEwan asked if there was a failure could they withdraw the permit. Atty. Muller replied yes.

RESOLUTION #168

Councilmember Bolton moved, seconded by Councilman Maranville to approve the sound amplification permit for Edward Foy Jr., Chateau on the Lake, Sundays: July 20 – October 12, 2014 and Saturday September 20, 2014, 4pm to 9pm, with the stipulation that the music is not to exceed the 75 decibels stated in Town Ordinance#22 for the dates and times listed on this application. Councilman MacEwan and Councilmember Wilson opposed. All others Favor. Motion Carried.

- Resolution authorizing award of Potter Hill Road over Finkle Brook culvert project to Ellsworth & Sons Excavating, Inc. for \$283,194.50 and to authorize the Supervisor to execute any and all agreements associated with the award subject to the Town obtaining needed easements.

Councilman Maranville stated that this bid was considerably less than the others. Supervisor Conover stated that the money would have to come out of the fund balance. Councilmember Bolton stated that they had budgeted \$275,000.00.

RESOLUTION #169

Councilman Maranville moved, seconded by Councilman MacEwan to authorize award of Potter Hill Road over Finkle Brook culvert project to Ellsworth & Sons Excavating, Inc. for \$283,194.50 to come from the General Fund and to also authorize the Supervisor to execute any and all agreements associated with the award subject to the Town obtaining needed easements. All in Favor. Motion Carried.

RESOLUTION #170

Councilman Maranville moved, seconded by Councilmember Bolton to enter into executive session to discuss matters involving personnel. All in Favor. Motion Carried.

- No Action Taken.

Adjourn: 8:12

Minutes respectfully submitted by:

Jodi Connally
Town Clerk

Katie Persons
Minute Taker