



Zoning Board of Adjustment minutes – continuation - hearing date 24 October 2016

Approved 01/16/17

- A. Roll Call of Members present by Clerk: Bob Bergeron, Phil Garside, Bill Fritz (CH), Guy Daniello (VCH), Bob Young (A), Landon Smith (A).
- B. 7:40 Guy Daniello requested to read a statement that he had composed pertinent to meeting of 17 October 2016. In that statement Guy requested that Chairman Fritz recuse himself based on issues and opinions as expressed during the hearing of Oct 17, and the facts that he was present when sound tests were being done by the Ruggieros at the Driving Range without ZBA knowledge or permission and had expressed such during the meeting of 17 Oct 2016. He also requested that Phil Garside should recuse himself for the reason he was on the premises when these tests were done as well as. Chairman Fritz declined based on the fact he was there to collect actual data and facts to bring back to ZBA. He stated he felt he had not done anything to jeopardize his position on the ZBA. Phil stated he had been at the Driving Range that night with his family and had no knowledge of testing being done. He expressed his displeasure at not being able to spend family time without being questioned what he was doing. Both men declined to be recused. Guy called for a discussion from Board members, hearing none, meeting called to order by Chairman Fritz.

Call to order by Chairman Fritz at 7:42pm. – 5 voting members: Bob Bergeron, Phil Garside, Bill Fritz, Guy Daniello and Bob Young. Deliberations final list of stipulations including 1000 persons capacity; 75 dB agreed to. Guy questioned list of stipulations as he was still gathering information from public input. Bill Fritz declared Deliberation session not opened to public. Guy noted they never closed and was still opened if there were questions.

Martin Ruggiero handed in a 2 page “Amendment to Application” dated 10/17/16 that outlined 9 items to be amended including #1: Additional Description of Use, #2: Charitable Activities, #3: Schedule, #4: Sound Levels, #5: Improvements to the Stage, #6: Maximum Capacity, #7: Crowd Control a-c, #8: Staff Duties a - d, #9: Safety & Security Measures. Signed by J Alexander MacMartin Jr dated Oct 17, 2016.

Clerk was asked to read document that had been presented on 10/17/16 that was being discussed but not all members had seen. Discussion as to whether BOA could change, agreed it could be as it was still taking public input on each paragraph, if there was no changes, go to next paragraph. No time limits set for discussions. All agreed BOA was still taking public input. Guy and Nicole discussed missing or questioning each item. Guy soliciting public input. Members agreed to Public forum

#1 remove “*but is not limited to*” and add film presentations “*on screen, not to exceed back stage wall*”, remove “*and other similar events*”.

#2 use includes but not limited to.

#3 times are confusing, Events held on Friday, Saturday and on holiday evenings will “*START at 8pm*”, end at 11pm. Events held on all other evenings will “*START at 6 pm*”( ie cruz night & school nights), end at 10 pm. Remove “*in all cases, events will start no earlier than the regular hours for Martys Ice Cream and the Driving Range.*”

#4 maximum sound level of “60 dBA. Discussion on where this reading takes place – abutters property line or Martys property line. Last discussion was proposed to change from 85 dBA to 75dBA. Normal time noise, ambient noise, concert noise compared discussed. #5 no wording changes, #6 no wording changes. #7 a) Color-coded wristbands *OR* hand stamps. Remove: *when required.* #8 no wording changes, #9 no wording changes. But Board did question using private security versus Mason Police Dept. Needs to be specified when and who will utilize private security. Mr Ruggiero stated that MPD charges \$60.00 an hour which was outrageously too high and could hire privately for far less and had done so in the past with Cruz Nite without issues. Bob Bergeron would like to have Ruggieros contact MPD as they have the final say or authority on the concerts over all. Chief stated state law on regulations of authority of Police Chief. Board cannot supersede State Law of Regulating MPD authority or jurisdiction over traffic and security & crowd control.

Guy and Chairman Fritz want to stress that the “Special Exception” stays with the land/property. If business gets sold and new owners don’t understand what this special exception means, it could be problems for everyone. ALL must understand the exception stays with the property/land.

Board moved onto “Business Expansion Plan” as presented on 10/17/2016 by Atty Alex MacMartin. Guy noted there are no dates, revision numbers on every page. This should be corrected before final decision made. Guy stated he had done some noise research, noted on “Wikipedia” noise map is defined as “unwanted noise”. Based on his study, he would like to make a Motion made to have independent third party to perform in depth noise study before voting on decibels level and present facts, dates information to board before voting is done. Bob Bergeron seconded. Bob Young opposed citing decibels values, ambient noise and ability to perform testing if there is no concert at the time.

Selectmen Charlie Moser asked who would pay for this, what could be a very expensive test, the Applicant Ruggieros or the Town? Stated the Town didn’t have this item in budget or forecast for private business. No answer was given. Atty Nicosia questioned 2 different times sampling when some folks there versus variable decibels reading without music and crowd noise, sampling done during concerts for ambient noise with crowd occupancy. Bob Young felt setting limits on participants and decibels would force controls. Atty Nicosia felt more information was needed before a cap could be put on it. Who would enforce the level and limits? Response was the applicants must abide and enforce. Bob Young felt sound levels at boundary line of 75 dBs numbers. 85 dBs are where ear protection is needed. Garth Fletcher spoke on sound levels being utter nonsense as there is no way to enforce depending on where one was standing or measuring. Carol Iodice Fritz asked how this could be performed while the business is shut down, no 1000 people there for noise control or measurement. Bob Bergeron suggested a full band study, if he gets approval. Guy would like to seek a professional

ambient noise study. Bob Young says we could have an expensive company from Boston that would do a sound study around town and not get an average reliable sound level. Guy felt that the study would give credence to having done the right thing for the application. Joanne Burman that lives on Rt 124, spoke about noise on Rt 124 being very loud from early morning to late night, and did not understand what 85dBs even were. What do you compare 85 dBs too to say that is loud or soft? Charlie Moser suggested a professional study be done before & after because of the noise issue with applicant Ruggieros paying for it. Lee Lemoy (sp) radio engineer works daily with noise, felt that 85 dBs not a good number without traffic study with an average of period of time 1 -2- 4 hours of consideration and supports Ruggieros being responsible for the noise on their property and leaving their property. Guy stated a professional would do this testing. Bob Young wants noise condition in report when we get into deliberations. Phil presented draft of noise study. Phil asked how many people have been at other concerts in the past years? Nicole responded 700-800. 24 concerts in the past. How many complaints in other years? Nicole only aware of a couple and the music was toned down at the time and for the future.

Bob Young made motion to table motion to have in depth third party perform a noise study subject to further discussion at 8:40pm. Seconded by Phil. All members agreed to further discussion approved and to allow discussion on propagation to sound from Bob Young - decide what is subjective measurement, unpleasant noise and how to control noise. Put a cap on level is about all that can be done. Discussion with Bob Young's proposal to view noise conditions based Kingston NH ordinance Bob would propose (see draft) :1) Marty's sole control of sound boards, 2) sound pressure controlled to 75 dBA, 3) ANSI -real instrument not performed on a phone -A weight, 4) Slow response reading over time, 5) ANSI spec.how you actually perform, 6) logs kept, temp, time avail for discussion with monthly review to insure being kept Mason Police Dept reviewing logs during monthly meeting, 7) Constructive and destructive noise, shrill or too much bass. Noise Control Condition to consider for this application. Bill Fritz agrees with hard caps and specifications for sound measurements as Bob proposal – Guy questioned dBA levels still concerns at 75dBA versus 60 dBs at property lines. Rt 124, Churchill Rd noise level, hence the need for a log. What happens for a penalty? Bob & Guy discuss Who enforces MPD? Charlie says standard at Property line and MPD there at the same time, the MPD could address or enforce but if not there? Abutters could buy sound machines notify MPD and could take it further to courts, but the Selectmen cannot make promises, if it becomes an enforcement issue, then BOS could address. Once again, noise levels are the issue of Special Exception comes into discussion. Marty's and Nicole are trying to oblige all involved, but new owners, if the property were to be sold may not be as obliging and could interpret the ordinances as they see fit. Bob Young talks about cost of meters about 200\$-300\$. Bob Bergeron wants fire and police chiefs and Marty's to set up some plans in writing if some type of emergency arose, they'd all be reading from the same plans. Marty Ruggiero agreed. Fire Chief Fred Greenwood describes what their policy is – scene is stable, they would essentially wait for Mason Police to evaluate situation before going into area.

Mary Pierce asked if BOA was going to return to noise issues discussion on page 19/20 of Business plan with Audio engineer on site. Further discussion – table for further consideration. Guy and Bill questioned 60 dBa at property line. Bob Y. says 100 dBa at stage and further back to attenuate sound equals to 60 dBs at midfield. 75 dBa is what a lawn mower makes. Charlie spoke that this should be discussed further not in input stage.

Guy wanted more public input on traffic study concerning possible congestion on Rt 124, had they considered an alternate entrance or exit to back parking field, maybe A1 entryway? Churchill Road not viable road, no view onto road either right or left, not a well laid out road, narrow, winding unsafe many times due to wash outs and poor drainage. Unsafe road. Route 124 would be the best exit/ entrance to Marty's as it's not usually backed up. Ruggieros don't want anyone sitting out in the roads, moved cars along. No backup issue ever noted on Rt 124. Chief agreed with this. Settle Guys issue with using Churchill Road.

Guy asked Atty Nicosia if his clients had expressed any changes to their proposal? Atty Nicosia stated they were still in complete agreement as the original documents stated and highly opposed to noise, traffic, neighborhood character changes, times involved, noise levels, lighting, crowd management, health & safety issues, pedestrians on and off site parking as well as people walking on the sides of roads. Asked Atty Nicosia for bullet list of oppositions and he could present them even if hearing were to close first. Mr Fritz read letter from public record - Mike Davieau (abutter & opponent) wanting noise and time issues addressed–back to original hearing of May 2015, still in opposition and concerned with property value decline. This letter submitted before when was exception versus Special Exception status was changed.

Guy questioned no one submitted or discussed decline value and marketability of property that abut the driving range. Atty felt that this known use of and will have direct impact on home owners and be a factor in desirability of property.

Bill Fritz and Garth discussed ZBA decisions past creating wrong impression on GRAF. Mr Ruggiero asked if deliberations could move along. Guy & Bill responded that deliberations would continue until all board members are satisfied and concerns addressed and understood by all parties. Bill Fritz suggested ending not later than 11 pm. Guy questioned the driving range expansion, fund raiser issue, hours of operation for concerts NOT business hours, start time missing, page 7/8, page 18 exempt cruz nite, clarify Lot A, B C with A1 building. Why only 3-4 Mason Police officers? Porta Pottys should be 5 to 8 depending on crowd size and handicapped accessible included per Disabled Americans Act. Outsourced Staff - Additional staff trained by Marty's for different positions during concerts as needed for crowd control and security. Nicole committed to implement all issues on stage sounds that are being addressed by Mr Lamoy. Highest impact would be addressed speaker placements/direction ways to deaden decibel level, noise commitment with newer sound system being looked into, but with limited funds now available it's pushed back until decision is reached and go ahead received. Top 3 remedies would be conditions to be incorporated. Noted on page 33 of business plan, accommodations listed within 20 mile radius to concerts so this is a

regional venue, not strictly for the town of Mason further away than Nashua area and will have a regional impact. .

.Bob Young at 9:35 made a Motion to reconsider the motion to have an independent 3<sup>rd</sup> party do a noise study – reconsider vote relative before & after sound study – seconded by Bob Bergeron or do BOA adopt noise control at 65dBa? Bob Young wants to address funding for study – BOA has no funds for this so applicant or Town to pay? Or funding and definitions cost could be staggering. Bob & Guy discuss the impact. Guy made motion, Bob Y seconded. Vote : Bob B – Y, Phil –N, Bill F –N, Guy D –Y , Bob Y –N – 2 Y's 3nays. Vote to deny sound study.

Deliberations at 9:42pm on Amendment to Application from Martin Ruggiero on dated 17 October 2016 - *Ruggiero ZBA Appeal Summary as presented to BOA*. Dated October 26, 2016 (2 versions) written and presented by Guy Daniello. Definitive list to application. – go down amendment by items as listed. Charlie suggested using the template for deliberations Bill wants clear definitions before defining 13 points. If property gets sold the next owner gets the same understanding clearly for Special Exception. 3 Primary pieces for the application. Landon will red mark

Completed Amendments to Application. Mr Ruggiero asked if he has any input in what these changes were. He was leaving for Kansas for 5 weeks. Board stated that Nicole would still be available for continuation.

Motion made to continue on Wednesday 26 October 7:30 pm Town Hall. Seconded. Motion made to adjourn Adjourned unanimously at 11:20 pm

Constance Lacasse  
Respectfully submitted 10/29/16

Edited per BOA on 01/16/17. Board approved minutes as corrected on January 16, 2017.  
Constance Lacasse, Clerk – submitted 01/17/17