



## Development Review Board

Town Of Hinesburg

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### Meeting Minutes - September 17, 2013

- Approved 10/01/13 -

**Members Present:** Dennis Place, Greg Waples, Zoe Wainer, Dick Jordan, Ted Bloomhardt, Sarah Murphy, Kate Myhre.

**Members Absent:** Andrea Bayer (alternate), Bill Moller (alternate).

**Also Present:** Peter Erb (Zoning Administrator), Alex Weinhausen (Director of Planning & Zoning) and Freeda Powers (Recording Secretary). Representing Applications: Brett Grabowski, Matt & Judy Laberge

**Public Included:** Diantha Francis, Judy Laberge (of Charlotte), Karen Myers, David Bouchard, Mary Jane Ballard, Richard Francis, Brock Francis, Fiona & Gary Fenwick, David & Tonia Bouchard, Kristi & Tim Brown

Zoe W. chaired the meeting, which was called to order at 7:31 p.m.

#### **Minutes from 9/3/13:**

Zoe W. **made a motion to approve as amended** the minutes from 9/3/13. Dennis P. **seconded the motion**. Ted B. abstained from this vote as he was not present at the 9/3 meeting. The board voted **6-0**.

**Hinesburg Center, LLC:** (Conditional Use Review) – The applicant is requesting conditional use review for the purpose of modifying the approved hours for Kinney Drugs from the conditional use approval dated 9/7/2010. This property is located at 10212 VT Route 116 in the Village Zoning District.

Brett Grabowski represented this request for an extension to the originally approved hours of operation for Kinney's. He noted that per staff comments, no concerns are addressed with the request.

He went on to say that the original parking matrix outlines parking hours that are in line with this request. Currently, the Bristol Bakery is approved and operating within the hours of 6-9; beyond what is being requested.

Zoe W. asked if the business has been operating under the hours currently being requested. Brett G. said yes. The request is for hours 7am-8pm Mon-Sat, 9am-6pm Sunday with some extended hours for holidays when they fall outside of normal hours.

Ted B. said he has no problem with the request but it does appear that the business has been running on hours they chose rather than as approved. Brett G. said this has been an honest miscommunication between himself and the tenant. He said there have been no complaints in regards to the hours they have been operating in. Ted B. said he concludes that the hours requested are reasonable and consistent for the surrounding businesses. He said he does not expect that the hours of operation will adversely affect neighborhood.

The Board agreed that July 4<sup>th</sup> should be added to the specified list of holidays in both the Findings of Facts and in Order#1. Ted B. made a **motion to approve the request as amended**. Dennis P. **seconded the motion**. The board voted **7-0**.

**Matt & Judy Laberge:** (Appeal of Notice of Violation) – The applicants are appealing a noise violation that was issued under Section 5.12.1 of the Hinesburg Zoning Regulations. This property is located at 852 Hayden Hill West in the Rural Residential 2 Zoning District.

Dennis P. recused himself from this hearing.

Greg W. noted that four Board members present were also present for the 1<sup>st</sup> meeting regarding this 11/6/07 (Ted B., Dick J., Zoe W., Greg W.)

Matt and Judy Laberge represented the landowners in this case; the lot houses a private dirt track for their two children to practice motorbikes on. Back in 2007, the Zoning Administrator made a site visit to the neighboring lot owners, the Fenwicks, where decibel readings were taken from the property line. At that time, there were decibel readings 96-98. Since that time, the applicants said, they have made some changes including less riders (now down to their 2 sons and Mr. Laberge), and adding hay bales around the section of track closest to the Fenwick's property line. Matt L. said he thought that since the DRB came out for that original site visit, he was of the impression that they found their activities appropriate.

Greg W. said actually, the Supreme Court decision said that the Laberges didn't need a permit to construct the track, but that there are issues with Performance Standards.

Matt L. said they understood that the DRB was ok with what they were doing and added that the decibel ratings are likely lower now than they were in 2007 as there are far fewer riders now. He described the bikes as stock bikes, with no modifications. Per the 3 dates listed in the Staff Report by the Zoning Administrator, which resulted in this violation, Matt L. asked if the ZA was present for all three of these dates. Peter Erb, Zoning Administrator, said no, Mr. Fenwick had taken decibel readings on those dates and notified the Zoning office via email. Peter E. said according to the town legal representative, Bud Allen, if the evidence is credible then it is admissible.

Matt L. questioned the validity of the dates of said readings, saying he and his family were not home on two of those dates. He voiced his frustration at having had no prior warning of this violation until the notice was sent in the US Mail. He said he feels they are being tried twice for the same issue.

Zoe W. noted that Standards have changed since 2007 which gives additional guidance in regards to duration, frequency and intensity. Matt L. said as far as frequency, the kids and he have ridden approximately eight times this year, each ride lasting about 20-25 minutes. He feels their use of their property falls under "usual or customary." He cited line 5 of the violation conclusion which addresses landowners' rights to enjoy their property as much as the neighbors are entitled to quiet.

Greg W. said the first issue at hand is whether or not the track itself constitutes a customary use. If it is customary, he explained, than the other factors (i.e., duration, frequency & intensity) are not prohibitive. Zoe W. said she would find it customary. Greg W. said this issue is likely to reoccur and therefore it would be sensible to address it in a conclusive way.

Peter E. (Zoning Administrator) asked the Laberges two questions in regards to the bikes being ridden: 1) are they street-worthy and 2) what type of mufflers do they have. Matt L. replied that the bikes are Stock Bikes, purchased as is, not modified in any way. They are not road legal. Dick J. said this issue does come down to the duration, frequency and intensity. In his opinion, the duration as described by the Laberges is reasonable (and less than in 2007).

Sarah M. noted that the original order specified riding to be restricted to Tuesdays and Thursdays.

Zoe W. opened the discussion to the public for questions or comments.

Peter E. added that these concerns relate also to the ability of an ordinance that could be clear to apply or difficult to define these three variables of duration, frequency and intensity. He suggests that regulations could be more clear and helpful. Greg W. agreed, saying that is a good comment, and we are left to wrestle with subjective standards in defining reasonable vs. unreasonable. Specific Standards are set for noise in other towns, ours are not. He suggested the Planning Commission should give this more thought.

Judy L. said she feels that they should have been notified at the time of the first violation (decibel reading dated April 1<sup>st</sup>, 2013).

Zoe W. asked when the regulations changed. Alex W. said in 2010 the Planning Commission added limited language but that the regulation does remain subjective.

Tonia B. spoke from the audience, saying that back in 2006, her young son used to ride at the Laberges'. This is something that their family does on their own 1A lot and their neighbor does not complain. She said she is concerned and hurt by the untruths being taken by Town Staff. She went on to say that the decibel readings being mentioned is a *peak* lasting about 15 seconds. She compared the decibels from the bikes to the decibels of a kitchen blender, saying if one is considered unreasonable, the other would by definition as well. She said the Laberges have a 17A lot to use, and only one party seems to feel that their use of that land is unreasonable. In her opinion, their use of their property is

not wrong and should not be punishable. She said they should be allowed free use of their land. She added that recreational vehicles are common in Hinesburg.

Gary Fenwick spoke to clarify the dates being referenced. He said he emailed his complaints and decibel readings to the Zoning Administrator the day after he took the readings. Typically, he said, the decibel readings were between 88-89, as measured from the property line.

Judy Laberge questioned the decibel readings being used.

Dianne St. Francis spoke from the audience, saying dirt bikes have been ridden all over Hayden Hill for the past 40 years along with other recreational vehicles including mud bog trucks. She said on their property, on Hayden Hill, she and her family process wood as well. She asked if this is considered "reasonable" use. She would hate to see lifestyles change or be affected by the boards' discretion.

Mary Jane B. spoke from the audience, saying in her view, the Laberges appear to be getting bullied. She asked whose rights are more important? Who's next? She said the Laberge children are just trying to enjoy their family land.

Dick Francis spoke from the audience, saying he is also concerned with the decibels readings being used. He has worked with sound-deadening devices etc. and he said you need someone who knows what they're doing and an accurately calibrated decibel reader. He also noted there is *no* decibel number listed in the regulations and questioned how the Laberges can be in violation when there is no threshold to measure them by.

Fiona Fenwick asked for clarification as to who is riding at the Laberge property. Matt L. said only him and his 2 sons ride on the property and that there are no visitors when he is not home.

Kristi Brown noted that there are trails that go right through the town, not just on the Laberge property. Fiona F. said while that may be true, a trail goes from one point to another; the track on the Laberge property goes around and around and around.

Brock Francis spoke from the audience, saying the frequency as described by the Laberges amounts to roughly 5% of the year, in his opinion, a very small amount of time, a small % of life. The time is nearly insignificant. Gary F. disputed that argument, saying his time is not insignificant, no matter how it is measured. Fiona F. added that they have no place to go to get away from the noise, other than inside their home, where they can still hear it. This is very upsetting. Judy L. said this is something they do as a family, and this noise violation is threatening to cut into how they spend time as a family unit.

David Bouchard said in his experience, the ride time is often only around 15 minutes or so, and is just to test out the bikes the family will be taking to meets later on.

Dennis Place spoke as a member of the public. He said his son races motocross bikes, which he said can be loud, but he has friends over and they ride in pretty dense residential areas along Place Road, with no complaints. He said many kids in this town have bikes/4-wheelers adding that the kids spend a lot of time on and with their vehicles and take a great deal of pride in their outdoor activities. He said what

constitutes “unreasonable noise” is going to be different for different people. This is a matter of perception and priorities.

Greg W. said he would find another site visit critical, as the issue is directly informed by the topography at the site and the track. Judy Laberge said since 2007, they have planted trees and added hay bales and currently one bike is not working and one of their sons is injured; they do not anticipate that they could replicate the decibel readings experienced in the previous site visit. Fiona Fenwick replied that in their experience, the trees planted have had no effect. Sarah M., Kate M. and Zoe W. agreed another site visit is not necessary.

Sarah M. asked the Fenwicks what has changed this year to cause them to take the decibel readings and contact the Zoning Administrator. The Fenwicks said they simply got fed up with it, they grew tired of it. They said they have been in contact with the Zoning Administrator since 2007. They provided the Board with a list of 9 dates when they contacted the Zoning Office just this year.

Sarah M. asked the Fenwicks if the Laberges’ riding were to be restricted to specified days, if it were not to be random, would that make the activity any less disruptive or distressing to them. The Fenwicks said no they would still consider it a violation.

Judy Laberge requested that the decibel readings being used for this hearing be taken out of the discussion as there are no such numbers to reference in the regulations. Zoe W. said Peter Erb was using the decibel reading as a point of reference and as a way to measure intensity. Diantha Francis said she feels that the decision made by the DRB will set a precedent for the rest of the Town, too, and would like to see readings being taken by a Town Official, rather than hearsay or unsubstantiated evidence. Peter E. said he did see a picture of one of the decibel readings in question, which does constitute substantiated evidence as expressed by Bud Allen.

Greg W. said while the Board is in receipt of new materials to review in this case, he recommends keeping the hearing open to allow time for comments to those new submissions. Greg W. made a **motion to continue the public hearing to a later date**. Dick J. **seconded the motion**. The board voted **6-0**.

Zoe W. asked if the board would be amicable to moving the Other Business of reviewing the Mission Statement to a later meeting. The board agreed.

Kate M. asked about the process of going paperless for these meetings. Alex W. explained that the Select Board will be discussing the possibility of getting electronic devices for board members use at the upcoming budget discussions.

The board discussed communicating with the Planning Commission on their desire for more informed guidance in regulatory language.

Dick J. asked staff about any public complaints/responses to specific development projects. Alex W. said they hear both positive and negative feedback from community members and interested parties but staff does not keep track of them. The board considered a future survey to get this type of feedback.

Zoe W. made a **motion to adjourn**. Ted B. **seconded** the motion. The meeting adjourned at 9:32 p.m.

Respectfully Submitted,  
Freeda Powers – Recording Secretary