

ZONING BOARD OF ADJUSTMENT

Wednesday, December 15, 2010
Belmont Corner Meeting House
Belmont, N.H.03220

Members Present: Chairman Peter Harris; Vice Chairman Norma Patten, Members: Pleasant Oberhausen, Linda Couture and Marshall Ford.
Alternates Present: Mark Mastenbrook.
Staff: Candace Daigle and Elaine Murphy.

The chairman opened the meeting at 7p.m.

Abutters' Hearing – Belmont Firearms and Range LLC: Continuation of a Hearing for a Special Exception of Article 5 Table 1 of the Zoning Ordinance for a Recreational Facility, outdoor shooting range and law enforcement training house at 140 Laconia Road, “C” Zone, Tax Lot 210-005, #2010Z.

At least three members have viewed the site.

Representing the applicant were Mr. Bob Gillespie, Attorney Ari Pollock, Attorney Robert Dietel and Mr. Jon Rokeh, PE. Representing the Town was consultant Mr. Eric Wood from Acentech Inc. who did the sound testing.

P. Harris explained tonight’s meeting is a continuation of the public hearing for Belmont Firearms and Range. The sound testing has been done by Acentech and the results will be presented tonight. He explained that everyone will have a chance to speak tonight and have their opinions and concerns heard.

P. Harris outlined the requirements for granting a special exception. The use is allowed in the district, the use is grandfathered or the Ordinance specifically allows the use when a Special Exception is granted. The site is appropriate for the use. No factual evidence is found that property values in the district will be reduced. There is no valid objection from abutters based on facts. No nuisance or hazard is involved. Adequate and appropriate facilities will be provided. There is adequate sewage disposal. Structures must otherwise meet all dimensional requirements of the Ordinance. He explained that the applicant has to meet all these requirements for approval. If he does not meet one of the requirements then the application will be denied.

Atty. Pollock explained that the proposal is to add an outdoor shooting range and law

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enforcement training house to an existing business. They applied for a special exception last April and when they get their approval they plan to move forward and apply to the Planning Board for site plan approval. The law enforcement training house will be on a concrete pad with moveable walls around the pad. The training house will use simulated ammunition no live ammunition will be used. The shoot house will have lanes similar to the test prototype. The seven shooting lanes will be individually soundproofed. He stated that the outdoor range compliments the indoor range. The outdoor range will be supervised by a full time certified range master and will be open to the public and law enforcement. When they get their approval they will go to the Planning Board and at that time they will address the technical use and details of the property.

Atty. Pollock explained that the shoot house will be constructed off to the side of the alleyway so that it is not in way of emergency vehicles. There is an earthen berm and you are looking out over a depressed area. The shoot house is designed to control erratic gun fire. The shooter aims through the window towards the hillside that is lined with a rubber material that collects bullets, casings and wading material. Periodically the casings are collected to be disposed of or recycled. The training house is outside of the wetlands area. The hours of operation will be seasonal, closed under snow cover. They will be open 10 am to an hour before sundown.

Atty. Pollock stated that the noise generated by the firing of guns is a primary concern and that is why Mr. Gillespie had the Board arrange to have an independent consultant do the sound testing.

Atty. Pollock addressed the criteria for a special exception. The site is an appropriate location because the proposal is located in the commercial district and is adjacent to the indoor range. The specific topo of the property is orientated towards a hillside in a sheltered area. There is no factual evidence that property values would be reduced because the indoor range exists without any issues. The sound level from the outdoor range during testing is compatible to other sounds in the commercial district. There are other compatible noises generated in the commercial district from lumber yards, gravel pits and manufacturing plants. This proposed use is in compliance with the Belmont noise ordinance. There is no nuisance or hazard involved. The support services are the same as the indoor range. There is adequate and appropriate facilities provided. Traffic has adequate access to and from Rte 106. There is adequate area for sanitary sewage disposal. Dimensional requirements will be observed.

Atty. Pollock stated that he would like to submit a petition with 220 signatures and 40 emails that are in support of the outdoor range. He stated that currently there is a shortage of facilities in NH that offer a controlled and safe environment for shooting and testing. He also submitted a letter of support from Sherriff Wiggins who knows the project and is endorsing Mr. Gillespie, the design of the shoot house and the project.

Mr. Eric Woods stated that he works for Acentech in Cambridge MA and was retained by the Town of Belmont to help the Zoning Board with their decision on the shooting range. He explained that he attended a meeting at the site with staff to talk about how to reasonably test noise levels in the

community when shooting inside the outdoor enclosure. They talked about how and where to do the testing. They located three places in the community that represent neighbor's input. The four testing sites were the 4H Fairgrounds on Mile Hill Road 1800' WNW, 35 Winter Street 2150' NNW, 4 Oak Drive 1950' NE and adjacent to the proposed rifle range. After the meeting he prepared the test plan and shared that information with the town so they could do the public noticing so people knew when and where the testing was happening. It was important to have people hear it as well as the Board. They used professional grade instruments that were set to measure 60 times per minute continuously during the test period. The weather was mostly sunny, 60⁰ with calm winds. Five different rifles were shot 4 times in the enclosure and 4 times outside the enclosure so that people could hear both inside and outside noise levels. The same instrument used at the range was also used at the sites so that it monitored the time of the shot and the time it traveled to each test site. After the testing he calibrated the measurements and created a report.

P. Harris stated that they would take questions or concerns regarding the sound testing.

Mr. John Froumy stated that it has come to his attention that the material used for sound proofing in the prototype for the sound test may not be able to be exposed because it is flammable. If it is covered up with a hard material would that have any effect on the acoustics test? Mr. Wood stated that it wouldn't be the whole area just a minor portion would be shielded. The sound material can be covered up with a steel plate. In the prototype sometimes it is just fiberglass used for construction by the engineer. Mr. Froumy stated that the IBC code states that the exposed foam needs to be covered with a fire barrier with something more rigid. The hard material would create more echoes. He stated that he hasn't seen the design of the building so he is not sure how this works. Mr. Wood explained that in some rooms that have metal ceilings the sound material is above the ceiling. P. Harris stated that the design of the building would be dealt with at the Planning Board level. Mr. Froumy stated that it is related to the sound test and may affect the sound test. He challenges the sound test because of the design of the building. P. Harris stated that it would be discussed at the Planning Board and would have to be built to conform to building code standards. Atty. Pollock stated that the technical requirements will be discussed at the Planning Board level. If they have to cover up the foam material then they could cover it up with a sound muffling material. It will be a requirement of the design.

Mr. Mark Woglom stated that he read the report and two mitigating factors for sound is the distance and the forest. Both help mitigate sound but what if the forest is removed; would that increase the sound level? Mr. Wood stated that it might. Mr. Woglom asked what if the forest was cut down or a house was 25' closer; would the sound be louder. The applicant doesn't control the sound level. He stated that they set the testing instruments three hours before the test and wanted to know if they were monitoring other sounds. Mr. Wood stated that the instruments measured all the sound up to the testing and in between testing. The ambient sounds include distant traffic, people talking, an occasional airplane and insects. Mr. Woglom wanted to know if the ambient noises could be heard by the human ear. Mr. Wood suspected that people could and they heard the gunshots. Mr. Woglom stated that he heard the shots clearly and distinctly.

Mr. Jon Koning stated that he is closer to the range than the fairground and at time intervals he had to wear hearing protection. Abutters would have to wear ear protection because they are twice as close to the range and it is much louder.

Mr. Gary Johnson stated that there is a difference between the sound of a rifle and a Harley Davidson. It is snap vs a rumble. Mr. Wood stated that a gunshot is brief and a motorcycle is more of a gradual sound. Mr. Johnson stated one is a head jerker and the other one is not.

Mr. Don Minor stated that he owns a mobile home park and wanted to know if there were two tests. Mr. Wood stated that there was only one. Mr. Minor wanted to know if when the leaves are off the trees would it be louder than in October. Would it be louder in the wintertime? Mr. Wood stated that in the winter people tend to spend more time indoors with the windows closed. During the summer time people are outside more and have their windows open. There are seasonal differences and it is his experience that people tend to be more sensitive to sound in the summer time. Mr. Minor stated he is approximately 2150' from the range and the decibel level was 60dba and he heard it loud and clear. The sound would be a distraction to him and the 100 people in the park. Atty. Pollock reiterated the fact that there was no second day of testing and if they heard any gunshots on another day it was not from the range.

Mr. Froumy wanted to clarify what Mr. Koning was trying to say. Mr. Koning is halfway between the shooting range and the 4H Fairgrounds and he is concerned about the noise level at his house. With the noise continuing all day at half the distance what are the consequences going to be. The decibels at the fairground were 60-62 from outside and 50-60 from inside. What would the db be at Mr. Koning house which is half that distance. Mr. Wood stated that he disagreed with the need to wear hearing protection at Mr. Koning's house because OSHA recommends hearing protection if you work in an environment with the sound db of 85. It is based on working 8 hour days for 40 years and this proposal is not even coming close to that level.

M. Mastenbrook stated that a lawn mower is around 60 db and a semi-truck is at 80db and things we hear everyday are louder than the shotguns. Trucks go up and down Rte 106 on a regular basis. Mr. Wood agreed and explained that when they were setting up the testing at the condos there were people mowing and they had to have them stop or they would not be able to measure anything. He also stated that sound propagates through the atmosphere and that affects the sound levels.

M. Ford stated that the model of the shoot house they received looks like the seven lanes of shoot hut has the whole front of the house open. The prototype only had about a 3' square that you shoot through which is more contained than one with an open front. Mr. Gillespie stated that the opening would be the size of the prototype and may have an even smaller opening. The drawing they received was just a conceptual design. Atty. Pollock stated that if the Board wants they can condition the window to be the same size as the prototype.

Mr. Mark Mooney stated that they have listened to enough testimony it is time for the public to talk.

L. Couture stated that as part of her research she has read the World Health Organization and wanted to know if the report included anything from them about the maximum noise level range being between 50 and 55db. Mr. Wood stated that he has read the World Health Organization but it is not part of the report. Those db levels are an average of 15 hours living outdoors. Motorcycles and trucks are louder than what World Health Organization consider acceptable.

P. Harris thanked the applicant for his professional attitude and Mr. Wood and everyone involved in the sound test. Now he will open the hearing to those witnessing the testing and what they heard.

Ms Cindy Bartlett stated that she sat out in front of her house during the testing and could hear the different levels from the shots being fired. The testing was one shot at a time but once the range is in full operation the sound will be magnified by continuous shots. Hearing one shot at a time is not the same as continuous shots. The testing was not comparing apples to apples.

Mr. Froumy stated that trucks go by his house but they don't hear them because it is an occasional truck and this is going to be continuous dba levels. He asked Mr. Wood what the dba level would be for a dripping faucet in a house. If you are in a house with a dripping faucet it would keep you awake and would be a nuisance. That dba level is much less than gun fire. There is a nuisance and hazard involved. The RSA doesn't make a statement about what dba level is a nuisance. They have an analysis of it being a nuisance. They bought their house where they did because of the area.

Mr. Woglom presented a map that he superimposed the tax map on showing the shooting range property and his remaining property that can be developed. On the day of the testing he heard the gun shots clearly and distinctly. It would be intimidating to have to listen to that all day long. They are conditioned to except the noise from trucks in the commercial zone but they are not condition to hear gun shoots eight hours a day. This would impact future development of his property.

Ms. Glenda Reynolds wanted to know the date of the test. The Board told her it was October 26, 2010. P. Harris stated that it was a quiet day with 50% of the leaves off the trees. Ms. Reynolds stated that she runs a dental practice and she has received positive feedback from her clients on the tranquil and quiet atmosphere of the area and her office. The quiet soothing atmosphere sets the tone for what happens inside her practice. This proposal could potentially harm her business and clientele. This would affect property values as well as business values.

Ms. Wendy French representing the 4H Club stated that she has a vested interest in safety. They host horse shows and animal clinics and horses do not like sudden sounds or movements. She explained that several years ago they had a climbing wall at the fairgrounds and when kids reached the top they

would ring the bell. The horses would freak out so for safety reasons they had to stop ringing the bell. She is concerned about the noise from the sudden gun shot. Motorcycle noise increases slowly but a sudden gunshot will affect the animals. She explained that after the last meeting she talked to Mr. Gillespie. He agreed to forgo the use of the outdoor range during horse shows. She is concerned that he is only as good as his word. What is the legal recourse if the range is open during a show? What happen if the business is sold? What would prevent someone else from shooting during a show? She is concerned for safety.

Mrs. Ruth Mooney stated that she was at Granite Ridge during the testing and she could not tell the difference from the inside or outside shot. If she owned a condo at Granite Ridge and sat on the deck and had to listen to continuous gunshot she would move. It would devalue property values and people won't buy there. She rides horses at the 4H fairground and is concerned about the horses. Mr. Gillespie will not own the business forever and she concerned about the noise. The 4H fairground has been there for a long time in the same capacity as it is now.

Mr. Gary Johnson stated he is concerned about the ability to sell his property. The noise would be a disturbance when he walks around his property. Property values would be affected. There would be no new development in Belmont and that would affect the tax rate.

Mr. Andy Bartlett stated that he has a great concern for the future development of his property. In the future he plans on developing his property as rental property and the noise would devalue his property.

Mr. Hugh Baird stated that he lives at Briarcrest along with two hundred other families and the noise would be tough on them. He is very concerned about the sound and noise. A lot of the families in that park are on fixed incomes and they bought there because it is a safe and well managed neighborhood. He is concerned that the value of the homes will decrease. If this happens it would not be a benefit to Belmont. Belmont needs development and this would not help development but cause a lot of problems. The tax base will shrink and hurt Belmont.

Mr. Ken Knowlton, Chairman of the Conservation Commission, stated that he is concerned about the environmental issues. He stated that DES has a regulatory approach for outdoor shooting ranges. He read from the regulations "No shooting directly in or over surface water/wetlands." He stated that the area between the target and the shooting house is a wetland. This activity is unsuitable for the area.

Mr. Jonathan Flack, a resident of Northbrook Park, stated that he doesn't want to listen to gunshots all day. He loves to shoot guns but there is a range in Plymouth that is more suited for it because it is in the middle of nowhere.

Mr. Froumy stated that Atty. Pollack stated that the area is surrounded by commercial

development, but it is not. There are rental properties and other residences in the vicinity. The "Stop the Noise 2010" group has hired an appraiser, Mr. William McLean, to determine the effect the range would have on property values. Mr. Froumy read from Mr. McLean's letter stating that 'Much of the data on noise levels results in a high degree of subjectivity in determining what types of noises, patterns of noises, repetition of noises, etc. can be considered a nuisance.'" He stated that the shots fired from inside the enclosures were much higher than he anticipated. It is Mr. McLean's opinion that the noise level from the use of a single firing station could reasonably be concluded to detract from the quiet enjoyment in a typical residential neighborhood. The noise level from the proposed facility could reasonably be concluded to be a nuisance. Such a nuisance would likely have a detrimental impact on marketability and property values in the area.

Mr. Froumy stated that the distance from Mr. Koning house to the range is similar to the distance from the Corner Meeting House to the highschool and having to listen to gunshots at that distance all day long would qualify as a nuisance. That distance would affect property values. There are hazardous materials involved with full metal jackets, with lead, being shot over the wetlands. He stated that he is not anti gun but this is not the right location for this proposal. The petition submitted should not sway the Zoning Board. The law for a special exception states it cannot be a nuisance.

Mr. Woglom stated that he heard from the applicant on how the proposal meets the special requirement now he wants to address why they don't meet the criteria. The specific location is not appropriate because if you have identical properties and at one you can hear gunshots and the other you don't then the one that you don't hear the gunshots will sell for a higher price even if everything else is identical. There are valid objections from abutters that are impacted by the noise. There is a nuisance involved because if you hear gunshots all day long it is a nuisance.

Mr. Don Minor stated that he owns a mobile home park with 34 homes there. He and his wife live next to the park and have a horse and barn. This is a quiet area where you can hear a pin drop at night. Listening to gunshots could affect the value of the park and he may lose some tenants.

Mr. Tim Bartlett stated that the applicant said that there are limited shooting ranges in NH but his research showed 53 shooting ranges in NH. Belknap County SWAT team members have told him they don't have problems finding a place to shoot.

Mr. Mark Mooney stated that he went to the first meeting and not many people knew about it. He stated at that meeting that there are places for a rifle range but a rifle range in this neighborhood is not the right fit. He is the owner of Briarcrest and he doesn't want residents subjected to this atmosphere. It will disturb the neighborhood. He stated that he had concerns about the testing. Some of the guns tested were not the high powered rifles the sportsman would be using. A 30.6 would be almost twice as loud as the ones demonstrated. He asked the public for a show of hands for those opposed to this application. He stated 90% or more were opposed. The Zoning Board needs to take this into consideration.

Atty. Pollock stated that they are observing the law and regulations and the Board has to focus on that. One item in dispute is the criteria that no factual evidence is found that property values in the district will be diminished. He has not heard of or seen Mr. McLean's letter before tonight but it even stated that appraisals can be subjective. He also was appraising homes in the residential zone not the commercial district. Atty. Pollock asked the Board to focus on the facts specifically related to the values in the district. The comparison being offered is outside the district. He stated that there was a comment about Mr. Gillespie's offer to the 4H Fairground not to use the range during a horse show and what happens if he doesn't live up to that agreement. Atty. Pollock state that if he doesn't act in accordance with the approval then the town can enforce the conditions and order a cease and desist or seek fines if he is not acting in accordance with the approval. Mr. Gillespie cannot sell his license they would have to go to the bureau of Alcohol, Tobacco and Firearms. P. Harris stated that the use goes with the property.

Mrs. Mooney stated that Sheriff Wiggins' letter in support of the range doesn't stop them from shooting all hours of the night even after the hours of operation are listed. Who are the abutters going to call if there is after- hours shooting? If the police call and want night shooting Mr. Gillespie will let them do it. They can't call the police and they know what will happen if they call Code Enforcement. There could be gun fire all night long. She stated that if this passes she will no longer take her grandkids to the fairground. The 4H will lose money and children may be injured.

P. Harris stated that the Board has to keep an open mind and make a fair decision. They have received a lot of information from the public and that all is taken into consideration when they make their decision.

N. Patten wanted to know if Mr. Gillespie owns the property. Mr. Gillespie stated that he leases it.

Ms. Kimberly Ortakales wanted to know how much of the Board's decision is based on opinions and feelings of the people most affected by it versus the facts. P. Harris explained that if they fail on one of the criteria that is enough for a denial. Ms. Ortakales wanted to know if the opinions are weighed equally with the facts. C. Daigle stated that there is no way to give a percentage. There may be some factual items and some judgment of the Board. A special exception weighs heavily on the involvement of abutter's testimony of the impact of the use.

Mr. Mooney wanted to know if they could vote on the issue now. He has attended every meeting and they have discussed the issue. They have had plenty of time for discussion. M. Ford stated that there is more information needed. They have only talked about the outdoor shooting range and have not discussed the training house. P. Harris stated that to make a solid decision they need time to make a fair decision. Another public hearing is necessary for the Board to absorb the information presented tonight. They are not trying to stall the project but want to know the facts before making a decision. Mr. Mooney stated that he wants to witness the decision. P. Harris stated that the decision will be made at a public hearing. In order to be fair everyone is allowed to talk and voice their concerns. The Board will not be

rushed into a decision.

Ms. Donna O'Leary stated that she lives at Briarcrest and that about a month ago she was watching TV and she heard two shots. Her windows were closed and she still heard them and it was very disturbing. How is the average person going to know the difference between shots coming from the range and shots being fired from somewhere else? P. Oberhausen stated that if there were two shots a month ago it wasn't from the testing. Mile Hill Road is a good shooting area. Before the testing he heard some shots possibly from hunters. Mrs. O'Leary stated that she didn't move here to listen to gun fire.

Mr. Bill Plante stated that he has been in real-estate for 50 years and wanted to know what the benefit to the town would be from this shooting range. It is not a big income to the town and people are disgusted by the noise.

P. Oberhausen stated that on June 23, 2010 they discussed the shooting range and part of this application is the training house used by law enforcement. At that time Mr. Gillespie stated that only simulated ammunition would be used and he wanted to know what simulated was like. Mr. Gillespie stated that it like a paint ball and will not be heard.

Ms. Kimberly O'Grady stated that she was in the military and simulated paint guns can be heard. She lives in Northbrook trailer park and there are children and babies in the park and noise is a huge factor. This is not the appropriate place for law office training. It will be an extreme nuisance. She works 2nd shift and if she has to listen to that noise all day it will not be good.

Mr. Woglom wanted to know if the application could be split because the training house would not have the noise factor the outdoor range does. P. Oberhausen stated that the Board cannot split the application. It is all or nothing.

P. Harris stated that the Board needs time to review the information submitted at tonight's hearing. He would keep the public hearing open to new information. Mr. Mooney wanted to know what the purpose of keeping the public hearing open was because they heard all the information. P. Harris stated that they will be keeping the public hearing open so the Board can receive all the information necessary to make an informed vote. Mr. Mooney stated that he feels that the Board is afraid to make a decision. P. Oberhausen stated that they need time to read all the information they received tonight before they make a decision.

Mr. Minor thanked the Board for being fair and listening to everyone. P. Harris stated that they will listen to all the information as long as it takes to go through the process to make a fair and informed decision. The meeting will be noticed in the paper. Mr. Froumy wanted to know if the Board takes input before the meeting. C. Daigle stated that additional information can be accepted in writing by the closing date and it will be forwarded to the Board so the members can review it before the next meeting. The closing date for the January meeting is January 5, 2011 at 4 PM.

The chairman asked if anyone in the audience had any questions or comments. There were none.

BOARD ACTION – BELMONT FIREARMS AND RANGE LLC:

MOTION: P. Harris moved to table the public hearing to January 26, 2011 at 7:00 to allow the Board time to review the information submitted tonight.

The motion was seconded by M. Ford and carried (5-0)

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

N. Patten made a motion to approve the minutes of November 17, 2010. M. Ford seconded. Carried (5-0)

STAFF REPORT:

NOTICE OF DECISIONS:

The chairman signed the Notice of Decision for:

- Lakeview at the Meadows 87 Horne Road Tax Lot 110-006.
- John Klement for Winnisquam Beach Campground Unit Owners Association 16 Park Place Tax Lot 117-015-000-046.

ZONING AMENDMENTS:

The Board received copies of the proposed zoning amendments. The first public hearing will be December 27, 2010.

ADJOURNMENT:

MOTION: On a motion by P. Oberhausen, seconded by L. Couture, it was voted unanimously to adjourn at 9:13p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy
Administrative Assistant